



Ministry of  
**JUSTICE**

# **Simple Cautions for Adult Offenders**

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## Introduction

1. This guidance is for police officers and Crown Prosecutors<sup>1</sup> in England and Wales for dealing with criminal offences.
2. **This guidance replaces Home Office Circular 016/2008 on the simple cautioning of adult offenders.** It should be applied to all decisions relating to simple cautions from the commencement date, regardless of when the offence was committed.
3. It should be used in conjunction with the Director's Guidance on Charging issued by the Director of Public Prosecutions under s37A of the Police and Criminal Evidence Act 1984<sup>2</sup>.
4. There is a range of out of court disposals available to the police and CPS. A decision to administer a simple caution needs to be taken in the context of all the available out of court disposals. The national framework on out of court disposals should be used to assist police and prosecutors and can be found at [www.justice.gov.uk](http://www.justice.gov.uk)

## Aims and purpose of the simple caution for adult offenders scheme

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

## Overview of the scheme

6. The simple caution (once known as a formal or police caution) is a non statutory disposal for adult offenders aged 18 or over. The scheme is designed to provide the police and Crown Prosecution Service (CPS) with an alternative means for dealing with low-level, mainly first time offending

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<sup>1</sup> Other bodies, for example, local authorities who have separate caution schemes, are not bound by this guidance although they may adopt this guidance if they wish.

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

when specified public interest and eligibility criteria are met. Only in very exceptional circumstances should it be used to deal with more serious offences.

7. The simple caution should not be confused with a conditional caution (a caution with conditions attached) introduced by the Criminal Justice Act 2003. Separate guidance on this scheme is contained in The Code of Practice on Adult Conditional Cautions and the Directors Guidance on Adult Conditional Cautions.
8. Whether an offence or offender is suitable for a simple caution is an operational decision for the police and in some instances, the CPS, based on the specific circumstances of the individual case. Annex A provides an overview of factors to consider for whether a simple caution may be appropriate.
9. Simple cautions cannot be offered to an offender who has not admitted that they are guilty of the offence or who has raised a defence, and cannot be given to an offender who does not agree to accept the caution. Offenders retain the right to decline the offer of a simple caution – even where guilt has been admitted – and face being prosecuted.
10. Simple cautions do form part of an offender's criminal record and may be used in future proceedings and in certain circumstances, may be made available to an employer as part of a criminal record check. Offenders **must** be made aware of this **before** agreeing to accept a simple caution.
11. There is no right of appeal against the administration of a simple caution once it has been accepted by the offender and administered by the police. However, it may be challenged by way of a formal complaint to the police force that administered it and by a judicial review.

## SECTION TWO: DECISION MAKING

### Offences

12. Simple cautions are available for any offence but are generally intended for low level, mainly first time offending. An assessment of the seriousness of the offence is the starting point for considering whether a simple caution may be appropriate. The more serious the offence, the less likely a simple caution will be appropriate. Wherever the circumstances of an offence indicate that an immediate custodial sentence or high level community order is the appropriate sentence, a simple caution should not be offered unless at least one of the exceptional circumstances set out below are met.
13. Any aggravating circumstances, including the methodology employed by the offender (for example, any breach of trust or advantage taken of the vulnerable or young) may all increase the seriousness of the offence to the point where the case should proceed to court. The National Decision Model and the Association of Chief Police Officers (ACPO) *Gravity Factors Matrix* should be used to assist officers in reaching this decision.
14. The Magistrates' Court Sentencing Guidelines provide a sentencing starting point for a range of offences dealt with by magistrates' courts at high level community order or period of imprisonment. The seriousness of the offence and the range of penalties likely to be considered must be carefully considered in every case taking into account the Magistrates' Court Sentencing Guidelines. Likewise cases routinely dealt with at the Crown Court (the Magistrates' Court Sentencing Guidelines indicate what type of cases these might be) should also generally proceed to court. These specific either way offences are set out in Annex B.

### ***Exceptional circumstances where a simple caution may be appropriate for an offence likely to attract a high level community order or a custodial sentence***

15. The decision to offer a simple caution for an indictable only offence, an either way offence routinely dealt with at the Crown Court or any offence which the sentencing guidelines indicate has a starting point at high level community order or sentence of imprisonment, may only be taken in **exceptional circumstances** where the decision maker is able to conclude that **the public interest does not require the immediate prosecution of the offender and that if it took place there would be reasons why the court would not impose a period of imprisonment or high level community order.**
16. In assessing whether exceptional circumstances exist in a case, the following factors must be taken into account:
  - The extent of culpability and/or harm caused;  
The degree of intention or the foreseeability of any resultant harm;
  - Any significant aggravating factors;

- Any significant mitigating factors;
- The lack of any recent similar previous convictions or cautions;
- Any other factors relating to the offender or commission of the offence likely to have a significant impact on sentence;
- The overall justice of the case and whether the circumstances require it to be dealt with in open court;
- The range of sentences appropriate to the circumstances of the case.

## Specific Offence Types

### *Domestic Violence and Abuse*

17. Positive action is recommended in cases of domestic violence and abuse to ensure the safety and protection of victims and children while allowing the Criminal Justice System to hold the offender to account. Domestic violence and abuse cases often involve a number of incidents prior to reporting to the police. A positive action approach considers the incident in its entirety and should focus investigative efforts on gathering sufficient evidence to be able to build a prosecution case that does not rely entirely on the victim's statement. Police and prosecutors should refer to the ACPO/CPS Charging checklist<sup>3</sup> to help secure evidence-based prosecutions which are not solely victim reliant.
18. Officers must follow the criteria for offering a simple caution as set out in this guidance, particularly that there is sufficient evidence in line with the Full Code Test and that the offender admits guilt and agrees to accept the simple caution. If the evidential stage of the Full Code test is satisfied then it will rarely be appropriate to deal with the case by way of a simple caution in cases of domestic violence and abuse. However, where a positive action policy has been adhered to but the victim does not support a prosecution and the available evidence (including any additional evidence adduced) would only disclose a very minor offence a simple caution can be considered in preference to a decision to take no further action.

### *Stalking and Harassment (racial or other)*

19. In cases of stalking or harassment there are two additional considerations before a simple caution can be offered:
  - a) administering a simple caution may render all conduct on which the caution is based inadmissible as evidence towards a course of conduct should this continue subsequently; and
  - b) since a restraining order can only be issued by the court, the only way in which a victim would otherwise be protected against a future conduct would be by seeking, and self-funding, an anti-harassment injunction from a civil court (which is similar in effect to a restraining order and permits a victim to apply to the court for a warrant of arrest in the event

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<sup>3</sup>[http://www.cps.gov.uk/legal/assets/uploads/files/joint\\_cps\\_acpo\\_evidence\\_checklist\\_for\\_domestic\\_violence\\_cases.doc](http://www.cps.gov.uk/legal/assets/uploads/files/joint_cps_acpo_evidence_checklist_for_domestic_violence_cases.doc)

of a breach). In cases of stalking or aggravated harassment a prosecution should be pursued wherever possible to ensure an application for an order can be made.

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

*Multiple Offences and Mixed Disposals*

21. Where multiple related offences have been committed, in determining whether the case should proceed to court or is suitable for a simple caution, police and prosecutors should consider the totality of the offending.
22. It is possible to use different disposals where an offender has committed multiple but unrelated offences as part of the same incident. Depending on the nature of the offence, other disposal options than a simple caution are also available such as a cannabis warning, a Penalty Notice for Disorder (PND), a conditional caution or a charge. For example, if a person is arrested for being drunk and disorderly and when searched in custody is found to be carrying a selection of car keys and admits that their intention was to steal from cars, they may be simple cautioned for “going equipped to steal” and issued with a PND for the drunk and disorderly offence.
23. Any decision on administering a simple caution as an disposal element when different disposals are used should be considered with regard to the Director’s Guidance on Charging.<sup>4</sup>

*Group offences*

24. Where a number of individuals are involved in committing an offence the extent of their involvement and the experience and circumstances of each offender can vary greatly. While consistency is an important consideration in the decision of how to deal with such a case, it is important that each offender should be considered separately and consequently different disposals may be justified.

*Other Serious Offences*

25. As noted above at paragraph 12, serious offences which would ordinarily attract a high end community order or immediate custody are generally not suitable for disposal through a simple caution. Care should be taken around administering a simple caution for sexual offences, serious violence against the person offences, and possession of a knife or offensive weapon. ACPO charging guidance for particular offence types should be followed.

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<sup>4</sup> This is available on the CPS website  
[http://www.cps.gov.uk/publications/directors\\_guidance/index.html](http://www.cps.gov.uk/publications/directors_guidance/index.html)



*Offenders subject to police or court bail and/or court orders*

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

**Circumstances when a simple caution should not be given**

27. A simple caution should not be viewed as an appropriate method of disposing of offences committed by serving prisoners or those subject to prison recall. This will include:
- new offences committed by a prisoner whilst in custody;
  - new offences committed upon release from custody whilst subject to prison recall;
  - offences committed prior to an offender beginning a custodial sentence. This includes circumstances where the commission of the offences, or the offender's guilt, only becomes known whilst the offender is in custody or carrying out the court imposed sanction.

If any of the above applies the offender should not be simple cautioned.

**The decision to offer a simple caution**

*Decision making powers*

28. The police may make the decision to offer a simple caution for any summary only offence (an offence that it is always heard in a magistrates' court) or either way offence (an offence that may be heard in either a magistrates' court or the Crown Court). Any cases involving indictable only offences (the most serious offences that must always be heard in the Crown Court) should always be referred to the CPS for a decision. **The police should not offer or administer a simple caution for an indictable only offence where it has not been authorised by the CPS.** The CPS may also instruct a simple caution to be offered in any summary only or either way case where the criteria is met and this is considered the most appropriate and proportionate response to the offending behaviour and meets the justice of the case.
29. If the CPS instructs that a simple caution should be offered in any case then this decision is binding upon the police. If, however, a simple caution is deemed to be the appropriate disposal by the CPS and it then proves not possible to administer it to an offender for any reason (for example where he or she does not agree to accept it or fails to attend the police station) then the case should be referred back to the CPS for a decision on whether to pursue a prosecution. This applies to any type of offence where the CPS has instructed that a simple caution should be offered.

*More Serious Either Way Offences - advice from the CPS*

30. The decision that exceptional circumstances exist in any case may only be made by a police officer not below the rank of Inspector.
31. As set out in the Director's Guidance on Charging, police officers can seek advice from the CPS at any stage in an investigation on whether a simple caution may be an appropriate outcome. They are particularly encouraged to do so in serious either way offences such as those involving violence against the person, sexual offences and possession of a bladed article, which are serious in nature and in which it may be in the public interest to prosecute.

**Evidential ground for giving a simple caution**

32. 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 which can be found at [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

*Full code test – evidential stage*

33. The police or prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence if the offender were to be prosecuted.
34. Part of determining whether there is sufficient evidence to provide a realistic prospect of conviction may include assessing whether there has been a clear and reliable admission of the offence either verbally or in writing. **A simple caution must not be offered in order to secure an admission that could then provide sufficient evidence to meet the evidential limb of the Full Code test.** See also paragraphs 49-52 which give further guidance on the admission of guilt.

*Full Code Test - public interest stage*

35. Where there is sufficient evidence to provide a realistic prospect of conviction police officers and prosecutors must then go on to consider whether it is in the public interest to offer a simple caution as an alternative to prosecution in respect of the offence or offences.
36. The Public Interest stage is as set out in the Full Code Test and can be found on the CPS website. [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

**Offender**

*Previous Offending History*

37. In considering whether a simple caution is appropriate any previous offending history of the offender should be considered. Both national and locally held records must be checked before a simple caution is given. Previous convictions, simple and conditional cautions or other out-of-court disposals in relation to earlier offences do not automatically preclude

giving a simple caution in relation to the current offence, however, it is important that they are not routinely used for offenders with multiple disposals.

38. A simple caution may be appropriate where:
- There has been a sufficient lapse of time following a previous caution, other out-of-court disposal or conviction for the same or similar type of offence, to suggest that it had a sufficient deterrent effect;
  - The current offence is low level;
  - The current offence is not similar or the same as any previous offence;
  - The offender has previously complied with another form of out-of-court disposal;
  - Giving a simple caution is likely to be the best outcome for the victim and the offender.
39. A simple caution is unlikely to be appropriate where the offence forms part of a pattern of offending. Police officers and prosecutors may consider that a different form of resolution, such as a prosecution, would be a more appropriate alternative for dealing with the offence.
40. A second simple caution should not generally be given for the same or similar offences unless there are exceptional circumstances indicating that it may be appropriate; for example where the previous simple caution was not given during the last two years.

#### *Consent to simple caution*

41. The offender must consent to the simple caution as an alternative to prosecution. The offender always has the right to decline the offer of a simple caution and opt instead to be prosecuted. Further details on consent is at paragraph 65.

#### **Victim**

42. Before a simple caution can be offered it is important to establish where appropriate and possible;
- The views of any victim about the offence and the proposed method of disposal;
  - The nature of any harm or loss and its significance to the victim.

These factors should be taken into account in considering whether a simple caution is appropriate.

43. Where there has been financial loss or loss of private property to an individual, although simple cautions are available, police officers should consider whether a conditional caution with conditions to repair damage or pay compensation is more suitable.

44. The views of the victim are important but are not conclusive. The decision to offer a simple caution lies with the police and/or the CPS who will take account of the views of the victim alongside wider public interest factors. Care must be taken not to raise the expectations of a victim whilst seeking their views.
45. If a victim declines to support a simple caution because they do not want any action to be taken, this should not automatically result in no further action being taken. Officers will need to consider wider evidential and public interest factors before dealing with the offence in this manner.

**Recording the decision to offer a simple caution**

46. When considering the suitability of an offence for disposal by simple caution, the decision should be referred to an officer of at least Sergeant rank for approval who is not linked to the investigation into the offence. They should apply the criteria set out in this guidance to determine if a simple caution is appropriate. When the police officer has reached a decision in favour of administering a simple caution they should sign the custody record, or other suitable documentation, to say that they have approved this as the appropriate method of disposal. The rationale for the decision to offer a simple caution must be fully documented as well as the gravity factors matrix score to ensure the record can be retrieved if required during subsequent proceedings or as part of an audit.
47. If the case has been referred to the CPS, the Prosecutor should record their decision to charge, simple caution, offer another out-of-court disposal such as a conditional caution, or take no further action and their reasons why. Where the decision is to administer a simple caution for an indictable only offence the full reasons for that decision should be recorded.

## SECTION THREE: PROCESSES TO FOLLOW

### Administration of a Simple Caution

#### *Overview*

48. Before the simple caution is administered officers should ensure the offender has made an admission of guilt, understands the implications of accepting a simple caution and consents to accept it.

### Admission of Guilt

49. An admission of guilt to committing the offence or offences must be made **before** the simple caution can be offered to the offender. **A simple caution must not be offered in order to secure an admission that could then provide sufficient evidence to meet the evidential stage of the Full Code test.**
50. **A simple caution cannot be given to an offender who does not make a clear and reliable admission to committing the offence or offences for which the simple caution is being given.** This is particularly important where there is any doubt at all about the mental state or capacity of the offender. In these circumstances a police officer should be particularly careful about accepting an admission of guilt. Police officers should refer to separate Police and Criminal Evidence Act 1984 (PACE) guidance on identifying and dealing with such offenders.
51. If an offender does admit guilt but also raises a defence the simple caution cannot be given. This includes where intent is denied or where a defence is offered; examples could include where the offender claims the offence was committed in self defence, or where the offender claims he or she has a good reason or lawful authority for having a bladed article in a public place<sup>5</sup>. An admission which may be qualified – where for example an offender commits an offence whilst under the influence of alcohol and cannot remember the full circumstances but evidence of involvement is agreed either through supporting witness evidence or other evidence (such as CCTV evidence) – may be considered a full and frank admission if all evidence is accepted by the offender.
52. The admission of guilt does not need to be made within a formal interview under PACE. However, the method for obtaining and recording the admission must be PACE compliant. PACE provides the following options:
  - o An admission made in response to questions asked in a formal interview which is conducted and recorded in accordance with the relevant provisions of the PACE Codes whether within the police station or elsewhere.<sup>6</sup>

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<sup>5</sup> Section 139 of the Criminal Justice Act 1988.

<sup>6</sup> For the conduct & recording of interviews see PACE Code C sections 11 & 12 & Code E. C11.7 deals with written records, Code E with audio recording and C3.21 deals with voluntary interviews of suspects who are not under arrest.

- An unsolicited admission made without inducement or invitation to comment at any time outside the context of an interview.<sup>7</sup> A written record must be made and the offender invited to sign the record to confirm it's accuracy in accordance with the PACE Codes.<sup>8</sup> Depending on whether the offender has been arrested, the record must be made in the officer's notebook or by the custody officer or review officer in the offender's custody record. If a formal interview takes place after an unsolicited admission the admission must be put to the suspect at the start of the interview and the suspect asked to confirm or deny what they said.<sup>9</sup>
- A formal written statement under caution made and recorded in accordance with the PACE Codes.<sup>10</sup>

### **Explaining the Implications of Accepting a Simple Caution**

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

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

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

#### **B) Criminal Record: Retention and Disclosure of the Simple Caution**

55. The simple caution forms part of an offender's criminal record and a record will be retained by the police for future use. It may also be disclosed in a court in any future proceedings.
56. A simple caution may be disclosed to a current or prospective employer in certain circumstances. Separate guidance governs the disclosure of criminal record information.
57. All information relating to simple cautions (as well as convictions) for a recordable offence is retained on the Police National Computer (PNC). ACPO guidelines set out how long this information will be retained for. The information is kept for police operational reasons and in the interest of prevention and detection of crime.
58. Legislation which came into effect in December 2008 brought simple cautions within the ambit of the Rehabilitation of Offenders Act 1974 (ROA). This means that simple cautions become spent immediately they

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<sup>7</sup> see PACE Code C3.4, C15.5, C11.5

<sup>8</sup> See PACE Code C11.13 & 11.14

<sup>9</sup> See PACE Code C11.4 & E 4.6

<sup>10</sup> See PACE Code C Annex D

are administered.<sup>11</sup> This means that an individual does not need to disclose a simple caution when asked unless they are seeking work in an occupation that is listed in the Exceptions Order to the ROA such as working with children and vulnerable adults or for other excepted purposes such as seeking to obtain certain licences. Cautions will also be disclosed under Disclosure and Barring Service (DBS) standard and enhanced checks. Further information can be obtained from the DBS.<sup>12</sup>

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

### **C) Sexual Offences Act 2003 implications**

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

### **D) Working with Children and Vulnerable Adults**

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

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

62. If after the simple caution has been administered, new evidence comes to light suggesting that the offence(s) committed are more serious, a prosecution may still be brought. Additionally, if the offence(s) involve a victim or victims they might still take civil action or bring a private prosecution against the offender. The police may provide the offender's name and address to the victims if this is necessary for legal action to take place. Further details are at paragraphs 77 – 78 of this guidance.
63. It is very rare that these situations will occur, however, the possibility should still be explained to the offender.

### **F) Travel and Immigration**

64. Countries requiring foreign nationals to obtain entry visas may require applicants to declare simple cautions on their application forms or at

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<sup>11</sup> The provisions in the ROA apply retrospectively to a simple caution that was administered prior to 19<sup>th</sup> December 2008 and therefore such a caution will also be considered to be spent in the same way as one administered after that date.

<sup>12</sup> <http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

interview. Other country's immigration rules may mean that a person who has received a simple caution is refused entry as though they have a criminal conviction. The ROA only applies within the UK which means simple cautions, even if spent, may still need to be disclosed to some countries in some circumstances. This will vary from country to country and may apply to people who want to emigrate permanently or those who simply want to visit for short term purposes, such as on business, for a holiday or to study. For specific information on what an individual may be required to disclose, the relevant embassy of the country of travel should be contacted.

### Consent to Receiving a Simple Caution

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

#### *Legal Advice*

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

### Administering the Simple Caution

67. A simple caution should be administered by a Custody officer or other suitability trained person to whom this responsibility has been delegated. A simple caution may be administered in a police station, court building, the offices of any prosecutor or any other suitable location consistent with achieving the appropriate impact on the offender. It will not generally be appropriate to administer a simple caution in public (for example on the street) or in the offender's home. However, in exceptional circumstances such as an elderly or vulnerable offender, the simple caution may be administered in the offender's home or similar place, providing the correct procedure for administering the simple caution is adhered to.
68. At the point the simple caution is administered police officers must:
- Ensure that the offender understands that he or she does not have to make an immediate decision on whether to accept the simple caution but can consider the matter and if need be take independent legal advice;
  - Ensure the offender understands he or she has the right to legal advice at any time during the process;



- Ensure that the offender understands the effect of the simple cautions and the implications of accepting it as set out in paragraphs 53-64 above;
  - Ensure that the offender has made a clear and reliable admission of guilt in respect of the offence or offences for which the simple caution is being administered;
  - Confirm that the offender consents to accept a simple caution;
  - Ask the offender to sign a form setting out the implications of the simple caution “the simple caution form”;
  - Sign the simple caution form themselves and provide the offender with a copy to take away.
69. When complying with paragraph 68 of this guidance, police officers must have regard to the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offenders and the use of an appropriate adult. Police officers must also ensure that paragraph 68 is explained in a language that the offender can understand.
70. A simple caution is only deemed to be administered when the offender has signed the simple caution form which sets out that he or she has made an admission of guilt in respect of the offence or offences, his or her consent to accept the simple caution and makes clear the implications for accepting the simple caution as set out at paragraphs 53-64. The offender should be given a copy of the simple caution form to take away. The simple caution form should also include the offender’s personal details including occupation and should provide full and clear details of the offence. This document must also be signed by the officer administering the simple caution.

## POST ISSUE

71. Once the simple caution has been administered and the simple cautions form completed as at paragraph 70 police officers must update PNC to record that a simple caution has been given; the offence that was ultimately the subject of the simple caution must be recorded on the PNC. For example, if the offence was originally reported as Assault Occasioning Actual Bodily Harm, but upon considering the evidence the offence was reclassified as common assault, the PNC must be updated to record that the simple caution was administered for common assault.
72. In regard to simple cautions given by the police, records must be kept in accordance with relevant guidance.<sup>13</sup> Other relevant prosecutors and authorised persons may issue similar guidance to ensure that records are kept in accordance with any relevant legal responsibilities.
73. After the simple caution has been administered, police officers must also comply with any relevant requirements to notify other agencies of the simple caution; for example where the simple caution is administered for a sexual offence under Schedule 3 of the Sexual Offences Act 2003, the appropriate notification requirements must be carried out.

### *Challenging a Simple Caution*

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

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<sup>13</sup> For example, see ACPO Retention Guidelines for Nominal Records on the Police National Computer.

### *Civil Proceedings*

77. If a simple caution has been given and the victim requests the offender's name and address in order to institute civil proceedings (for example, to claim compensation or seek an injunction) the information may be disclosed. Under the Data Protection Act 1998, personal data are exempt from the non-disclosure provisions where the disclosure is necessary for the purpose of, or in connection with, any legal proceedings or future legal proceedings. This includes circumstances where the data are required in order to obtain legal advice.

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

78. Usually, a person will only be prosecuted for an offence they have already been simple cautioned for if there is a substantial change in the material circumstances, or new evidence comes to light which suggests that the original offence is more serious than previously thought or if the decision to administer a simple caution was wrong. Even where a simple caution has been administered this may not preclude a private prosecution<sup>14</sup>. In addition, the decision to administer a simple caution may be judicially reviewed, either because the proper procedures and relevant guidance have not been followed or because it is claimed that the decision is unlawful, irrational or unreasonable on *Wednesbury* principles<sup>15</sup> the decision to authorise and administer a caution may be quashed and set aside. If this happens the slate is in effect wiped clean and the case must be reviewed again to decide the appropriate disposal. If the subsequent decision is to prosecute it does not follow that a prosecution for the alleged offence would inevitably amount to an abuse of process. This will be made on a case by case basis. It is unlikely that such action would occur, however in order to minimise the risk of an abuse of process argument, local arrangements should be put in place to ensure that when a simple caution is administered, the person being cautioned is informed in writing that the simple caution *may* not preclude a subsequent prosecution and that it *will* not preclude a civil action by an aggrieved party.<sup>16</sup>

### **Best Practice**

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

### **Enquiries about This Guidance**

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

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<sup>14</sup> *Hayter v L* (1998) 1 WLR 654

<sup>15</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* {1948} 1 K.B. 223

<sup>16</sup> *Jones v Whalley* [2006] UKHL 41 (26 July 2006); *Hayter v L* [1998] 1 WLR 854; *Guest v Director of Public Prosecutions* [2009] EWHC 594.

## Annex A

<b>Overview of factors for considering whether a simple caution is appropriate</b>	
<b>Simple caution may be appropriate</b>	<p>For low level offending.</p> <p>For first time offenders.</p>
<b>Simple caution may not be appropriate</b>	<p>Where the offence is very minor. In these cases consideration should be given to a community resolution or other action short of a formal sanction.</p> <p>Where the offence is serious, for example an indictable only offence more serious either way offence where if prosecuted and convicted the likely sentence would be more than a high level community order or a period of imprisonment.</p> <p>Where the offender was on police or court bail or subject to a court order at the time of the commission of the offence.</p> <p>For offences involving stalking, harassment or domestic violence.</p> <p>Where the offender has a previous criminal history.</p> <p>Where a conditional caution may be more appropriate; for example where there has been financial loss or loss of private property to an individual or where rehabilitation may be appropriate.</p> <p>Where the offender is a foreign offender with no permission to be in the UK. For such cases police officers should consider whether a conditional caution with foreign offender conditions should be offered.</p>
<b>Simple caution should not be given</b>	<p>Where the offender does not admit the offence.</p> <p>Where the offender does not agree to accept the simple caution.</p> <p>Where there is not sufficient evidence to provide a realistic prospect of conviction.</p> <p>When the public interest requires the offender is prosecuted.</p> <p>Where the offence is committed by a serving prisoner or those subject to prison recall.</p>

## Annex B

### **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) 1863
- Wounding or causing grievous bodily harm - Section 20 OAPA 1863
- 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 violence or serious alarm or distress - Section 4A Protection from Harassment Act 1997
- Violent Disorder - Section 2 Public Order Act 1986
- Affray – S3 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 – S 1 and S 4 Criminal Damage Act 1971
- Assault occasioning actual bodily harm (including Racial or religiously aggravated) - S.47 OAPA 1863
- Assault W/I to resist arrest – S38 Offences Against the Person Act 1861
- Bladed article/offensive weapon, possession of - S.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 Racial or religiously aggravated) over £5,000 – Criminal Damage Act 1971
- Cruelty to a child - S.1 Children and Young Persons Act 1933
- Drugs –class A – possession –Misuse of Drugs Act 1971
- Drugs – Class A Produce – Supply - Misuse of Drugs Act 1971
- Drugs –class B & C – supply possess w/I to supply Misuse of Drugs Act 1971

## Simple Cautions for Adult Offenders

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 – S 19 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) S.20 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  
Public order Act s.2 violent disorder  
Sexual Assault - S3 & S7 Sexual Offences Act 2003  
Theft - Theft Act 1968  
Threats to Kill – S16 Offences Against the Person Act 1861.  
Voyeurism - S67 Sexual Offences Act 2003  
Witness intimidation - S.51 Criminal Justice and Public Order Act 1994  
Cause death by Careless driving - S2B Road Traffic Act 1988  
Cause death by driving unlicensed/disqualified - S3ZB Road Traffic Act 1988  
Dangerous Driving - S2A Road Traffic Act 1988



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