



HM Government



College of  
Policing

# Review of Simple Cautions

November 2013

## **Introduction**

1. The review was launched by way of Written Ministerial Statement (WMS) on 15 April, and aimed to deliver a report to Ministers by the end of May 2013.
2. This paper comprises the report of the review. The review did not include consideration of youth cautions, and unless stated expressly any reference to simple cautions should be read as referring only to adult simple cautions.

## **Terms of Reference**

3. The terms of reference were set out in the WMS which stated:

The Secretary of State for Justice, together with the Home Secretary and the Attorney General, on 3<sup>rd</sup> April 2013 launched a review of simple cautions. This will examine the way in which simple cautions are currently used, and consider the need for any changes to policy or practice to ensure that there is transparency, accountability and public confidence in the use of simple cautions as a disposal.

The review will include (but not necessarily be restricted to) the examination of:

- existing guidance and practice relating to the use of simple cautions;
- the question of whether there are some offence types for which the use of simple cautions is generally inappropriate – and if so, what procedures should be adopted;
- the multiple use of cautions;
- the need for increased scrutiny of, and accountability for, the use of a caution in any given case, or the general approach adopted in a police force area to the use of cautions as a disposal; and
- the impact on individuals of accepting a caution – taking into account the recent case of T-v-Chief Constable of Greater Manchester and others.

## **Methodology**

4. The review was led by the Ministry of Justice and overseen by a review group comprising Home Office and Attorney General's Office officials, Police representatives, College of Policing representatives and the CPS.
5. The review was not a public consultation, but it did engage with stakeholders from across the Criminal Justice System, including the wider legal community and those voluntary and third sector organisations with an interest in the CJS.
6. To ensure that the review had a proper understanding of the process for administering simple cautions, how the guidance for doing so was understood, issues surrounding the use of discretion and how forces scrutinise decision making the review undertook a series of deep dives with five separate forces. These forces represented a range of rural, mixed urban and rural, and metropolitan policing experience, and represented the full range of cautioning rate (that is the percentage of cautions as a total of cautions and convictions) from the highest to the lowest rate.
7. A questionnaire was developed in agreement with the review board, and members of the review group visited the relevant forces and engaged with criminal justice policy professionals and Custody Sergeants in each force over a two week period. The College

of Policing's Reducing Bureaucracy Working Group, which comprises representatives from 20 police forces, were also commissioned to respond to the questionnaire, and responses and emerging themes were discussed with that group at their meeting on 15 May. The CPS areas corresponding to the five main police force areas were also engaged through questionnaires and they provided written responses.

8. Key stakeholders were identified and written to in order to ensure that they had the opportunity to feed into the review. A stakeholder round table event was held on 9 May in 102 Petty France.
9. Quantitative analysis of data drawn from the Police National Computer has enabled Analytical Services to compile the evidence pack which is summarised at the beginning of the report.

## Executive Summary

### The review has found:

1. The use of out of courts disposals increased significantly from 2003 and had increased more than twofold by 2007, following the introduction of targets around Offences Brought to Justice. After the abolition of this target, numbers fell sharply and have continued to fall since 2010. By 2012 the absolute volume of conditional and simple cautions had fallen by 45%.
2. The total number of cautions administered is at its lowest level for nearly 30 years. However there remains concern about their use for serious violent and sexual crimes and repeat offenders and the lack of scrutiny and accountability regarding decision making.
3. Issues with the way in which crimes are recorded can provide a deceptive figure regarding the use of cautions (following investigation some apparently serious crimes can turn out to be less serious offences for which a caution may be appropriate, but the crime recording systems may record the caution against the original reported crime).
4. If properly administered for the right offenders cautions are a useful disposal and that view is supported by the Bar Council, Law Society, Victim Support and the magistracy.
5. Whilst recipients of caution are given a clear written warning of their consequence, there is still confusion regarding the impact of a caution on a criminal record. Great care should be taken when administering a caution for either a very minor or a serious offence, the very young, or those in excepted professions (e.g. teachers).
6. All local police forces suggested there were some cases where the decision to administer a caution was decided by prosecutors following the police decision to charge rather than the police issuing a caution at the outset. Forces also suggested that some cases were returned from the magistrates' courts for a caution to be administered. The CPS has a continuing duty of review under the Code for Crown Prosecutors. As part of this continuing review, along with further information that may be available following charge, and the indication of an admission the prosecutor may decide that the public interest can be satisfied by a caution or conditional caution. In these situations, prosecutors who responded to the questionnaire indicated that the factors that are taken into account are:
  - Nature of the offence and the likely penalty;
  - Remorse/loss or harm "put right" by the offender apologising and/or paying for the damage;
  - Victim's views
  - Offender's circumstances.

The examples provided by the CPS were for offences such as simple possession of cannabis and shoplifting and therefore indicates that this is not occurring in respect of serious offences

7. The review concludes that there remains a case for allowing police officers to retain discretion to deal with some exceptionally difficult cases outside the justice system where it is not in the public or victim interest to prosecute.
8. The steps taken so far by this Government following the review of out of court disposals undertaken in 2011 have the potential to improve practice:

- The revised strengthened guidance on simple cautions which came into effect on 8 April 2013 is an important step forward, although it is too early yet to fully determine its effect on police decision making
- The new College of Policing has the potential to help improve practice.
- The creation of PCCs has the potential to help improve local accountability.
- Police forces believe that the changes made to the conditional caution regime should encourage a significant increase in the imposition of conditional cautions because the conditional caution has “teeth” and there is a prospect of bringing a prosecution in the event of non-compliance.
- Local scrutiny arrangements, now set to be established across all areas, have boosted sentencer confidence and provided useful feedback on practice.

**The review recommends:**

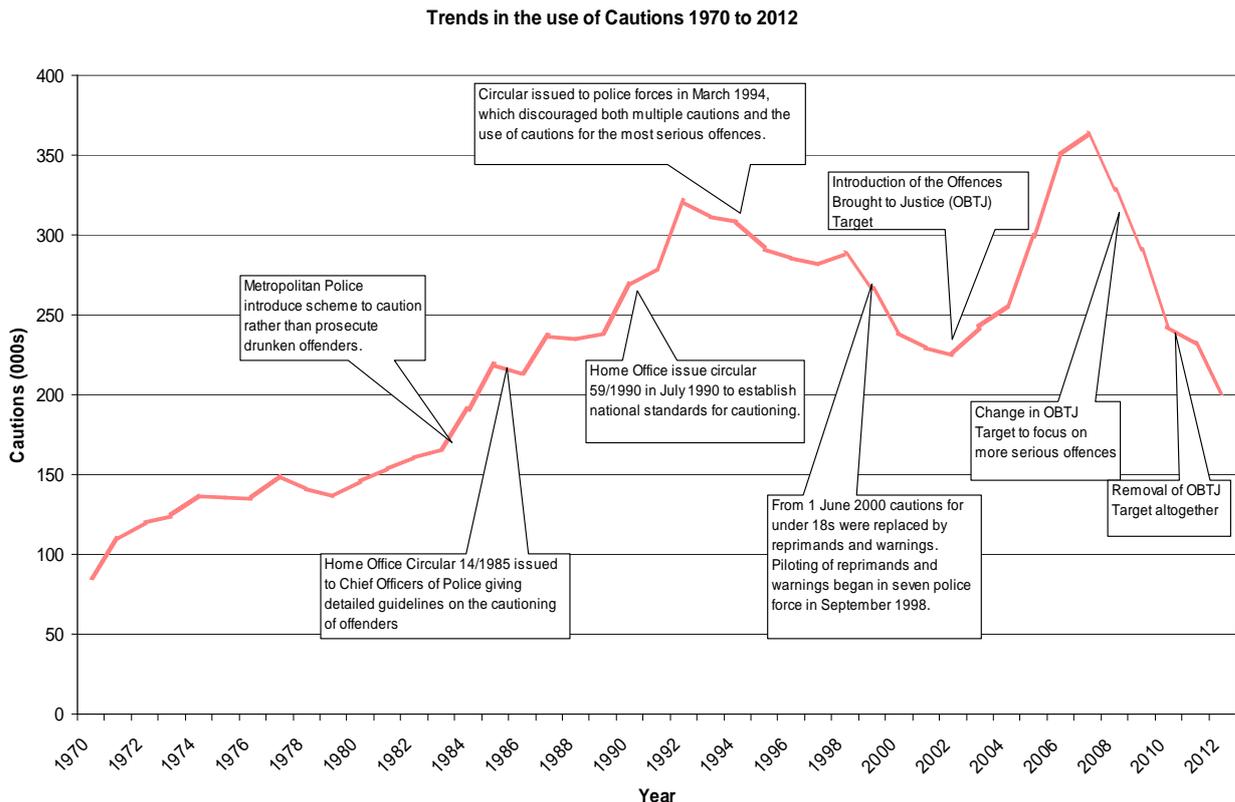
9. Though there are improvements in prospect, we believe that there is more to do in order that the Cautions regime commands public confidence. Therefore we would propose the following:

- The Government should remove the availability of simple cautions for indictable only offences unless there are very exceptional circumstances and the caution has been approved by a chief officer, whilst continuing to allow the use of the conditional caution for these offences. This can be achieved either through toughening the guidance or through legislating. We will also seek to restrict the use of simple cautions for particularly serious either way offences which would ordinarily attract custodial sentences or high end community orders if the offender is found guilty following a trial.
- We should also restrict the use of simple cautions for repeat offenders beyond the position as set out in the guidance.
- We believe there is a compelling case for simplification and consolidation of the existing guidance. We also recommend further strengthening the existing guidance regarding cautioning in serious cases.
- That there is greater local accountability and scrutiny of decision making. Each force should have a senior officer identified as responsible to provide local leadership and accountability and by making use of local Scrutiny Panels.
- Whilst the imposition of a caution is an operational policing matter we believe there is a compelling case for forces to review strategy and usage of cautions and other out of court disposals on an annual basis. Particular scrutiny should attach to the question of cautions for serious and repeated cases. There is clear potential for Police and Crime Commissioners to play an active role in providing transparency and assurance for the public on this issue.
- The presentation of data on cautions, and any accompanying narrative, should continue to draw a clear distinction between youth and adult cautions and simple and conditional cautions, although there is a need for consistent operating principles between these wherever possible. More use can be made of police.uk to ensure that the data is easily accessible to the public.
- Whilst this review has limited itself to adult simple cautions, it has concluded that in view of wider concerns which have been voiced during the review, there would be a good case for conducting a wider review of other statutory and informal out

of court disposals for both adults and youths to ensure that the framework is rational, understood by all practitioners, and maintains public confidence, and that there are no inadvertent effects from any changes to the simple caution regime in isolation.

## Evidence summary<sup>1</sup>

- There were 200,900 cautions administered in 2012 (including juveniles given a reprimand or final warning), representing a 13 per cent decrease compared with 2011 (232,200 cautions administered). This continues the downward trend in the use of cautions observed since a peak in 2007, with the 2012 figure representing a 45 per cent decrease since 2007.
- The long term trends suggest that the use of cautions is influenced by both government guidance, and in particular, the introduction and removal of an Offences Brought to Justice target.



- Five offences accounted for just over half of all cautions administered in 2012, namely:
  - Common assault and battery;
  - Shoplifting;
  - Possession of cannabis;
  - Causing summary criminal damage;
  - Possession of cocaine.
- The cautioning rate<sup>2</sup> was highest for drug offences and indictable criminal damage, with 40% of offenders convicted or cautioned for these offences given a caution.

<sup>1</sup> Unless otherwise stated, all statistics are taken from Criminal Justice Statistics Quarterly Update to December 2012, England and Wales, Ministry of Justice, May 2013.

<sup>2</sup> The “cautioning rate” is the proportion of offenders who were either cautioned or convicted that were given a caution

- Cautioning rates were much higher for offenders aged 10-17 than for offenders who are 18 or over, and cautioning rates also vary by the gender of the offender. For offenders aged 10-17, the cautioning rate was 56% for females and 39% for males. For offenders aged 18 or over, the cautioning rate was 16% for females and 21% for males.
- The 2012 cautioning rates for indictable offences varied by police force area. The highest cautioning rate was 44% and the lowest cautioning rate was 15%. The average cautioning rate for indictable offences in England and Wales was 26%.
- Of the offenders cautioned for indictable offences in 2012, 63% had no previous cautions, reprimands or warnings. 33% had either one or two previous cautions, reprimands or warnings, and the remaining offenders had three or more previous cautions, reprimands or warnings.
- 97% of adult offenders cautioned in 2012/13 had received no previous cautions, reprimands or warnings for offences of the same type within the last 2 years, while 83% had never received a previous caution, reprimand or warning for the same type of offence.
- Of the offenders cautioned in 2011, 18% of adults and 26% of juveniles re-offended within 12 months of receiving a caution, reprimand or warning.<sup>3</sup>

### **Public attitudes to cautions**

- Evidence related to public attitudes towards cautions is set out below. However, care should be taken as some of these findings are based on older studies.
- Evidence suggests that victim acceptance of the decision to caution varies across different types of offence.<sup>4</sup>
- For young offenders, there is public support for the use of cautions, mainly for first-time and less serious offences (50% for 10-year-old male offender for first time shoplifting offence).<sup>4</sup> Support drops slightly for older young offenders (43% for 15-year-old male offender for first time shoplifting offence)<sup>4</sup> and more so for repeat offenders (12% and 8% for 10-year-old and 15-year-old persistent male offenders for shoplifting offences respectively).<sup>4</sup> There is also public support for the use of cautions for first time adult offenders (47%)<sup>5</sup>, although again, this support is reduced for adult repeat offenders (9% where adult offender has received a fixed penalty or warning before).<sup>5</sup>

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<sup>3</sup> Proven Re-offending Statistics Quarterly Bulletin, January to December 2011, Ministry of Justice, October 2013.

<sup>4</sup> Mattinson J, Mirrlees-Black, C (2000). Attitudes to crime and criminal justice: findings from the 1998 British Crime Survey. Research Findings 111, London: Home Office

<sup>5</sup> Ipsos Mori (2006) Public attitudes to alternatives to prosecution. OCJR

## The current out of court disposals landscape

### Introduction

1. The current OOCDD landscape provides a flexible means of dealing with offending behaviour which does not meet the public interest test threshold for prosecution, but does need a CJS response. The landscape provides for disposals ranging from informal resolution between parties, often developed by the police for use in their own area and drawing on restorative justice principles, through to formalised cautions with conditions attached.
2. The use of simple cautions by the police and the CPS needs to be seen within the range of disposals available to them to deal with matters outside of court.

### The landscape

#### Adult OOCDD landscape:

2. Cannabis Warnings are a non-statutory disposal introduced in 2004. They are an informal verbal warning administered by the police, either on the street or at a police station to deal with adults caught in possession of a small amount of cannabis consistent with personal use. Cannabis is controlled as a Class B drug under the Misuse of Drugs Act 1971.
3. Under Police Guidelines, Cannabis Warnings are part of a three-stage escalation procedure for a first-time offence of simple possession of cannabis. It is expected, in the absence of any aggravating factors, that an offender will receive a Cannabis Warning for a first possession offence, a Penalty Notice for Disorder (PND) for a second offence and then be arrested for a third offence.
4. The following conditions must be met for a cannabis warning to be administered:
  - The offender must admit guilt;
  - There must be sufficient evidence to provide a realistic prospect of prosecution;
5. A record of the Cannabis Warning is made on local police systems and may also be disclosed as part of an enhanced Disclosure and Barring Service (DBS) check if deemed relevant.
6. Penalty Notices for Disorder (PNDs) are a statutory disposal introduced by the Criminal Justice and Police Act 2001. PNDs are only available for certain specified penalty offences including being drunk and disorderly in a public place, retail theft under £100, behaviour likely to cause fear, alarm or distress and littering.
7. A PND may be given by an officer or accredited person at a police station or on the spot. Recipients have 21 days to either pay a penalty of £50 or £80 or request to be tried. If the person fails to do either then a fine of one and a half times the penalty amount is registered in a magistrates' court for enforcement. By paying the penalty the recipient discharges any liability to be convicted of the penalty offence. In areas where schemes are running, officers may give a PND with an education option. This provides recipients with the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing a short educational course designed to address the implications of their behaviour.
8. A PND does not form part of a criminal record but a record will be created on the Police National Computer (PNC) for PNDs issued for recordable offences. A PND may be disclosed as part of an enhanced DBS check if deemed relevant.

9. The following conditions must be met for a PND to be administered:
  - An admission of guilt is not required and payment of the penalty or completing an education course is not an admission of guilt
  - There must be sufficient evidence to support a prosecution
10. Simple cautions are a non-statutory disposal available for any offence. They are intended to be used for low level, first time offending. They are administered by the police, using their own discretion, for summary and either way offences but the CPS must authorise their use for indictable only offences. The police can seek advice from the CPS in any type of case, and if the CPS direct a simple caution should be administered the police are bound by that decision. The following conditions must be met for a simple caution to be administered:
  - The offender must admit guilt, and agree to the caution being administered;
  - There must be sufficient evidence to provide a realistic prospect of prosecution;
  - It is in the public interest to dispose of the offence by way of caution rather than prosecute.
11. Simple cautions are spent immediately for the purposes of the Rehabilitation of Offenders Act 1974, but form part of the offenders criminal record and may, in certain circumstances, be disclosed in future proceedings or to an employer. If a simple caution is issued for an offence listed in Schedule 3 of the Sexual Offences Act 2003, the offender will be made subject to notification requirements (colloquially known as being put on the sex offenders register) for 2 years from the date of the caution.
12. Conditional cautions are a statutory disposal introduced by the Criminal Justice Act 2003, and amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. From 8 April 2013 they are available for all offences but should not be given for offences involving hate crime and domestic violence. They are administered by the police, using their own discretion, for summary and either way offences but the CPS must authorise their use for indictable only offences. The police can seek advice from the CPS in any type of case, and if the CPS direct a conditional caution should be administered the police are bound by that decision.
13. Conditional cautions have either punitive, rehabilitative or reparative conditions attached to them, as determined by police and CPS. The offender can be prosecuted if they do not complete their conditions within a reasonable period of time (usually within 16 weeks, stretching to 20 weeks for exceptional cases). The following conditions must be met for a conditional caution to be administered:
  - The offender must admit guilt, and agree to the caution being administered;
  - There must be sufficient evidence to provide a realistic prospect of prosecution;
  - It is in the public interest to prosecute, but the offending behaviour is better dealt with through a conditional caution.
  - Non-compliance with a Conditional Caution may result in a prosecution for the original offence
14. Conditional cautions come within the Rehabilitation of Offenders Act 1974 and are spent three months after the date on which they are administered unless the conditional caution is revoked and the offender is prosecuted instead and convicted. In that case the rehabilitation period is that for the offence and sentence imposed by the court. But the conditional caution forms part of the offender's criminal record and may, in certain

circumstances, be disclosed in future proceedings or to an employer. If a conditional caution is issued for an offence listed in Schedule 3 of the Sexual Offences Act 2003, the offender will be put on the sex offenders register for 2 years from the date of the caution.

15. Community resolutions – are a non-statutory means of enabling the police to deal proportionately with low level and predominantly first time offences in a timely and transparent manner, where the offender has admitted guilt and the victim is content with this approach. Community resolutions give victims a greater say in how the offender is dealt with, and encourage offenders to face up to the impact of their behaviour and to take responsibility for making good the harm caused.
16. Community resolutions should only be delivered for less serious offences where the offender has no relevant offending history, where the offender accepts responsibility, and when the victim has been consulted. Guidance is clear that they should not be used to divert suitable cases from court.
17. Community resolutions may include an apology to the victim in person or via letter and/or involve reparative activities like the offender repairing or paying for damage or loss caused. Community resolutions may also involve use of full restorative justice techniques in the form of a ‘restorative justice conference’, facilitated by a trained mediator.
18. Community remedy proposals – owned by the Home Office and being taken forward through the Antisocial Behaviour Bill the community remedy proposals legislate to allow police and crime commissioners (or the relevant local policing body) to give victims of low-level crime (such as low-level criminal damage and low-value thefts) and antisocial behaviour a say in the punishment of the offender through a ‘menu’ of available conditions that can be attached to a conditional caution or actions undertaken as part of community resolution.

#### Youth OOCB landscape

19. A new simplified and streamlined youth out of court framework was provided for in the LASPO Act and has only just been brought into effect from 8 April. This consists of a new flexible Youth Caution (which retains assessment and intervention by the Youth Offending Team) and the Youth Conditional Caution. It did away with the inbuilt ‘escalator’ in the warning system that limited repeated use and was criticised for driving minor cases into a formal court process. The issue of a Youth Caution provides the trigger for intervention by the YOT where this is assessed as necessary. The youth caution is expected to be the primary disposal for youths. It contains a statutory requirement for consideration of a second or subsequent caution to be referred to the YOT to ensure interventions are provided where a pattern of reoffending is identified. A youth caution can only be given for an offence that is triable only on indictment in the case of an adult on the authority of the CPS. These act as safeguards against repeated or inappropriate use.
20. Because the new youth out of court framework has only just been implemented there has been no opportunity to assess its effectiveness. The Youth Conditional Caution only became available across England and Wales and for all 10-17 year olds from 8 April. It had previously only been piloted for 16-17 year olds in a limited number of areas. It has also been brought into effect with the expectation of providing the basis for the community remedy provided for in the Home Office’s Anti-social Behaviour Bill.
21. Although there are many detailed differences between the youth and adult systems they consist of the same framework of cautions and conditional cautions. Youth disposals are available for the same range of offences as adults except that Youth Conditional Cautions are available for most offences categorised as domestic violence or hate crime,

which are excluded from the adult Conditional Cautioning framework.. However, there is a general acceptance that out-of-court disposals for more serious offences may be an appropriate response for young people in cases where they would not be for adults. The public interest test is less likely to weigh towards prosecution for young people, because their interests and welfare must be taken into account and balanced against other factors such as the seriousness of the offence, Children and young people, are seen as having a greater capacity to change behaviour if challenged that can be achieved through immediate intervention rather than delaying for court proceedings.

## The guidance for adult simple cautions

### Introduction

This section of the review gives an overview of the current guidance which front line decision makers need to be aware of before they administer a simple caution.

Two of these documents are currently internal to policing only until the launch of the public facing Police Authorised Practice website in September 2013, where others such as the Code for Crown Prosecutors and the DPP's Guidance on Charging are statutory and must be applied by both the police and CPS.

### The guidance

1. Simple cautions for adult offenders are a non statutory disposal. Guidance on their use has previously been through a series of Home Office Circulars addressed to police and prosecutors in England and Wales but is now contained in guidance published by the Ministry of Justice, published on 8 April and which includes strengthened guidance in relation to the issue of cautions for serious offences. As well as guidance on the disposal itself, there is overarching guidance to assist the decision making process when dealing with criminal offences that should always be considered. The complete package consists of:
  - The Police National Decision Making Model;
  - The Police Adult Gravity Factors Matrix and any individual Police guidance on the approach to specific offences
  - Ministry of Justice National Framework on Out-of-Court Disposals (the Police have adapted this slightly to be police officer focused);
  - Ministry of Justice guidance on Simple Cautions for Adult Offenders;
  - Code for Crown Prosecutors – issued under section 10 of the Prosecution of Offences Act 1985 – includes the Full Code Test (CPS);
  - Director's Guidance on Charging - Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act 1984 (CPS)
2. The starting point for a police officer when an offence is committed (in terms of decision making) is to consider the circumstances of the offence presented to them within the context of the National Decision Model (NDM), any Police offence specific guidance, and the Police Gravity Factors Matrix. This will direct them to consider whether the offence should generally be dealt with out of court or by court proceedings. If they consider that an out-of-court disposal is appropriate they may then wish to use the out-of-court disposals framework to assess which type of disposal may be appropriate. Once they decide what disposal is the most appropriate, they will need to comply with detailed guidance on the individual disposal; if a simple caution is deemed to be appropriate Offices will follow all relevant guidance, including the MoJ simple caution guidance as well as consideration of the Code for Crown Prosecutors, Full Code Test and also the likely penalty applying the Magistrates Court Sentencing Guidelines. If the offence is one which would be a starting point of a high level community order or custody then a simple caution should only be considered in "exceptional circumstances".

### Duplication and Omissions in existing guidance

*Guidance on seriousness and repeat offenders*

3. Each piece of guidance refers to a need to look at the seriousness of the offence and any offending history in deciding what may be a proportionate response. The MoJ simple caution guidance says that the starting point of deciding whether a simple caution is appropriate is the seriousness of the offence. The first step is to consider the potential sentence if prosecuted by reference to the Magistrates Court Sentencing Guidelines. The guidance is clear that offenders perpetrating more serious offences should only be given simple cautions in exceptional circumstances, and should be authorised by at least an Inspector and the CPS must be involved in decisions to caution indictable only offences. The guidance goes on to say that in assessing whether exceptional circumstances exist in a case, factors that must be taken into account are; the extent of culpability and/or harm caused, intention or foreseeability of harm, significant aggravating and mitigating factors, previous offending history for similar offences and the likely sentence alongside any other factors relating to the offender or the commission of the offence that may influence that sentence.
4. The guidance also deals with considering a simple caution for an offender with an existing criminal record and requires the Officer to look into the type of offending and whether it is part of a pattern of offending, whether relevant time has passed since the previous offence(s) were committed and whether the offence was serious or low level.
5. The Police Gravity Factors Matrix looks at similar factors when considering the matrix score; officers should consider factors such as likely sentence, premeditation, motivated by hate, vulnerability of victim or offender, use of weapon or threat of violence, likelihood of offence being repeated. The Code for Crown Prosecutors requires a consideration of whether it is in the public interest to prosecute an offender. This asks decision makers to answer several questions including: how serious the offence is, the culpability of the offender, the circumstances of and harm to a victim and whether prosecution is a proportionate response.
6. The DPP's Guidance on Charging makes reference to the requirement to the Full Code Test and the evidence and public interest stage. It also says that when considering the public interest a consideration will be given as to whether the matter can be appropriately dealt with out of court. Making this decision will depend on the circumstances of each individual case including the seriousness of the offence, the results of the offending behaviour, any previous criminal history of the offender and the likely outcome at court.
7. There is therefore substantial overlap and repetition in the guidance relating to the questions, factors and decision making Police Officers need to undertake at each stage of the process and when complying with the various pieces of guidance from partners and agencies. While these considerations are necessary (and in practice, occur naturally) there is clearly scope to better align them.

#### *Offence guidance*

8. Alongside the gravity factors matrix, the College of Policing also publish cross linked guidance in the form of Authorised Professional Practice on specific offences, including for example violent offences, hate crime and knife crime amongst others. The current MoJ Simple Caution guidance also contains reference to some specific offence types which were not included in the previous Home Office Circular 016/2008. The Simple Caution guidance says that care should be taken when considering a simple caution for serious offences such as possession of a knife or offensive weapon and sexual and serious violent crime. It also sets out additional considerations that apply when considering a simple caution in a case involving domestic violence, hate crime and stalking and harassment.

9. The Police gravity factors matrix is consistent with this. It refers to domestic violence or hate crime being aggravating factors in an offence; aggravating and mitigating factors for sexual and violent crime are also included within the matrix. In relation to knife crime, this is not dealt with as a specific offence within the matrix as the introduction refers to existing Police guidance on knife crime which should be considered. The messages on knife crime, domestic violence and hate crime and serious sexual and violent offences are consistent across these pieces of guidance; that is that these offences should usually be charged and a simple caution only used in an exceptional case.

*Guidance on simple cautions not contained elsewhere*

10. The MoJ Simple Caution guidance, published in April 2013, is the most comprehensive and detailed documented guidance for police and prosecutors in considering a simple caution. This was comprehensively revised from the previous guidance contained in Home Office 016/2008 to give greater clarity to practitioners using the guidance and the wider public as to when a simple caution may be appropriate. Although it is aimed at police and prosecutors, as it is publically available it also provides details on the use and impact of simple cautions to other groups such as offenders, victims and the defence community. It provides guidance on key aspects of the process of simple cautions not covered elsewhere including:
- Aim and purpose of the simple caution scheme;
  - The likely sentence above which a simple caution is not generally appropriate;
  - Circumstances when a simple caution should not be given;
  - Circumstances when the police are authorised to make the decision to offer a simple caution and the rank of police officer who can do so, and when they should refer to the CPS;
  - Evidential grounds for offering a simple caution;
  - How the admission of guilt should be made and recorded;
  - Detail on considering a simple caution for offenders with previous criminal history;
  - The process for administering the simple caution including the provision of legal advice for the offender and what the police must make the offender aware of before accepting the simple caution,
  - Detail on the implications and consequences for an offender of receiving a simple caution including criminal record and employment issues and private prosecutions;
  - The process for challenging a simple caution once it has been administered.
11. Although the police (or a prosecutor) may not refer to every aspect of this in a particular case, or as they gain further professional experience, there is still a need for this detail and for it to be available publicly. Decisions need to be transparent and accountable and some groups have different considerations and needs to the police or prosecutors – for example it is vital that information is available for an offender to access on the implications and consequences of a simple caution, before they agree to accept it.

**Previous Steps to Simplify Guidance**

12. As noted above the simple caution guidance was recently been revised and republished on 08 April 2013. This revised guidance is intended to clarify certain key elements of when a simple caution is appropriate (including considering its use for serious offences and for offenders with a previous offending history). This guidance was revised alongside changes to the conditional caution guidance in order that key decision making

considerations would be identical, where appropriate, across the two different types of caution. It was also part of a wider piece of work which resulted in the publication of the new Framework which sought to draw together OoCD landscape. The new simple caution guidance refers to a need for exceptional circumstances to exist before more serious offending can be dealt with by way of simple caution, and the need for Inspectors, not Sergeants, to sign off any such cautions. Details of what these offences are, are included within the guidance, and listed at Annex B of this report. These exceptional circumstances are consistent with the revised DPP's Guidance on Conditional Cautions.

13. In order to provide a high level overview of individual out-of-court disposals, accompanying the national framework, there are quick reference guides which provide high level details of key considerations that must be met before a particular disposal can be offered. Included in the quick reference guides is a guide to simple cautions. The framework and the quick reference guides are not solely aimed at police officers. They are intended for other criminal justice practitioners such as the CPS and for members of the public (in particular victims and witnesses) and offenders to help understand what each out-of-court disposal means and how they fit together. However, they are mainly a useful tool for front line officers who may need to make on the street, swift, decisions of how to proceed with a particular case; they are intended as aide memoirs to support officers in such circumstances.
14. To achieve this, the Police have therefore adapted the national framework and the quick reference guides for police officer use and made them available through the Approved Professional Practice (APP) framework of guidance by the College of Policing. These quick reference guides do not replace the more detailed guidance as by definition they cannot cover every aspect of the process or considerations that apply to the decision to offer - and for an offender to accept - a simple caution. However, they lead into, introduce and link to the MOJ Code of Practice.

#### *Approved Professional Practice (APP)*

15. The College of Policing, with support from ACPO, have developed APP, a consolidated, streamlined national approach to developing and delivering guidance for police forces. All guidance to police officers and staff will be electronically available in one place, APP. The APP Programme rationalised, consolidated and removed duplication of existing guidance for policing into a reduced and integrated body of knowledge addressing cross cutting themes and national standards. APP aims to reduce the volume and duplication of national guidance, encourage the use of professional discretion and bring consistency to all police guidance. With APP all the guidance that the police need will be in one place. Previously individual police forces may have adapted or repackaged national guidance however, under APP this will not occur.
16. APP was made publicly available on 24 October. The DPP has also agreed that from September all guidance published by the CPS will move to align to the structures and format of APP.
17. In relation to simple cautions, APP provides the Policing version of the national framework on out-of-court disposals and the quick reference guide. It will also provide direct links to the simple caution guidance issued by the Ministry of Justice (and related out-of-court disposals guidance) and links to the guidance issued by the DPP. APP will not duplicate copies of the guidance documents. For a document to be included on APP, the College of Policing must have ownership and editorial control of it and the ability to change or adapt it the purposes of publication within their electronic format and to remove any duplication for police needs.

18. Alongside the APP programme, the Home Office have set up a Programme and Gateway group focused on freeing up police time. One of its roles is to provide a gateway to any new guidance that the Home Office, other agencies and partners intend to issue to police forces and rationalise and simplify it so it is relevant to policing needs.

### **Training**

19. The College of Policing maintains the national curriculum for police officer and staff career development and training. Officers and staff receive training when first joining the police service and at various points throughout their career including as part of the promotion process. This includes details of out-of-court disposals at all relevant points. The College of Policing reviews the curriculum and training that is provided on a regular basis; for example following changes introduced to out-of-court disposals by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
20. The College of Policing has also aligned the national curriculum with APP in order to ensure consistency of training content against national standards of practice. Individual police forces also deliver regular training courses which are specific to the police force. APP, the curriculum and training are aligned nationally and Forces can choose what information is provided as part of their local training courses.

## Findings

### Introduction

1. This section sets out the findings which emerged from interviews with police CJS departments and front line Custody Sergeants, and information returned from the CPS by way of questionnaire, alongside the views of the wider stakeholder group.

### Findings

2. The findings are:

#### The simple caution as a disposal:

- The majority of stakeholders engaged with believed that if the guidelines are followed correctly cautions are appropriate and fit for purpose but if guidelines are not followed this is when problems occur. There was some concern, often anecdotal, that the police are not always following the national framework that is in place for the giving of cautions to offenders, and that there is noticeable variation across force areas. It was suggested that this may question the communication structures, the training and guidance that is in place, and might be a result of local force initiatives as well as local community priorities. Stakeholders attending the round table discussion noted that they would be concerned at any alternative that fetters the discretion of police officers.
- An alternative view was expressed by members of the senior judiciary who questioned why simple cautions were still being used now that we have a statutory framework for conditional cautions. They noted that a statutory framework for cautions was first recommended by the Royal Commission on Criminal Procedure in 1979 but rejected at the time because it was considered desirable to retain flexibility in the use of cautions.

#### Guidance

- The guidance for simple cautions is clear and an improvement on previous versions, although as yet untested as it has only just been released. But simple cautions need to be seen within the wider context of the whole range of OOCs, and the combined guidance for all OOCs is complex, and at times conflicting. Some Custody Sergeants believed that there could be greater specificity in guidance which gives a clear indication of when a simple caution would not be appropriate, particularly in regards to length of time between offences and what is same or similar offending behaviour. However, there were concerns also expressed that this could limit a sensible response to a particular offence. Certain forces had local policies in relation to specific offending behaviour – ie violence, class B possession or knife possession – which interacted with cautioning decisions. All of the CPS areas stated that they were aware of the new guidance, and what it said in relation to simple cautions and when it was appropriate to use them.

#### Alternative disposals

- Custody Sergeants believe, across all forces interviewed, that they will make much greater use of conditional cautions and consequently less use of simple cautions now that the CPS no longer need to be engaged for the majority of cases. They believe that conditional cautions provide a more victim focussed outcome, and a speedy resolution when the offender admits their behaviour and an out of court disposal is suitable. It also has consequences for non-compliance so that if the offender doesn't

comply then they may be prosecuted. They see the simple caution being used for low level offending behaviour only.

- Concern was raised from a number of stakeholders that simple cautions have no rehabilitative element attached. If a case is prosecuted, or a conditional caution administered, an offender with a drugs problem or repetitive thieving history can receive some form of treatment or education programme, where as with a simple caution this is not available. As a result the use of simple cautions in these circumstances would not identify or address repetitive behaviour.
- All forces interviewed gave anecdotal examples of when offenders had been unwilling to accept a PND for an offence because they could not afford it, but would be willing to take a simple caution for the offence. This is due to either unwillingness to pay (the offender would rather spend their money on other things) or genuine inability to pay. Whilst clearly this results in up-tariffing, officers cannot impose the PND on the offender without their consent.
- All forces interviewed gave anecdotal examples of charging an offender, only for case to be returned to the police following an initial appearance at the magistrates' court for a caution to be administered. The CPS indicate that this occurs where they have re-reviewed the case under their continuing duty and applying the Code for Crown Prosecutors either the evidential stage is not passed and therefore an alternative charge is required or the public interest stage of the test indicates a caution is more appropriate. In these situations, factors that are taken into account are:
  - The nature of the offence and the likely penalty;
  - Remorse/loss or harm "put right" by the offender apologising and/or paying for the damage;
  - The Victim's views;
  - The Offender's circumstances.
- The examples provided by the CPS were for offences such as simple possession of cannabis and shoplifting and therefore support this assessment.

#### Cultural drivers

- A performance culture based on sanction detections/crime outcomes has driven, in a number of forces, a high cautioning rate. This is particularly so where simple cautions are being given out of custody by Detective Sergeants who may not have the benefit of the independent perspective afforded to a Custody Sergeant. This has led to occasions when cautions have been used both when a lesser sanction would have been more appropriate, and when a charge would have been the better outcome. Where cautions are only given by Custody Sergeants they appear to be more robust in applying the guidelines and pushing back against any investigating officers' inclinations on desirable outcomes at the point of decision. Given that they are experienced in their decision making, they tend therefore to make better evidence based decisions. The recent changes to Code G PACE 1984, which sets out the test of necessity more clearly when considering whether an offender should be arrested or otherwise detained in custody following recent legal challenges, means that custody will be used only as a last resort and there is the possibility that more out of custody cautions will be administered with a consequent potential for a decline in the robust approach adopted by Custody Sergeants if they are not routinely involved in the decision making process. This may need to be addressed.

- Some Police and Crime Commissioners have raised concerns that the issuing of cautions seems to be related to police targets for recorded crime and not by the need to keep cases out of court. As a result of this they suggest that public confidence in the use of cautions is low. Magistrates' representative groups stated that they believe that the police are using cautions in order to save costs and resources rather than undertaking the necessary work to develop an appropriate file for prosecution. Neither group offered specific evidence on this point.

#### Serious and repeat offences

- Magistrates' representative groups and senior judiciary could not see the arguments for disposing of serious cases by way of a simple caution, in particular serious violent offences or serious sexual offences.
- Cautions for more serious either way offences are administered after more detailed investigation, with a range of decision makers making the final call on whether the offender and the offence would be suitable for disposal by way of simple caution. In such cases the decision making following investigation would normally involve oversight by at least an Inspector or above. For serious either way offences, Custody Sergeants routinely noted that they would seek the advice of senior officers and that they would prefer to charge the more serious offences rather than caution as a simple caution doesn't give a victim focussed response.
- It should be noted that some seemingly serious offences which are cautioned may involve relatively low level offending behaviour but which is captured within the class description of the offence. For instance the offence of sexual assault under s3 of the Sexual Offences Act 2003 (non-consensual touching of a sexual nature) can encompass a wide range of behaviour, which at the lower end may well be suitable to be disposed of by way of caution - inappropriate touching on a bus over clothes for example when the offender has no previous convictions - but at the higher end should be charged. The same point can be made in relation to the offences of theft and criminal damage.
- Almost all forces indicated that they would be unwilling to administer a caution for repeat offenders. There was a distinction however between repeat cautioning for same/similar behaviour, and repeat cautioning for different offending behaviour. In the latter category police forces would be more likely to offer a caution, as long as there had been a reasonable period of time between the first caution and the second incident even though it was for a different type of offence. However, all forces indicated that there may be exceptional circumstances in which a caution for same offending behaviour may be appropriate and each case had to be taken on the individual facts.

#### CPS involvement

- Police forces stated that there is reluctance on the part of the CPS to advise on serious either-way offences where police have asked whether a caution would be a suitable disposal for a particular offence. CPS respondents stated that the police rarely refer cases to them for advice as they exercise their authority to make the decision. A number of police forces said that, when asked for advice on charging decisions for certain offences the CPS will tend to review the proposed offence and advise that the conduct is more appropriately characterised (and will pass the evidential stage of the code test) as a less serious offence and instruct that a caution be administered rather than charged. The CPS have acknowledged that on certain rare occasions this takes place but the decision to administer a caution is considered

very carefully by both the CPS and the police at the point of decision. It was also reported that there can be a difference in approach dependent upon whether local CPS are asked for views, or whether CPS Direct are contacted for advice.

- The process of migrating daytime charging from local Areas to CPS Direct (CPSD) commenced on a rolling programme, with CPSD undertaking all national charging for volume crime across all Areas from 1 April 2013. This will bring about a national approach and greater consistency in decision making process, The Director's Guidance on Charging also sets out the arrangements for actions to be taken if either the police or a prosecutor disagrees with any decision or action proposed following referral of a case to the CPS.
- Application of The Code for Crown Prosecutors (in combination with the Charging Standards) can lead to the prosecutor reviewing the evidence and concluding that there is insufficient evidence to prosecute the more serious offence reported by police, but sufficient evidence to prosecute a less serious offence. The prosecutor will then go on to consider the public interest test in relation to that less serious offence and may conclude that the public interest is met by the imposition of a caution rather than prosecution. For example, the police refer an allegation of Grievous Bodily Harm (GBH) to the CPS for charge. The CPS advise that, due to the relatively minor nature of the injuries incurred, the offence of GBH is not made out, and a charge of common assault is more appropriate. The prosecutor then goes on to consider the public interest and concludes that the public interest is met by the imposition of a caution. As the offence originally reported was GBH, the caution will be recorded as having been imposed for GBH when in fact the appropriate charge would have been common assault.

#### Victim engagement

- All Custody Sergeants interviewed and CPS respondents stated that they take into account the views of the victim when considering whether to administer a caution, and that they were useful but not necessarily determinative as to the decision making process. The CPS in particular noted that the victim's views could be of particular use in determining the public interest in charging or cautioning. The views of the victim would normally be included in the case file handed to Custody Sergeants when asked to make a decision, and if it was not reflected then they all stated that they would return to the investigating officer to get these views included. There were rare occasions that the very strong views from victims, particularly where the offender does not have any previous offending behaviour, can make a difference. All police officers interviewed though were conscious of the need to ensure that victims understand what is happening throughout the process, and have the reasons why a caution was given explained to them. The stakeholder group noted that victims are often telephoned by police when the offender is given a caution, but this does not give them adequate opportunity to discuss the matter and provide their views, therefore victims are often left feeling the case has not been dealt with effectively.
- Stakeholders believed that this is a difficult area. For example if a caution is given for serious offending behaviour the victim may feel that this is inappropriate action taken but on the other hand, if the offender pleads not guilty and the case is taken to court, the victim has to be cross examined and give evidence which can have a much greater affect on the victim. There are competing interests which need to be balanced. However, victims do not necessarily understand the OOC regime as they often feel dissatisfied when they see repeat offenders let off. Conditional Cautions on the other hand provide a more victim focussed outcome, particularly in cases of lower

level criminal damage where compensatory conditions can be attached to the caution to provide immediate relief to the victim.

### Recording practices

- All cautions are recorded on PNC. However, there is a wider disparity in the recorded crime figures which can distort the public perception of level of crime and disposals used given the mis-match between Home Office counting rules on recorded crime, CPS charging guidance, and the final disposal recorded on the Police National Computer.
- To give a practical example, a forced front door on a Friday night might be recorded initially as domestic burglary, but on investigation it is actually a matter of criminal damage by an inebriated offender on his way home which is disposed of by an adult simple caution. The recorded crime is domestic burglary. Following investigation, the offending behaviour is criminal damage. The outcome of a caution though is recorded against the domestic burglary which has been entered on PNC. This difference between the actual crime and the disposal on the one hand and the recorded crime on the other skews the statistics, and the public perception that cautions are being used for serious offences. This phenomenon needs to be considered in more detail and if possible a means found of reconciling any apparent discrepancies in recording the seriousness of the reported offence and actions taken to resolve it.

### Scrutiny

- There is a varied approach across forces interviewed in relation to in force scrutiny. Smaller forces with less crime can adopt a more in depth daily scrutiny of overnight decisions made by Custody Sergeants. Other larger forces pick up scrutiny at weekly, monthly or quarterly performance meetings and look across the force at emerging patterns of simple cautions and the offences that they are being used for, but do not query individual decisions made. One force did not have any formalised scrutiny of simple cautions at all.
- It should be noted that a paper on national take up of local scrutiny arrangements was tabled, and agreed at, the Chief Constables' Council on 24<sup>th</sup> April. Consequently, police forces should be in the process of establishing local scrutiny arrangements in conjunction with CJS partners.
- Stakeholders agreed that scrutiny panels, whilst applying retrospective consideration of cautioning decisions, were a good way of feeding back information to Chief Constables on the effectiveness of cautions given to offenders in their area. They further noted that Police and Crime Commissioners may have an interest in this issue and having them sit on scrutiny panels would give them the opportunity to understand and review out of court disposal practices.

## The impact on the offender of receiving a caution

### Introduction

This section considers the impact on the offender of receiving a caution, sets out the position in relation to the Rehabilitation of Offenders Act 1974, and the position in relation to further offending.

### Cautions and Rehabilitation of Offenders Act 1974

1. The Criminal Justice and Immigration Act 2008 extended the Rehabilitation of Offenders Act 1974 (ROA) to cover reprimands, warnings, cautions and conditional cautions, as well as convictions. Under the provisions, simple cautions, reprimands and final warnings become immediately spent. The rehabilitation period for conditional cautions and youth conditional cautions is three months. However, this rehabilitation period for a conditional caution is extended where the offender is subsequently prosecuted and convicted for the offence in respect of which the conditional caution was given. In such cases the rehabilitation period for the caution is extended so that it is the same as the rehabilitation period for the conviction. Spent cautions (and spent convictions) do not have to be disclosed for most purposes, including for most jobs and for insurance.
2. There must, of course, be a balance to ensure that the public is adequately protected. The Exceptions Order to the ROA, therefore, allows certain employment positions, bodies and proceedings to be excluded from the general application of the Act. For example, where employment involves significant contact with vulnerable groups, including children, the Exceptions Order provides that employers are able to ask about, and take into account, all convictions and cautions when considering an individual for a job. Linked to this, the Police Act requires all cautions and convictions are disclosed on criminal convictions certificates issued by the Disclosure and Barring Service.

#### Recent changes to the scheme to introduce 'filtering'

3. The Court of Appeal recently held (In *T-v-GMP*) that the Exceptions Order, and the Police Act 1997, are incompatible with Article 8 of the European Convention on Human Rights in that they provide for the disclosure to employers of, and allow employers to ask about and take into account, all convictions and cautions, both spent and unspent. The Court found that this regime, in so far as it relates to historic and minor convictions and cautions, to be disproportionate.
4. The Government responded to the Court of Appeal judgment by bringing forward amendments to the Exceptions Order and the Police Act which will restrict the caution and conviction information which is subject to disclosure. It will remain the case that full disclosure of cautions and convictions will still be required in certain circumstances, for example, in respect of employment, and other decisions in relation to safeguarding national security, and court proceedings. Also, all cautions and convictions for specified serious sexual and violent offences, and for certain other specified offences with particular relevance for safeguarding purposes, will always remain subject to disclosure.
5. But for other, non-specified offences, cautions and equivalents administered to a young offender will not be subject to disclosure after a period of two years, and for adults after a period of six years. Convictions for a non-specified offence resulting in a non-custodial disposal will not be subject to disclosure after five and half years if received as a young offender, or after eleven years as an adult, provided it is the only conviction on the individual's record.

6. These changes came into force on 29<sup>th</sup> May and the DBS will issue only 'filtered' standard and enhanced disclosure certificates, in other words the certain cautions (and convictions) will no longer appear on the certificates, and may not be taken into account by employers.
7. The retention of criminal record information, both cautions and convictions, is a matter for the police. The current Police policy is to retain all criminal record information until the subject reaches 100 years of age. This is for police operational reasons and in the interest of the prevention and detection of crime. It is possible to apply to the chief constable for the force concerned to have a caution or conviction removed for the record but this would only be considered in exceptional circumstances.
8. The amendment made to the Exceptions Order, and related changes to the Police Act, means that the disclosure of spent cautions will become more limited.
9. It is vital, therefore, that a decision to administer a caution should not be seen as an easy way of dealing with a case, and that the full consequences of accepting a caution must be explained to an individual. For example, where consenting sexual activity between those in a relationship of a similar age comes to the attention of the police because one set of parents disapprove of the behaviour of the children, any decision to administer a caution could impact on the individual's education and employment prospects for the rest of that individual's life and should only be given in certain limited circumstances. Arguably, cautions should never be given for consensual activity between juveniles unless there are exceptional circumstances.

### **Further offending**

10. One of the stated aims of the simple caution is to record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks. Being recorded on PNC they can provide a useful picture of an individual's criminal history.
11. It is certainly the case that Custody Sergeants take into consideration whether an offender has previously had a caution when considering whether they should receive a further caution. But it is less clear the extent to which they are used as evidence of bad character if a case is charged and prosecuted at court. The wider stakeholder group stated that the better prosecution advocates do reference previous cautions, but that it is by no means universal. There is specific guidance and procedures in place for the court to allow evidence of bad character to be adduced; the threshold for this is high and it is therefore likely that evidence in relation to previous cautions is inadmissible in many cases.
12. Of greater concern though are the views expressed by some members of the senior judiciary. They noted that amongst Crown Court judges there is a concern that some people agree to a caution simply to avoid the possibility of an appearance in court, and that the offer of a caution may act as an inducement to admit the offence. In some cases, they say, that can affect the reliability of the admission, and so there is a difference in practice amongst Judges in dealing with cautions when a Defendant's character is put to the court. Some Judges ignore cautions, and allow a Defendant to be put before the jury as of good character even when they have cautions because they do not consider them to be reliable evidence of guilt. Others take the view that a jury should know of cautions, if character is being relied on as the Defendant could not have been cautioned without making an admission of guilt.

## OPTIONS FOR CHANGE

### Introduction

1. This section of the report sets out what the options for change are to ensure that there is public confidence in the use of the simple caution, and that it is used appropriately to deal with low level, first time offending behaviour.

### Options

2. There are a range of options which are grouped around more effective training and guidance to the police and CPS; better and increased transparency and accountability for the use of simple cautions; and options to limit the use of simple cautions for certain offence types.

### Awareness raising and Guidance

- **A more detailed look at the content of the simple caution guidance in relation to other pieces of guidance.** Although the different pieces of guidance available are not contradictory and do coherently makes sense, there is a lot of repetition in what police officers (and prosecutors) are asked to consider at different stages of the process and in different pieces of guidance. It may be helpful to look at these as a whole, across all of the disposals, to see what is relevant to whom, whether they can be aligned and unnecessary repetition weeded out. This should be done in conjunction with a detailed look at what is provided on APP for police staff and publicly available on other aspects of the caution process, for example implications and consequences to criminal record from accepting a simple caution and considered in light of any statutory guidance that requires guidance in a certain format – i.e. a Code of Practice approved by Parliament. Any final guidance should be developed with the Freeing up Police Time Gateway Group and where possible aligned with the content and style of APP.
- **Consider the detail of what is provided in the simple caution guidance.** A graduated approach with different entry points depending on the need for detail may remove unnecessary bureaucracy and duplication and enable practitioners to more easily identify specific elements of guidance quickly and with minimal fuss.
- **Consider developing a public policy statement on simple cautions to sit alongside guidance on their use.** This would not form part of guidance but would contain details relevant to wider operation of the simple caution scheme that may not be relevant for decision making but should be publically available. For example this could include details of aims and purposes of the simple caution scheme and the implications of receiving a caution making sure the public are informed. This policy statement would not be part of the formal guidance that police and prosecutors have to consider when making a decision on whether a simple caution is an appropriate method of dealing with an individual offence.
- **Awareness raising.** Through the development of APP and other policing and College of Policing initiatives more effort could be made to increase awareness of, and knowledge about, the out of court disposals framework and the simple cautions regime in particular.

### Transparency and accountability

- **There should be greater transparency around the use of cautions.** To achieve this we need to find a way of describing better the range of behaviours for which cautions may be appropriately given – even where flagged as violent or sexual offence. At the same time it would be helpful to explore whether there is any way to review crime

counting and crime outcome recording rules to remove apparent discrepancies between the original reported offence and the eventual disposal.

- **There should also be a greater accountability for the use of cautions**, and other out of court disposals, within force areas. More use can be made of police.uk to ensure that the data is easily accessible to the public. We should explore with PCCS what their role could be in scrutinising and publicising the use of cautions, and other out of court disposals. We should also explore with Chief Constables to what extent they should publish a range of data broken down by key demographics that set out how OOCs are used across their area. It would be helpful if there were a named senior officer in each force responsible for local leadership and accountability for the use of OOCs. The government should continue to encourage national take up of local scrutiny arrangements to enable local post hoc scrutiny of out of court disposals.

### **Limiting the use of simple cautions for serious offences**

- Simple cautions are a useful part of the police toolbox to deal with low level offending behaviour. But it is clear that they are being used for serious offending behaviour, and that this has driven increased parliamentary and media criticism of the disposal, thereby weakening public confidence in the simple caution.
- In the short term, there could be a restatement of policy by the Government backed up by the Police that simple cautions are appropriate only for low level, first time offending and therefore should only be used for summary and either way offences, stressing the changes recently made to the simple cautions guidance. We should build on this guidance to make it clear that indictable only cases, which would ordinarily attract custody, are not suitable for disposal by way of simple caution except in exceptional circumstances and signed off by a chief officer.
- In the alternative, we could legislate to put the simple cautions regime on a statutory footing which would enable statutory guidance and a clear regime within which the front line can exercise their discretion. Such a regime could clearly define what offences can be disposed of by way of simple caution, and under what circumstances. This could follow the model which governs the use of the Conditional Cautions.
- We should also explore whether we should restrict the use of simple cautions for repeat offenders beyond the position as set out in the guidance, and consider whether there is a good case for further restricting the use of simple cautions for particularly serious either way offences which would ordinarily attract custodial sentences or high end community orders if the offender is found guilty following a trial.
- At present we do not believe that the Conditional Cautions framework as amended by the changes brought into force in April 2013 should be amended. Conditional Cautions should still be able to be used for indictable only offences in exceptional circumstances and where considered to be in the public interest.
- In the longer term however, we believe that it would be beneficial to conduct a broader review of the out of court disposals framework for both adults and youths, given that it has grown up organically over time. The review could usefully consider the merits of a clear single legislative framework for all out of court disposals to ensure that there is transparency, legitimacy and protected discretion for CJS professionals to make decisions which attract public confidence in the justice system.

### **Implications of limiting the use of simple cautions for summary and either way cases only**

#### Public safety and risk management

- There is an important distinction in the tests for giving simple and conditional cautions. Simple cautions are available when there is sufficient evidence to justify a realistic prospect of conviction but it is not in the public interest to prosecute. Conditional cautions are available with the same evidential test, and it is in the public interest to prosecute but the public interest is better served by the offender complying with conditions. So if it is not in the public interest to prosecute a conditional caution is not appropriate.
- Such circumstances would be expected to be rare as it should ordinarily be in the public interest to prosecute indictable only offences. But if it is not in the public interest to prosecute, and the simple caution is not an available disposal then there is a risk that there will be some offenders where it is not in the public interest to prosecute given the specific circumstances of the case, but for whom there will be no suitable out of court disposal. This may have public safety and risk management consequences.

### Costs

- The costs of removing the simple cautions for indictable only offences will largely depend on how the offenders, police, CPS and sentencers respond to the changes.
  - In 2012, only 493 adult offenders were given a caution for an indictable only offence.
  - If a simple caution was no longer available, we would expect a proportion of these offenders to be offered a conditional caution by the police and CPS, and for the remaining offenders to have no further action taken against them, or in some cases, for the offender to be prosecuted, though not necessarily for the same offence. There would be a cost to the police, CPS and HMCTS associated with prosecuting any additional offenders.
  - We may expect some offenders who would accept a simple caution to refuse a conditional caution, which could result in further prosecutions and associated CJS costs.
  - For the offenders that accept a conditional caution there would be a cost to the police of monitoring compliance with the conditions, the cost of which would depend on the conditions imposed. There could also be costs of provision for conditions such as drug treatment or restorative justice, which could include costs to other government departments (e.g. Department of Health) as well as to the CJS.
  - We would expect a proportion of offenders to fail to comply with the conditions imposed. The most recent published rate of non-compliance with conditional cautions is 16%, though this rate would be likely to change if the conditions attached to the cautions, and the type of offender to which they are given, were to change.
  - There would be a cost for the police, CPS and HMCTS associated with prosecuting offenders who fail to comply with the conditions of their conditional caution. The most recent conditional caution data shows that 70% of offenders who fail to comply with a conditional caution are prosecuted.
  - There would be a cost to HMCTS and NOMS of provision of sentences given to any prosecuted offenders. It is difficult to predict the sentences that judges would give these offenders, as although they have committed the most serious offences, they are not currently considered suitable for prosecution.

- The small number of offenders currently cautioned for indictable offences mean that the costs associated with removing simple cautions are likely to be small. However, if simple cautions were removed for a larger group of offenders, such as offenders cautioned for serious each way offences, the costs could be substantial.

## SIMPLE CAUTIONS

### Existing Guidance

#### Overview of guidance

From 8 April 2013 the complete package on simple cautions consists of:

- The Police National Decision Making Model;
- Police Adult Gravity Factors Matrix and any individual Police guidance on the approach to specific offences
- Ministry of Justice National Framework on Out-of-Court Disposals ( the Police have adapted this slightly to be police officer focused) <http://www.justice.gov.uk/out-of-court-disposals> ;
- Ministry of Justice guidance on Simple Cautions for Adult Offenders <http://www.justice.gov.uk/out-of-court-disposals> ;
- Code for Crown Prosecutors [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html) ;
- Director's Guidance on Charging (CPS) [http://www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_4.html](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_4.html) .

It should be noted that these documents will not be considered in the entirety each time an officer is considering dealing with a case by way of simple caution. Police officers will have considerable experience in dealing with offences in such a way and should be familiar with the considerations and tests that should be met. It will also depend on the complexity of the case; in straightforward cases police officers are unlikely to need to refer to the full guidance package when making decisions. It should also be noted that there are 43 police force areas which may have variation in practice, for example on training and differing local priorities on dealing with offences in a particular way.

**National Decision Model** Essentially this is a national standard to direct police officers to think about decision making, and in this instance, dealing with an offence in a particular, nationally consistent, way. It directs police officers to consider a few questions on the basics on what a police officer needs to think through when considering decisions on how to proceed with an offence, for example gathering necessary information. Its intention is to get all police officers using the same decision making theory.

**Police Gravity Factors Matrix.** This is available on the Police National Legal Database and provides operational assistance to officers on how to respond to individual offences, but is not intended as a definitive guide. It rates offences by seriousness and invites officers to then consider the possible mitigating and aggravating factors that may change that score. As well as the overarching matrix, some individual offence types (knife crime, violent crime, sexual crime for example) have their own specific considerations within the matrix. The score reached will direct officers to whether to prosecute or deal with out of court.

If an officer is proposing to deal with the offence out of court, they are then directed to the **national framework on out-of-court disposals** which describe the range of out-of-court disposals available (formal and informal) for youth and adults. This will indicate which out-of-

court disposal may be appropriate by reference to factors such as whether there is an admission guilt, what evidence is available, whether reparation or rehabilitation is required. Having decided which disposal may be appropriate, officers should then refer to the technical Police guidance on that disposal which directly links to the MOJ guidance on the MOJ website.

If considering a simple caution, officers should then refer to the Ministry of Justice guidance on the use of **simple cautions for adult offenders**. <http://www.justice.gov.uk/out-of-court-disposals> This provides guidance to the police and prosecutors in England and Wales on the use of the simple cautions. It sets out the criteria that must be met and processes that must be followed by the police (and prosecutors where applicable) in making the decision to offer the simple caution and to administer that to the offender.

This guidance states that in deciding whether to offer a simple caution the police or CPS must apply the Full Code Test as set out in the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985. 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/). The Full Code Test has two stages, **(i) the evidential stage**; followed by **(ii) the public interest stage**.

The DPP's Guidance on Charging issued under S37A of the Police and Criminal Evidence Act 1984 [http://www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_4.html#a10](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_4.html#a10) This sets out arrangements prescribed by the DPP for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases. The Guidance makes reference to diversion from prosecution and whether a case can be dealt with out of court.

## Simple Cautions Guidance – serious offences and senior authorisation

The current guidance for adult simple cautions as re-issued on 08 April states that for the offences listed below there is an expectation that the offender will be prosecuted, simple cautions can only be administered in exceptional circumstances, and an officer of at least the rank of Inspector must authorise the administration of the simple caution.

### **EITHER WAY OFFENCES HAVING A SENTENCING STARTING POINT IN MAGISTRATES' COURT SENTENCING GUIDELINES OF CUSTODY OR HIGH LEVEL COMMUNITY ORDER**

Assault occasioning actual bodily harm – section 47 Offences Against the Person Act (OAPA) 1861

Wounding or causing grievous bodily harm – Section 20 OAPA 1861

Possession of an offensive weapon – Section 1 Prevention of Crime Act 1953

Possession of a bladed article – Section 139 Criminal Justice Act 1988

Harassment – putting people in fear of violence – Section 4 Protection from Harassment Act 1997

Stalking involving serious alarm or distress – Section 4A Protection from Harassment Act 1997

Violent Disorder – Section 2 Public Order Act 1986

Affray – Section 3 Public Order Act 1986

Cruelty to a Child – Section 1 Children and Young Persons Act 1933

Sexual Assault – Section 3 & Section 7 Sexual Offences Act 2003

Witness Intimidation – Section 51 Criminal Justice and Public Order Act 1994

### **EITHER WAY OFFENCES ROUTINELY DEALT WITH AT THE CROWN COURT**

(This is not a comprehensive list)

Arson – s1 and s4 Criminal Damage Act 1971

Assault occasioning Actual Bodily Harm (including racial or religiously aggravated) – s47 OAPA 1863

Assault with intent to resist arrest – s38 OAPA 1861

Possession of an offensive weapon – Section 1 Prevention of Crime Act 1953

Possession of a bladed article – Section 139 Criminal Justice Act 1988

Burglary (dwelling) - s9 Theft Act 1968

Burglary (non-dwelling) - s9 Theft Act 1968

Child prostitution and pornography – Sexual Offences Act 2003

Criminal Damage (including racially or religiously aggravated) over £5000 – Criminal Damage Act 1971

Cruelty to a child – s1 Children and Young Persons Act 1933

Drugs – Class A possession – Misuse of Drugs Act 1971

Drugs – Class A Procure/Supply – Misuse of Drugs Act 1971

Drugs – Class B/C – supply and possess with intent to supply – Misuse of Drugs Act 1971

Drugs – Cultivation of cannabis – Misuse of Drugs Act 1971

Exploitation of prostitution – s33A, s52-53 Sexual Offences Act 2003

Firearm, carrying in a public place – s19 Firearms Act 1968

Fraud (banking & insurance) – Fraud Act 2006

Fraud (confidence) – Fraud Act 2006

Fraud (possessing, making or supplying articles for use – Fraud Act 2006

Grievous bodily harm/unlawful wounding (including racial or religiously aggravated) – s20 OAPA 1861

Handling Stolen Goods – s22 Theft Act 1968

Harassment (including Racial or religiously aggravated) – Protection from Harassment Act 1997

Human Trafficking Offences – s57-59 Sexual Offences Act 2003, s4 Asylum and Immigration Act 2004, s71 Coroners and Justice Act 2009

Identity documents – possess – Part 1 s1-5 Forgery Act 1861, Identity Cards Act 2006, Identity Documents Act 2010

Indecent Photographs of children – Protection of Children Act 1978

Keeping a brothel used for prostitution – Sexual Offences Act 1956

Protective Order – Breach of

Violent Disorder – Section 2 Public Order Act 1986

Sexual Assault – s3 & 7 Sexual Offences Act 2003

Theft – Theft Act 1968

Threats to kill – s16 OAPA 1861

Voyeurism – s67 Sexual Offences Act 2003

Witness intimidation – s51 Criminal Justice and Public Order Act 1994

Causing death by Careless Driving – s2B Road Traffic Act 1988

Cause death by driving whilst unlicensed/disqualified – s3ZB RTA 1988

Dangerous Driving – s2A RTA 1988

## Simple Cautions Review Questions – CPS

### Awareness of guidance for simple cautions

1. To what extent are you aware of the simple cautions guidance, do you know what it is for, and what it is meant to cover?
2. Are you aware of the recently revised Simple Caution guidance (Copy attached)?

### Practice and procedure for administering simple cautions

3. How do you (and the police) determine whether a simple caution is the appropriate disposal in any given case?
4. How do you know if previous cautions have been issued to an individual?
5. Are there circumstances in which multiple use of cautions might be appropriate (eg depending on timescale since last caution – or for an entirely different sort of offence)?
6. Do you know whether there is an issue with cautions being used when a lesser sanction or intervention would have been appropriate?
7. Do you know whether there is an issue with cautions being used when a more serious sanction or intervention would have been appropriate?
8. Do the police refer indictable only cases to the CPS for a decision on cautioning?
9. Do the police refer either way and summary cases for a decision on cautioning? If so is this on a regular basis? Are there any particular category or type of offences/offenders that are usually referred?

### Partner involvement in administering simple cautions

10. Are there particular circumstances where you would downgrade a charging decision to a caution, and a caution to a NFA? What PI factors would you take into account.

### Victim involvement in administering simple cautions

11. How, and to what extent, do you ensure engagement with the victim to determine whether a caution is a suitable disposal?
12. What weight do you give their views?
13. How do the police (you) engage with them after the disposal has been administered?

### Scrutiny of simple cautions

14. Are you involved in any post-hoc scrutiny of simple cautions by police forces?
15. Do CPS monitor/review authorisation of cautions rather than charge by CPS prosecutors on a dip sampling or routine basis – ie through chain of command or central strategy team?
16. Do CPS routinely monitor or review use of cautions where CPS have authorised these to be given for “serious” offences?

### General Comments

17. Please provide any other comments about issues that have not been covered by the questions above.

#### Follow up interview

18. Please provide contact details of a prosecutor able to take part in a telephone interview?

### **Interview Questions - Police**

#### Awareness of guidance for simple cautions

1. Do front line staff consider current guidance sufficient, is it easy to understand and unambiguous?
2. Is national guidance supplemented by any local direction or specific targets?
3. Are there any local or external factors that might influence an officer's use of a caution other than his/her own discretion – for example local detection or other targets, pressure on local courts, certain crime types or local priorities?

#### Practice and procedure for administering simple cautions

4. How do you determine whether a simple caution is the appropriate disposal in any given case?
5. How do officers know if previous cautions have been issued to an individual?
6. Are there circumstances in which multiple use of cautions might be appropriate (eg depending on timescale since last caution – or for an entirely different sort of offence)?
7. Do we know whether there is an issue with cautions being used when a lesser sanction or intervention would have been appropriate?
8. Do forces require cautions for certain offences to be authorised at a particular rank?
9. Are there clear protocols for recording cautions – ie do they go on PNC or not? If yes – what might prevent protocols being followed?

#### Partner involvement in administering simple cautions

10. What would cause you to engage with the CPS when considering whether a caution would be a suitable disposal for an either way offence?

#### Offender /Victim involvement in administering simple cautions

11. How, and to what extent, do you engage with the victim to determine whether a caution is a suitable disposal?
12. What weight do you give their views?
13. What information or advice is provided to those being offered a caution.

#### Scrutiny of simple cautions

14. Do forces monitor/review use by their officers of cautions on a dip sampling or routine basis – ie through chain of command or central strategy team?
15. Do forces routinely monitor or review use of cautions where these are given for “serious” offences?
16. Where forces have OoCD scrutiny panels – have these caused any reassessment of how cautions are used locally/ produced any lessons learned?

## Stakeholder list

### CJS Partners

Surrey Police  
Warwickshire Police  
Dyfed Powys Police  
South Wales Police  
Greater Manchester Police  
College of Policing  
Police Reducing Bureaucracy Practitioners Group  
CPS policy officials and front line practitioners

### Whitehall

Home Office  
Attorney General's Office

### Judiciary

Senior Judiciary of England & Wales via the Senior Presiding Judge  
Magistrate's Association  
National Bench Chairman's Forum

### Legal Representative Groups

Bar Council  
Law Society  
Justices' Clerk's Society

### Commercial Representative Groups

Association of Convenience Stores  
Association of Business Crime Partnerships

### Victims' Groups

Victim Support  
Victim's Commissioner

### Other

Howard League  
NACRO  
HM Inspector of Constabulary