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The perverse impact of performance measures on policing: lessons from the rise and fall of out of court disposals

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ABSTRACT

This paper questions the assumption that performance measures inevitably lead to gaming behaviours. Using (and extending) Patrick's Perverse Policing Model, the rise and fall of out of court disposals (OOCs) from 2000–2020 – especially penalty notices for disorder – is assessed in light of the introduction and removal of the offences brought to justice target (in place from 2002–2008) and the Best Use of Stop and Search Scheme (BUSSS, in place from 2014). All four forms of gaming set out in the Perverse Policing Model were found with regard to the offences brought to justice target and a fifth form, materialising, was added to the model. However, gaming was not apparent in the use of OOCs post-BUSSS. Reasons for this difference are considered. Namely, distinction is drawn between performance targets and performance measures. It is argued that all performance measures begin life as presentational rules. They either remain as such or become *enabling* (encouraging gaming) or *inhibitory* (encouraging compliance) depending on which response attracts the least 'within the job' trouble. This paper draws on national statistics on OOC use from 2000–2020, a case study on one force's use of PNDs from 2010–2011 and exploratory data on positive outcomes following stop and search from July 2015–December 2020. These varied datasets allow for a detailed consideration of how these powers have been used in practice, the various opportunities afforded for gaming by OOCs and an exploration of why those opportunities are, and are not, realised.

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Performance measures; out of court disposals; penalty notices for disorder; stop and search

The police discretion literature points toward a range of factors which can influence officers' decision-making: legal; organisational and structural; community and environmental; situational; and, individual – both police and citizen – characteristics (Sherman 1980, Riksheim and Chermak 1993, Skinns 2012, 2019, Grace 2014b). Whilst recognising that officers' decisions do not occur in a vacuum, this paper focuses on one organisational factor: performance measurement, and on one area of police decision making: the use of out of court disposals. The potential for performance measures to detrimentally affect police practice has long been recognised (see, for example: Skolnick (1966) and, more recently, HMIC (2014); House of Commons Public Administration Select Committee (2014)), with concerns that they lead to gaming. That is, behaviours which serve to meet the letter, rather than the spirit, of any given policy, resulting in unintended, perverse consequences. Gaming may be indicated by 'sudden and significantly large fluctuations in performance' (Patrick 2011, p. 205) and is arguably the 'unwitting ... inevitable, by-products' of target-based performance

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management (Guilfoyle 2012, p. 252). It is notable therefore that out of court disposals rose rapidly, from 338,305 in 2004, to a peak of 699,914 in 2007 but, by 2019, had fallen to 205,864¹ (Ministry of Justice 2010b, 2021a).

This paper uses Patrick's (2009, 2011, 2014) Perverse Policing Model as an analytical framework to explore the rise and fall of out of court disposals (OOCs) in England and Wales. Patrick's (2009, 2011, 2014) model – which summarises the extant literature – provides an ideal type of the different means by which performance measures have been found to distort police practice via: a *skewing* of resources, to focus on offences which are subject to performance indicators; the *cuffing* (i.e. non-recording or downgrading) of offences; *stitching* (manipulation or fabrication) of evidence; and/or inducing suspects into admitting or '*nodding*' to (perhaps additional) offences. To this list, this research adds *materialising*. The opposite of cuffing, materialising involves net-widening, focusing on low level/subjective offences to artificially improve detection rates. The 'Perverse Policing Model like all 'ideal types' is a conceptual construction and does not exist in its purest form' (Patrick 2009, p. 400). Instead, it provides a useful lens to explore gaming, allowing for consideration not just of whether gaming may have occurred but the various forms this can take.

Patrick (2009, 2011, 2014) focused on the gaming of detection and crime rates. The current research expands this, applying the model to the use of OOCs in light of two performance measures. Firstly, the offences brought to justice (OBTJ) target. All notifiable offences (that is, those offences which contribute to police recorded crime (Home Office 2020a)) regardless of severity and/or complexity, which result in a conviction, caution, penalty notice for disorder (PND), cannabis or khat warning, or having an offence taken into consideration are 'brought to justice' (Ministry of Justice 2012). From April 2002 until April 2008 there was a target to increase the number of offences brought to justice, initially to 1.2 million per year then, from 2004 (the same year PNDs and cannabis warnings were introduced), to 1.25 million per year (Morgan 2008). Secondly, the Best Use of Stop and Search Scheme (BUSSS) is examined. Introduced in 2014, the BUSSS saw a commitment to reduce searches and an aim to increase 'the stop and search to positive outcome ratio' (Home Office/College of Policing 2014, p. 2), with performance measurement on stop and search extended such that data on all 'positive' outcomes were published (i.e. searches ending in OOCs, arrest and postal charge/summons), where previously only searches ending in arrest 'counted'.

As national-level measures which span the history of OOCs in the twenty-first century, the OBTJ target and BUSSS are useful examples for examining the perverting potential of performance measures. Both see the use of OOCs 'count' as a marker of 'successful' performance, thus providing the same opportunities for gaming. This paper takes a long-term view of OOC use, examining national OOC data from 2000–2020, with a particular focus on PNDs and on those OOCs issued following stop and searches conducted between July 2015 and December 2020. This is supported by data from a case study of one force's use of PNDs in 2010–2011 (the middle of the overall research period), which draws on street-level police observations and a document analysis of 250 PND tickets. Combining national-level statistical data with a force-level case study allows for consideration of gaming at both the macro-level level, in the overall use of these powers, and the micro-level, during specific encounters. This paper provides an insight into the use and impact of out of court disposals, highlighting the opportunities for gaming offered (and taken) particularly by PNDs and other 'lower visibility' OOCs.

This paper makes three key contributions. Firstly, it applies Patrick's Perverse Policing Model in a new context, examining the potential for performance measures to impact on officers' use of OOCs specifically. In doing this, it extends the model to add a fifth form of gaming: *materialising*. Secondly, in focusing on OOCs, it highlights the particular opportunities for gaming offered by low-visibility powers such as PNDs and community resolutions. Finally, in applying the Perverse Policing Model and comparing the potentially perverting effects of two different performance measures – OBTJ and BUSSS – it explores the different forms gaming can take and how/why opportunities for gaming are and, importantly, are not, realised.

All four forms of gaming outlined by Patrick – *skewing, cuffing, stitching* and *nodding*, as well as a fifth form, *materialising* – were suggested by the use of OOCs under the OBTJ target. However, despite presenting similar opportunities for gaming, BUSSS has not had the same perverting influence on OOC use. To some extent this may reflect the difference between performance targets, which are ‘to be aimed for, met or exceeded’, and performance measures, which are ‘simply a source of information’ to aid decision making (Curtis 2015, p.4). However, it is argued that if we see both measures and targets as beginning life as presentational rules (Smith and Gray 1983) then we may be able to better understand their influence, or the lack thereof, on officers’ behaviour.

The function of presentational rules is to present an acceptable image of the police and such rules have no necessary influence on behaviour. This appears to be the case with BUSSS’ stated, but little emphasised, aim to improve the effectiveness of stop and search. However, where there is political, and thereby organisational, pressure to meet a performance measure – as was the case with the OBTJ target – they can influence behaviour. And, depending on which response attracts the least ‘within the job’ trouble (that is, the least negative attention from superiors (Chatterton 1976)) – rather than being purely presentational, they may become *enabling* or *inhibitory rules*, encouraging gaming or else compliance/good practice respectively (Smith and Gray 1983, Sanders *et al.* 2010). The data presented here thus question the idea that performance measures inevitably lead to gaming, in the sense that they *pervert* practice. Instead, these data highlight the need to consider not just whether gaming occurs, but the different forms gaming can take and the manner in which the tools for (so-called) gaming may be developed alongside, or within, performance management frameworks, with gaming thus ‘baked in’ to the system. This is particularly important given the recent announcement of a new Crime and Policing Performance Board indicating a return to top-down performance measures (Patel 2020).

Background

The OOC framework

Simple (previously ‘formal’) cautions have been used as an alternative to prosecution ‘from the very beginning of professional policing’ (Morgan 2008, p. 12). However, in the last twenty years, a range of out of court disposals (OOCs) for adult offenders have been introduced in England and Wales.² Penalty notices for disorder (PNDs) and cannabis warnings were introduced in 2004. Conditional cautions were rolled out nationally in April 2008. In 2014 (when khat was criminalised) khat warnings were introduced. Guidelines on the use of community resolutions (with restorative justice) were published in 2012 (ACPO 2012), and data on community resolution use began to be collated nationally in 2014. However, as they include giving ‘advice ... [offenders] apologising ... or making some form of reparation’ (National Police Chiefs Council (NPCC) 2017, p. 24) it is difficult to pinpoint the effect of their introduction, as they reflect a codification of previously informal practice.³

OOCs, as case-ending powers, are alternatives to court. Whilst offering the opportunity for diversion from prosecution, there is no necessary downgrading of officers’ response when using OOCs (Grace 2014a). As Cohen (1996/1979, p. 404) has noted “‘alternatives’ [can] become not alternatives at all but new programmes which supplement the existing system or else expand it by attracting new populations’, thus leading to net-widening. Indeed, when PNDs were piloted it was found that between half and three-quarters of s5 and drunk and disorderly tickets were ‘new business’ (Halligan-Davis and Spicer 2004, p. 3).

There have been reviews of OOC use – an Office for Criminal Justice Reform (OCJR) review of PNDs in 2006 (Kraina and Carroll 2006) and, later of OOCs more broadly (OCJR 2010) as well as a Criminal Justice Joint Inspection (CJJI 2011) and a Policy Exchange report (Sosa 2012) into OOC use – which have raised concerns about the consistency of decision-making, the appropriateness of decisions, and the quality/accuracy of OOC records. However, OOCs’ potential to offer resource

savings (particularly pertinent given the funding cuts to criminal justice agencies in the 2010s), their diversionary potential and comparable levels of victim satisfaction have also been recognised (see also: Allen 2017, Neyroud 2018). There is however limited academic research on the use and impact of these powers and, despite calls ‘to formulate a national strategy’ (CJJI 2011, p. 4), this had not, until recently, been forthcoming from government.

In 2014, following a consultation on OOCs (Ministry of Justice 2014a), a 12-month pilot was launched in three forces of a new, two-tier, OOC framework. Only community resolutions (informal) and conditional cautions (formal) (and not simple cautions, PNDs or cannabis/khat warnings) were used (Ames *et al.* 2018). The pilot found that the two-tier system’s operating costs were approximately 70% higher than the existing framework, with no statistically significant impact on the likelihood of reoffending (Ames *et al.* 2018, Sturrock and Mews 2018). The findings were released without response from the Government and, since then, the OOC framework has been left in limbo with different forces operating different systems. In March 2020, 11 forces were operating a two-tier approach, with 25 continuing to use all six OOCs and seven a hybrid system (Mason 2020).

The National Police Chiefs Council (NPCC 2017) have advocated for a two-tier framework but indicated that PNDs should remain an option unless or until the law changes to allow officers to attach fines to community resolutions. Part 6 of the Police, Crime, Sentencing and Courts Bill (2021) proposes a – different to that piloted – plan to scrap existing OOCs and replace them with (upper-tier) diversionary cautions and (lower-tier) community cautions, with community resolutions retained for cases which ‘do not reach the criminal threshold’ (Brown *et al.* 2021, p. 22). However, regardless of any administrative simplification a two- (or perhaps three-) tier system might achieve, it must be noted that, like community resolutions and conditional cautions, community and diversionary cautions are umbrella terms, covering a range of actions. Going forward it seems likely the existing system of (more or less official) warnings and police-issued fines will be retained, if rebranded under those (arguably less transparent) umbrellas.

Penalty notices for disorder

PNDs were introduced to manage (and punish) the *suspected* commission of (low-level) *criminal* offences (Grace 2014a). A PND is not a conviction and requires no admission of guilt; payment discharges the recipient’s liability to be prosecuted. PNDs can be issued to anyone aged 18 or over whom officers have ‘reason to believe’ has committed a penalty offence, that is, one of the 30 offences listed in s1 of the Criminal Justice and Police Act 2001. In practice, however, over 94% of PNDs have been issued for drunk and disorderly, s5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress; s5 hereafter), theft (up to £100), possession of cannabis, criminal damage (up to £300) and wasting police time (Home Office 2005, Ministry of Justice 2021b). Whilst often termed ‘on-the-spot fines’, PNDs need neither be issued, nor paid, on-the-spot; approximately 50% are issued in police custody, rising to over 90% of tickets for drunk and disorderly behaviour. Recipients have 21 days to either: pay the fee; request a court hearing; or (in forces where it is available, and for offences to which the scheme applies) attend a relevant rehabilitation programme, following which their ticket will be cancelled.

Stop and search

The Best Use of Stop and Search Scheme (BUSSS) was introduced in 2014 to improve ‘transparency, accountability and community involvement in the use of stop and search powers’ (Home Office/ College of Policing 2014, p. 2). One of the aims of BUSSS was to reduce ‘suspicionless searches’ (Bowling and Marks 2017, p. 62) conducted under s.60 of the Criminal Justice and Public Order Act 1994. Whilst there was no explicit aim to reduce the (more common) searches conducted under s.1 of the Police and Criminal Evidence Act 1984 and/or s.23 of the Misuse of Drugs 1971

(which do require officers to have reasonable suspicion of the individual to conduct a search) the Home Secretary's launch speech suggested that the intention was to reduce *all* searches:

if the numbers do not come down, if stop-and-search does not become more targeted, *if those stop-to-arrest ratios do not improve considerably*, the Government will return with primary legislation to make those things happen. (*emphasis added*, Theresa May HC Deb (2013–2014) Vol. 579, Col. 833)

BUSSS was thus introduced under threat of primary legislation; if search rates did not fall and stop-to-arrest ratios did not improve, forces would, in time, be forced by statute to change their practices. In the event, the scope of a 'positive' stop was extended beyond arrest to include PNDs, postal charge/summons, cannabis/khat warnings, community resolutions and (simple or conditional) cautions. BUSSS also requires the recording (and publication) of the link, or lack thereof, between the purpose of a search and the outcome (Home Office/College of Policing 2014). BUSSS enhanced the performance measurement of stop and search, with usage data published monthly (Home Office 2020b), creating an implied target to increase the positive outcome rate.

Gaming: discretion and the impact of performance measures on officers' decision making

The quantity, quality and form of discretion vary in different policing situations (Skinns 2019). Different processes are involved in issuing different OOCs. Cautions, especially conditional cautions (which prior to 2014 required CPS approval), and custody-issued PNDs typically involve some oversight from a sergeant and, in the case of cautions, require the authorisation thereof. Cautions for more serious offences/repeat offenders require authorisation from higher ranking officers and/or the CPS (Ministry of Justice 2015a). However, notwithstanding the introduction of body-worn cameras in many forces, officers' street-level decision making is relatively rarely "second-guessed" by supervisors or ... external review processes' (Bradford and Jackson 2016, p. 219). Officers' decision(s) to intervene in disorder, to conduct a stop and search and/or to issue an on-the-spot OOC – such as a PND, community resolution or cannabis warning – are relatively invisible to their managers.

As noted at the outset of the article, officers' decisions are influenced by a range of factors, both legal and extra-legal. Smith and Gray (1983, pp. 161–173) distinguished between three types of rule that might govern officers' behaviour: 'working rules' are the internalised, unwritten, informal rules about how the job should be done (pointing to the influence of police culture on police practice). 'Inhibitory rules' are formal, whilst not internalised, they *may* restrain officers' behaviour depending on the perceived threat of consequences for non-compliance. 'Presentational rules' serve to present an acceptable image of the police (and policing) to the public. Performance indicators are primarily presentational, telling officers (and the public) how policing *should* be done, but they may serve any/all of these functions.

Performance indicators have been said to disempower the police, decrease discretion and undermine constabulary independence by creating 'an arbitrary system that prioritises certain types of police actions over others' (Cockcroft and Beattie 2009, p. 533). Equally, however, just as Sanders *et al.* (2010, pp. 67–68) note that the rules which govern police behaviour may be enabling rather than inhibitory, so too performance measures may enable officers' use of their discretionary powers. Turner and Rowe (2020) disaggregate discretion, distinguishing between the discretionary space in which police officers act and the discretionary actions they take. Performance management regimes affect the discretionary space in which officers make decisions, encouraging, at both the organisational and individual level, a focus on 'what can be counted, audited and easily targeted' (McLaughlin *et al.* 2001, p. 311).

Since the mid-1990s principles of New Public Management have had a growing influence on the organisation and governance – and thereby the practice – of policing, both in England and Wales and internationally (Loveday 2006, Fleming 2008, de Maillard and Savage 2012). In the UK, particularly under the Labour Government (1997–2010), this was manifest in the flourishing of 'top-down',

centrally driven performance frameworks such as the National Policing Plan, the Policing Pledge and Public Service Agreements (PSAs) (centrally set targets, such as OBTJ, against which public organisations were measured).

The election of a Conservative-led Government in 2010 saw an apparent break with overt centralised performance targets with officers told ‘to cut crime. No more, and no less’ (May 2010, no pagination). However, the instruction to ‘cut crime’ is a performance measure (Patrick 2014). Even without centralised targets, the adoption of quantitative measures of ‘success’ by many local Police and Crime Commissioners; the monthly publication of street-level, crime, antisocial behaviour and stop and search data; and regular HMICFRS Inspections, all point to the continued use of quantitative data to assess police performance throughout the 2010s (de Maillard and Savage 2012, Jones and Lister 2019, Home Office 2020b). With the new Crime and Policing Board suggesting the ongoing relevance of, and commitment to, this form of performance management.

Methods

This paper presents analyses of four datasets, examining the potentially perverting effects of the OBTJ target and Best Use of Stop and Search scheme on OOSD use. Firstly, statistical analyses of OOSD use between 2000 and 2020 are presented (Home Office 2005, Ministry of Justice 2010a, 2010b, 2021a, 2021b). Secondly national PND data are assessed (Home Office 2005, Ministry of Justice 2015b, 2019, 2021a). Thirdly, drawing on data collected as part of a broader study on the use and impact of PNDs (Grace 2014b), a case study on PND use in 2010–2011 (the middle of the research period) is presented. This includes data from over 130 hours of observations with officers on patrol in a city centre on Friday and Saturday nights between January and July 2011 and a (quantitative and qualitative) document analysis of 250 PND tickets issued between September and November 2010 by one (relatively high-PND-use) English police force (see Grace 2014b for further details).⁴ This case study allows for a more detailed examination of the forms of gaming set out by Patrick (2009, 2011, 2014) than would be possible from analysis of the overall numbers alone: the document analysis and observations providing for consideration of officers’ decision making and the particular circumstances in which they used OOSDs.

Finally, to compare the impact of the OBTJ target and BUSSS on OOSD use, an exploratory dataset which combines forces’ monthly stop and search data as published on data.police.uk (Home Office 2020b) from July 2015 to December 2020 is assessed. Data were downloaded on 05/12/17, 08/10/19 and 05/02/21 and collated into a single excel spreadsheet using code written for this purpose.⁵ Data were subsequently merged by the author into one SPSS file covering the whole data period (July 2015–December 2020). The exploratory dataset provides monthly data, allowing for a more nuanced analysis of the impact of BUSSS on OOSD use than that which would be possible by reviewing the annual data (Home Office 2020c). However, the extent of missing data means it should be treated with caution. For example, overall, there are 2,325,711 cases in the exploratory dataset with 1,512,258 from April 2016–March 2020, compared to 1,538,439 for the same period in the annual dataset (Home Office 2020d). Using these four datasets – national OOSD data, national PND data, the PND case study and national stop and search data – the potential perverting influence of performance measures on OOSD use is explored.

Offences brought to justice and out of court disposals: a perverse policing model?

Figure 1⁶ depicts all convictions and OOSDs issued between 2000 and 2020, Figure 2 focuses on convictions, OOSDs⁷ and offences taken into consideration for *notifiable* offences i.e. only those outcomes which contributed to the offences brought to justice target. There are three key dates of

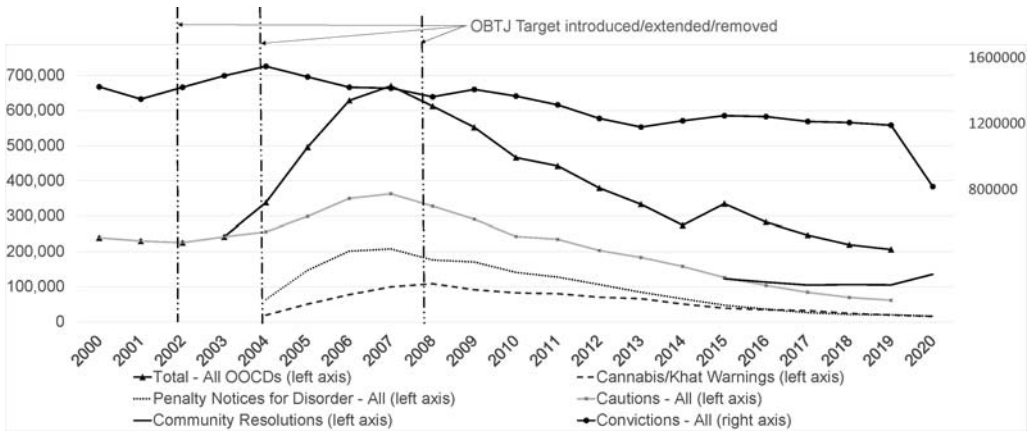


Figure 1. All OOCs and convictions 2000–2019/2020.⁸

interest when examining gaming of the OBTJ target: 2002, when it was introduced, 2004 when it was increased and 2008 when it was removed.

Figures 1 and 2 depict the rise and fall in OOC use, with all but community resolutions plateauing in recent years. This increase in the use of community resolutions seems, in part, to reflect growing use of stop and search – and associated increased opportunities to issue OOCs – as well as a switch from other out of court disposals (see further below). With the fall in convictions reflecting the impact of the pandemic on the courts (HL 2021/21, 257).

Skewing

Skewing involves focusing resources on offences which are subject to performance indicators. Thus, if OBTJ were skewed we would expect officers to concentrate on notifiable offences which contribute to the target and for them to manage these by way of OOC rather than (more resource intensive) prosecutions; we would therefore expect to see an increased use of OOCs in 2002 and 2004, with a decrease in 2008 once the target was removed. Figures 1 and 2 are suggestive of such skewing. However, increased OOC use is not necessarily perverse; indeed, the target aims bring more (notifiable) offences to justice.

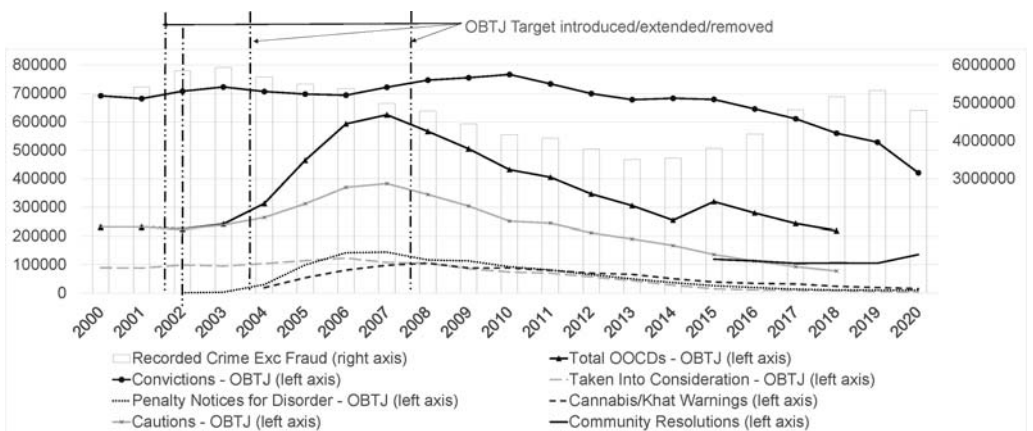


Figure 2. OOCs, convictions and offences taken into consideration which contributed to the offences brought to justice target 2000–2018/2020.⁹

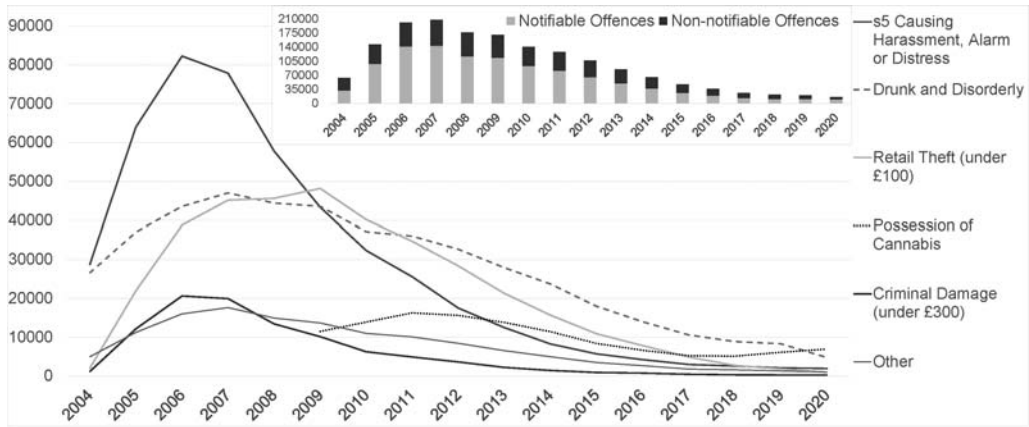


Figure 3. The use of PNDs 2004–2020.

The drop in overall convictions and increase in OOCs shown in [Figure 1](#) might, to some extent, be explained by a diversion of less serious (non-notifiable) cases from court. Convictions for notifiable offences however remained relatively consistent, whilst OOCs for such offences rose (see [Figure 2](#)). From 2000–2003, 22–23% of offences were brought to justice by way of OOC (at that time, only cautions), 9% by offences taken into consideration and 68% by conviction. After increasing in 2004, by 2007 (the last full year the OBTJ target was in place), 43% of offences were brought to justice by way of OOC. By 2018 this had fallen to 17%. This pattern suggests that officers favoured OOCs over (the more resource-intensive) prosecution (CJJI 2011, [Figure 7](#)), only whilst the OBTJ target was in place, which is suggestive of skewing.

Analysis of PND use specifically provides for comparison of notifiable and non-notifiable offences, i.e. both those that did and did not contribute to the OBTJ target. As with all OOCs, following an initial deluge, the use of PNDs has fallen dramatically in the last ten years; from a peak of 207,544 in 2007–15,952 in 2020. However, those overall data mask significant differences based on offence; the proportion of PNDs issued for notifiable/non-notifiable offences has varied over time, with a more modest decline for the latter (see [Figure 3](#)).

In 2007 70% of PNDs were issued for the three notifiable offences which contributed to the target – theft, criminal damage and s5; cannabis PNDs were introduced in 2010, after the OBTJ target was removed – by 2019 only 52% of PNDs were issued for notifiable offences, the majority of which were for possession of cannabis.¹⁰ As [Figure 3](#) shows, even within the notifiable offence group, there appear to be different issues at play. Retail theft tickets continued to rise after the OBTJ target was removed, peaking (at 48,161) in 2009. Conversely, s5 tickets started falling *before* the removal of the OBTJ target (see further below).

Skewing seems apparent for criminal damage and s5 in particular. From 2003 to 2010, the number of criminal damage and s5 cases heard by the magistrates' court remained relatively consistent (Grace 2014b, [Table A8.1](#)), but use of PNDs for these offences rose and fell dramatically in this time (see [Figure 3](#)). [Figures 1](#) and [2](#) also suggest skewing of cannabis warnings. The number of convictions for possession of cannabis did fall following the introduction of cannabis warnings (Grace 2014b, [Table A8.1](#)), however this fall was far exceeded by the number of cannabis warnings issued (108,346 at the peak in 2008). As with other OOCs, use fell after the OBTJ target was removed (see [Figures 1](#) and [2](#)).

Rather than diverting cases from court, PNDs and cannabis warnings thus drew thousands more cases into the net i.e. those who might have been dealt with informally (if at all) were drawn into the criminal justice system and issued with an OOC. Although, as Morgan (2009, p. 21) has noted, 'the critics' 'net widening' is the advocate's 'closing the justice gap'. The purpose of OBTJ target was to

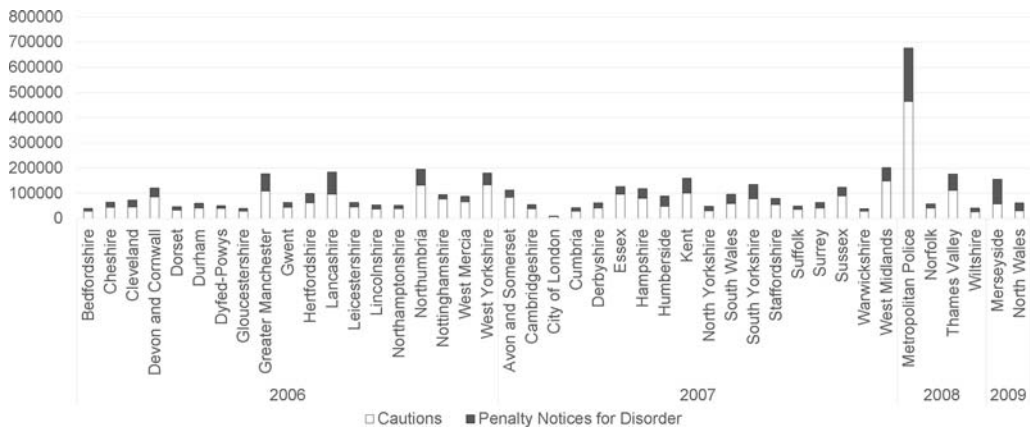


Figure 4. Total number of cautions and PNDs issued between 2005 and 2018 by each constabulary, sorted by the year their OOC use peaked.¹¹

bring more offences to justice, and more *were* brought to justice (by way of OOC). Whilst we might question whether these low-level offences were the intended priority and note the skewing of resources to such offences, equally however it must be noted that officers have simply met the target using the tools given to them by the government who set it. This point is considered further below.

Whilst the focus here has been on overall trends in the use of OOCs, and the skewing suggested by Figures 1–3, it must be noted that practice varied (and continues to vary) both between, and within, forces. Nationally OOC use may have peaked in 2007, but forces differ both in when their OOC use peaked and the proportion of cautions/PNDs issued (see Figure 4).

Even within forces, there is not always a consistent approach to OOC use (OCJR 2010, CJI 2011, Grace 2014b). Similarly, different police managers may be more/less committed to traditional, target-based performance management (de Maillard and Savage 2018). The Figures presented here suggest that both the extent and type of OOC use was correlated with the OBTJ target. Whilst the OBTJ target was neither universal in its impact nor occurring in a vacuum, the sudden increase in the use of these powers after the target was introduced, and subsequent fall after its removal, is suggestive of some degree of gaming.

Cuffing

Whilst Figures 1–3 are suggestive of skewing, s5 PND use peaked in 2006, i.e. *before* the removal of the OBTJ target. Since then, drunk and disorderly (a non-notifiable offence) has been favoured over section 5. *Cuffing* is the non- or under-recording of offences; however, such is the extent of the change, the move from s5 to drunk and disorderly might be considered wholesale switching (see Figure 3). These two offences are (often) seen as interchangeable (Kraina and Carroll 2006) so why, even before the OBTJ target was removed, did the non-notifiable offence become the preferred option? Until 2014, s5 was classified as a violent crime. Therefore, whilst contributing (with relative ease) to the number of OBTJ, s5 PNDs simultaneously (and negatively) impacted on violent crime rates.

That there was a switch to a non-notifiable offence, rather than a cessation of punishment (as seen with criminal damage, which fell from around 20,000 in 2006–2007 to 270 in 2020) highlights that satisfaction of the OBTJ target was not the only function served by disorder PNDs. However, as the ‘legal characteristics [of these offences] ... have a high degree of similarity’ (HMIC 2014, p. 66), it is difficult to assess (or assert) either an *under-recording* (cuffing) or *stitching* (manipulation) of evidence based on analyses of the statistical data alone. The following case study on one force’s use of

PNDs in 2010–2011 provides insight into the circumstances in which PNDs were used, allowing for the consideration of these issues.

The parameters for ‘cuffing’ in PND use are set by the list of offences to which the scheme applies and the guidance which (should) govern their use. There are a number of restrictions on PND use: PNDs should not be issued for cases involving injury or a realistic threat or risk of injury or cases involving domestic violence. No other offence(s) which overlap(s) with the penalty offence should have been committed; the suspect must also be ‘able to understand what is being given to them ... [not] impaired by the influence of drugs or alcohol’; these restrictions are notably at odds with the list of penalty offences (Ministry of Justice 2014b, p. 12) and the realities of much disorder, which was often cumulative: 43% of s5 and drunk and disorderly cases involved more than one victim ($N = 79$), most commonly, the second victim was a police officer (see further below).

All s5 and drunk and disorderly PNDs reviewed in the ticket analysis ($N = 79$) were issued for either public urination or abusive or violent behaviour directed towards the public, the police or both (arrest being most likely in the latter two scenarios). Notably, given the guidelines, 25 of these reported physical violence toward the police (typically during/following, rather than triggering, arrest) and 12 reported physical violence toward the public, including various physical altercations involving head-butting, punching and/or kicking, suggesting at least the potential for injury. Four cases arose out of situations where officers were initially called to deal with a domestic incident. Thirteen drunk and disorderly/s5 PNDs were issued during observations: four cases involved physical violence toward a member of the public and one the threat thereof. Another related to the possession of class A drugs.

Officers were aware they were engaging in cuffing. Observation Cases 10–12 (the only s5 PNDs) arose from a melee involving around ten people where one of the recipients lost a tooth, officers recognised it ‘shouldn’t really be a s5 [PND]’ (Field Notes p. 93; p. 95). Whilst acknowledging their cuffing practices, officers saw PNDs for fighting as a better solution for both the offender(s) and the officer(s); saving the time/stress of a court appearance, and, from the officers’ perspective, avoiding a potentially more lenient court-issued fine.

Cuffing is made easier for officers when dealing with offences they come across in the course of their duties. They have:

more discretion with drunk and disorderly [as opposed to theft cases] as they’re not generally logged as an incident, so may just use words of advice rather than issuing a ticket/arresting. (Field Notes, Page 99)

In the current study the police became aware of the incident in the course of their duties in 96% of cannabis cases ($N = 22$), 49% of drunk and disorderly cases ($N = 51$) and 47% of s5 cases ($N = 19$), as compared to only 2% ($N = 41$) of theft cases. The concept of ‘cuffing’ assumes some more serious action would have been taken, but the decision to issue a PND for offences involving violence was not necessarily a downgrading of their response. Decisions were largely driven by what (if any) action was deemed necessary to (re-)gain compliance and restore order, with offenders’ demeanour central to these assessments (Grace 2013, Grace 2014b, pp. 243–244).

Stitching

Stitching is the fabrication or manipulation of evidence, to make it more conclusive and/or justify one’s actions. The Perverse Policing Model would therefore predict that officers would ‘stitch’ their cuffing practices. The case study data, including officers’ discussion of their ‘defensive writing’ (Chatterton 1983, p. 201), points to some degree of stitching in officers’ write-up of PND offences. For example, in Case 6 (a woman reported to have slapped a doorman) the officer noted ‘you have to be careful what you write as it [a PND] shouldn’t be used for assault’ (Field Notes, p. 49). Officers in Cases 10–12 debated whether to collect CCTV covering the incident as it would show it was not a s5 offence.

In the night-time economy, although the police may initially *intervene* because of some verbal/physical abuse towards a third party, arrest and/or issuing of a PND usually arose as a result of the person's abusive behaviour towards the police. In 60% of drunk and disorderly and s5 cases the issuing police officer was at least one of the victims ($N = 78$) and it was not uncommon for the police to be the sole victim of the offence ($n = 17$: 3 s5, 14 drunk and disorderly). Brown and Ellis (1994, pp. 40–41) found s5 provided a 'vehicle for asserting police authority'. This was also borne out in the observation data where seven of the 13 PNDs issued followed recipients' disrespectful behaviour toward the police (Grace 2014b, pp. 243–244). Where 'challenge, resistance and a lack of general respect for the police will always incur punishment' (Choongh 1997, p. 224), stitching allows officers to provide a post-facto legally defensible account of that punishment.

The extant literature reports on officers' use of 'formulaic phrases that not only justify the decisions [but] persuade [others] ... to ratify these decisions' (Ericson 2007, p. 367). Such practices were evident in the tickets reviewed here, with officers providing standardised accounts of offenders' drunkenness in particular. However, some tickets documented the misuse of PNDs, noting violence or preceding domestic incidents for example. When issuing PNDs, officers do not always exercise their 'account ability' (Ericson 2007) perhaps because PNDs (and indeed cannabis warnings and community resolutions) provide a tool whereby officers are unlikely to ever have to defend their account.

PNDs facilitate stitching as officers often need only convince themselves of the veracity of their case. Only 45% of PNDs had the ticket signed by another (corroborating) officer ($N = 227$). The most subjective offences were significantly less likely to have evidence corroborated (drunk and disorderly, 34%; s5, 44%; theft, 61% ($\chi^2 = 9.769$, d.f. = 4, $p = 0.045$)) and the odds of evidence being completed were 2.7 times higher in theft cases as compared to s5/drunken and disorderly. Indeed, the evidence section was only (properly) completed on 64% of the tickets sampled ($N = 250$).

The lack of internal scrutiny is coupled with a lack of external scrutiny. Nationally, less than 1% of PND recipients ever request a court hearing (Ministry of Justice 2021a). Ashworth (2015), noting the low proportion of cases that are challenged in court, questioned the fairness and proportionality of the PND system; officers serving both as investigator and judge, places recipients at a disadvantage. This disadvantage is perhaps evidenced by officers in the case study reporting that if PNDs were challenged it was likely they would simply be dropped. Whilst many forces operate OOC scrutiny panels, they only review a small sample of cases and have no means to reverse decisions made in any given case (Grace 2014b).

Nodding

Nodding, as Patrick defined it, related to the abuse of offences 'taken into consideration' (TIC) and prison write-offs; inducing offenders to admit to offences they did not commit. If the OBTJ target had encouraged nodding, we would therefore expect a surge in TICs. In practice this did not occur (see Figure 2). However, this is not to say that nodding was not at all relevant to the OBTJ target, rather its impact may be seen beyond TICs. The power differential between officers and citizens (and the threat of a prosecution if an OOC is refused) may encourage people to 'nod' to offences and accept an OOC even where they do not accept any wrongdoing (Grace 2014b). Indeed, PNDs arguably institutionalise *nodding*, inducing recipients to accept a fine, without admitting guilt, to avoid prosecution (an approach which would apparently benefit all, except many cases may never have gone to court due to a lack of evidence or public interest). The potential for community resolutions to be gamed via nodding is particularly strong given that they can be used can be issued on-the-spot for both criminal and non-criminal matters (NPCC 2017).

Materialising – an addition to the Perverse Policing Model

This research has identified the need to extend Patrick's Perverse Policing Model; adding a new element of 'materialising' to the framework. Whilst skewing refers to focusing resources on those

offences which most easily satisfy targets and stitching describes the process of manipulating evidence, Patrick's (2009) model does not directly address the issue, noted above, of net-widening caused by OOC use. In disorder cases, what, if any, offence has been committed, and by whom, may only be determinable after the fact i.e. once officers have seen behaviour (or it has been reported to them) *and* it has been labelled as 'offensive' by police. If cuffing is the disappearance of offences up the officer's sleeve, *materialising* could be said to describe the process of pulling cases from their sleeve.

Police discretion, when issuing (especially low-visibility) OOCs, leaves open avenues to record, and clear-up, offences that come about from the police-public interaction itself. For disorder offences (such as s5, drunk and disorderly and possession of cannabis), which officers come across in the course of their duties, whether or not there is an offence depends on officers' decisions to act (or not). This is distinct from skewing – the focusing of resources on offences subject to targets – as materialising *creates* an offence which would not otherwise have been recorded. Where the focus is on crime rates such materialising would be problematic as it would lead to an increase in recorded crime – and, indeed, following the shift in focus to reducing crime in 2010, the decline in OOC use hastened – but where, as in 2002–2008, performance measures focus on bringing an increased number of offences to justice, materialising provides a means of satisfying that goal.

The Best Use of Stop and Search?

Analysis of the rise and fall in OOC use from 2004–2020 demonstrated apparent gaming; whilst the initial impetus may have been the OBTJ target, the case study on one force's use of PNDs in 2010–2011 suggested that opportunities for gaming continued to be realised after the removal of that target, albeit with different motivators. The influence of working rules was evident, whether to 'down-grade' or up-tariff the response to offending, officers sought to ensure offenders received an appropriate punishment and/or to (re-)exert their authority over the non-compliant and/or recalcitrant.

Stop and search shares many characteristics with PNDs; both are low-visibility and high-discretion, largely directed by events officers come across in the course of their duties and governed by highly subjective assessments such as to who/what is 'suspicious' or 'offensive'. We might therefore expect BUSSS, like the OBTJ target before it, to encourage gaming in the use of OOCs with, in particular, a materialising of offences for low-level disorder, with post-search OOCs providing an opportunity both to justify the officer's decision to conduct a search and to formalise previously informal 'lectures' on poor attitudes and/or behaviours.

Launched in August 2014, BUSSS sought *inter alia* to encourage: a reduction in, and a better targeting of, stop and search powers. Having peaked at 1,519,561 in 2008/9 and reaching a low of 279,756 in 2017/18, stop and search has since risen, with 577,054 searches in 2019/20. On the second measure (better targeting of these powers), arrest rates – which had already been rising from a low of 8% in 2008/2009–2011/2012 – did initially rise post-BUSSS, plateauing in 2016/2017–2017/2018 at 17%. But, as stop and search use increased, arrest rates fell. By 2019/2020 this was 13% (Home Office 2020d, Table SS.14). Previously 'success' was measured using arrest rates alone, BUSSS extended this to any 'positive outcome' (i.e. arrest, summons or OOC) and the proportion of outcomes linked to the reason for the search. There are no pre-BUSSS comparative data so the impact of the policy cannot be considered for the full range of outcomes, but we are able to consider its subsequent effect and how the changing political landscape has affected stop and search use.

Having been falling since 2008/9, increased knife crime and the launch of the Serious Violence Strategy in April 2018 saw calls from senior police officers and politicians to increase the use of stop of search which, since summer 2018, have been answered (see Figure 5). The purported aim of this increase is crime control, with talk focused on increasing 'targeted', 'intelligence-led' searches which would lead to 'more arrests' (Khan 2018). The Perverse Policing Model would therefore predict that around the time of this changed political climate – more pro-stop and search, whilst retaining BUSSS' imperative to improve effectiveness – increased search numbers would be matched with a

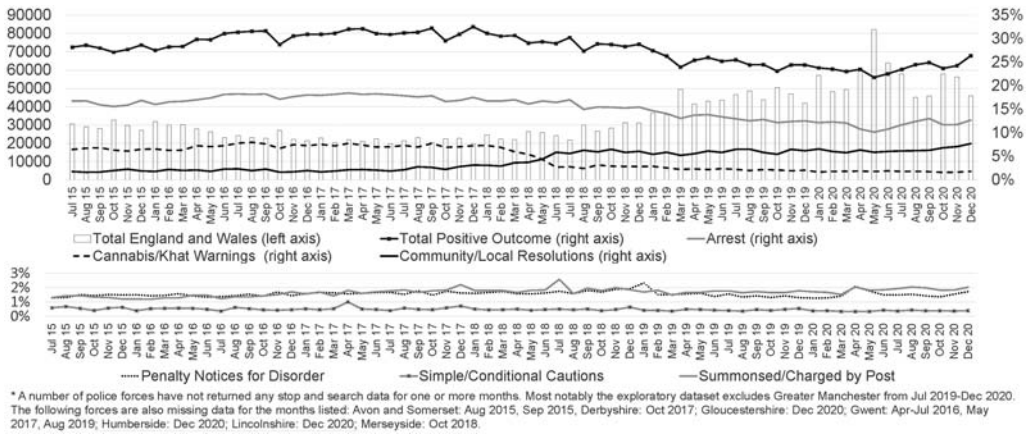


Figure 5. Use of stop and search and positive outcomes July 2015–December 2020.

materialising of positive outcomes, particularly through those most easily gamed methods (disorder PNDs and community resolutions). Figure 5 demonstrates that this has not borne out.

Overall, contrary to what the Perverse Policing Model might predict, positive outcome rates were initially relatively consistent, increasing slightly from 28% in July 2015–33% in December 2017, but as stop and search increased, (reported) success fell. Whilst our focus here is the impact (or lack thereof) of BUSSS on OOC use, it is notable that stop and search has continued to increase post-pandemic, surging especially in May 2020 – with particular increases (not shown in Figure 5) in the days immediately before and after the 13 May rule changes and on the Spring Bank Holiday weekend. The pandemic does not however appear to have influenced post-search OOC use. Thus, whilst increased stop and search has seen the overall number of positive outcomes and, in particular, post-search community resolutions, increase in 2020, the proportion of searches ending in a ‘positive outcome’ has fallen to 24% continuing pre-pandemic patterns whereby higher search rates see lower success rates.

The move from cannabis/khat warnings to community resolutions shown in Figure 5, rather than a perverse skewing (or switching), appears to reflect NPCC advice on simplifying the OOC framework and did not result in any overall increase in punishment. Nationally, post-search PND and

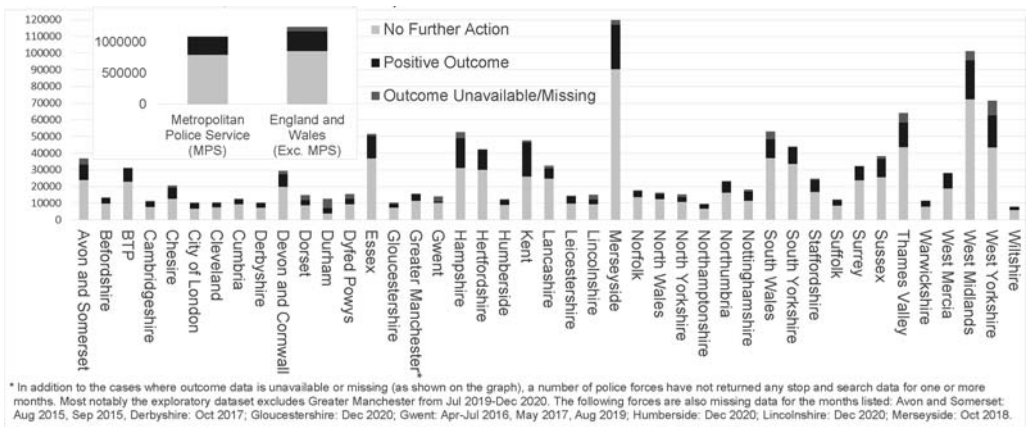


Figure 6. Total number of searches in each constabulary from July 2015–December 2020, by outcome.

caution use, as well as summons and postal charges, all remained consistently low (at less than 3%) throughout. Forces do however differ in their use of stop and search and the proportion of searches which end in a positive outcome (see [Figure 6](#)). In Kent for example, between July 2015 and December 2020, nearly half of searches had a positive outcome; 14% resulted in a community resolution, compared to a national average of 5%.

The exploratory data (for most forces) excludes 'linked' data but annual data point to only 21–22% of stops in 2016/2017–2018/2019, and 20% of searches in 2019/2020, having an outcome that was linked to the reason for the stop (Home Office 2020c). Whilst perhaps unsurprising given the high NFA rate, the consistently low linked outcome rate begs two questions. Firstly, what are people being sanctioned for? Secondly, given that officers are free to define the outcome as either linked (successful) or not (and not) why are they *not* gaming the linked outcome rate?

Lessons on the perverse impact of performance measures

Comparison of [Figures 1–6](#) gives a sense of the manner in which the use of OOCs has (and has not) changed over time. The OBTJ target was largely achieved through increased use of OOCs (rather than convictions), whereas the changing political climate clearly impacted the use of stop and search, BUSSS has, overall at least, had little, if any, influence on the use of post-search OOCs. The rise and fall in OOC use suggests that the OBTJ target was gamed. However, as the surge in OOC use was not restricted to notifiable offences, satisfaction of the OBTJ target was clearly not the sole driver in their (short-lived) popularity or subsequent decline. Indeed, whilst nationally OOC use peaked in 2007, the rate of decline has increased since 2011 i.e. following the Prime Minister's 2010 directive that officers 'cut crime. No more, and no less' (May 2010, no pagination).

Just as the use of OOCs (especially PNDs and cannabis warnings) provided an opportunity to pick the 'low-hanging fruit' (Morgan 2009, p. 6) and help achieve the OBTJ target, the non-use of these powers for notifiable offences, that is, *not* 'picking the fruit', can help achieve the drop in crime that was being called for. This could be indicative of what was once being *materialised* now being *cuffed*. Equally, however, the sharp decline in OOC use since 2011 may simply reflect falling police numbers from 2009–2017 (Home Office 2020e, Table 6). There were fewer officers available to 'pick the fruit' and focus on (and criminalise) the low-level disorderly behaviours which may be disposed of via OOC. As well as falling officer numbers, austerity saw policing models change, with a shift away from neighbourhood policing approaches that likely affected OOC use. Furthermore, over a million fewer searches in 2018 as compared to 2008 will have provided fewer opportunities to issue OOCs.

OOC use surged under the OBTJ target, they were issued whilst they 'counted' suggesting a *skewing* of resources. Comparison of ticket analysis and fieldwork data suggest some degree of *stitching* in officers' PND evidence. This points to officers' use of s5 and drunk and disorderly PNDs as 'resource charges' (Chatterton 1976). Where they have failed to negotiate an informal solution and/or to socially discipline offenders (Choongh 1997), disorder PNDs allow officers to dispose of cases in a manner that attracts minimal scrutiny and thus avoids 'within the job' trouble (i.e. negative attention from superiors (Chatterton 1976)). The purpose of stitching, when bringing resource charges, is to justify decisions to those further along the criminal justice process (Ericson 2007) and/or supervisors (Chatterton 1983). OOCs however are the end of the process. PNDs, community resolutions and cannabis/khat possession warnings (those, lower-visibility, powers which do not require authorisation), thus need not be *stitched*.

OOCs are case-ending powers. Officers do not need to define their use of these powers in rule-conforming terms (although the cautious may still do so), as others rarely check whether the rules are being conformed with. Rather than resource charges, they may therefore be better thought of as resource *outcomes*. Resource outcomes may satisfy different cultural norms/working rules, encouraging officers to avoid 'within the job' trouble and/or a bureaucratic/lenient court system, to (re-)exert authority over the non-compliant, and/or to socially discipline those who fail the attitude test

(Chatterton 1976, Choongh 1997). Their low visibility also presents particular gaming opportunities. The Perverse Policing Model would predict that, following the introduction of BUSSS, the pressure to be seen to be targeting stop and search effectively would interact with such working rules resulting in an increase in post-search OOCs. BUSSS did not however have that impact.

The distinction between the OBTJ target and BUSSS may reflect the fact that OBTJ was a clear target – 1.25 million – whereas BUSSS was a (vague) measure seeking ‘improvement’ (from a low bar). The distinction between them may then reflect the clarity and specificity of the former over the latter. However, even where individual targets are absent, performance measures may have an ‘indirect and diffuse’ influence on officers’ behaviour as they are held to account for their decisions by middle managers (de Maillard and Savage 2018, p. 11). Perhaps more important then is the political (and thereby the organisational) importance attached to achieving the OBTJ target, as compared to those aspects of BUSSS related to increasing search ‘success rates’.

Following the publication of the first post-BUSSS stop and search data, the Home Secretary cited erroneous data when claiming ‘figures show that stop and search reforms are working’ (Home Office 2018). Despite the success rate more than halving when the data were corrected, there was no subsequent suggestion that perhaps this meant the reforms were *not* working. The OBTJ target was, for a time, one of the main targets against which police forces were measured; BUSSS, or at least those elements of BUSSS concerned with improving the (reported) success of stop and search never had that same political pressure.

Patrick (2014) noted the applicability of Smith and Gray’s (1983) concept of presentational rules to the use of recorded crime as a performance measure (and the gaming thereof). If, however, we see *all* performance measures starting life as presentational rules, serving ‘to give an acceptable [public] appearance to the way that police work is carried out’ (Smith and Gray 1983, p. 171) we may be better able to explain why some – like the OBTJ target – have a perverting influence, others an inhibitory influence and others still, no influence at all. This analysis sees the purpose of performance measures as not simply about *achieving* quality, but (perhaps falsely) advertising it.

The OBTJ target was, on this interpretation, an enabling rule (Sanders *et al.* 2010, p. 67); which enabled the forms of gaming Patrick (2009) describes. Directives to reduce stop and search were inhibitory, whereas those to improve effectiveness were purely presentational. This account questions the idea that performance measures restrict police discretion. Rather than disempowering the police, performance measures *may* direct officers’ discretion, but that direction is not necessarily a *restriction* of their discretionary power and, indeed, performance measures can interact with working rules and serve an enabling function.

Comparison of the OBTJ target and BUSSS lends weight to the argument that ‘gaming or administrative corruption is organisational in nature’ (Patrick 2009, 2014, p. 72); the figures are not corrupted when there is no pressure to corrupt them. The introduction of a Crime and Policing Performance Board, signalling an apparent return to centralised performance indicators is thus to be approached with caution. The forms of policing that are closest to the ‘invitational edge of corruption’ are those with the ‘greatest degree of secrecy and invisibility from managerial, administrative or democratic oversight’ (Newburn 1999, p. 27). As high-discretion, low-visibility powers, this description applies to the use of stop and search as well as out of court disposals; particularly those which can be issued on-the-spot such as PNDs, cannabis/khat warnings and community resolutions. The lack of oversight provides the means for gaming, but the *invitation* comes from organisational and, crucially, political pressure to meet performance measures, coupled with a (willing) ignorance of the means by which those targets are achieved.

It is easy to criticise officers (and forces) for gaming performance measures. Indeed, the Home Affairs Committee (2007, p. 92) asked one Chief Constable why they had ‘padded’ the OBTJ figures with petty crime, but, as they replied, forces were ‘using ... definitions ... approved and owned by the Government’. It was the Government’s choice to allow these measures to contribute to the OBTJ target, so too, for stop and search, the Government chose to measure effectiveness based on the number of so-called positive outcomes rather than, for example, surveys of those

searched – yet ‘hit rates’ are a poor proxy for success (Bowling and Philips 2007). Officers will only answer the invitation to act on gaming opportunities if that act of administrative corruption does not itself create ‘within the job’ trouble. Officers gamed the OBTJ target with s5 PNDs until that gaming, by artificially increasing the violent crime rates, began creating, rather than alleviating, ‘within the job’ trouble, after which, officers (and forces) switched to drunk and disorderly.

Whilst the OBTJ target appears to have been enabling – with a clear surge in OOCs – BUSSS’ impact seems more limited, perhaps serving some (temporary) inhibitory function. Around the turn of the decade, following various legal challenges (and the publicity surrounding these), stop and search use began declining (Bowling and Marks 2017). BUSSS built on this – as well as policy changes already implemented in some forces (for example: London Assembly 2014) – seeking to reduce use, improve transparency and increase effectiveness of the power. Subsequently, the political and organisational discourse on stop and search has (again) changed, as one anonymous MPS officer reported:

When I first joined the force, stop and search was something that we were told to avoid ... Now, unofficial targets mean that if an officer hasn’t performed a stop and search for, say, two weeks, they are being hauled in front of chief inspectors and bollocked. This change – pressure being put on us to meet certain numbers – is not about safety: it’s about politics. (Guardian 2019)

Political and organisational pressure, and thereby ‘within the job’ trouble, initially came from performing stop and search, BUSSS further enshrined directives to reduce stop and search use. Yet, as knife crime rose, the political narrative reverted, the inhibition lifted and use of stop and search has risen again.

However, despite the availability of easily (and previously) gamed OOCs, BUSSS did not result in a surge in positive outcomes. Indeed, rising use of stop and search has seen positive outcome rates fall. This suggests that there was (and is, for now at least) little ‘within the job’ trouble from non-successful stops. Whether this is the case cannot be assessed on the available – statistical – data; further research, particularly qualitative research akin to that undertaken on PNDs, is needed to explore the impact of BUSSS on officers’ decision making and, indeed, the impact of the changed political climate around stop and search use.

Conclusion

This article examined OOC use from 2000–2020, comparing their use under the offences brought to justice target (2002–2008) and the Best Use of Stop and Search Scheme (2014–date). All four forms of gaming set out in the Perverse Policing Model (Patrick 2009, 2011, 2014) – that is, getting people to admit to offences they did not commit (*nodding*); focusing on offences subject to targets (*skewing*); down-grading or failing to record evidence (*cuffing*) and manipulating evidence (*stitching*) – were apparent in the overall use of OOCs, and in response to the OBTJ target. A fifth form of gaming – *materialising* – was also identified, it is proposed that this be added to the model. The opposite of cuffing, materialising refers to officers’ ability to ‘pull cases from their sleeve’ when issuing low-visibility OOCs for subjectively defined disorder offences. In doing this, officers are creating (and simultaneously solving) an offence where, but for the police-citizen interaction, none would have been recorded.

Despite presenting similar opportunities for gaming – with lower-visibility OOCs (community resolutions and PNDs for subjective offences in particular) serving as potential ‘resource outcomes’ – there was no surge in the use of these powers post-search as would be expected were BUSSS being gamed. It is proposed that the key differences between the two measures discussed here are the specificity of the OBTJ target and the (internal and external) political pressure to meet that target, both of which were lacking in BUSSS’ directive to improve the stop and search success rate.

The current research stresses that it is not performance measurement per se that perverts practice. What is important here, what can pervert or ameliorate practice, is the existence and nature of

the monitoring of any given performance measure. Gaming is a form of ‘administrative corruption’ (Patrick 2014, p. 72), it is organisational and political in nature. Officers seek to avoid ‘within the job trouble’ (Chatterton 1976), that is, negative attention of managers. Officers will not strive to achieve performance measures where there is no pressure to do so, nor too will they game performance measures if that act of gaming creates ‘trouble’. The OBJ target was one of the main means of measuring police performance in the mid-2000s. Failure to meet this would thus have attracted ‘trouble’ for forces and, in turn, for individual officers, and so, accordingly, we see the OBJ target impact the use of OOCs. Similarly, whilst there was no overt numerical target, we see stop and search use rise and fall with changing political sensibilities. Conversely, to date at least, there has been little political pressure to fulfil BUSSS’ stated aim of improving the effectiveness of stop and search and thus little impact on the use of post-search OOCs.

The announcement of a new Crime and Policing Performance Board (Patel 2020) signals a return to centralised performance measures. This research lends weight to the idea that any such performance regime should be of the more advanced, deliberative type, taking a longer-term view (to the extent that the political cycle will allow) and drawing on a range of measures, (including service-users experiences), measuring the process and focusing on what is achieved by different outcomes, rather than adopting a short-termist, targets-based approach and/or counting outputs (Curtis 2015, de Maillard and Savage 2018).

This research has added to Patrick’s Perverse Policing Model, providing a means to theorise and assess potential gaming under any new performance regime. It has also highlighted the particular susceptibility to gaming of low-visibility OOCs such as PNDs and community resolutions, suggesting a need to proceed with caution in any future changes to the OOC system. Significantly, this research calls into question the idea that gaming, where it occurs, is always an *unintended* consequence of performance management. Instead, it is argued that we should view performance measures as beginning life as presentational rules. In doing so, we can recognise the ways in which performance measures – and the public promotion thereof – function to (perhaps falsely) *advertise* quality rather than simply achieve it. And, as such, we are better able to recognise the ways in which, far from being an unintended consequence, gaming may be ‘baked in’ to the system from the outset.

Notes

1. Due to Covid-19 restrictions 2020 data on OOC use exclude cautions, so 2019 data are reported here (see Ministry of Justice 2021a).
2. A slightly different system of youth community resolutions, youth cautions and youth conditional cautions operates for under 18s (NPCC 2017). Whilst the focus here is on the adult OOC framework, it should be noted that, until April 2013, PNDs could be issued to 16–17 years olds and, in seven pilot forces, to 10–15 year olds. The minimum age was raised to 18 under the Legal Aid, Punishment and Sentencing of Offenders Act 2012. Data presented above include all PNDs issued 2004–2020, including those issued to young offenders.
3. The Home Office Crime Recording Standards require all recorded crimes to be assigned an outcome. In addition to out of court disposals, there are a number of ‘alternative crime outcomes’ which have been added since 2014 (see Home Office 2020f, Table A1.1). Outcome 21, introduced in 2016, captures situations where police decide, in the public interest, to take no further action. Outcome 22, introduced in 2019, captures situations ‘where no further action is taken but diversionary action has been undertaken to address offending behaviour or prevent further offending’ (NPCC 2019, p. 1). These outcomes were not available when the OBJ measure was in place and, at the time of writing, they are not measured/reported as part of the Best Use of Stop and Search dataset. They are not one of the six official out of court disposals, instead operating in a more ‘informal space’ (Centre for Justice Innovation 2020, p. 1). As such their use is not explored in this paper, but it should be noted that their introduction is likely to be another organisational factor that has, and will, influence OOC use.
4. Whilst it is recognised that officers’ accounts as provided on PND tickets are ‘problematic, selective renderings of complex realities’ (McConville *et al.* 1991, p. 7), the circumstances described on PND tickets were akin to those viewed during observations, supporting the external validity of the two data sources.

5. The code was written by Max Shelley of Echoleft and is available for use/adaption on GitHub: <https://github.com/maxshelley/uk-police-stop-and-search-data-processor>. Thanks is offered to him for his time and technical support in this process.
6. Data for Figures 1–3 were adapted from the Ministry of Justice, Criminal Justice Statistics Quarterly Overview Tables from December 2020, December 2018, December 2016, December 2014 and the Main Tables from December 2012 (see Tables Q1_4, Q1.3, A.1, A1.2) all available from: Ministry of Justice (2021b). For 2000–2007, this was supplemented with data from the Ministry of Justice (2010a, 2010b) and Home Office (2005) (some of these figures are rounded to the nearest thousand).
7. National data on caution use do not distinguish between simple and conditional cautions so both are included in the Figures presented here. Conditional caution data were published from 2009/10–2013/14, less than 25,000 conditional cautions were issued in that time (CPS 2017). For comparison, national data show 1,154,229 cautions were issued from 2009 to 2013.
8. Due to Covid-19 restrictions cautions data are not available for 2020. As such, in Figure 1, cautions and total OOCs are reported to 2019 only (see Ministry of Justice 2021a).
9. Due to Covid-19 restrictions cautions data for notifiable offences are not available for 2019 or 2020. As such, in Figure 2, cautions and total OOCs are reported to 2018 only (see Ministry of Justice 2021a).
10. From 2014 to 2019 56–52% of PNDs were issued for notifiable offences. In 2020, 63% of PNDs were issued for notifiable offences, this however reflects a significant fall in the number of tickets issued for drunk and disorderly (a non-notifiable offence) that year. This change in how PNDs were used likely reflects the impact of the pandemic on the night-time economy.
11. 2019–2020 data are unavailable due to Covid-19 restrictions (see Ministry of Justice 2021a). Data presented in Figure 4 were adapted from Ministry of Justice 2019 and 2015b.

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