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Home Office circular 016 / 2008

Simple cautioning of adult offenders

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Simple Cautions
- **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 confidence 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 cautions 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-custodial disposal for adult offenders. It may be used for disposing of 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 circumstances in 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 Prosecutions' 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 which 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 is 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 Prosecutions' [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 or if they attend a police station voluntarily and are cautioned prior to interview but not arrested (see Code C paragraphs 10.2 and 3.21). An offender who is arrested 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 legal advice. PACE requirements in relation to the provision of an appropriate adult for mentally vulnerable offenders also apply where a simple caution is being considered.

7. The administration of a simple caution for a notifiable offence is treated as a sanction detection and an offence brought to justice ([OBTJ](#)).[\[2\] \(new window\)](#)

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 \(new window\)](#), "The I

Test"? (A clear, reliable admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to realistic prospect of [conviction](#).)^[3] [\(new window\)](#)

- Is it in the public interest to use a simple caution as the means of disposal? Officers should take into account the public interest factors set out in the Crown Prosecutors, "The Full Code Test", in particular the seriousness of the offence.
- Is the suspect 18 years of age or older at the time the caution is to be administered^[4] [\(new window\)](#)? Where a suspect is under 18, a Reprimand or would be the equivalent disposal, as per the Crime and Disorder Act 1998. Guidance may be found in [Final Warning Scheme: Guidance for Police Offending Teams](#).
- Is a simple caution appropriate to the offence and the offender? (With reference to ACPO's Gravity Factors Matrix and the offender's criminal his

10. If all of the above requirements are met, the offence may be suitable for disposal by simple caution.

11. If the offence is indictable-only, the case must be referred to the CPS for a decision. In exceptional circumstances, a simple caution may still be an appropriate disposal. But generally the more serious the offence, the more likely a prosecution will be required.

12. There are a range of out-of-court disposals available to the police (and CPS). See [Out-of-court disposals for adults - a guide to alternatives to prosecution](#) [\(new window\)](#) for further information. A decision to administer a simple caution needs to be taken in the context of all possible out-of-court disposals, particularly conditional caution.

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 Matrix assists 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 offence will only increase or decrease by one level, regardless of the number of aggravating/mitigating factors. If there is one of each (aggravating and mitigating), they cancel each other out.

Circumstances where a simple caution cannot be considered

16. A simple caution will not be appropriate:

- Where a person has not made a clear and reliable admission of the offence or has otherwise raised a defence. This includes occasions where 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 is agreed either through supporting witness evidence or other evidence (such as CCTV) - may be considered a full and frank admission if all evidence is by the offender.
- 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 a court order. It is also not appropriate to use a simple caution when the offender was on court bail or subject to a court order at the time of the commission of the offence. It would be more appropriate to prosecute in these cases (or for such offences to be taken into consideration in relation to any other ongoing prosecution of the offender). See CPS guidance on [Offences to be taken into consideration \(TICs\)](#) [\(new window\)](#).

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 for obtaining and recording the admission must be PACE compliant.

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 provisions of PACE Codes. Provisions in Codes C, E and F govern interviews that take place at police stations with interviews that take place elsewhere being governed by Code C.
- 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 and the suspect invited to sign the record to confirm its accuracy in accordance with the Code C11.13 and 11.14 and *Note 11E*. Depending on whether the suspect has been arrested, the record must be made in the officer's note book or by the custody officer or review officer in the suspect's custody record. If a formal interview takes place after an unsolicited admission, the admission must be put to the suspect at the start of the interview and the suspect asked to confirm or deny what they said.
- 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 involving sexual violence). Police officers should not become involved in negotiating or awarding reparation or [compensation](#)^[5] [\(new window\)](#).

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. Officers 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. The final decision is at the discretion of the police and/or the CPS.

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' (NFA). Officers will need to consider wider public interest factors before disposing of the offence in this manner.

Other considerations

23. Does the suspect have a criminal record?

- Both national and any locally held records must be checked before a simple caution is given to avoid inappropriate use of this out-of-court disposal.
- If the suspect has previously received a caution (including a conditional 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 current offence is trivial or unrelated to any previous offences, or as part of a reparation scheme.

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 related to offences for which the previous conviction was received. The decision to proceed with a simple caution in these circumstances remains at the discretion of the police officer or the CPS, but there should have been a significant time lapse between the original conviction and any new offence before a simple caution is appropriate.

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 circumstances should suspects be pressured, or induced in any way to admit offences in order to receive a simple caution as an alternative to being charged. [\[6\] \(new window\)](#) paragraphs 33 to 41 for further information on the implications of accepting a caution and the Appendix for a sample pro forma to be given to and read by the offender.

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 he/she accepts a simple caution. After receiving this, if the suspect does not give his/her consent, the police may choose to continue with a prosecution in accordance with the Director's Guidance on Charging. Officers must avoid any suggestion that accepting a simple caution is an 'easy option'.

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. [\[7\] \(new window\)](#)

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 (who may not be a Custody Officer) for approval. This officer must be unrelated to the investigation of the offence. He/She should apply the criteria set out in this circular to determine if a simple caution is appropriate.

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 where he/she has approved this as the appropriate method of disposal. 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.

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 decision on whether an indictable-only offence is suitable to be dealt with by way of a simple caution.

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 in the public interest to proceed with a prosecution, prosecutors should consider whether the case is nevertheless suitable for a simple caution disposal before deciding on further action against the offender.

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. This is binding upon the police. If, however, a simple caution is instructed by the CPS and it proves not possible to issue to an offender for any reason (for example, the offender fails to attend or withdraws consent), the case should be referred back to the CPS. [\[8\] \(new window\)](#)

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. Where the decision is to caution for an indictable-only offence, full reasons for that decision and the full details of the offence (ie sufficient description of the offence to allow for accurate recording on databases) for which a simple caution was administered should be recorded on the MG3.

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 cautioned. The pro forma attached to this circular can be used to do this.

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 forms part of the offender's criminal record. It may influence how they are dealt with, should they come to the notice of the police again and may also be cited in court in subsequent proceedings.

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 employment purposes, licensing purposes or to inform judicial appointments.

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 Offences Act 2003 before the caution is administered. 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. This means that the offender will be put on the 'sex offenders register' for 2 years from the date of the caution.

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 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 must be made available in the station.

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 from working with children. Regulations which came into force on 28th February 2007 [\[9\] \(new window\)](#) make provision for any adult who is convicted of, or cautioned for, an offence which is listed in the regulations, to be included on List 99. By accepting such a caution an individual will be disqualified from working with children in a regulated profession defined by the Criminal Justice and Court Services Act 2000, and will commit an offence if they undertake or seek to undertake such work.

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 the Act was made 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 circumstances 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 or for a visit.

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 has been 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 need to be, 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 of the caution. The offender should be given a copy of the form to take away. The pro forma should include the offender's personal details (including occupation) and should provide full and clear details of the offence (ie sufficient description of the offence to allow for accurate recording on databases). **This document must also be signed by the officer administering the simple caution.** Arrangements are being made to produce an English /Welsh bilingual version of the simple cautions acceptance form. In addition the text of the declaration will be made available in Arabic, Bengali, Chinese, Gujarati, Polish, Punjabi, Somali and Urdu. Copies of these will be distributed to the police and CPS via ACPO and CPS headquarters or you can email Simple-Cautions@cjs.gsi.gov.uk

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] [\(new window\)](#). The records 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) originally recorded for which the offender was originally arrested.

Returns to the Ministry of Justice/Home Office

49. In order to ensure accurate reporting 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. Two types of form are used for this.

- The CrimSec 3 covers crimes involving notifiable offences and contributes towards the Sanction Detections figures.
- The NG form/upload covers offenders and offences, and provides data for the purposes of Offences Brought to Justice (OBTJ) and other matters.

50. Sanction Detection simple cautions relate to the number and type of crimes which are detected by means of a simple caution. Conversely, OBTJ simple cautions relate to 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 because crimes are recorded based on the reported circumstances, whereas a simple caution can be issued for an offence that would be considered appropriate bearing in mind the charging standards; and
- There ought usually to be a greater number of OBTJ simple cautions than Sanction Detection simple cautions. A single crime involving three offences, for example, would result in one crime being detected even though each offender may have received a simple caution, resulting in three OBTJs. It is important to ensure that recording methods are robust and auditable, and that OBTJ and other simple cautions on NG forms are not being under-reported.

51. 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. A regular audit of all processes generating data should be an integral aspect of police forces quality assurance processes if confidence in the data and nationally published cautions data is to be maintained.

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 disposals 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 and other charging decisions, once the case is passed to the CPS then the decision on disposals 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 simple 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 offence is dealt with by a simple caution 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 is accompanied by any aggravating factors and where the victim does not support a prosecution, the offence may be suitable for disposal by simple caution if 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. It 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 evidence.

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 be pursued 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 cases of 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 that harassment will not continue subsequently.

Enquiries about this circular

61. Enquiries about this circular should be addressed to Simple-Cautions@cjs.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 issued. 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 of guilt that is required to satisfy the Full Code Test. There is no requirement to build a case file with corroboration or continuity statements.

[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 not be issued a 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, practitioners 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.

[6] [\(new window\)](#) See R v Commissioner of Police of the Metropolis ex p Thompson [1996] 1 WLR 1519

[7] [\(new window\)](#) DPP v Ara TLR July 2001

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

[9] [\(new window\)](#) The Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184) as amended by the Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007 (S.I. 2007/195).

[10] [\(new window\)](#) Provisions in the Criminal Justice and Immigration Act 2008 amend the Rehabilitation of Offenders Act to cover simple cautions and court disposals. With the exception of simple cautions administered for those offences listed in an exceptions order, all simple cautions will be immediately spent.

should come into force towards the end of 2008.

[\[11\] \(new window\)](#) Jones v. Whalley [2006] UKHL 41 (26 July 2006)

[\[12\] \(new window\)](#) 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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