Home Office circular 016 / 2008

Simple cautioning of adult offenders

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- **For more info contact:**
  - Simple Caution
- **Addressed to:**
  - Chief Officers of Police (England and Wales), Chief Crown Prosecutors

**Introduction**

1. The purpose of this circular is to:
   - provides guidance to the police and prosecutors on the use of the simple caution and in particular reminds practitioners that simple cautions should be used for low-level offending
   - encourages greater consistency between Criminal Justice Areas in the use of the simple caution
   - clarifies how the police and Crown Prosecution Service (CPS) responsibility for simple cautions is affected by the Statutory Charging Scheme
   - gives a clear outline of the practical process of administering a simple caution
   - emphasises the importance of accurate recording of simple cautions because of the possible impact on the individual offender, to help maintain public trust and for data collection purposes
   - provides a standard simple caution pro forma for operational use (see Appendix).

This replaces Home Office Circular 30/2005[1](new window) on the cautioning of adult offenders. It should be applied to all decisions relating to simple cautioning from the publication date regardless of when the offence was committed.

**The simple caution**

2. A simple caution, known as a *formal caution* before Home Office Circular 30/2005, was renamed to distinguish it from a conditional caution. It is a non-disposal for adult offenders. It may be used for offences when specified public interest and eligibility criteria are met.

3. A simple caution should be used for low-level offending. Only in exceptional circumstances should it be used to deal with more serious offences. The Chief Police Officers (ACPO) has developed a Gravity Factors Matrix (available on the Police National Legal Database). This provides guidance on the weight of which a simple caution may be an appropriate disposal.

4. With the introduction of the statutory charging scheme, decisions to issue simple cautions must be made in accordance with the Director of Public Prosecution’s (DPP) Guidance on Charging (new window). The police retain the authority to issue a simple caution in all cases other than cases involving indictable-only offences must be referred to the CPS for a decision. A simple caution administered by the police for an indictable-only offence without reference to the CPS (deemed not to have been properly administered).

5. Police officers can also take advice from the CPS at any stage in an investigation on whether a simple caution is appropriate, as set out in the Director of Public Prosecution’s Guidance on Charging.

6. An offender has a right to free legal advice under the Police and Criminal Evidence Act 1984 (PACE) after arrest and being held in custody at a police station. An offender cannot be prevented from speaking to a solicitor but, unless at the station as per Code C paragraph 3.21, is not entitled as a matter of course to free or paid legal advice. Only in exceptional circumstances should a simple caution be used to deal with more serious offences. The Chief Police Officers (ACPO) has developed a Gravity Factors Matrix (available on the Police National Legal Database). This provides guidance on the weight of which a simple caution may be an appropriate disposal.

7. The administration of a simple caution for a notifiable offence is treated as a sanction detection and an offence brought to justice (OBTJ).

**Aims of the simple caution**

8. The aims of the simple caution are to:
   - deal quickly and simply with less serious offences where the offender has admitted the offence
   - divert offenders where appropriate from appearing in the criminal courts
   - record an individual’s criminal conduct for possible reference in future criminal proceedings or relevant security checks; and
   - reduce the likelihood of re-offending.

**Simple cautioning process**

**Criteria for a simple caution**

9. When deciding if a simple caution is appropriate, a police officer must answer the following questions:
   - Has the suspect made a clear and reliable admission of the offence either verbally or in writing? (See also paragraph 16 for what constitutes a clear admission and paragraphs 18 and 19 for recording an admission.)
   - Is there a realistic prospect of conviction if the offender were to be prosecuted in line with the Code for Crown Prosecutors (new window).
Aggravating or mitigating factors

13. There may be aggravating or mitigating factors in the course of an offence which will either increase or decrease its seriousness. The ACPO Gravity helps officers in deciding whether or not a simple caution remains the most appropriate disposal with these factors in mind.

14. Officers should use it to determine the seriousness of the offence. This is initially determined on a scale between 1 and 4, with 1 being the least serious.

15. If there are any aggravating or mitigating factors, then the seriousness of the case will either increase or decrease by one level. The seriousness of an only increase or decrease by one level, regardless of the number of aggravating/mitigating factors. If there is one of each (aggravating and mitigating), the caution is reviewed.

Circumstances where a simple caution cannot be considered

16. A simple caution will not be appropriate:

- A person who has not made a clear and reliable admission of the offence or has otherwise raised a defence. This includes occasions where intent there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered. An admission which may be qualified - for example, an offender commits an offence while under the influence of alcohol and cannot remember the full circumstances, but evidence of involvement can be obtained through supporting witness evidence or other evidence (such as CCTV) - may be considered a full and frank admission if all evidence.
- If someone refuses to accept it.

17. In addition, a simple caution cannot be viewed as an appropriate method of disposing of offences committed by serving prisoners or those subject to restrictions on their liberty.

Recording the admission

18. An admission of guilt is required before a person can be invited to accept a caution: an admission must not be sought as part of the cautioning process.

19. The circumstances under which the admission to the offence is obtained will determine the recording options. PACE provides the following options:

- An admission made in response to questions asked in a formal interview which is conducted and recorded in accordance with the relevant provision of the Code C of PACE. Provisions in Codes C, E and F govern interviews that take place at police stations with interviews that take place elsewhere being subject to the Code G.
- An unsolicited admission made without any inducement or invitation to comment at any time outside the context of an interview. A written record of the admission must be made in the officer's note book or by the custody officer or review officer in the suspect's custody record. The suspect must be put to the suspect at the start of the interview and the suspect agrees.
- A formal written statement under caution made and recorded in accordance with PACE Code C Annex D.

The victim

20. Before a simple caution can be given, it is important to establish, where appropriate and possible:

- the views of any victim about the offence and the proposed method of disposal
- the nature and extent of any harm or loss, and its significance to the victim
- 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 non-fatal assault)
- Police officers should not become involved in negotiating or awarding reparation or compensation.

21. These are all factors that are likely to be relevant to an assessment of whether it is in the public interest to use a simple caution as the means of disposal. Should be taken to ensure victims are aware that, although their views will be taken into account, they will not necessarily be conclusive to the outcome.

22. If a victim declines the option to support a simple caution, because they don't want any action taken, this should not automatically result in 'no further action' being taken.

Other considerations

23. Does the suspect have a criminal record?

- If so, the current offence is trivial or unrelated to any previous offences, or as part of a new offence.

If the suspect has previously received a Reprimand or Warning, a period of at least two years should also be allowed to elapse before it will be appropriate to administer a simple caution.

- If an offender has a previous conviction, the current offence may still be considered for a simple caution as long as the current offence is not relate
- If the offence is a list 99 offence, the current offence may still be considered for a simple caution as long as the current offence is not relate

24. Has the offender been made aware of the significance of a simple caution?

- If a simple caution is being considered, then the full implications must be explained (and provided in writing) to the offender. Under no circumst

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

- 'Informed Consent' can be given when the suspect has received in writing an explanation of the implications of accepting a simple caution before I

26. Have the legal rights of the offender been met?

- The offender's right to legal advice is set out in PACE and must be adhered to.
- Offenders and their legal representatives are entitled to seek and have disclosure of the evidence before the offender agrees to accept a caution.

Making the decision

27. 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 (i

28. When the officer has reached a decision in favour of issuing a simple caution, he/she should sign the custody record, or other suitable documentation

29. Crown Prosecutors may be asked for advice on the suitability of using a simple caution disposal at any time. However, only the CPS can make the decis

30. Because of their inherent seriousness, indictable-only cases are highly unlikely to be suitable for a simple caution. However, in cases where it is not i

31. The CPS may also instruct a simple caution to be issued in any case where the criteria are met and this is considered the most appropriate disposal. T

32. The prosecutor should record their decision whether to charge, caution, NFA or otherwise on the rear of the Prosecution Team Manual of Guidance ( MG3 form, including the appropriate monitoring sub-code indicating the reason for the decision. The history of the disposal decision must be fully documented to ensure the record can be retrieved if required during subsequent proceedings or as part of an audit.

Consequences of receiving a simple caution

33. The significance of the admission of guilt in agreeing to accept a simple caution must be fully and clearly explained to the offender before they are c

34. 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 and f

35. A simple caution will appear on a subject access request made by the offender under the Data Protection Act 1998. It may also be disclosed for emplo

Sexual Offences Act

36. It is particularly important to explain the consequences of accepting a simple caution where the offence is listed in Schedule 3 to the Sexual Offen

Notifiable occupations

37. Notifiable occupations are currently set out in Annex A of Home Office Circular 6/2006 (new window). Where a simple caution is issued to someone

List 99

38. The Department for Children, Schools and Families maintains a list of individuals who are unsuitable to work with children, and are therefore barred

Independent Safeguarding Authority

39. A simple caution may also be taken into account by the Independent Safeguarding Authority in reaching decisions about the suitability of persons to

children or vulnerable adults, once the new Authority commences its work under the Safeguarding Vulnerable Groups Act 2008.

Rehabilitation of Offenders Act

40. Simple cautions will soon be covered under the Rehabilitation of Offenders Act 1974 and will become immediately spent[10] (new window). Until then 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 employers). However, a person will not be required to admit the existence of previous simple cautions if asked whether they have any criminal convictions.

Civil proceedings

41. If a simple caution has been given and the victim requests the offender’s name and address in order to institute civil proceedings (for example, to claim compensation or seek an injunction) the information must be disclosed. Under the 1998 Data Protection Act, personal data are 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 cases where the data are required in order to obtain legal advice.

Prosecutions (including private prosecution)

42. A person can only be prosecuted for an offence they have already been cautioned for if there is a substantial change in the material circumstances, or comes to light which suggests that the original offence is more serious than previously thought. If a person has been expressly promised that he will not be prosecuted for an offence if he accepts a caution, then any subsequent prosecution, including a private prosecution, will be held to be an abuse of process.[11] (new window) CPS policy to take over any private prosecution commenced after a caution has been properly administered, with a view to discontinuing the case.

Travel abroad and immigration

43. Countries requiring foreign nationals to obtain entry visas may require applicants to declare cautions on their application forms or at interview. Their rules may mean that a person who has received a simple caution is refused entry as though he / she has a criminal conviction. This will vary from country to country and may apply to people who want to emigrate permanently or those who simply want to visit for short term purposes, such as on business, for a holiday

Administering a simple caution

44. After the simple caution has been approved, it should be administered by a Custody Officer or other suitably trained person to whom this responsibility is delegated.

- Wherever possible, simple cautions should be administered at the police station. In exceptional circumstances, they may be administered at another location (for example, at the home of an elderly or vulnerable offender).
- 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 take independent legal advice. The simple caution should be deemed to have been administered only when the offender has signed a form which makes clear the implications for the offender. The offender should be given a copy of the form to take away. The pro forma should include the offender’s personal details (including OCC should provide full and clear details of the offence (ie sufficient description of the offence to allow for accurate recording on databases). This should be signed by the officer administering the simple caution.

This does not apply to the officer administering the simple caution. Arrangements are being made to produce an English /Welsh bilingual version of the form. In addition to the text of the declaration, the officer administering the form should also provide full and clear details of the offence (including Description of the offence to allow for accurate recording on databases).

Ensuring accurate recording and returns to the Ministry of Justice / Home Office

Recording the Caution

45. The accurate recording of all simple cautions is essential in order to:

- ensure that the records of individual offenders are correct
- avoid multiple cautioning
- ensure consistency; and
- support the accurate reporting of data to the Ministry of Justice/Home Office.

46. Simple cautions must be recorded on the local custody system as well as on national information systems.

47. Simple cautions must be entered on the Police National Computer (PNC) if they have been administered for a recordable offence[12] (new window). They must be retained in accordance with the ACPO Retention Guidelines for Nominal Records on the Police National Computer (new window).

48. The offence(s) for which the simple caution was administered must be recorded. It should be noted that this may be different to the offence(s) original for which the offender was originally arrested.

Returns to the Ministry of Justice/Home Office

49. In order to ensure accurate recording of all simple cautions, it is important that the correct data is sent to the Ministry of Justice or Home Office on a regular basis. This includes records of all offences for which an offender receives a simple caution. These differences raise two important considerations:

- The crime reported to the police and detected by means of a simple caution may not always be the same as the offence for which an individual is cautioned. If a person is cautioned for a recordable offence, they will be entirely removed from the criminal records system.
- There are usually a greater number of OBTJ simple cautions than Sanction Detection simple cautions. A single crime involving three offenders, for example, would result in one crime being detected even though each offender may have received a simple caution, resulting in three OBTJs.

50. To ensure accurate capture of data for OBTJ and other uses NG forms should contain details of all the offences for which a person has received a simple caution. This includes records of all processes generating data should be an integral aspect of police forces quality assurance processes if confidence is to be maintained and nationally published cautions data.
Other issues

Group and multiple offences

52. The experience and circumstances of offenders involved in group offences can vary greatly, as can their degree of involvement. Consistency is an important consideration in the decision of how to deal with a case but each offender should be considered separately and different dispositions may be justified. Where 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

53. 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 offence, other disposal options are also available, such as a cannabis warning or a Fixed Penalty Notice. For example, a person is arrested for being drunk disorderly, and when searched in custody has in their pocket a number of different sets of car keys that they may use to get into cars and steal from them. 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 appropriate, and a Penalty Notice for the Drunk and Disorderly offence.

54. Any decision on issuing a simple caution as an element of a mixed disposal should be considered with regard to the Director's Guidance on Charging other charging decisions, once the case is passed to the CPS then the decision on dispositions for all offences rests with the CPS.

Particular offence types

55. Where there is sufficient evidence, serious offences should be prosecuted at court. Ordinarily it would be inappropriate for them to be dealt with by a caution. However, there will always be cases in which it is not in the public interest to prosecute and in these circumstances it is preferable that an offender rather than no further action being taken.

(i) Violence Against the Person (VAP)

56. Generally, the simple caution is not appropriate for the most serious violence against the person offences. However, where an offence of personal violence accompanied by any aggravating factors and where the victim does not support a prosecution, the offence may be suitable for disposal by simple caution other criteria are met.

(ii) Domestic Violence

57. Positive action is recommended 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. A positive action approach considers the incident in its entirety, not just the oral and written evidence of the victim, and should focus investigative efforts on gathering alternative evidence in order to charge and build a prosecution that does not rely entirely on the victim's statement.

58. Where a positive action policy has been adhered to and officers still have difficulty in securing a charge/summons, forces need to have a system in place that simple cautions are considered in preference to an NFA decision.

(iii) Harassment (racial or other)

59. The two considerations for simple cautioning in harassment cases are that:

a) administering a simple caution may render all conduct on which the caution is based inadmissible as evidence towards a course of conduct should this subsequently; and

b) 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 a 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 cȩ aggravated harassment, a prosecution should be pursued.

60. 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 harassment will not continue subsequently.

Enquiries about this circular

61. Enquiries about this circular should be addressed to Simple-Cautions@cjcs.gsi.gov.uk

[1] (new window) HOC 30/2005 was originally published as part one of a two part series of guidance on cautioning (part two was to be guidance on conditional cautioning). In the event part two was never published, Guidance on conditional cautioning is provided in the Code of Practice for Conditional Cautions and Guidance on Conditional Cautions. Further guidance in the form of a circular was not considered necessary.

[2] (new window) A notifiable offence is one which must be recorded by the police and notified to the Home Office. This covers all indictable and triable offences, as well as a small number of closely associated summary offences. Further details and a full list of notifiable offences can be found on the Home Office website at http://www.homeoffice.gov.uk/rds/countrules.html.

[3] (new window) An eye witness statement of the commission of the offence (or a police officer's note if a police witness) and a PACE compliant admission that all that is required to satisfy the Full Code Test. There is no requirement to build a case file with corroborative evidence.

[4] (new window) Offenders aged 17 or under at the time the offence was committed, but 18 or older at the time the caution is to be administered should simple caution (not a reprimand or warning).

[5] (new window) Where reparation and/or compensation might be appropriate and the offence is one for which a conditional caution can be administered, the offender should consider whether a conditional caution would be more appropriate. In making this decision practitioners should remember that, where a simple caution is administered, the victim will need to claim through the civil court for any compensation. They will have to pay to do this.


[8] (new window) Police and Criminal Evidence Act 1984, S37B.


[10] (new window) Provision in the Criminal Justice and Immigration Act 2008 amend the Rehabilitation of Offenders Act to cover simple cautions an court disposals. With the exception of simple cautions administered for those offences listed in an exceptions order, all simple cautions will be immediate
should come into force towards the end of 2008.


[12] A recordable offence is any offence that carries the option of imprisonment and some 50 other non-imprisonable offences listed in th

Attachments

- 2008- 07 - 07 Simple caution acceptance proforma.doc (Microsoft Word file - 39kb)

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