

Title: Restrictions of the use of simple cautions IA No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)				
	Date: 10/03/2014				
	Stage: Introduction of Legislation				
	Source of intervention: Domestic				
	Type of measure: Legislation				
	Contact for enquiries: general.queries@justice.gsi.gov.uk				

Summary: Intervention and Options	RPC Opinion: N/A
--	-------------------------

Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?		Measure qualifies as
N/A	N/A	N/A	N/A		N/A

What is the problem under consideration? Why is government intervention necessary?

Cautions for adults (commonly referred to as simple cautions) are a non-statutory disposal, governed by administrative guidance issued by the Ministry of Justice. Cautions may be given in respect of any offence, subject to restrictions set out in the guidance. There has been growing concern at how simple cautions have been used in certain cases, and cross-Criminal Justice System ministers launched a review into cautions in April 2013. This Simple Cautions Review recommended that there should be certain restrictions on the use of cautions for serious offences, and for repeat offenders, in order to help ensure that there is accountability and public confidence in the use of cautions as a disposal.

What are the policy objectives and the intended effects?

The policy objectives are to restrict the use of cautions for certain offences, therefore increasing accountability and public confidence in their use. We intend to prohibit, subject to certain exceptions, the use of a simple caution for certain specified offences and categories of offence, or in certain prescribed circumstances. The policy will not apply in relation to conditional cautions, youth simple cautions or youth conditional cautions.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 - Do nothing

Option 1 - Make the following changes to restrict the use of cautions:

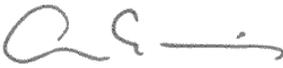
- I. Prohibit the use of a simple caution for an indictable only offence;
- II. Prohibit the use of a simple caution for certain serious triable either way offences;
- III. Prohibit the use of a simple caution for the remainder of either way offences and all summary only offences where the offender has been cautioned or convicted for a similar offence in the previous two years.

The preferred approach is Option 1, as we believe this should ensure greater confidence that cautions are being used appropriately.

Will the policy be reviewed? N/A. If applicable, set review date: N/A

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 10/03/14

Summary: Analysis & Evidence

Policy Option 1

Description: To restrict the use of simple cautions for adults in indictable only, certain serious triable either way offences and where a similar offence has been committed by the adult within the previous two years.

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

Description and scale of key monetised costs by 'main affected groups'

It is not possible to estimate the exact financial impact of this policy due to the considerable uncertainty around potential sentencing decisions of the police and CPS. However, we do not expect the overall costs to exceed £10m per year.

Other key non-monetised costs by 'main affected groups'

We expect that there will be additional costs to the police and the Criminal Justice System as alternative methods will be used to deal with these offenders including the use of more expensive conditional cautions and prosecutions. We also expect additional NOMS costs as some of these offenders will now be sentenced to custody or community sentences.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

Description and scale of key monetised benefits by 'main affected groups'

None identified.

Other key non-monetised benefits by 'main affected groups'

The proposals to restrict the use of cautions are intended to ensure that the public have a greater level of confidence in cautions, that the police have a clear understanding of the offences for which they should not be used, and that Police and Crime Commissioners can better hold their forces to account for the use of cautions.

Key assumptions/sensitivities/risks

Costs are highly dependent on the behaviour of the police, Crown Prosecution Service, sentencers and the offenders.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

Evidence Base

Introduction

1. Simple cautions are a form of out-of-court disposal that have no statutory basis at present. Their use is subject to guidance issued by the Ministry of Justice. They are intended to offer the police a proportionate response to low level offending where “guilt” is admitted. The offence is then recorded on the Police National Computer (PNC) and may be disclosed in any future criminal proceedings.
2. Although the police can give a simple caution for any offence, they must seek the approval of the Crown Prosecution Service (CPS) to give a caution for an indictable only offence. If the CPS instructs the police to give an offender a caution for a summary or either way offence, then this decision is binding on the police.
3. The victim’s views should be sought regarding the use of a simple caution, but they are not binding. A simple caution does not preclude a subsequent civil claim for compensation.
4. In contrast, conditional cautions are a separate form of out-of-court disposal that are governed by Sections 22-27 of the Criminal Justice Act 2003. They are only given to adults who admit “guilt” and they oblige the offender to adhere to certain conditions, which can include a financial penalty. The offence is recorded on the PNC and may be disclosed in any future criminal proceedings.
5. A conditional caution can be given for an indictable only offence, though this must be approved by the CPS. A conditional caution cannot be given for an offence classified as a hate crime or domestic violence, but it can be given for any summary only or either way offence.
6. As with simple cautions, the victim’s views regarding the use of a conditional caution should be sought, but they are not binding. However, one of the conditions placed on the offender could be to apologise to the victim or to make reparations for the offence.

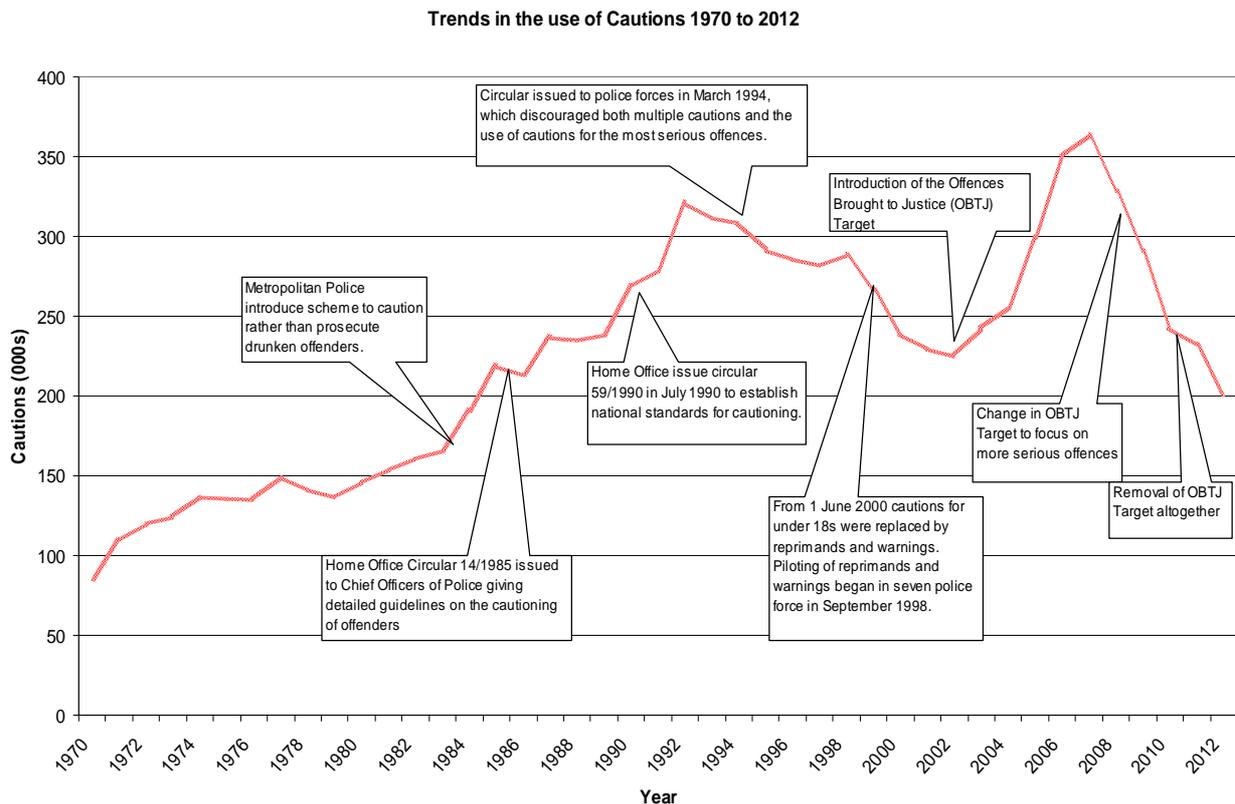
Trends

7. There were 200,900 cautions (including both simple and conditional cautions and juveniles given a reprimand or final warning) administered in 2012 across England and Wales, 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 2007¹. In addition, latest statistics confirm this trend as they show a 13 per cent decline in the use of cautions from the 12 months ending September 2012 to the 12 months ending September 2013².
8. Figure 1 shows the long term trend in the use of cautions. The long term trend suggests 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.

¹ Criminal Justice Statistics Quarterly Update to December 2012, England and Wales, Ministry of Justice, May 2013

² Criminal Justice Statistics Quarterly Update to September 2013, England and Wales, Ministry of Justice, February 2014

Figure 1 – Long term trends in the use of cautions



9. Five offences accounted for just over half of all cautions administered in 2012, namely¹:

- I. Common assault and battery;
- II. Shoplifting;
- III. Possession of cannabis;
- IV. Causing summary criminal damage;
- V. Possession of cocaine.

10. The cautioning rate³ was higher for indictable offences (including both indictable only and triable either way offences) than summary only offences⁴. Within the indictable offences, the 2012 cautioning rate was highest for drug offences (40 per cent) and criminal damage (39 per cent)¹.

11. Of the offenders cautioned in 2012, 168,200 were adult offenders (aged 18 or over), and 32,700 were juveniles (aged 10-17). At present, it is not possible to distinguish between simple and conditional cautions in the data. However, it is estimated that around 4,600 adults received a conditional caution during 2012. This figure would represent approximately 3% of all adults who received a caution that year.

12. Cautioning rates were much higher for juveniles than for adults, and cautioning rates also vary by the gender of the offender. For juveniles, the cautioning rate was 56% for females and 39% for males. For adults, the cautioning rate was 16% for females and 21% for males (the remaining offenders receiving a conviction rather than a caution)¹.

13. The 2012 cautioning rates for indictable offences varied by police force area. The highest cautioning rate was 44%, in Dyfed-Powys, and the lowest cautioning rate was 15%, in North Yorkshire. The average cautioning rate for indictable offences in England and Wales was 26¹.

14. Of the offenders cautioned in 2011, 18% of adults and 26% of juveniles re-offended within 12 months of receiving a caution, reprimand or warning⁵.

³ The "cautioning rate" is the proportion of cautioned or convicted offenders who were given a caution as opposed to being processed through the courts.

⁴ Note that cautioning rates for summary offences are lower than for many indictable offences as many high volume summary offences are not dealt with by the police. For example, TV license evasion and benefits offences are dealt with the TV Licensing Authority and DWP respectively

Cautions for indictable only offences

15. Indictable only offences are the most serious breaches of the criminal law such as violent and sexual offences and robbery, which are ordinarily tried at the Crown Court before a judge and jury.
16. There were 493 adult offenders cautioned for indictable only offences in 2012. Figure 2 shows the number of adult offenders cautioned for indictable only offences, by offence type, between 2009 and 2012⁶.

Figure 2 – Adult offenders cautioned for indictable only offences, by offence type, 2009 – 2012⁶

	Offenders Cautioned for Indictable Offences			
	2009	2010	2011	2012
Violence against the person	134	110	88	72
Sexual offences	171	180	192	146
Burglary	87	53	13	12
Robbery	32	30	21	24
Fraud and forgery	131	108	80	53
Criminal damage	14	4	8	8
Other offences (excluding motoring)	339	257	192	178
Total indictable only offences	908	742	594	493

Cautions for triable either way offences

17. Triable either way offences include criminal damage where the value is £5,000 or greater, theft, burglary and drink driving, and may be heard either at a magistrates' court or tried at the Crown Court.
18. There were 4,388 adult offenders cautioned for certain triable either way offences in 2012. Figure 3 shows the number of adult offenders cautioned for certain triable either way offences, by offence type between 2009 and 2012⁶.

Figure 3 – Adult offenders cautioned for certain triable either way offences, by offence type, 2009 – 2012⁶

	Offenders Cautioned			
	2009	2010	2011	2012
Child prostitution and pornography	5	5	6	7
Unlawful importation of a Class A drug	3	2	4	1
Unlawful exportation of a Class A drug	2	4	0	0
Production of a Class A drug	15	11	9	7
Possession of a Class A drug with intent to supply	84	64	66	71
Supplying or offering to supply a Class A drug	87	46	58	54
Cruelty to or neglect of children	1,438	1,452	1,596	1,560
Taking, permitting to be taken or making, distributing or publishing indecent photographs or pseudo photographs of children	157	132	177	183
Possession of weapons	2,446	1,733	1,948	1,543
Possession of knives	1,091	1,011	1,049	962
Total of certain triable either way offences	5,328	4,460	4,913	4,388

Criminal histories of cautioned offenders

19. Of the 164,755 adult offenders cautioned in 2012/13, 28,372, or 17%, of the offenders had one or more cautions or convictions in the previous two years. Figure 4 shows the number of adult offenders

⁵ Proven Re-offending Statistics Quarterly Bulletin, January to December 2011, Ministry of Justice, October 2013.

⁶ Further breakdowns of cautions, Ministry of Justice Ad hoc statistics publication, September 2013. These figures are taken from an ad-hoc publication, and are only available for certain data periods.

cautioned in 2012/13, by number of previous cautions or convictions received for any offence in the previous two years⁷.

Figure 4 - Number of adult offenders cautioned in 12 months ending March 2013, by number of previous cautions or convictions received for any offence within the previous two years⁷

Number of previous cautions or convictions received for <u>any</u> offence within previous two years	Number of offenders	Proportion of offenders
0	136,383	83%
1	18,397	11%
2	5,022	3%
3	1,975	1%
4	1,089	1%
5+	1,889	1%
Total	164,755	100%

20. Of the 164,755 adult offenders cautioned in 2012/13, 9,168, or 6%, of the offenders had one or more cautions or convictions for an offence of the same type in the previous two years⁷. Figure 5 shows the number of adult offenders cautioned in 2012/13, by number of previous cautions or convictions received for an offence of the same type within the previous two years.

Figure 5 - Number of adult offenders cautioned in 12 months ending March 2013, by number of previous cautions or convictions received for an offence of the same type within the previous two years⁷

Number of previous cautions or convictions received for offences of the <u>same type</u> within previous two years	Number of offenders	Proportion of offenders
0	155,587	94%
1	7,547	5%
2	1,071	1%
3	265	0%
4+	285	0%
Total	164,755	100%

21. Of the 9,168 offenders who were cautioned in 2012/13 and had one or more cautions or convictions for an offence of the same type in the previous two years, 6,385, or 70%, were cautioned for summary non-motoring offences⁷. Figure 6 shows the breakdown of offence types for offenders who were cautioned in 2012/13 and had one or more cautions or convictions for an offence of the same type within the previous two years.

⁷ Criminal Justice Statistics Quarterly Update to March 2013, England and Wales, Ministry of Justice, August 2013, further breakdown.

Figure 6 - Number of adult offenders cautioned in 12 months ending March 2013 who had one or more cautions or convictions for an offence of the same type within the previous two years, broken down by offence type⁷

	Number of offenders who had 1+ cautions or convictions for an offence of the same type within previous two years
Indictable offences	
Violence against the person	102
Sexual offences	5
Burglary	52
Robbery	0
Theft and handling stolen goods	1,132
Fraud and forgery	52
Criminal damage	38
Drug offences	1,276
Other indictable offences	124
Indictable motoring offences	0
Summary offences	
Summary offences exc. motoring	6,385
Summary motoring offences	2
Total	9,168

Public attitudes to cautions

22. 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.
23. For young offenders, there is public support for the use of cautions, mainly for first-time and less serious offences (50% of the public support the use of a caution for a 10-year-old male offender for first time shoplifting offence). Support drops slightly for older young offenders (43% for 15-year-old male offender for first time shoplifting offence) and more so for repeat offenders (12% and 8% for 10-year-old and 15-year-old persistent male offenders for shoplifting offences respectively). There is also public support for the use of cautions for first time adult offenders (47%). Although again, public support is lower for adult repeat offenders (9% where adult offender has received a fixed penalty or warning before)^{8,9}.

⁸ 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

⁹ Ipsos Mori (2006) Public attitudes to alternatives to prosecution. OCJR

Impact Assessment

Problem under consideration

24. Cautions (commonly referred to as simple cautions) are a non-statutory disposal for a person aged 18 or over, governed by administrative guidance issued by the Ministry of Justice. Cautions may be given in respect of any offence, subject to restrictions set out in the guidance. There has been growing concern at how cautions have been used in certain cases, and cross-Criminal Justice System ministers launched a review into cautions in April 2013. This Simple Cautions Review recommended that there should be certain restrictions on the use of cautions for serious offences, and for repeat offenders, in order to help ensure that there is transparency, accountability and public confidence in the use of simple cautions as a disposal.

Rationale for intervention

25. The lack of legislation on cautions could be perceived as undermining public confidence in the use of cautions as a disposal. The Justice Secretary has therefore announced plans to stop the use of simple cautions for indictable only and certain serious either way offences unless there are exceptional circumstances, and that offenders should not be given a simple caution for the remainder of either way or a summary only offence if they have been convicted or cautioned for a similar offence in the previous two years, again, unless there are exceptional circumstances. The changes being made apply to simple cautions only. Conditional cautions, youth cautions and youth conditional cautions are unaffected by these proposals.

Description of options considered

Option 0 - *Do nothing*

26. Continue to support the police force through the use of guidance which is published by the Ministry of Justice. On the 14th of November revised guidance was published which outlined that simple cautions should not be used for indictable only offences and certain specified either way offences unless there were exceptional circumstances. In addition, the guidance provided that a person should not receive a caution for a non-specified either way offence or any summary only offence where that person has been convicted or cautioned for a similar offence in the previous two years unless there are exceptional circumstances. Although police officers could ignore the current non-statutory guidance and still issue a simple caution for any offence.

Option 1 - *Legislative changes*

27. Make the following changes to restrict the use of cautions:

- I. Prohibit the use of a caution where the offender has committed an indictable only offence, unless there are exceptional circumstances.
- II. Prohibit the use of a simple caution where the offender has committed certain serious either way offences, unless there are exceptional circumstances.
- III. Prohibit the use of a simple caution for the remainder of offences triable either way and all summary only offences where the person has been convicted or cautioned for a similar offence in the previous two years, unless there are exceptional circumstances.

28. The statutory framework around the use of conditional cautions would not be affected by this change of legislation.

Aims and outcomes for the policy

29. To ensure that cautions are not used where the offender has committed any of the following offences, unless there are exceptional circumstances:

- I. An indictable only offence.
- II. Certain serious either way offences. These are as follows:
 - Child prostitution and pornography
 - Unlawful importation, production or exportation of a Class A drug
 - Possession of a Class A drug with intent to supply
 - Supplying or offering to supply a Class A drug
- III. The remainder of offences triable either way and all summary only offences where the person has been convicted or cautioned for a similar offence in the previous two years.

Monetised and non-monetised costs and benefits of each option

30. Due to the uncertainties around the behaviour of the police and CPS, we have not quantified the exact impact on total costs as this will depend on the volumes of offenders receiving different available disposals. We are however able to provide some indications of likely unit costs and these are included below.

Costs¹⁰

Pre-charging decision costs

31. When the option of giving a simple caution is no longer ordinarily available, the police will choose an alternative method of dealing with these offenders. It is impossible for us to say with certainty what the police will choose to do, given this is a matter of professional discretion. However, we would expect action to be taken wherever there is sufficient evidence to do so and where it is in the public interest. The options available will include issuing conditional cautions, or charging the offender where appropriate.

32. There will be unit costs to the police from dealing with these offenders. A report by Her Majesty's Inspectorate of Constabulary¹¹ gives the police time needed to administer these disposals, as shown in figure 7. The 2013/14 cost of an hour of a Police Sergeant's time is £36.5¹².

Figure 7 – time spent by police and cost to police of administering disposals¹¹¹²

	Time spent by police (minutes)	Police Cost (2013/14)
Charge	525	£320
Conditional Caution	492	£300
Simple caution	431	£260

33. There will also be costs to the Crown Prosecution Service (CPS) from the pre-charging decision, which are shown in figure 8¹³.

¹⁰ We have rounded costs to the nearest £100,000 or to the nearest £1,000,000 as appropriate. We have considered costs less than £50,000 to be minimal.

¹¹ Exercising Discretion: The Gateway to Justice, HMIC, June 2011.

¹² Home Office estimates calculated using data from the Annual Survey of Hours and Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) and uprating to account for inflation.

¹³ A Guide to Activity Based Costing, CPS, 2012, and CPS advocacy cost data.

Figure 8 - cost to CPS of administering disposals¹³¹⁴

	CPS Cost (2013/14)
Pre charge decision – Caution	£50
Pre charge decision – Charge	£60

Cost of prosecution

34. The exact number of prosecuting offenders who would have otherwise have received a caution depends on the type of offence they have committed. These costs will only apply to those who are now prosecuted or to those who receive a conditional caution but who breach those conditions and are subsequently prosecuted (data published by the CPS¹⁵ indicates that 17% of offenders currently given conditional cautions fail to comply with the conditions, and, of the offenders that fail to comply, 70% are charged).

35. CJS unit costs for indictable only offences are as follows:

- The 2013/14 cost of a prosecution in the Crown Court, where the defendant pleads guilty before the trial date is £1,300¹³
- The 2013/14 cost of a sitting day¹⁶ in the Crown Court is £1,600¹⁷. Assuming most cases takes around 3 hours¹⁸; we assume a cost per defendant to the HMCTS of £1,000.
- We assume a cost per defendant to the Legal Aid Agency of £2,000.

36. CJS unit costs for certain serious triable either way offences are as follows:

- The 2013/14 cost to the CPS of a prosecution for a triable either way offence in the magistrates' court, where the defendant pleads guilty before the trial date, is £60¹³.
- The 2013/14 cost of a sitting day in magistrates' courts is £1,200¹⁷. Assuming most cases takes around 2.5 hours¹⁸; we assume a cost per defendant to the HMCTS of £670.
- We assume a cost per defendant to the Legal Aid Agency of £650.

37. CJS unit costs for the remainder of triable either way and summary only offences are as follows:

- The 2013/14 cost to the CPS of a prosecution for a summary offence in the magistrates' court, where the defendant pleads guilty before the trial date, is £50¹³
- The 2013/14 cost of a sitting day in magistrates' courts is £1,200¹⁷. Assuming most cases takes around 2.5 hours¹⁸; we assume a cost per defendant to the HMCTS of £670.
- We assume a cost per defendant to the Legal Aid Agency of £450.

Cost of Sentencing

38. We do not know how judges will choose to sentence these offenders. Therefore, it is not possible to estimate additional sentencing costs. However, given that these cases currently receive simple cautions only, we would not anticipate a significant increase in NOMS costs and the prison population.

¹⁴ Note that CPS costs are subject to change pending further work to provide more robust costs estimates. At present the CPS costs do not include several categories. Current CPS costs are based on Activity Based Costings (ABC) and CPS advocacy cost data, the primary purpose of which is resource distribution. The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): http://www.cps.gov.uk/publications/finance/abc_guide.pdf

¹⁵ CPS Conditional Cautioning Data by Quarter, CPS, 2013.

¹⁶ We assume that there are five hours in a Crown Court sitting day.

¹⁷ HMCTS annual report 2012/13, HMCTS, Sept 2013. updated to account for inflation

¹⁸ This is based on the average time per case. Given that such offenders are likely to plead guilty (otherwise they would not have been eligible for a caution) actual time spent may be lower.

39. We have not quantified the exact financial impact of this policy, because the costs are highly dependent on the behaviour of the police, Crown Prosecution Service, sentencers and the offenders. However, we do not expect the additional costs to exceed £10m per year.

Benefits

40. Restricting the use of simple cautions is intended to ensure greater public confidence in how cautions are used. This will also ensure that police have a clear understanding of the offences which should not receive a caution and make it easier for the Police and Crime Commissioners to hold their forces to account.

Risks and uncertainties

41. Given the high level of uncertainty over the behaviour of the police, Crown Prosecution Service, sentencers and the offenders, we have not quantified the exact financial impact.

Summary and preferred option

42. We propose to take forward option 1. Given the level of uncertainty about the behaviour of the police, CPS, sentencers and the offenders, we have not quantified the exact financial implications of this proposal. Notwithstanding, given the number of offenders who would be affected and the CJS costs, we do not expect the additional annual costs to be greater than £10m. On the other hand, we believe that this proposal will bring significant benefits as the restriction in the use of cautions will lead to an increase in the level of accountability and public confidence in how they are used.