



Ministry  
of Justice

# **Simple Cautions for Adult Offenders**

**This guidance is effective from 13 April 2015**



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## SECTION ONE: INTRODUCTION

1. This document provides guidance to police officers and Crown Prosecutors<sup>1</sup> in England and Wales (and information to the public) on the use of simple cautions for adult offenders (“simple cautions”).
2. **This guidance replaces all previous guidance on simple cautions issued by the Ministry of Justice. It must be applied to all decisions relating to simple cautions from the date it comes into effect, regardless of when the offence was committed.**
3. This guidance must be read in conjunction with the Director’s Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984<sup>2</sup>.
4. There is a range of formal out-of-court disposals available to the police and the Crown Prosecution Service (“CPS”) for dealing with adult offenders. A decision to administer a simple caution needs to be taken in the context of all such disposals. Police officers and Crown Prosecutors should refer to the national framework on out-of-court disposals for assistance. This can be found at [www.justice.gov.uk/out-of-court-disposals](http://www.justice.gov.uk/out-of-court-disposals).

### Aims of the simple caution scheme

5. The aims of the simple caution scheme are:
  - To offer a proportionate response to low-level offending where the offender has admitted the offence;
  - To deliver swift, simple and effective justice that carries a deterrent effect;
  - To record an individual’s criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
  - To reduce the likelihood of re-offending;
  - To increase the amount of time police officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

### Overview of the simple caution scheme

6. A simple caution (once known as a formal or police caution) is a formal warning that may be given by the police to persons aged 18 or over who

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<sup>1</sup> This guidance does not apply to other bodies that have separate caution schemes, local authorities for example, although they may follow it if they wish

<sup>2</sup> The Director’s Guidance is available on the Crown Prosecution Service website at [http://www.cps.gov.uk/publications/directors\\_guidance/index.html](http://www.cps.gov.uk/publications/directors_guidance/index.html)

admit to committing an offence (“offenders”). The simple caution scheme is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. A simple caution may only be given where specified criteria are met.

7. A simple caution should not be confused with a conditional caution (a caution with conditions attached). Conditional cautions were introduced by the Criminal Justice Act 2003. Guidance on the conditional caution scheme is contained in the Code of Practice for Adult Conditional Cautions and the Director’s Guidance on Adult Conditional Cautions.
8. Whether an offender is suitable for a simple caution is an operational decision for the police and/or the CPS, based on the specific circumstances of the individual case. Annex A provides an overview of factors to consider when deciding whether a simple caution may be appropriate.
9. A simple caution must not be offered to a person who has not admitted to committing the offence, and must not be given to an offender who does not agree to accept the simple caution. Offenders retain the right to decline the offer of a simple caution – even where guilt has been admitted and their refusal may result in prosecution.
10. In addition, a simple caution may only be given if the decision-maker is satisfied that there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted.
11. Furthermore, a simple caution must not be given if the decision-maker considers that it is in the public interest for the offender to be prosecuted. See paragraphs 27-29 for further guidance on applying the Code for Crown Prosecutors when deciding whether to offer a simple caution.
12. **Even if the above criteria are met, section 17 of the Criminal Justice and Courts Act 2015 prohibits certain offenders from being given a simple caution in the absence of exceptional circumstances (see paragraphs 35-39).**
13. Simple cautions form part of an offender’s criminal record and may be referred to in future legal proceedings and, in certain circumstances, may be revealed as part of a criminal record check. Offenders **must** be made aware of this **before** agreeing to accept a simple caution.
14. There is no formal right of appeal against the administration of a simple caution once it has been accepted by the offender and administered by the police. However, it may be challenged by way of a complaint against the police force that administered it and by way of a claim for judicial review.

## SECTION TWO: THE DECISION TO OFFER A SIMPLE CAUTION

### Decision-making powers

#### *Summary and either-way offences*

18. The police may make the decision to offer a simple caution in relation to any summary or either-way offence without reference to the CPS, unless the Director's Guidance on Charging requires the case to be referred to the CPS for a charging decision. Where a case is referred to the CPS for a charging decision, whether or not the police were required to refer the case, the decision made by the CPS is binding on the police. Where however the CPS decide that a simple caution should be given but it proves not to be possible to do so for whatever reason, including in particular where any requirement imposed under section 17 of the Criminal Justice and Courts Act 2015 is not met, or the offender refuses or fails to attend to be cautioned, they must instead be charged with the offence.
19. Furthermore, as set out in the Director's Guidance on Charging, the police may in any case seek the advice of the CPS as to whether a simple caution is appropriate. This can be done at any stage of the investigation. The police are particularly encouraged to do so in serious, sensitive and/or complex cases.
20. Where the police have charged a summary or either-way offence without reference to the CPS, the Director's Guidance on Charging provides that if the CPS on reviewing the case decide that a simple caution is more appropriate, the police must ensure that the offender is given a simple caution.

#### *Indictable-only offences*

21. **Section 17(2) of the Criminal Justice and Courts Act 2015 prohibits the police from giving a simple caution to an offender for an indictable-only offence unless the CPS agree that a caution should be given.**
22. Furthermore, the Director's Guidance on Charging requires the police to refer all indictable-only offences to the CPS for a charging decision. Any such decision will be binding on the police. If however the CPS decide that a simple caution should be given but it proves not to be possible to do so for whatever reason, including in particular where any requirement imposed under section 17(2) of the Criminal Justice and Courts Act 2015 is not met, or the offender refuses or fails to attend to be cautioned, they must instead be charged with the offence.

### Admission of guilt

23. **A simple caution must not be offered to a person who has not made a clear and reliable admission to committing the offence.** This is

particularly important where there is any doubt at all about the mental state or capacity of the person. In these circumstances a decision-maker should be particularly careful about accepting an admission of guilt. Decision-makers should refer to the Police and Criminal Evidence Act 1984 (“PACE”) and the Codes issued under that Act for assistance in identifying and dealing with such persons.

**24. A simple caution must not be offered in order to secure an admission of guilt that could then provide sufficient evidence to meet the evidential stage of the Full Code test.**

25. If a person admits guilt but also raises a defence, a simple caution cannot be offered. This includes where the person denies an essential element of the offence or where they assert a substantive defence; examples include where the offender claims they acted in self defence, or where the offender claims they had a good reason or lawful authority for having a bladed article in a public place.

26. The admission of guilt does not need to be made within a formal interview under PACE. However, the method for obtaining and recording the admission must be PACE-compliant. 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 the PACE Codes<sup>3</sup> whether within the police station or elsewhere.
- An unsolicited admission made without inducement or invitation to comment at any time outside the context of an interview<sup>4</sup>. A written record must be made and the offender invited to sign the record to confirm its accuracy in accordance with the PACE Codes<sup>5</sup>. Depending on whether the offender has been arrested, the record must be made in the officer’s notebook or by the custody officer or review officer in the offender’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<sup>6</sup>.
- A formal written statement under caution made and recorded in accordance with the PACE Codes<sup>7</sup>.

## The Full Code Test

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<sup>3</sup> For the conduct and recording of interviews, see PACE Code C sections 11 and 12, Code E and Code F

<sup>4</sup> See PACE Code C paragraph 11.13

<sup>5</sup> See PACE Code C paragraphs 11.13 and 11.14

<sup>6</sup> See PACE Code C paragraph 11.14

<sup>7</sup> See PACE Code C Annex D

27. In deciding whether a simple caution is appropriate a decision-maker must apply the Full Code Test, as set out in the Code for Crown Prosecutors. This can be found at:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

#### *Evidential Stage*

28. A decision-maker may only decide that a simple caution is appropriate if satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the offence if the offender were to be prosecuted. In doing so, the decision-maker may take any clear and reliable verbal or written admission by the offender to committing the offence into account. **However, a simple caution must not be offered in order to secure an admission that could then provide sufficient evidence to meet the evidential limb of the Full Code test.**

#### *Public Interest Stage*

29. Before deciding that a simple caution is appropriate, a decision-maker must be satisfied that it is in the public interest to offer a simple caution in respect of the offence rather than to prosecute. Relevant factors are set out below.

#### **The offence**

30. Simple cautions are available for any offence, although decision-makers should bear in mind that they are primarily intended for low-level, mainly first-time, offending. **There are also statutory restrictions on the use of simple cautions in relation to some offences (see paragraphs 35-39).**
31. An assessment of the seriousness of the offence is the starting point for considering whether a simple caution may be appropriate. The more serious the offence, the less likely it is that a simple caution will be appropriate.
32. Any aggravating circumstances of the offence (for example, any breach of trust or advantage taken of the vulnerable or young) may increase its seriousness to the point where the case should proceed to court. Police officers should use the National Decision Model and the College of Policing *Gravity Factors Matrix* in deciding whether this is the case.
33. In assessing the seriousness of the offence, the sentence likely to be imposed in the event of a conviction must be carefully considered, taking into account the Magistrates' Court Sentencing Guidelines. Offences which are likely to result in a custodial sentence (whether immediate or suspended) or a high-level community order should generally be prosecuted. If the offence is also a sexual offence or involves violence against the person especial care should be exercised before offering a simple caution.

34. Any charging guidance issued by the Association of Chief Police Officers (“ACPO”) for particular offence types should generally be followed.

**Indictable-only offences**

35. **Section 17(2) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for indictable-only offences (offences which, if committed by an adult, are triable only on indictment). An offender must not be given a simple caution for such an offence unless a police officer of at least the rank of Superintendent determines that there are exceptional circumstances relating to the offender or the offence, and the CPS agree that a caution should be given. Section 17(6) of the Act requires a decision on whether there are exceptional circumstances to be made in accordance with the guidance in paragraphs 40-41.**

**Specified either-way offences**

36. **Section 17(3) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for certain either-way offences (offences which, if committed by an adult, are triable either on indictment or summarily). An offender must not be given a simple caution for an either-way offence that has been specified by the Secretary of State unless a police officer of at least the rank of Inspector determines that there are exceptional circumstances relating to the offender or the offence. Section 17(6) of the Act requires a decision on whether there are exceptional circumstances to be made in accordance with the guidance in paragraphs 40-41.**
37. **The either-way offences that have been specified by the Secretary of State are set out in Annex B. They are summarised as follows:**
- **Offensive weapon and bladed article offences;**
  - **Carrying a firearm in a public place;**
  - **Child cruelty;**
  - **Sexual offences against children (including those relating to child prostitution and pornography);**
  - **Sex trafficking offences;**
  - **Indecent and pornographic images of children;**
  - **Importing, exporting, producing, supplying and possessing with intent to supply to another Class A drugs.**

### Repeat offending

38. **Section 17(4) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for repeat offending. An offender must not be given a simple caution for a summary offence (an offence which, if committed by an adult, is triable only summarily) or an either-way offence that has not been specified by the Secretary of State if in the two years before the offence was committed the offender has been convicted of, or cautioned for, a similar offence, unless a police officer of at least the rank of Inspector determines that there are exceptional circumstances relating to the offender, the present offence or the previous offence. A police officer of at least the rank of Inspector must also determine whether a previous offence was similar. Section 17(6) of the Act requires a decision on whether there are exceptional circumstances to be made in accordance with the guidance in paragraphs 40-41 and a decision on whether a previous offence was similar to be made in accordance with the guidance in paragraph 42.**
39. **An offender is to be treated as having been cautioned for a previous offence if they were given a simple caution, a conditional caution, a youth caution or a youth conditional caution.**

### Exceptional circumstances

40. **A decision-maker is only permitted to conclude that there are exceptional circumstances justifying a simple caution if satisfied that, were the offender to be convicted of the offence, the sentencing court would be unlikely to impose a custodial sentence (whether immediate or suspended) or a high-level community order.**
41. **Furthermore, in determining whether there are exceptional circumstances, a decision-maker must take the following non-exhaustive list of factors into account:**
- **The level of culpability of the offender in committing the offence;**
  - **Any harm which the offence caused, was intended to cause or might foreseeably have caused;**
  - **The offender's antecedents;**
  - **Any aggravating factors;**
  - **Any mitigating factors;**
  - **The overall justice of the case and whether the circumstances require it to be dealt with by way of prosecution (e.g. for the protection of the public);**
  - **The range of sentences appropriate to the facts of the case.**

### Determining similarity

42. **A decision-maker must treat a previous offence as being similar to the present offence if it was of the same description or of a similar nature, e.g. they were both of a sexual nature, they both involved violence against the person, they both involved dishonesty by the offender, etc. Two offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms. The decision-maker must take into account all of the facts of the offences.**

### Specific offence types

#### *Domestic violence and abuse*

43. Positive action is recommended in cases of domestic violence and abuse to ensure the safety and protection of victims and children while allowing the criminal justice system to hold the offender to account. Domestic violence and abuse cases often involve a number of incidents prior to reporting to the police. A positive action approach considers the incident in its entirety and should focus investigative efforts on gathering sufficient evidence to be able to build a prosecution case that does not rely entirely on the complainant's statement. Police and prosecutors should refer to the ACPO/CPS Charging checklist<sup>8</sup> to help secure evidence-based prosecutions which are not solely reliant on the complainant.
44. If the evidential stage of the Full Code test is satisfied, it will rarely be appropriate to deal with the case by way of a simple caution in cases of domestic violence and abuse. However, where a positive action policy has been adhered to but the victim does not support a prosecution, and the available evidence (including any additional evidence adduced) would only support charging a very minor offence, a simple caution may be preferable to a decision to take no further action.

#### *Stalking and harassment (racial or otherwise)*

45. In cases of stalking or harassment decision-makers should bear two additional considerations in mind:
- a) Administering a simple caution may render all conduct on which the caution is based inadmissible as evidence of a course of conduct should this continue subsequently;
  - b) Since a restraining order can only be issued by a court, the only way in which a victim would otherwise be protected against future misconduct would be by seeking an anti-harassment injunction from a civil court (which is similar in effect to a restraining order and permits a victim to apply to the court for a warrant of arrest in the event of a breach). In cases of stalking or aggravated harassment a prosecution should be

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[http://www.cps.gov.uk/legal/assets/uploads/files/joint\\_cps\\_acpo\\_evidence\\_checklist\\_for\\_domestic\\_violence\\_cases.doc](http://www.cps.gov.uk/legal/assets/uploads/files/joint_cps_acpo_evidence_checklist_for_domestic_violence_cases.doc)

pursued wherever possible to ensure an application for an order can be made.

46. For these reasons, the views of the victim should be fully considered and a simple caution only administered where the police are confident that the stalking or harassment will not continue subsequently and a harassment warning has not been previously issued.

*Multiple offences and mixed disposals*

47. Where multiple related offences have been committed, police and prosecutors should consider the totality of the offending in determining whether it is appropriate to deal with the case by way of caution.
48. It is possible to use different disposals where an offender has committed multiple but unrelated offences as part of the same incident. Depending on the nature of the offence, disposal options other than a simple caution may be available, such as a cannabis warning, a Penalty Notice for Disorder (“PND”), a conditional caution or a charge. For example, if a person is arrested for being drunk and disorderly and when searched in custody is found to be carrying a selection of car keys and admits that their intention was to steal from cars, they may be given a simple caution for going equipped to steal and issued with a PND for the drunk and disorderly offence.
49. The Director’s Guidance on Charging<sup>9</sup> should be considered when deciding whether to combine a simple caution with any other disposal.

*Group offences*

50. Where a number of offenders are involved in committing an offence the extent of their involvement and the circumstances of each offender can vary greatly. While consistency of treatment is an important consideration in such a case, it is important that the case of each offender should be considered separately and consequently different disposals may be justified.

*Offences committed by offenders subject to bail and/or court orders*

51. It is generally not appropriate to use a simple caution if the offender was on police or court bail or subject to a court order at the time of the commission of the offence. In general it would be more appropriate to prosecute in these cases, or for such offences to be taken into consideration in relation to any ongoing prosecution of that offender. The CPS guidance on Offences to be Taken into Consideration should be followed.

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<sup>9</sup> This is available on the CPS website at [http://www.cps.gov.uk/publications/directors\\_guidance/index.html](http://www.cps.gov.uk/publications/directors_guidance/index.html)

*Offences committed by serving prisoners and offenders on licence*

52. A simple caution will only rarely be an appropriate method of disposing of offences committed by serving prisoners or those subject to prison recall. This will include:

- New offences committed by a prisoner whilst in custody;
- New offences committed upon release from custody whilst subject to prison recall;
- Offences committed prior to an offender beginning a custodial sentence, including where the commission of the offence, or the offender's guilt, only becomes known whilst the offender is serving a custodial sentence.

**The offender's antecedents**

53. **Section 17(4) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for repeat offending (see paragraphs 38-39).**

54. A simple caution will generally not be appropriate where the offence forms part of a pattern of offending. For example, an offender with a previous caution for an offence involving violence against the person should not normally be cautioned again for other offences involving violence against the person. In such circumstances, the decision-maker may consider that a different form of resolution, such as a prosecution, would be a more appropriate way of dealing with the offence.

55. A simple caution may be appropriate where:

- There has been a sufficient lapse of time (at least two years) following a previous conviction or out-of-court disposal (including a simple caution) for the same or similar type of offence, to demonstrate that it had a deterrent effect;

AND

- The current offence is low level;

OR

- The offender has previously complied with another form of out-of-court disposal;

OR

- Giving a simple caution is likely to be the best outcome for the victim and the offender.

56. In considering whether a simple caution is appropriate both national and locally-held criminal records must be checked.

## The victim

57. In deciding whether to offer a simple caution, it is important to establish, where appropriate and possible, and to take into account:
- The views of any victim about the offence and the proposed method of disposal;
  - The nature of any harm or loss caused by the offence and its significance to the victim.
58. Where there has been financial loss or loss of private property to an individual, although simple cautions are available, the decision-maker should consider whether a conditional caution with a condition to repair damage or to pay compensation is more suitable.
59. The views of the victim are important but are not conclusive. The decision to offer a simple caution lies with the police and/or the CPS who should take account of the views of the victim alongside wider public interest factors. Care must be taken not to raise the expectations of a victim whilst seeking their views.
60. If a victim declines to support a simple caution because they do not want any action to be taken, this should not automatically result in no further action being taken. Officers will need to consider wider evidential and public interest factors before dealing with the offence in this manner.

## Approving and recording the decision to offer a simple caution

61. **Where a police officer considers that a simple caution should be offered, the decision should, subject to section 17 of the Criminal Justice and Courts Act 2015 (see paragraphs 35-39) requiring the decision to be made by a higher-ranking officer, be referred to an officer of at least the rank of Sergeant who is not involved in the investigation of the offence, for approval.**
62. They should apply the criteria set out in this guidance to determine if a simple caution is appropriate. Where the officer reaches a decision in favour of offering 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 rationale for the decision to offer a simple caution must be fully documented as well as the gravity factors matrix score to ensure the record can be retrieved if required during subsequent proceedings or as part of an audit.
63. If the case has been referred to the CPS, the Crown Prosecutor should record their decision to charge, to offer a simple caution or another out-of-court disposal, or to take no further action, and their reasons why. Where the decision is to offer a simple caution for an indictable-only offence the full reasons for that decision must be recorded.

## SECTION THREE: ADMINISTERING A SIMPLE CAUTION

### Overview

64. Before a simple caution is administered, the police officer seeking to do so must ensure the offender understands the implications of accepting a simple caution and consents to receiving a simple caution.

### Explaining the implications of accepting a simple caution

65. Accepting a simple caution has potentially significant implications for an offender all of which **must** be explained to the offender **before** he or she is invited to accept it and the simple caution is administered. These are set out below.

#### A) Significance of the admission of guilt

66. A simple caution is an admission of guilt to committing an offence and forms part of an offender's criminal record.

#### B) Criminal record: retention and disclosure of the simple caution

67. The simple caution forms part of an offender's criminal record and a record will be retained by the police for future use. It may also be referred to in future legal proceedings.
68. A simple caution may be revealed as part of a criminal record check. Separate guidance governs the disclosure of criminal record information.
69. All information relating to simple cautions (as well as convictions) for a recordable offence is retained on the Police National Computer ("PNC"). ACPO guidelines set out how long this information will be retained for. The information is kept for police operational reasons and in the interest of prevention and detection of crime.
70. Legislation which came into effect in December 2008 brought simple cautions within the ambit of the Rehabilitation of Offenders Act 1974 ("ROA"). This means that simple cautions become spent immediately they are administered<sup>10</sup>. This means that an individual does not need to disclose a simple caution when asked unless they are seeking work in an occupation that is listed in the Exceptions Order to the ROA such as working with children and vulnerable adults or for other excepted purposes such as seeking to obtain certain licences. Cautions will also be disclosed under Disclosure and Barring Service ("DBS") standard and enhanced checks. Further information can be obtained from the DBS<sup>11</sup>.

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<sup>10</sup> The provisions in the ROA apply retrospectively to a simple caution that was administered prior to 19 December 2008 and therefore such a caution will also be considered to be spent in the same way as one administered after that date

<sup>11</sup> <http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

71. As well as the retention of the record of the simple caution, the offender's DNA profile and fingerprints, if taken, whether before or after the simple caution has been administered, may be retained by the police.

**C) Sexual Offences Act 2003 implications**

72. Accepting a simple caution for an offence in Schedule 3 to the Sexual Offences Act 2003 will result in the offender becoming a "relevant offender" for the purposes of the notification and registration requirements of Part 2 of that Act. This means that the offender will be put on the "sex offenders register" for two years from the date of the simple caution.

**D) Working with children and vulnerable adults**

73. The DBS maintains the lists of those barred from working with children and vulnerable groups, including adults. A simple caution may be taken into account by the DBS when reaching a decision about the suitability of persons to work with children and adults. Accepting a simple caution for certain offences may lead to the offender's inclusion on such a list which will prevent them from working in a regulated post with children and vulnerable groups. Further information should be obtained from the DBS.

**E) The potential for prosecution or civil action**

74. If after the simple caution has been administered, new evidence comes to light suggesting that the offence(s) committed are more serious, a prosecution may still be brought. Additionally, if the offence(s) involve(s) a victim or victims they might still take civil action or bring a private prosecution against the offender. The police may provide the offender's name and address to the victim or victims if this is necessary for legal action to take place. Further details are at paragraphs 90 of this guidance.

75. It is very rare that these situations will occur, however, the possibility should still be explained to the offender.

**F) Travel and immigration**

76. Countries requiring foreign nationals to obtain entry visas may require applicants to declare simple cautions on their application forms or at interview. Other country's immigration rules may mean that a person who has received a simple caution is refused entry as though they have a criminal conviction. The ROA only applies within the UK which means simple cautions, even if spent, may still need to be disclosed to some countries in some circumstances. 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 to study. For specific information on what an individual may be required to disclose, the relevant embassy of the country of travel should be contacted.

### **Consent to receiving a simple caution**

77. A simple caution can only be given when the offender agrees to accept it. They should not be induced to accept a simple caution in any way and must not be pressed to make an instant decision on whether to accept a simple caution. They should be allowed to consider the matter and, if need be, take independent legal advice.

#### *Legal advice*

78. **Before** administering a simple caution the police officer should ensure that the offender has had the opportunity of receiving free and independent legal advice in relation to the offence. The offender's right to legal advice is set out under PACE and must be adhered to. The police officer must inform the offender of the evidence against them and the decision to offer a simple caution. Offenders and their legal representatives are entitled to seek and have disclosure of the evidence before the offender agrees to accept a simple caution.

### **Administering the simple caution**

79. A simple caution should be administered by a Custody officer or other suitability trained person to whom this responsibility has been delegated. A simple caution may be administered in a police station, court building, the offices of any prosecutor or any other suitable location consistent with achieving the appropriate impact on the offender. It will not generally be appropriate to administer a simple caution in public (for example on the street) or in the offender's home. However, in exceptional circumstances, for example where the offender is elderly or vulnerable, the simple caution may be administered in the offender's home or similar place, providing the correct procedure for administering the simple caution is adhered to.

80. At the point the simple caution is administered the police officer must:

- Ensure that the offender understands that they do not have to make an immediate decision on whether to accept the simple caution but can consider the matter and, if need be, take independent legal advice;
- Ensure the offender understands that they have the right to legal advice at any time during the process;
- Ensure that the offender understands the effect of the simple caution and the implications of accepting it as set out in paragraphs 65-76 above;
- Ensure that the offender has made a clear and reliable admission of guilt in respect of the offence or offences for which the simple caution is being administered;
- Confirm that the offender consents to receiving a simple caution;
- Ask the offender to sign a form setting out the implications of the simple caution ("the simple caution form");
- Sign the simple caution form themselves and provide the offender with a copy to take away.

## Simple Cautions for Adult Offenders

81. When administering a simple caution, police officers must have regard to the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offenders and the use of an appropriate adult. Police officers must also ensure that all matters that need to be explained are explained in a language that the offender can understand.
82. A simple caution is only deemed to be administered when the offender has signed the simple caution form which sets out that they have made an admission of guilt in respect of the offence or offences, their consent to receiving the simple caution and makes clear the implications for accepting the simple caution as set out at paragraphs 65-76. The offender should be given a copy of the simple caution form to take away. The simple caution form should also include the offender's personal details including occupation and should provide full and clear details of the offence. This document must also be signed by the officer administering the simple caution.

## SECTION FOUR: AFTER ADMINISTRATION

83. Once the simple caution has been administered and the simple cautions form completed in accordance with paragraph 80 of this guidance, police officers must update the PNC to record that a simple caution has been given; the offence that was ultimately the subject of the simple caution must be recorded on the PNC. For example, if the offence was originally reported as assault occasioning actual bodily harm, but upon considering the evidence the offence was reclassified as common assault, the PNC must be updated to record that the simple caution was administered for common assault.
84. The police must keep records in relation to simple cautions in accordance with relevant guidance<sup>12</sup>. Other relevant prosecutors and authorised persons may issue similar guidance to ensure that records are kept in accordance with any relevant legal responsibilities.
85. After the simple caution has been administered, the police must also comply with any relevant requirements to notify other agencies of the simple caution; for example where the simple caution is administered for a sexual offence under Schedule 3 to the Sexual Offences Act 2003, the appropriate notification requirements must be carried out.

### *Challenging a simple caution*

86. There is no formal right of appeal against a simple caution once it has been administered. However, this does not prevent a person (for example an offender or a victim) who claims that it was not administered in accordance with this guidance from challenging the simple caution by way of a complaint against the police force or in court by way of a claim for judicial review.
87. To make a complaint against the police force a person can:
- Make a complaint in writing to the Chief Constable of the police force that administered the simple caution or by visiting a police station;
  - Make a complaint to the Independent Police Complaints Commission to pass to the police force;
  - Authorise a third person (such as a solicitor or Citizens Advice Bureau) to submit the complaint on their behalf.
88. If the simple caution is set aside for any reason, whether following a challenge or for any other reason then the case should be reviewed again within the provisions of this guidance to consider whether a simple caution or other outcome is appropriate.

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<sup>12</sup> For example, see the ACPO Retention Guidelines for Nominal Records on the Police National Computer

### *Civil proceedings*

89. 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 may be disclosed. Under the Data Protection Act 1998, personal data are exempt from the non-disclosure provisions where the disclosure is necessary 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.

### *Subsequent prosecutions (including private prosecution)*

90. Usually, a person will only be prosecuted for an offence they have already been simple cautioned for if there is a substantial change in the material circumstances, or new evidence comes to light which suggests that the original offence is more serious than previously thought or if the decision to administer a simple caution was wrong. Even where a simple caution has been administered this may not preclude a private prosecution<sup>13</sup>. In addition, the decision to administer a simple caution may be judicially reviewed as unlawful, e.g. because the proper procedures and relevant guidance have not been followed or because it is claimed that the decision is irrational or unreasonable on *Wednesbury* principles<sup>14</sup>. This may result in the decision to authorise and administer a caution being set aside. If this happens the slate is in effect wiped clean and the case must be reviewed again to decide the appropriate disposal. If the subsequent decision is to prosecute it does not follow that a prosecution for the alleged offence would inevitably amount to an abuse of process. This will be made on a case by case basis. It is unlikely that such action would occur, however in order to minimise the risk of an abuse of process argument, local arrangements should be put in place to ensure that when a simple caution is administered, the person being cautioned is informed in writing that the simple caution *may* not preclude a subsequent prosecution and that it *will* not preclude a civil action by an aggrieved party<sup>15</sup>.

### **Best practice**

91. Supervisory quality checks should be undertaken to ensure that simple cautions are used appropriately and in accordance with this guidance.

### **Enquiries about this guidance**

92. Enquiries about this guidance should be addressed to the Ministry of Justice.

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<sup>13</sup> *Hayter v L* [1998] 1 WLR 854

<sup>14</sup> *Associated Provincial Picture Houses Ltd V Wednesbury Corporation* [1948] 1 KB 223

<sup>15</sup> *Jones v Whalley* [2006] UKHL 41; [2007] 1 AC 63; *Hayter v L* [1998] 1 WLR 854; *R (Guest) v Director of Public Prosecutions* [2009] EWHC 594; [2009] 2 Cr App R 26

## Annex A – Overview of decision-making factors

Overview of factors for considering whether a simple caution is appropriate	
<b>Simple caution may be appropriate</b>	<p>For low-level offending.</p> <p>For first time offenders.</p>
<b>Simple caution may not be appropriate</b>	<p>Where the offence is very minor. In these cases consideration should be given to a community resolution or other action short of a formal sanction.</p> <p>Where the offence is serious, in particular where, if convicted, the offender is likely to receive a custodial sentence (whether immediate or suspended) or a high-level community order.</p> <p>Where the offender was on police or court bail or subject to a court order at the time of the commission of the offence.</p> <p>For offences involving domestic violence or abuse, stalking or harassment.</p> <p>Where the offender has a previous criminal history.</p> <p>Where a conditional caution may be more appropriate; for example where there has been financial loss or loss of private property to an individual or where rehabilitation may be appropriate.</p> <p>Where the offender is a foreign offender with no permission to be in the UK. For such cases police officers should consider whether a conditional caution with foreign offender conditions ought to be offered.</p> <p>Where the offence is committed by a serving prisoner or someone subject to prison recall.</p>
<b>Simple caution must not be given</b>	<p>Where the person does not admit to committing the offence.</p> <p>Where there is insufficient evidence to provide a realistic prospect of conviction.</p> <p>Where the public interest requires a prosecution.</p> <p>For an indictable-only offence, where a police officer of at least the rank of Superintendent has not determined that there are exceptional circumstances relating to the offender or the offence and/or where the CPS have not agreed that a caution should be given.</p> <p>For an either-way offence specified by the Secretary of State, where a police officer of at least the rank of Inspector has not determined that there are exceptional</p>

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	<p>circumstances relating to the offender or the offence. The either-way offences that have been specified by the Secretary of State are set out in Annex B.</p> <p>If in the two years before the offence was committed the offender has been convicted of, or cautioned for, a similar offence, for a summary offence or an either-way offence that has not been specified by the Secretary of State, where a police officer of at least the rank of Inspector has not determined that there are exceptional circumstances relating to the offender, the offence or the previous offence.</p> <p>Where the offender does not agree to accept the simple caution.</p>
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## **Annex B – Specified either-way offences**

The following either-way offences have been specified by the Secretary of State for the purposes of section 17(3) of the Criminal Justice and Courts Act 2015 (see paragraphs 36-37):

### Offensive weapon and bladed article offences

Having an offensive weapon in a public place, contrary to section 1(1) of the Prevention of Crime Act 1953

Threatening another person with an offensive weapon in a public place, contrary to section 1A(1) of the Prevention of Crime Act 1953

Having a bladed or pointed article in a public place, contrary to section 139(1) of the Criminal Justice Act 1988

Having a bladed or pointed article on school premises, contrary to section 139A(1) of the Criminal Justice Act 1988

Having an offensive weapon on school premises, contrary to section 139A(2) of the Criminal Justice Act 1988

Threatening another person with a bladed or pointed article in a public place or on school premises, or threatening another person with an offensive weapon on school premises, contrary to section 139AA(1) of the Criminal Justice Act 1988

### Carrying a firearm in a public place

Having a firearm in a public place, contrary to section 19 of the Firearms Act 1968, where the offence was committed in relation to a firearm within the meaning of section 57(1) of that Act and is triable either way (see Schedule 6 to the Firearms Act 1968)

### Child cruelty

Child cruelty, contrary to section 1(1) of the Children and Young Persons Act 1933

### Sexual offences against children (including those relating to child prostitution and pornography)

Sexual assault, contrary to section 3(1) of the Sexual Offences Act 2003, where the victim of the offence was under 16 at the time of the offence

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Causing a person to engage in sexual activity without consent, contrary to section 4(1) and (5) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 4(4) of that Act), where the victim of the offence was under 16 at the time of the offence

Sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003

Causing or inciting a child under 13 to engage in sexual activity, contrary to section 8(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 8(2) of that Act)

Sexual activity with a child, contrary to section 9(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 9(2) of that Act)

Causing or inciting a child to engage in sexual activity, contrary to section 10(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 10(2) of that Act)

Engaging in sexual activity in the presence of a child, contrary to section 11(1) of the Sexual Offences Act 2003

Causing a child to watch a sexual act, contrary to section 12(1) of the Sexual Offences Act 2003

Arranging or facilitating the commission of a child sex offence, contrary to section 14(1) of the Sexual Offences Act 2003

Meeting a child following sexual grooming, contrary to section 15(1) of the Sexual Offences Act 2003

Sexual activity with a child in abuse of a position of trust, contrary to section 16(1) of the Sexual Offences Act 2003

Causing or inciting a child to engage in sexual activity in abuse of a position of trust, contrary to section 17(1) of the Sexual Offences Act 2003

Engaging in sexual activity in the presence of a child in abuse of a position of trust, contrary to section 18(1) of the Sexual Offences Act 2003

Causing a child to watch a sexual act in abuse of a position of trust, contrary to section 19(1) of the Sexual Offences Act 2003

Sexual activity with a child family member committed by a person who was aged 18 or over at the time of the offence, contrary to section 25(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 25(6) of that Act)

Sexual activity with a child family member committed by a person who was under 18 at the time of the offence, contrary to section 25(1) and (5) of the Sexual Offences Act 2003

Inciting a child family member to engage in sexual activity committed by a person who was aged 18 or over at the time of the offence, contrary to section 26(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 26(6) of that Act)

Inciting a child family member to engage in sexual activity committed by a person who was under 18 at the time of the offence, contrary to section 26(1) and (5) of the Sexual Offences Act 2003

Paying for the sexual services of a child where the victim of the offence was under 16 at the time of the offence, contrary to section 47(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving a victim who was under 13 at the time of the offence or the penetrative activities specified in section 47(6) of that Act)

Paying for the sexual services of a child where the victim was 16 or over at the time of the offence, contrary to section 47(1) and (5) of the Sexual Offences Act 2003

Causing or inciting child prostitution or pornography, contrary to section 48(1) of the Sexual Offences Act 2003

Controlling a child prostitute or a child involved in pornography, contrary to section 49(1) of the Sexual Offences Act 2003

Arranging or facilitating child prostitution or pornography, contrary to section 50(1) of the Sexual Offences Act 2003

Indecent assault on a woman, contrary to section 14(1) of the Sexual Offences Act 1956, where the victim of the offence was under 16 at the time of the offence

Indecent assault on a man, contrary to section 15(1) of the Sexual Offences Act 1956, where the victim of the offence was under 16 at the time of the offence

Indecent conduct with or towards a child, contrary to section 1(1) of the Indecency with Children Act 1960

Sexual activity with a child in abuse of a position of trust, contrary to section 3(1) of the Sexual Offences (Amendment) Act 2000

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### Sex trafficking offences

Trafficking another person into the UK for sexual exploitation, contrary to section 57(1) of the Sexual Offences Act 2003

Trafficking another person within the UK for sexual exploitation, contrary to section 58(1) of the Sexual Offences Act 2003

Trafficking another person out of the UK for sexual exploitation, contrary to section 59(1) of the Sexual Offences Act 2003

Trafficking another person for sexual exploitation, contrary to section 59A(1) of the Sexual Offences Act 2003

Trafficking an individual into the UK for prostitution, contrary to section 145(1) of the Nationality, Immigration and Asylum Act 2002

Trafficking an individual within the UK for prostitution, contrary to 145(2) of the Nationality, Immigration and Asylum Act 2002

Trafficking an individual out of the UK for prostitution, contrary to 145(3) of the Nationality, Immigration and Asylum Act 2002

### Indecent and pornographic images of children

Making etc indecent photographs of children, contrary to section 1(1) of the Protection of Children Act 1978

Possessing indecent photographs of children, contrary to section 160(1) of the Criminal Justice Act 1988

Possessing prohibited images of children, contrary to section 62(1) of the Coroners and Justice Act 2009

### Class A drug offences

Producing etc a controlled drug, contrary to section 4(2) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Supplying etc a controlled drug, contrary to section 4(3) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug and is triable either way, (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Possessing a controlled drug with intent to supply it to another, contrary to section 5(3) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Importing a controlled drug, contrary to section 50(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Importing a controlled drug, contrary to section 50(3) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Exporting a controlled drug, contrary to section 68(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Importing or exporting a controlled drug, contrary to section 170(1) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Importing or exporting a controlled drug, contrary to section 170(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as

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defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)



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