

Cautioning of Adult Offenders

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Cautioning of Adult Offenders

Part 1 - Simple cautioning

Section A: Aims and Process of Simple Cautioning

The purpose of this circular

1. The purpose of this circular is to:

- provide updated guidance on the use of the Simple Caution
- encourage greater consistency between Criminal Justice Areas in the use of the Simple Caution
- provide a brief outline of the relationship between Simple Cautions and other pre-court disposals
- clarify how the police responsibility for Simple Cautions is affected by the charging scheme
- give a clear outline of the practical process of administering a Simple Caution (a flow chart is attached at Appendix B)
- ensure accurate recording of Simple Cautions.

This replaces HOC 18/1994 on the cautioning of offenders, which is hereby cancelled. Further guidance – “Part 2 - Conditional Cautioning” will follow in late 2005 once decisions have been made on national roll-out of Conditional Cautions.

The simple caution

2. A Simple Caution (known as a formal caution in previous Home Office Circulars, now renamed to distinguish it from a Conditional Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low level offences where the public interest can be met by a Simple Caution. The administration of a Simple Caution for a recorded offence is treated as a sanction detection and an offence brought to justice (OBTJ).**(I)** The accurate recording of cautions can contribute to improved public confidence in the criminal justice system and also contributes towards reducing the likelihood of re-offending.

3. With the introduction of the statutory charging scheme, decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging (the Director's Guidance).**(II)** The police retain the authority to issue a Simple Caution in all cases other than those indictable only offences which meet the Threshold Test, as outlined in the Director's Guidance. These must be referred to the Crown Prosecution Service.

4. Police can also take early advice from the CPS at any point in an investigation on whether a Simple Caution is appropriate. The Director's Guidance states that 'an investigating officer may wish to consult with a Crown Prosecutor in respect of any case where it is proposed to deal with an offender by way of a [Simple or Conditional] caution, reprimand or final warning.'**(III)**

5. Simple Cautions are a non-statutory disposal and the opportunity exists for police to exercise discretion in deciding to use them. Therefore it is not possible to set out definitive rules on the circumstances in which Simple Cautions are appropriate (for example that first time offenders should always be cautioned or particular offences should always result in a Simple Caution only). The questions to consider in each case are:

- whether a Simple Caution is appropriate to the offence and the offender
- whether a Simple Caution is likely to be effective in the circumstances.

Aims of the simple caution

6. The aims of the Simple Caution are:

- to deal quickly and simply with less serious offences
- to divert offenders where appropriate from appearing in the criminal courts
- to reduce the likelihood of re-offending

Simple cautioning process

Criteria for a Simple Caution

7. In considering whether a Simple Caution is appropriate, a police officer must consider the following facts:

- Is there sufficient evidence of the suspect's guilt to meet the Threshold Test (as outlined in the Director's Guidance)?
- Is the offence indictable only (and the available evidence meets the Threshold Test)? If the answer is 'yes', this disposal option must be referred to a Crown Prosecutor.
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? An admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to provide a realistic prospect of conviction. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation. A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered).
- Is it in the public interest to use a Simple Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors, which is a public document and is available on the [CPS website](http://www.cps.gov.uk)
- Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the equivalent disposal.

If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution.

Aggravating or Mitigating Factors

8. A Gravity Factors Matrix has been provided to assist officers in their decision making process. Officers should use the Matrix (which will be available on the Police National Legal Database) to determine the seriousness of the offence and to decide whether or not a Simple Caution could be used as an appropriate means of disposal. As the matrix makes clear, the questions to be asked in determining the seriousness of the offence are:

- Are there any aggravating factors involved?
- Are there any mitigating factors involved?

9. If the answer to either question is yes, then the seriousness of the case will either increase or decrease by one level. The seriousness of an offence is initially determined on a scale between 1 and 4 (with 1 being the least serious). This can only increase or decrease by one level, regardless of the number of aggravating/mitigating factors. This is because the highest severity available is level 4, so additional factors cannot be added on indiscriminately. If there is one of each (aggravating and mitigating), they simply cancel each other out.

Recording the admission

10. In order for there to be an adequate record of an independent admission of the offence, the details of the admission could be recorded by any of the following methods (which must be PACE compliant):

- a tape recorded interview
- a record of the admission in the officer's notebook and signed by the suspect as an accurate record. This could cover any statement made by the suspect on arrest, after being cautioned
- a statement made by the suspect whilst in police detention (after being reminded they are still under caution) could be recorded in the custody record and signed by the suspect as an accurate record
- a contemporaneous interview under caution could be conducted in the absence of the suspect making a voluntary statement of admission, or for clarification where the statement does not meet the required evidential standard. The notes should be fully documented.

The victim

11. Before a Simple Caution can be given, it is important to try to establish:

- the views of the victim about the offence
- the nature and extent of any harm or loss, and its significance, relative to the victim's circumstances
- whether the offender has made any form of reparation or paid compensation (although this would not be appropriate in some cases such as offences of violence). Police officers should not become involved in negotiating or awarding reparation or compensation

12. If a situation arises where a victim is prepared to make a full statement, which could be used to support a prosecution, and this is considered to be the most appropriate course of action, officers should refer to guidance on prosecutions. However if a Simple Caution is being considered as a more appropriate disposal, the reasons for this should be explained to the victim and the consequences of the Simple Caution outlined. The fact that a victim declines to support a prosecution (NCRS Rule D4) should not preclude the consideration of a Simple Caution.

13. Where there is a decision not to proceed with a prosecution but the case is still suitable for a Simple Caution (see paragraph 7), the victim may be asked if they will affirm their support for a Simple Caution as a suitable method of disposal. In these cases the victim could be asked to give a statement confirming the facts of the offence and stating in their own words that they are not prepared to support a prosecution through the courts, but would be satisfied if the matter was dealt with by way of a Simple Caution. Forces should consider issuing clear guidance to their staff to emphasise the option of a Simple Caution disposal in these cases, with due regard to the interests of justice and the ethical processes involved.

14. In some cases where a Simple Caution might be appropriate because of an admission, prosecution may still be required to protect the victim from further attention from the offender, and/or because the offence is too serious. The CPS operates a pro-active policy on certain types of offence, which encourages prosecutors to proceed with cases, even where the complainant does not support the prosecution.

15. In all circumstances where the views of victims are sought, care should be taken to ensure they are aware that although their views will be taken into account, they will not necessarily be conclusive to the outcome, as the final decision is at the discretion of the police and/or the CPS.

16. The victim must always be kept informed of the final outcome of the case. Depending on local arrangements this may be the responsibility of police or CPS.

Other Considerations

17. Does the suspect have any other cautions for similar offences?

Both national and any locally held records must be checked before a Simple Caution is given, to ensure that the suspect's criminal record is known and up-to-date and to avoid inappropriate use of a Simple Caution. If the suspect has previously received a caution, then a further Simple Caution should not normally be considered. However, if there has been a sufficient lapse of time to suggest that a previous caution has had a significant deterrent effect (two years or more) then a Simple Caution can be administered. A Simple Caution can also still be administered if the subsequent offence is trivial or unrelated, or as part of a mixed disposal (as explained in paragraphs 38-39). If the suspect has previously received a Reprimand or Final Warning, a period of two years should also be allowed to elapse before administering a Simple Caution.

18. Has the suspect been made aware of the significance of a Simple Caution?

If a Simple Caution is being considered, then the full implications must be explained to the suspect (see paragraphs 27-29). Under no circumstances should suspects be pressed, or induced in any way to admit offences in order to receive a Simple Caution as an alternative to being charged.

19. Has the suspect given informed consent to being cautioned?

If the suspect does not consent, then police may choose to continue with a prosecution. Officers must avoid any suggestion that accepting a Simple Caution is an "easy option". Similarly, every effort must be made to avoid any suggestion of the suspect being coerced into accepting a Simple Caution.

20. A Simple Caution should not be viewed as an appropriate method of disposing of offences by serving prisoners. It may be appropriate to carry out interviews in prison in exceptional circumstances (e.g. where an offender admits responsibility for a previously recorded crime where forensic or other substantial evidence exists which links the offender to that crime) or to gather intelligence.

Making the Decision

21. When considering the suitability of an offence for disposal by Simple Caution, the decision should be referred to an officer of at least Sergeant rank (who may or may not be a Custody Officer) for approval. This officer must be unrelated to the investigation of the offence.

22. Once the approving officer is satisfied that the requirements for administering a Simple Caution have been met, they should give further consideration to:

- if a Simple Caution is appropriate to the offence and the offender
- if it is in the public interest to deal with the offence in this way.

23. Officers should take into account the public interest principles set out in the Code for Crown Prosecutors. Officers should not opt to take no further action (NFA) in circumstances in which the requirements of a Simple Caution are met.

24. When the approving officer has reached a decision in favour of issuing a Simple Caution, they should sign the custody record, or other suitable documentation, to say

that they have approved this as the appropriate method of disposal. The history of the disposal decision must be fully documented.

25. Forces should establish a 'gatekeeper' role, which could be filled by a Custody Officer. In cases that are being considered by the police for charging by the Prosecution Team, gatekeepers should ensure that cases are fully considered for the appropriate disposal method and that a Simple Caution is administered where a case is clearly suitable.

Administering a Simple Caution

26. After the Simple Caution has been approved, it should be administered by someone who is suitably trained for this purpose and to whom the relevant authority has been delegated. This should not delay a person's release from custody where a suitable person is not immediately available. In these circumstances an officer of Inspector rank or above may determine an appropriate person to deliver the Simple Caution.

- Wherever possible, Simple Cautions should be administered at the police station. In exceptional circumstances, they could be administered at another suitable place, for example at the home of an elderly or vulnerable offender in the presence of a friend, relative or other appropriate adult.
- The suspect should not be pressed to make an instant decision on whether to accept the Simple Caution. They should be allowed to consider the matter, and if need be, take independent advice. In order to facilitate this, a suspect may be required to attend at a later date to enable the Simple Caution to be administered. Cautions clinics/surgeries are held in some areas as a means of streamlining and ensuring adequate supervision of the cautioning process.
- Once the Simple Caution has been administered, the offender should sign a form accepting the terms of the caution and should be given a copy of a caution acceptance pro-forma to take away. The pro-forma should include the offender's personal details (including occupation) and should outline the details of the offence. It should also include information on the consequences of accepting a caution, as below. The form must explain that the offender's details can be passed to the victim, should they wish to pursue civil proceedings. The offender should sign to say that the terms of the Simple Caution are agreed, and the person administering the Simple Caution should also sign.

Consequences of receiving a Simple Caution

27. A Simple Caution is not a form of sentence (which only a court can impose), nor is it a criminal conviction. It is, however an admission of guilt. A Simple Caution forms part of an offender's criminal record and may influence how they are dealt with, should they come to the notice of the police again. Simple Cautions given for recordable offences are entered on the Police National Computer, where they are held in line with ACPO General Rules for Criminal Record Weeding on Police Systems.(IV) These Rules are under review, and will be replaced by Retention Guidelines later in 2005. The fact of the Simple Caution may also be cited in court in any subsequent court proceedings and can be quoted on a Standard or Enhanced Disclosure issued by the Criminal Records Bureau and thus can be made known to a prospective employer. Fingerprints and other identification data can also be held on databases to which the PNC has links.(V) Therefore the significance of the admission of guilt in agreeing to accept a Simple Caution must be fully and clearly explained to the offender.

28. This is particularly important where the offence is listed in Schedule 3 to the **Sexual Offences Act 2003**. Accepting a Simple Caution in relation to such an offence will result in the offender becoming a 'relevant offender' for the purposes of the notification and registration requirements of Part 2 of the Act. In common terms, the offender will be put on the 'sex offenders register'. It is especially important that an offender is informed of the consequences of accepting a Simple Caution before accepting such a disposal for a sexual offence that makes them subject to these requirements. If the offender is not informed of this, they may, at a later date, have a case for having the Simple Caution removed.

29. Notifiable occupations are currently set out in Annex A of Home Office Circular 45/1986, which is available at on the [circulards section](#) on the Home Office website. Where a Simple Caution is issued to someone employed in a notifiable occupation, this should be disclosed by the police to their employer in accordance with the guidelines set out in that circular. A list of notifiable occupations should be made available in the station. This circular is currently subject to review and revised guidance will be issued in due course. (VI)

Recording the Caution

30. The accurate recording of all Simple Cautions is essential in order to avoid multiple cautioning and to ensure consistency. Simple Cautions must be recorded on the local custody system as well as on national information systems (see paragraphs 51-53).

31. Simple Cautions must be entered on the Police National Computer (PNC) if they have been given for a recordable offence. Under the current ACPO Rules, Simple Cautions should be removed from the PNC after 5 years, provided there are no convictions on the record and no further Simple or Conditional Cautions have been given, except where the caution is accompanied by an 'offences against vulnerable person' information marker. Under the new Retention Guidelines such records will be kept for longer periods of time. Non police users of PNC will have their access to the data restricted after a specific period of time. The time period will be determined by the nature of the offence rather than the vulnerability of the victim.

Decisions by the Crown Prosecution Service

32. The instructions set out above apply to the police decision making process. Crown Prosecutors may be asked for advice on the suitability of using a Simple Caution disposal at any time (see paragraph 4). However there are three situations in which the CPS will need to make the decision on whether an offence is suitable to be dealt with by way of a Simple Caution:

- when reviewing a case in which the police have charged the suspect during the roll-out of the statutory charging scheme
- when examining indictable only cases referred to them by the police
- when reviewing a domestic violence case which has been referred to them by the police because the Threshold Test has been met (see CPS Policy for Prosecuting Cases of Domestic Violence – February 2005).

33. Because of their inherent seriousness, indictable only cases which have met the Threshold Test are unlikely to be suitable for a Simple Caution. However in cases where it is not in the public interest to proceed with a prosecution, prosecutors should consider whether the case is suitable for a Simple Caution disposal before deciding to take no further action against the offender.

34. The Director's Guidance provides that where the decision of the CPS is that a person should be cautioned (whether Simple or Conditional Caution) this is mandatory and binding upon the police. If however it subsequently proves not to be possible to give the caution (for example, because the offender fails to attend or withdraws consent), the matter will be referred back the Crown Prosecutor, to determine whether the person is instead to be charged with the offence.

35. The prosecutor should record their decision whether to charge, caution (Simple or Conditional), NFA or otherwise on the rear of the MG3 form, including the appropriate monitoring sub-code indicating the reason for the decision. The MG3 is included as Appendix C to this circular.

Section B: Background Considerations

General

Benefits of a Simple Caution

36. Officers should consider the potential benefits of issuing a Simple Caution, as opposed to dealing with a case by no further action (NFA) or detected not proceeded (DNP).

- An admission of guilt is necessary for a Simple Caution, and the knowledge that someone has made this admission may provide the victim with some resolution.
- Once administered, a Simple Caution for a recordable offence appears on a person's criminal record and can be cited in future proceedings.
- A Simple Caution (for a recorded offence) is a sanction detection and an OBTJ, which reflects the effort and resources expended by police in investigating the offence, successfully identifying the perpetrator, and contributing to victim satisfaction.

Group and multiple offences

37. The experience and circumstances of offenders involved in group offences can vary greatly, as can their degree of involvement. Consistency and equity are important considerations in the decision of how to deal with a case but each offender should be considered separately and different disposals may be justified. Where multiple related offences are considered, the decision to issue a Simple Caution or prosecute should be based on the most serious of those offences.

Mixed disposals

38. It is possible to use mixed disposals where an offender has committed multiple but unrelated offences as part of the same incident. Depending on the nature of the offence, other disposal options are also available, for example a formal warning for cannabis possession or a Fixed Penalty Notice for a penalty offence. For example, a person is arrested for being drunk and disorderly, and when searched in custody has in their pocket a large set of car keys that they may use to get into cars and steal from them. If the person admits that their intention was to steal from cars, they could be charged with 'going equipped to steal' and so could be issued with a Simple Caution for that offence if appropriate, and a Penalty Notice for the Drunk and Disorderly offence. The presence of a previous Simple Caution on the offender's record may not necessarily be seen as a deterrent to administering a further Simple Caution in this type of situation, provided it is not for a similar offence.

39. Any decision on issuing a Simple Caution as an element of a mixed disposal should be considered with regard to the Director's Guidance. As with all other charging decisions, once the case is passed to the CPS then the decision on disposals for all offences rests with the CPS.

Decisions to take no further action

40. Careful consideration should be given to whether a case meets the requirements for a Simple Caution before deciding to take no further action (NFA). Cases where NFA is the appropriate outcome are likely to be those which fail to meet the evidential or public interest requirements set out in the Code. Copies of the Code are available at www.cps.gov.uk for further guidance.

41. Taking no further action or giving an informal warning is not recorded or shown as an offence brought to justice and can have a negative impact on efforts being made to raise confidence in the criminal justice system for both victims and the general public. NFA decisions should be appropriately reviewed to ensure this disposal is not used as a 'soft' option.

Victim Personal Statement Scheme

42. The Victim Personal Statement scheme (VPS) was introduced in October 2001. All victims of crime should be offered an opportunity by the police to make a Victim Personal Statement, in which they can tell criminal justice agencies about any support they might need and how the crime has affected them (for example physical, emotional or financial effects). If the victim has chosen to make such a statement, this can be used to capture additional information to inform the decision whether to issue a Simple Caution.

Civil proceedings

43. If a Simple Caution has been given and the victim requests the offender's name and address in order to institute civil proceedings, the information must be disclosed. Under the 1998 Data Protection Act, personal data is exempt from the non-disclosure provisions where the disclosure is required for the purpose of, or in connection with, any legal proceedings or future legal proceedings. This includes circumstances where the data is required in order to obtain legal advice.(VII)

Particular Offence Types

44. Special care and consideration should be given to victims of offences of personal violence. Since the introduction of the National Crime Recording Standard (NCRS) in 2002, when a victim claims a crime has been committed the crime is recorded without the need for corroborating evidence.(VIII) This has led to increased recording of these types of offences. There are 3 categories of offences of personal violence, each with different characteristics.

(i) Violence Against the Person (VAP)

45. Generally, where an offence of personal violence is not accompanied by any aggravating factors and where the victim does not support a prosecution, the offence may be suitable for disposal by Simple Caution, providing all other criteria are met. A proactive approach to dealing with this type of offence could avoid overuse of the NFA disposal where the victim declines to support a prosecution through the courts. The positive action outlined above in paragraph 13 would be an appropriate method of dealing with these types of cases.

(ii) Domestic Violence

46. ACPO Guidance on Investigating Domestic Violence was published in 2004 by the National Centre for Policing Excellence and should form the basis for investigation of these offences. The recently revised CPS Policy on Prosecuting Cases of Domestic Violence should also be considered. Both of these documents advocate positive action in cases of domestic violence to ensure the safety and protection of victims and children while allowing the Criminal Justice System to hold the offender to account. The ACPO Guidance stresses that an effective and proactive investigation should be completed in all cases where a domestic violence incident is reported. The CPS Policy also stresses the need for a proactive approach to the prosecution of cases of domestic violence. The drive is for consistency from investigation through to charge.

47. Taking forward a prosecution does not depend solely on the victim's wishes. The evidential and public interest tests need to be considered and it may be that although the victim does not support the prosecution, it can still go ahead. Where police forces are operating this positive action policy on domestic violence, in some circumstances officers have experienced difficulty in securing a charge/summons when the victim does not want to proceed with a prosecution. Forces need to have a system in place to ensure that Simple Cautions are considered in preference to an NFA decision, as a potential disposal in the absence of a charge/summons, to gain the benefits detailed in paragraph 36.

(iii) Harassment (racial or other)

48. The National Centre for Policing Excellence is producing a set of investigative standards for harassment.

49. The two considerations for Simple Cautioning in harassment cases are:

- (i) that administering a Simple Caution will render all conduct on which the caution is based inadmissible as evidence towards a course of conduct should this continue subsequently
- (ii) that since a restraining order may only be issued by the court, the only way in which a victim would be protected against future conduct would be by seeking an anti-harassment injunction from a civil court (which has the same effect as a restraining order and provides a power of arrest in the event of any breach). In cases of aggravated harassment, a prosecution should be pursued.

50. For these reasons, the views of the victim should be fully considered and a Simple Caution should only be administered where the police are confident that the harassment will not continue subsequently.

Ensuring accurate recording and returns to the home office

51. In order to ensure accurate reporting of all Simple Cautions for Offences Brought To Justice (OBTJ) purposes, it is important that the correct data is sent to the Home Office on a monthly basis. Two types of form are used for this.

- The CrimSec 3 covers crimes and contributes towards the Sanction Detections figures.
- The NG form/upload covers offenders and offences, and provides data for the purposes of OBTJ.

52. Sanction Detection Simple Cautions relate to the number of crimes which are detected by means of a Simple Caution. OBTJ Simple Cautions relate to all Simple Cautions received by all offenders. Because of these differences, there must be a greater number of OBTJ Simple Cautions than Sanction Detection Simple Cautions. It is important to ensure that recording methods are robust and OBTJ Simple Cautions on NG forms are not being under-reported.

53. To ensure accurate capture of all OBTJs to inform returns to the Home Office, a code for each offender and details of all their offences should be recorded on NG forms. A regular audit of all locally held and nationally published cautions data should be an integral aspect of monitoring an area's performance. All Simple Cautions should also be recorded on local custody systems.

Legal Implications of Receiving a Simple Caution

The Rehabilitation of Offenders Act 1974

54. Simple Cautions are not covered under the Rehabilitation of Offenders Act and therefore, never become spent. This means that the Act does not allow an individual to lawfully conceal a Simple Caution if asked specifically if they have received any cautions, for example by prospective employers. However a person will not be required to admit the existence of previous Simple Cautions if asked whether they have any criminal convictions. Amendments to the Rehabilitation of Offenders Act have been subject to consultation and the Act is currently being reviewed.

Sex Offenders

55. A decision to issue a Simple Caution in cases involving sexual offences and those where the offender is known or believed to be at risk should not be taken without consulting other relevant agencies. A Simple Caution received on or after 1 May 2004 for a relevant sexual offence makes the offender subject to the notification requirements of the Sexual Offences Act 2003 for 2 years from the date of the Simple Caution. For further information on the notification requirements see Guidance on Part 2 of the Sexual Offences Act 2003.

Other Disposals

Conditional Cautions

56. The Conditional Caution is a statutory disposal introduced by the Criminal Justice Act 2003. It is a form of caution given in respect of an offence committed by the offender and has conditions attached to it. If an offender fails without reasonable excuse to comply with the conditions attached to the Conditional Caution, the Act provides for criminal proceedings to be instituted for the original offence and for the Conditional Caution to be cancelled.

57. Conditional Cautioning is subject to a phased implementation and the relevant guidance has been issued to the areas participating in the early implementation. Guidance (which will form part 2 of this document) will be issued prior to national roll-out of this disposal, which is expected to commence in late 2005 or early 2006.

58. The major differences between Simple and Conditional Cautions can be summarised as follows:

Simple Caution	Conditional Caution
No statutory basis – generally at the discretion of the police	Set out in statute (sections 22-27 of the Criminal Justice Act, 2003)
Can be given by the police without reference to the CPS in all but indictable only offences	The decision to offer a Conditional Caution must be made by a relevant prosecutor (generally the CPS).
Enforceable conditions cannot be attached to the caution	Conditions which make rehabilitative and/or reparative requirements of the offender are always attached to the caution
In most cases, a Simple Caution is a once and for all response to the offence committed.	
In rare circumstances, further action may be taken against the offender for the same offence, for example; <ul style="list-style-type: none"> · where circumstances materially change criminal proceedings may be commenced; · where a private prosecution is brought. 	The offender is liable for prosecution for the original offence if the conditions of a Conditional Caution are not complied with.
It is also important to note that a Simple Caution does not preclude the instigation of civil proceedings.	
Public interest is met by a Simple Caution.	The Prosecutor considers that, while the public interest justifies a prosecution, the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at rehabilitation and/or reparation. The CPS should be prepared to prosecute the offender for the original offence if the conditions are not satisfactorily completed, or the offender refuses the Conditional Caution.

59. A Conditional Caution is not to be considered as the next “automatic” step for an offender who has previously received a Simple Caution. Indeed, a person who has recently received a Simple Caution for a similar offence should not be given a Conditional Caution (unless exceptionally it is believed that the condition would be effective in breaking the pattern of offending).

Final Warning and Reprimand Scheme

60. Reprimands and Final Warnings are a statutory disposal, created by sections 65-66 of the Crime and Disorder Act 1998 to replace cautions for offenders aged 17 and under. Guidance on the scheme is available for Police and Youth Offending Teams (YOTs) through joint Home Office/Youth Justice Board guidance published in November 2002.

61. The scheme established a system of Reprimands (for offenders aged 17 and under who have not previously been convicted of an offence) and Final Warnings (for those who have previously received a Reprimand or have committed an offence which is not considered serious enough to merit a charge).

Fixed Penalty Notices for Disorder

62. Penalty Notices for Disorder are also a statutory disposal, created by sections 1-11 of the Criminal Justice and Police Act 2001. They were introduced as an alternative means of dealing with low-level offending by delivering swift, simple and effective justice, which also carries a deterrent effect. The initial Fixed Penalty Notices for Disorder (PNDs) were piloted in 4 forces between 2002 and 2003 covering 11 disorder offences, one of which is recorded. More offences were added to the scheme in September 2004. Three firework offences were added from 11 October 2004 and 7 further offences came into effect from 1 November 2004, including the recorded offences of theft and criminal damage. The scheme has now been extended and PNDs are now in use in all 43 forces in England and Wales. Guidance issued to the police on this subject can be found on the Home Office Police Website in the [Criminal Justice and Police Act 2001 \(s.1-11\)](#).

Formal warnings for cannabis possession

63. Formal warnings for cannabis possession are a non-statutory disposal introduced in 2004. From April 1st 2005, uses of this disposal (which has replaced cautions for that offence) will be counted as sanction detections, and for OBTJ, using a new sanction detections disposal for 92E formal or street warnings (method F in the Home Office Counting Rules).

References

(I) A recorded offence (previously known as a ‘notifiable offence’) is one which falls within the recorded crime series. This should not be confused with a recordable offence (see footnote 4).

(II) Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act, Second Edition, January 2005, paragraphs 3.10 and 9.1.

(III) Ibid, paragraph 9.2

(IV) A recordable offence is any offence that carries the option of imprisonment and some 50 other, non-imprisonable offences listed in the regulations. These are entered on the PNC.

(V) Sections 9 and 10 of the Criminal Justice Act 2003 extend sections 61 and 63 of the Police and Criminal Evidence Act (PACE) 1984 respectively, to provide the police with the power to take fingerprints and non-intimate samples (without consent) from suspects arrested and detained at a police station for a recordable offence. Where an offender who has been convicted or cautioned for a recordable offence has not been in police detention and has not already had their fingerprints taken as part of the investigation, section 27 of PACE provides the police with the power to require that person to attend a police station for the purposes of taking fingerprints under section 61(6).

(VI) Home Office Circular 47/2003 outlined revised arrangements for police checks, and cancelled the majority of HOC 45/1986, with the exception of paragraphs 11-12 and Schedule 2 within Annex A.

(VII) Data Protection Act 1998, Section 35 and Schedule 2 (5)

(VIII) NCRS, section 2.2 “...an incident will be recorded as a crime (notifiable offence) if, on the balance of probability: (a) the circumstances as reported amount to a crime defined by law....., and (b) there is no credible evidence to the contrary.”

Appendices

- A – Summary of key points
- B - Flow chart
- C - MG3

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