







Published by TSO (The Stationery Office) and available from:

**Online**

**[www.tsoshop.co.uk](http://www.tsoshop.co.uk)**

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone 0870 240 3701

**TSO@Blackwell and other Accredited Agents**

**Customers can also order publications from:**

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Tel 028 9023 8451 Fax 028 9023 5401

Published with the permission of the Office for Criminal Justice Reform on behalf of the Controller of Her Majesty's Stationery Office.

© Crown Copyright 2010

All rights reserved.

Copyright in the typographical arrangement and design is vested in The Stationery Office Limited. Applications for reproduction should be made in writing in the first instance to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey, TW9 4DU.

First published 2010

ISBN 9780117064065

Printed in the United Kingdom for The Stationery Office.

# 1 INTRODUCTION

- 1.1** This Code of Practice is issued by the Secretary of State for Justice under section 66G Crime and Disorder Act 1998 (“the Act”) and is published with the consent of the Attorney General. It has been approved by Parliament and brought into force by Statutory Instrument (SI 2010 - 127). It extends to England and Wales. The Code governs the use of Youth Conditional Cautions under the Crime and Disorder Act 1998.
- 1.2** Conditional Cautioning is a statutory out-of-court disposal introduced by Part 3 of the Criminal Justice Act 2003 as amended by the Police and Justice Act 2006. The legislation provides for Conditional Cautions to be administered for adult offenders. The Criminal Justice and Immigration Act 2008, Section 48, extended the use of Conditional Cautions to young people aged 10–17 by amending the Crime and Disorder Act 1998.
- 1.3** However, as part of a phased approach to the implementation the **Youth Conditional Caution applies, at present, solely to 16 and 17-year-olds.**
- 1.4** The disposal allows a relevant prosecutor<sup>1</sup> (such as the CPS) to offer a caution with condition(s) attached for certain offences. Where possible the decision to offer a Youth Conditional Caution should be made by a youth specialist prosecutor. The decision to administer a Youth Conditional Caution has the effect of suspending any criminal proceedings while the young person is given an opportunity to comply with the agreed conditions. Where the conditions are complied with, a prosecution is not normally commenced<sup>2</sup>. However, where there is no reasonable excuse for non-compliance, the Youth Conditional Caution can be cancelled and criminal proceedings commenced for the original offence(s).

---

1 Throughout the Code any reference to a prosecutor should be read as meaning a relevant prosecutor under the Act.

2 The caution *may* not preclude a subsequent prosecution if it was not appropriately administered and it *will* not preclude a civil action by an aggrieved party (see *Hayter v L* (1998) 1 WLR 854; *Jones v Whalley*, (2006) UKHL 41, paragraphs 36 and 44).

- 1.5 Such a caution may only be administered by an authorised person (such as a police officer)<sup>3</sup> **if the young person has not been previously convicted of an offence** and each of the five statutory requirements are met.
- 1.6 It is the duty of key agencies who work with children and young people, including the police and YOTs, to put in place arrangements to make sure that they take account of the need to safeguard and promote the welfare of young people when dealing with young people. It is also the duty of local authorities and public services, private and voluntary organisations to cooperate to improve outcomes for children and young people. Agencies should ensure that a Youth Conditional Caution or specific conditions should not be offered if they jeopardise the welfare and safeguarding of the young person.

## 2 OBJECTIVE OF YOUTH CONDITIONAL CAUTIONING

- 2.1 Youth Conditional Cautions are an out-of-court disposal aimed at reducing the number of young offenders taken to court for low-level offending, where appropriate conditions can meet the justice of the case taking into account the views of the victim and the behavioural needs of the young person. They provide an opportunity to achieve an early positive response to offending behaviour for those young people willing to admit their offending and to comply with certain conditions. It will operate as the “next tier” from the Reprimand or Warning as a more serious disposal<sup>4</sup>.

## 3 GUIDANCE TO PROSECUTORS

- 3.1 Before exercising any powers under the Crime and Disorder Act 1998 as amended by the Criminal Justice and Immigration Act 2008, a prosecutor will publish guidance to its prosecutors on the approach to be taken in deciding whether to offer a Conditional Caution for an offence.

---

3 Although the examples used in the Code relate mainly to the CPS and the police, the Code applies equally to Conditional Cautions given by any authorised persons on the authority of other relevant prosecutors.

4 Please note that although there is a legislative hierarchy for youth out-of-court disposals, this is not the case for adults. The adult code of practice for conditional cautions should be referred to for details on the administration of adult conditional cautions.

**3.2** This Guidance will identify any aspects which render a case unsuitable for a Youth Conditional Caution and where an alternative disposal should be preferred, such as prosecution. For example, certain offences may be excluded from the scheme, or specific circumstances surrounding the case may make charging the offender the most appropriate response.

**3.3** The Director of Public Prosecutions will issue Guidance under section 37A of the Police and Criminal Evidence Act 1984 which will prescribe the offences and circumstances in which a Youth Conditional Caution is permitted. Any other prosecutor will also publish similar guidance.

## **4 THE REQUIREMENTS IN THE ACT**

**4.1** The Act imposes five requirements before a Youth Conditional Caution can be given. Each of these requirements must be met in every case and should be followed in the order set out below:

- 1 The authorised person must have evidence that the young person has committed an offence<sup>5</sup>.
- 2 The prosecutor must determine that there is sufficient evidence to charge the young person with the offence. The prosecutor must also determine that a Youth Conditional Caution should be given to the young person in respect of the offence.
- 3 The young person must admit to the authorised person that he has committed the offence.
- 4 The authorised person must explain the effect of the Youth Conditional Caution and warn the young person that failure to comply with any of the conditions may result in prosecution for the original offence. Where the young person is aged 16 years, the explanation and warning must be given in the presence of an appropriate adult<sup>6</sup>.

---

<sup>5</sup> The authorised person must have sufficient evidence available that is capable of meeting the Full Code Test (see footnote 7) at the time the case is referred to the prosecutor.

<sup>6</sup> The PACE Codes of Practice require that an appropriate adult should also be present where, because of the mental state or capacity, the youth (including 17 year olds) may not fully understand the nature and requirements of or the significance of accepting a Youth Conditional Caution.

5 The young person must sign a document containing details of the offence, the admission to the authorised person, consent to be given a Youth Conditional Caution and details of the conditions attached.

**4.2** The Act does not require an admission to be made by the young person before the prosecutor determines whether a Youth Conditional Caution is appropriate. However, the prosecutor must be satisfied that there is sufficient available evidence to meet the evidential requirements of the Full Code Test<sup>7</sup>. Notwithstanding this, the offender must make an admission to the offence at the time the Youth Conditional Caution is given.

**4.3** In determining whether the Full Code Test is met, the prosecutor should take into account all available evidence including any admission made by the young person. A prosecutor may not authorise the offer of a Youth Conditional Caution in order to secure an admission that could then provide sufficient evidence to meet the Full Code Test.

## **5 DECIDING WHETHER A YOUTH CONDITIONAL CAUTION SHOULD BE GIVEN**

**5.1** The decision to offer a Youth Conditional Caution and the condition(s) to be attached may only be made by a prosecutor; it is not a decision for an authorised person. Where possible the decision should be made by a youth specialist prosecutor.

**5.2** The Youth Conditional Caution is currently only available for young people aged 16 or 17 at the time the Youth Conditional Caution is offered. If the young person becomes 18 before the Youth Conditional Caution can be offered, an adult disposal (including an adult Conditional Caution) may be considered.

**5.3** The prosecutor must decide whether the public interest in the case is satisfied by the offender being offered a Youth Conditional Caution in respect of the offence(s). In making this decision prosecutors will take into account:

---

<sup>7</sup> The evidential requirements under the Full Code Test for police and CPS prosecutors requires that the prosecutor must be satisfied that there is enough evidence to provide a “realistic prospect of conviction”. This is set out in the Code for Crown Prosecutors. Prosecutors not covered by the Code for Crown Prosecutors issued by the Director of Public Prosecutions should use an equivalent test.

- 1 Guidance issued to prosecutors (see section 3);
- 2 The seriousness of the offence;
- 3 The circumstances of the case;
- 4 Any views expressed by the victim;
- 5 Any wider neighbourhood or community considerations or concerns;
- 6 The background, circumstances and previous offending history of the young person;
- 7 The willingness of the offender to comply with possible conditions;
- 8 The likely effect of the Youth Conditional Caution; and
- 9 The likely outcome if the case proceeded to court.

**5.4** Where any first offence is too serious to be dealt with by way of a Reprimand or Warning, the prosecutor should consider whether a Youth Conditional Caution would be a more suitable disposal and if so, should provide reasons for why he has chosen to offer a Youth Conditional Caution rather than prosecute the young person.

**5.5** Only one Youth Conditional Caution should be administered unless there are exceptional circumstances (e.g. the previous Youth Conditional Caution resulted from a first offence, in which case a further Youth Conditional Caution may be considered but no more than two Youth Conditional Cautions may be issued to a young person).

**5.6** Where a number of offences are related<sup>8</sup> and an out-of-court disposal is considered suitable for all of them, the prosecutor may decide to group the offences and deal with them using one Youth Conditional Caution. Before making this decision the prosecutor should consider whether the number of offences increase the gravity of the offending behaviour to a level where the public interest requires a prosecution.

**5.7** Where a young person denies the offence or raises a defence, an offer of a Youth Conditional Caution cannot be made.

---

8 They could arise out of the same incident or alternatively they may be similar offences related to the same underlying problem (for example, acquisitive crime to fund a drug habit).

## 6 REFERRING CASES TO THE PROSECUTOR AND YOUTH OFFENDING TEAM (YOT)

6.1 In any case in which a Youth Conditional Caution is permitted<sup>9</sup> and:

- 1 Where the police consider there is evidence to provide a realistic prospect of conviction, and that the young person has previously received a Reprimand and/or Warning but has not been convicted of any offence, the case will be referred to a prosecutor to determine whether a Youth Conditional Caution should be offered; or
- 2 In which the police are considering charging a young person aged 16 or 17 who has not previously received a Reprimand or Warning, the police shall refer the case to a prosecutor who will determine whether the person is to be charged or receive a Reprimand, Warning or a Youth Conditional Caution.

6.2 At the time a case is referred to a prosecutor, the police will provide any relevant information (including recommendations for possible conditions) to the prosecutor and will also ensure that the local YOT are notified of the referral at the same time<sup>10</sup>.

6.3 The local YOT should put in place arrangements to consider these referrals. These arrangements should include:

- 1 An initial assessment to ensure early identification of those cases where a Youth Conditional Caution may be administered without delay;
- 2 A further assessment of the young person to identify any appropriate conditions or referral schemes where necessary;
- 3 Early notification to the police and prosecutor of the outcome of the initial assessment so that a Youth Conditional Caution can be administered immediately in suitable cases and the young person can be released on bail in those cases where a further assessment is required.

---

9 The Director's Guidance on Youth Conditional Cautioning will specify the offences for which a Youth Conditional Caution is permitted.

10 Further detail on the protocol required for sharing information between the YOT, CPS and police will be contained in the DPP guidance.

- 6.4** The police should release on bail to return to the police station, or to the YOT premises where appropriate, any young person where the YOT will require more time to assess the young person and identify any appropriate conditions or referral schemes. Young people released on bail may be made subject to bail conditions where appropriate and necessary. It will generally be appropriate to include conditions requiring attendance at an assessment where required and to co-operate with the YOT.
- 6.5** The decision as to whether a Youth Conditional Caution is appropriate, and the conditions to be offered, is for the prosecutor. However, the prosecutor will take into account any information and recommendations provided by the YOT and/or police in considering whether to offer a Youth Conditional Caution. In particular, the YOT report should provide information relevant to the prosecutor's consideration as set out in section 8.
- 6.6** Where a prosecutor has considered a report from a YOT and has decided that a Youth Conditional Caution is appropriate, a police officer with input from the YOT will proceed to administer the Youth Conditional Caution and cancel any bail to which the young person had been subject for the purposes of a YOT assessment.
- 6.7** Where a young person is charged with an offence but it appears upon review that a Youth Conditional Caution may be appropriate a prosecutor may decide that a Youth Conditional Caution should be offered. The prosecutor should ensure that the young person is seen by the YOT for an early assessment for the purposes of identifying and recommending appropriate conditions. In such cases the prosecution will be adjourned pending the decision by the young person on whether to accept the offer of a Youth Conditional Caution.

## 7 TYPES OF CONDITIONS

**7.1** The conditions that can be attached to a Youth Conditional Caution must have one or more of the following objectives:

- Rehabilitation – conditions which help to modify the behaviour of the young person, serve to reduce the likelihood of re-offending or help to reintegrate the young person into society;
- Reparation – conditions which serve to repair the damage done either directly or indirectly by the young person;
- Punishment – conditions which punish or penalise the young person for their unlawful conduct.

**7.2** Rehabilitative conditions may include attendance at substance misuse programmes, or any of a range of interventions available to the YOT for addressing offending behaviour.

**7.3** Reparative conditions may include apologising, repairing or otherwise making good any damage caused provided this is acceptable to the victim. Specific financial compensation may be paid. Where the offending has resulted in damage to community property, reparation may take the form of unpaid work to repair that damage or of a payment to an appropriate local charitable or community fund.

**7.4** Punitive conditions may include the payment of a financial penalty, unpaid work for a period not exceeding 20 hours or attendance at a specified place to undertake an agreed activity for a period not exceeding 20 hours, not including any attendance for the purposes of facilitating the young person's rehabilitation. A punitive unpaid work condition might be appropriate where there is no individual victim who has suffered quantifiable loss or where the damage caused by the offending cannot be repaired by the young person, but it is appropriate for the young person to make indirect reparation to the community through other unpaid work.

**7.5** Conditions which impose restrictions on a young person may only be used where they contribute towards the aims of rehabilitation, reparation or punishment. Such conditions could be used to prevent the young person from contacting individuals, visiting certain locations or participating in particular activities.

- 7.6** Conditions may include reference to the future behaviour of the young person, such as an agreement not to commit further offences for a specified period.
- 7.7** Conditions should avoid any conflict with the young person's religious beliefs and any interference with the times, if any, at which he normally works or attends school or any other educational establishment or attends other specialist services.

## **8 SELECTION OF APPROPRIATE CONDITIONS**

- 8.1** Conditions attached to a Youth Conditional Caution must always be:
- Appropriate;
  - Proportionate;
  - Achievable.
- 8.2** Prosecutors should seek to apply a problem solving approach aimed at changing a young person's behaviour and/or providing redress to the victim of the offence. These two aims will be regarded as the priority. Punitive conditions should only be used where there are no appropriate reparative or rehabilitative conditions (or where those conditions do not provide a proportionate response to the offending behaviour).
- 8.3** When determining the conditions to be attached to a Youth Conditional Caution, the prosecutor should consider the totality of the conditions and seek to achieve proportionality to the offending behaviour<sup>11</sup>. The objectives sought ought to be achieved by the attachment of the minimum number of conditions.
- 8.4** The young person must be able to complete the conditions satisfactorily and within a reasonable time period. Prosecutors should take into account the young person's circumstances, physical and mental capacity, and ensure that any conditions with a financial element are commensurate with the financial means of the young person.

---

<sup>11</sup> Where a number of offences have been grouped together, the prosecutor should consider all the offences when determining whether the conditions attached are proportionate.

- 8.5** In deciding on the time period within which conditions must be completed, prosecutors must take into account any time limits affecting the commencement of proceedings for the original offence(s) and must ensure that the option of prosecuting the original offence(s) in the event of non-compliance remains available. In the case of summary-only offences conditions must be capable of being completed within 16 weeks of the date of the original offence, wherever possible. 16 weeks will also be an appropriate maximum time period for the completion of conditions relating to an either-way offence in the majority of cases.
- 8.6** In considering the appropriate conditions to achieve one or more of the objectives set out in section 7.1, a prosecutor should consider whether any of the following are applicable to the case:
- 1 Opportunities to provide reparation or compensation to any victim or relevant neighbourhood or community;
  - 2 Use of conditions to reflect and secure the interests of the victim and neighbourhood or community (for example, by requiring the offender to stay away from a specific area);
  - 3 Use of restorative and reparative processes to have a positive impact on the community or individuals affected by the offending behaviour;
  - 4 Opportunities to provide unpaid work that benefits the community;
  - 5 Use of a financial penalty condition to punish the offender and deter future offending (see paragraphs 8.4 and 9).
- 8.7** Information from the YOT will assist the prosecutor in meeting these objectives, taking into account everything that is known about the young person and the circumstances of the offence.
- 8.8** Restorative Justice processes may be used to help determine the conditions to be attached to a Conditional Caution. However, before any conditions that arise from the Restorative Justice process are attached to a Conditional Caution, the prosecutor must ensure that they are appropriate in accordance with this Code and any relevant guidance issued to prosecutors. In particular prosecutors should ensure that such conditions are proportionate to the offending and meet the public interest requirements of the case. Where Restorative Justice processes are to be used to help determine the conditions to be attached to a Conditional Caution,

the offender can be bailed, under s.37(7)(a) of the Police and Criminal Evidence Act 1984, for a sufficient period of time to allow this to take place.

- 8.9** Participation in a Restorative Justice process may also be a condition of the caution itself. In such cases, positive participation in the process is all that is legally required of the offender by the condition, and any actions arising out of the Restorative Justice process will form a voluntary agreement between the offender and the victim.
- 8.10** Restorative Justice processes may only be used where both parties (the victim and the offender) consent to take part. Best Practice Guidance for Restorative Justice Practitioners<sup>12</sup> sets out the skills and knowledge required by practitioners and the standards that participants should expect.

## **9 CONDITIONS WITH A FINANCIAL ELEMENT**

- 9.1** Conditions with a financial element include compensation payments (with the objective of reparation) and financial penalties (with the objective of punishing the young person). Financial Penalty Conditions<sup>13</sup> can only be used in those cases in which they are permitted by virtue of an Order issued under s.66C of the Act (“the Order”).
- 9.2** The maximum amount of any financial penalty condition in relation to each offence or description of the offence will be specified in the Order. Prosecutors should determine the financial penalty, taking into account information from the YOT regarding the financial means of the young person and the circumstances of the case, including the seriousness of the offence and the assessment of the YOT.
- 9.3** Financial penalty and compensation conditions will not be the subject of enforcement procedures by the court. Failure to make payment in relation to any condition with a financial element without reasonable excuse will amount to non-compliance with the condition of the Conditional Caution which may lead to prosecution for the original offence.

---

12 Best Practice Guidance for Restorative Justice Practitioners can be found on the Home Office website at [www.homeoffice.gov.uk/documents/rj\\_bestpractice.pdf](http://www.homeoffice.gov.uk/documents/rj_bestpractice.pdf).

13 The use of financial penalty conditions is limited by statute. There are no statutory restrictions on the offences for which compensation can be given, nor any maxima regarding the amount of compensation; however, operational guidance should be produced by prosecutors concerning the use of such conditions.

- 9.4** Any financial penalty conditions must specify to whom the young person must make payment.
- 9.5** When considering any conditions with a financial element that may be attached to a Youth Conditional Caution, particularly where the young person is of limited financial means, prosecutors should always prioritise compensation for the victim ahead of any financial penalty condition.
- 9.6** The extent of any financial loss suffered by the victim may mean that the full amount of any compensation sought is beyond the means of the young person. This does not preclude the use of a Youth Conditional Caution where it is appropriate and meets the justice of the case as the total amount of compensation to be paid may be reduced. Before offering a Youth Conditional Caution in such circumstances, prosecutors should consider whether a court order for compensation (which can be paid over a longer period of time) would be a more suitable response taking into account all the circumstances of the case.
- 9.7** Where multiple conditions involving financial payment are attached to a Youth Conditional Caution, the total required to be paid must be commensurate with the individual's financial means and be capable of being paid within a reasonable period of time.

## **10 INVOLVEMENT OF VICTIMS**

- 10.1** The views of the victim should be obtained wherever possible. These should be taken into account in deciding whether a Youth Conditional Caution is appropriate and in determining suitable conditions. The victim's consent must be obtained in any case where direct reparation or Restorative Justice processes are being considered.
- 10.2** The views of the victim will be important but cannot be conclusive. The decision as to whether to offer a Youth Conditional Caution and the conditions to be attached lies with the prosecutor who will take into account the views of the victim and the assessment of the YOT. In some circumstances the prosecutor may consider that proportionality with the level of the offence requires the inclusion of conditions that may be more onerous or less onerous than those the victim wants or YOT recommends. Care must be taken not to raise the expectations of the victim whilst seeking their views.

- 10.3** Where the conditions attached to a caution have a direct impact on the victim<sup>14</sup>, the victim should be informed of the conditions given to the young person and the intended outcome. The victim should be informed of any changes to the expected outcome; for example, if the young person has failed to comply with the Youth Conditional Caution and will not be completing the conditions.
- 10.4** Victims who are not directly affected by the conditions<sup>15</sup> should also be informed of the outcome of the case where possible, including whether the Youth Conditional Caution was completed or whether the young person was prosecuted for the original offence as a result of non-compliance.

## **11 MAKING THE OFFER OF A CONDITIONAL CAUTION**

- 11.1** In a case in which a prosecutor considers that there is sufficient evidence to charge and that the case is suitable to be dealt with by means of a Youth Conditional Caution, the prosecutor shall direct the authorised person to make the offer of a Conditional Caution to the young person.
- 11.2** The young person must always admit to the authorised person at the time the Youth Conditional Caution is given that he has committed the offence(s) in question. This is true for all cases, irrespective of whether a previous admission has been made by the young person.
- 11.3** Before making the offer of a Youth Conditional Caution the authorised person shall:
- 1 Ensure that all appropriate checks have been made to establish whether or not the young person has previously received a Youth Conditional Caution and whether they have any criminal convictions;
  - 2 Ensure that the young person has the opportunity to receive free and independent legal advice;
  - 3 Ensure that in the case of a young person aged 16 years, the offer is made and the caution administered in the presence of an appropriate adult;

---

14 For example, where compensation is to be paid, or work that benefits the victims is undertaken.

15 For example, where the young person has been given a rehabilitative condition and no compensation is necessary.

- 4 Ensure that an appropriate adult is present in the case of a young person aged 17 where there is reason to doubt the capacity or ability of the young person to fully understand the nature and requirements of a Youth Conditional Caution;
- 5 Inform the young person of the evidence against them and the decision made by the prosecutor;
- 6 Explain the Youth Conditional Caution and the implications of accepting this, including any circumstance in which it may be disclosed;
- 7 Explain the requirement for and consequences of making an admission to the offence, including the fact that the admission may be used in evidence should the case result in prosecution<sup>16</sup>;
- 8 Make it clear to the young person that an admission should never be made merely to receive a Youth Conditional Caution;
- 9 Explain that the young person may decide at any stage to withdraw from the Youth Conditional Caution. Make it clear that if the young person does decide to withdraw he should inform the authorised person as soon as possible. Tell the young person that withdrawal will be reported to the prosecutor, who may then decide that the young person should be charged with the original offence and prosecuted at court;
- 10 Warn the young person that any failure to comply with the conditions will be investigated and reported to the prosecutor. The prosecutor will consider the report and the circumstances of the case, including the extent of any compliance to date, and may decide that the young person should be prosecuted for the original offence.

---

<sup>16</sup> Where a prior admission has been made by the offender, the offender should already be aware of this.

## 12 ADMINISTRATION OF THE YOUTH CONDITIONAL CAUTION

**12.1** Once a prosecutor has determined that a Youth Conditional Caution is appropriate in a case, an authorised person will administer the caution. It should be borne in mind throughout the process that the offender is aged 16 or 17 and is not an adult. Particular care must be taken to ensure that the young person understands what is happening and the options open to them. It is essential that appropriate time is allowed throughout the process so that the young person is able to engage in it as required.

**12.2** The Youth Conditional Caution may be administered in a police station, court building, YOT premises, the offices of any prosecutor, or any other suitable location consistent with achieving the appropriate impact on the young person.

**12.3** The form for recording the Youth Conditional Caution must:

- 1 Contain the details of the offence(s) for which the caution is administered;
- 2 Clearly set out all the conditions to be complied with;
- 3 Set out the arrangements for monitoring compliance;
- 4 Specify the effect of the Youth Conditional Caution and the consequences of any failure to comply with the conditions, including the possibility of future prosecution for the offence(s);
- 5 Record the young person's clear admission to the offence(s), consent to being given the Youth Conditional Caution, and their agreement to and undertaking to abide by the condition. This admission must be made at the time the Youth Conditional Caution is administered;
- 6 Provide details of the person in the YOT who will supervise completion of the Youth Conditional Caution that the young person should contact in the case of non-compliance, or if they are unable or unwilling to comply with the conditions.

**12.4** The authorised person should ensure that the young person understands the following:

- 1 The young person has the right to legal advice at any time during the process;

- 2 The effects of accepting a Youth Conditional Caution; in particular that although it is not a criminal conviction, the Youth Conditional Caution will be recorded, form part of the young person's criminal record and may be disclosed in certain circumstances;
- 3 The means by which compliance with each of the conditions will be verified (including any responsibilities of the young person for demonstrating compliance);
- 4 The victim(s) may be informed of the conditions agreed (unless there is good reason for this not happening);
- 5 The victim may be provided with the details of the young person for any civil proceedings;
- 6 The process for contacting the person in the YOT monitoring compliance should any problems arise in complying with the conditions or if the young person decides to withdraw from the Youth Conditional Caution process;
- 7 The consequences of failing to complete the Youth Conditional Caution (in particular that the young person may be liable for arrest and prosecution for the original offence);
- 8 Any requirement to notify the YOT immediately upon change of address.

## 13 MONITORING AND COMPLIANCE

- 13.1 Compliance by the young person with the condition(s) attached to the Youth Conditional Caution within the agreed timescale will normally preclude the possibility of prosecution for the original offence (see paragraph 1.4). Failure to comply with a condition is not an offence in itself, but may result in the young person being prosecuted for the original offence(s).
- 13.2 When determining the conditions to be attached to a Youth Conditional Caution, a prosecutor should consider the mechanism by which compliance with the conditions will be demonstrated.
- 13.3 The local YOT will put in place and maintain a robust process for demonstrating compliance. This may include agreements with:
  - 1 Organisations involved in delivering the conditions (such as drugs referral agencies);
  - 2 Police officers and other police staff;
  - 3 Her Majesty's Courts Service (for collection of monies).

- 13.4** The monitoring process must be made clear to both the young person and any organisation responsible for providing such information. Where reasonable and appropriate, the onus for providing confirmation of compliance may be placed specifically upon the young person. However, the YOT will have overall responsibility for monitoring compliance with conditions.
- 13.5** Where it appears that a young person is failing to comply with one or more conditions the YOT, having investigated the case, should forward a report to a prosecutor for a decision regarding the future of the Youth Conditional Caution. Where the YOT reports that there is no response from the young person, or where the prosecutor concludes that there is no reasonable excuse for the failure, or that the non-compliance is likely to continue, a prosecution for the original offence should usually follow.
- 13.6** Whether any excuse given is reasonable or not is a matter for the prosecutor to determine on all the available evidence. The decision of the prosecutor and the reasons for it should be recorded.
- 13.7** Where the prosecutor is satisfied that there is a reasonable excuse for the young person's failure to meet the conditions, or that there has been substantial part-compliance, the prosecutor will have to decide whether:
- 1 The Youth Conditional Caution should be regarded as completed;
  - 2 The Youth Conditional Caution should be regarded as incomplete but that the public interest requires no further action;
  - 3 A new time limit should be set for completing the original conditions; or
  - 4 The original conditions should be revised.
- 13.8** Any changes to the conditions must be recorded and explained to the young person. Any unreasonable refusal by the young person to agree to revised conditions should usually result in prosecution for the original offence. It will not usually be appropriate to revise conditions more than once.
- 13.9** A document clearly setting out any amendments to the conditions should be produced and must be signed by the authorised person on behalf of the YOT and by the young person to indicate acceptance of the new conditions. Such a document must comply with the requirements set out in paragraph 12.3 of this Code.

- 13.10** Where the Youth Conditional Caution has been given for multiple offences, the prosecutor must also determine which of the original offences requires prosecution. This is particularly relevant in cases of partial compliance, where the young person may have completed one of the conditions that related to a specific offence.
- 13.11** Where a prosecutor determines that a prosecution for the original offence(s) is to go ahead, the YOT will ensure that the young person is notified and provide relevant information to the police who will then amend any local and national police records accordingly. Once proceedings are instituted, the Youth Conditional Caution ceases to have effect; however the fact that a Youth Conditional Caution was given and not complied with will remain on a young person's record.

## **14 ARREST AND DETENTION OF YOUTHS**

- 14.1** A specific power allowing a police officer to arrest and detain offenders is provided by s.24A(1) of the Criminal Justice Act 2003 (as amended). The power arises when a constable has reasonable grounds for believing that a young person has failed without reasonable excuse to comply with any conditions attached to a Youth Conditional Caution but should only be exercised where considered necessary. While the necessity criteria in s.24(4) and (5) of PACE do not apply to arrests under s.24A of the 2003 Act, as a matter of practice the same approach should be adopted and the power of arrest should only be exercised where considered necessary. Once arrested, detention may be authorised where it is necessary to investigate reasons for any non-compliance or to seek a charging decision from a prosecutor and formally charge a young person.
- 14.2** The young person should only be detained for as long as is necessary to explore the reasons for any breach and/or to undertake any charging procedures. This should be done as soon as practicable after arrest or arrival at the police station. Where it is clear that this cannot be achieved in a short period of time, the young person should be released on bail under s.24A(2)(b) of the Criminal Justice Act 2003 whilst the authorised person enquires into the non-compliance and the prosecutor decides whether the original offence should be charged.

**14.3** Once the YOT has concluded any enquiry into the non-compliance the case will be referred to a prosecutor for decision. Where it appears likely that referral may not be concluded within a short period of time, the young person will be released on an appropriately short period of bail.

## **15 PROSECUTION FOLLOWING FAILURE TO COMPLY**

**15.1** Where a prosecutor has determined that a young person has failed to comply with a Youth Conditional Caution and is to be prosecuted, proceedings should be commenced as soon as possible. This may be done in one of three ways:

- 1 A charge may be brought at a police station;
- 2 A summons may be issued; or
- 3 The written charge and requisition<sup>17</sup> process may be used when brought into force.

**15.2** Where a prosecution for the original offence follows a failure to complete conditions attached to a Youth Conditional Caution, the prosecutor should ensure that the court is made aware of this fact and provide details of the conditions that were attached to the caution and the extent of any partial completion. This information may be used by the court when considering the case<sup>18</sup>.

## **16 RECORDING AND CITING CONDITIONAL CAUTIONS**

**16.1** Records concerning Youth Conditional Cautions must be kept in accordance with relevant directions issued by or on behalf of the Home Secretary. Other prosecutors and/or authorised persons should issue similar directions to ensure that records are kept in accordance with any relevant legal responsibilities.

**16.2** Youth Conditional Cautions can be cited in any subsequent court proceedings<sup>19</sup> subject to relevant legislation regarding the rehabilitation of offenders.

---

17 This is commonly referred to as the "charge by post" procedure and was introduced in s.29 of the Criminal Justice Act 2003.

18 The court will be dealing with the original offence. Non-compliance with a Conditional Caution is not an offence in itself.

19 This includes civil proceedings.

## Annex

### CRIME AND DISORDER ACT 1998

(as amended by the Criminal Justice and Immigration Act 2008)

#### Chapter 37

#### YOUTH CONDITIONAL CAUTIONS

#### SECTIONS 66A TO 66H

#### 66A Youth conditional cautions

- (1) An authorised person may give a youth conditional caution to a child or young person (“the offender”) if –
  - (a) the offender has not previously been convicted of an offence, and
  - (b) each of the five requirements in section 66B is satisfied.
- (2) In this Chapter, “youth conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.
- (3) The conditions which may be attached to such a caution are those which have one or more of the following objects –
  - (a) facilitating the rehabilitation of the offender;
  - (b) ensuring that the offender makes reparation for the offence;
  - (c) punishing the offender.
- (4) The conditions that may be attached to a youth conditional caution include –
  - (a) (subject to section 66C) a condition that the offender pay a financial penalty;
  - (b) a condition that the offender attend at a specified place at specified times.

“Specified” means specified by a relevant prosecutor.
- (5) Conditions attached by virtue of subsection (4)(b) may not require the offender to attend for more than 20 hours in total, not including any attendance required by conditions attached for the purpose of facilitating the offender’s rehabilitation.
- (6) The Secretary of State may by order amend subsection (5) by substituting a different figure.

- (7) In this section, “authorised person” means –
- (a) a constable,
  - (b) an investigating officer, or
  - (c) a person authorised by a relevant prosecutor for the purposes of this section.

### **66B The five requirements**

- (1) The first requirement is that the authorised person has evidence that the offender has committed an offence.
- (2) The second requirement is that a relevant prosecutor decides –
  - (a) that there is sufficient evidence to charge the offender with the offence, and
  - (b) that a youth conditional caution should be given to the offender in respect of the offence.
- (3) The third requirement is that the offender admits to the authorised person that he committed the offence.
- (4) The fourth requirement is that the authorised person explains the effect of the youth conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.
- (5) If the offender is aged 16 or under, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.
- (6) The fifth requirement is that the offender signs a document which contains –
  - (a) details of the offence,
  - (b) an admission by him that he committed the offence,
  - (c) his consent to being given the youth conditional caution, and
  - (d) the conditions attached to the caution.

### **66C Financial penalties**

- (1) A condition that the offender pay a financial penalty (a “financial penalty condition”) may not be attached to a youth conditional caution given in respect of an offence unless the offence is one that is prescribed, or of a description prescribed, in an order made by the Secretary of State.

- (2) An order under subsection (1) must prescribe, in respect of each offence or description of offence in the order, the maximum amount of the penalty that may be specified under subsection (5)(a).
- (3) The amount that may be prescribed in respect of any offence must not exceed £100.
- (4) The Secretary of State may by order amend subsection (3) by substituting a different figure.
- (5) Where a financial penalty condition is attached to a youth conditional caution, a relevant prosecutor must also specify –
  - (a) the amount of the penalty, and
  - (b) the person to whom the financial penalty is to be paid and how it may be paid.
- (6) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (5)(b).
- (7) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.

#### **66D Variation of conditions**

A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a youth conditional caution by –

- (a) modifying or omitting any of the conditions;
- (b) adding a condition.

#### **66E Failure to comply with conditions**

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the youth conditional caution, criminal proceedings may be instituted against the person for the offence in question.
- (2) The document mentioned in section 66B(6) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the youth conditional caution is to cease to have effect.

- (4) Section 24A(1) of the Criminal Justice Act 2003 (“the 2003 Act”) applies in relation to the conditions attached to a youth conditional caution as it applies in relation to the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).
- (5) Sections 24A(2) to (9) and 24B of the 2003 Act apply in relation to a person who is arrested under section 24A(1) of that Act by virtue of subsection (4) above as they apply in relation to a person who is arrested under that section for failing to comply with any of the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).

### **66F Restriction on sentencing powers where a youth conditional caution given**

Where a person who has been given a youth conditional caution is convicted of an offence committed within two years of the giving of the caution, the court by or before which the person is so convicted –

- (a) may not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its doing so; and
- (b) where it does make such an order, must state in open court that it is of that opinion and why it is.

### **66G Code of practice on youth conditional cautions**

- (1) The Secretary of State must prepare a code of practice in relation to youth conditional cautions.
- (2) The code may, in particular, make provision as to –
  - (a) the circumstances in which youth conditional cautions may be given,
  - (b) the procedure to be followed in connection with the giving of such cautions,
  - (c) the conditions which may be attached to such cautions and the time for which they may have effect,
  - (d) the category of constable or investigating officer by whom such cautions may be given,
  - (e) the persons who may be authorised by a relevant prosecutor for the purposes of section 66A,

- (f) the form which such cautions are to take and the manner in which they are to be given and recorded,
  - (g) the places where such cautions may be given,
  - (h) the provision which may be made by a relevant prosecutor under section 66C(5)(b),
  - (i) the monitoring of compliance with conditions attached to such cautions,
  - (j) the exercise of the power of arrest conferred by section 24A(1) of the Criminal Justice Act 2003 (c. 44) as it applies by virtue of section 66E(4),
  - (k) who is to decide how a person should be dealt with under section 24A(2) of that Act as it applies by virtue of section 66E(5).
- (3) After preparing a draft of the code the Secretary of State –
    - (a) must publish the draft,
    - (b) must consider any representations made to him about the draft, and
    - (c) may amend the draft accordingly, but he may not publish or amend the draft without the consent of the Attorney General.
  - (4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.
  - (5) When he has done so he may bring the code into force by order.
  - (6) The Secretary of State may from time to time revise a code of practice brought into force under this section.
  - (7) Subsections(3)to(6) are to apply (with appropriate modifications) to a revised code as they supply to an original code.

### **66H Interpretation**

In this Chapter –

- (a) “appropriate adult” has the meaning given by section 65(7);
- (b) “authorised person” has the meaning given by section 66A(7);
- (c) “investigating officer” means an officer of Revenue and Customs, appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c. 30);

- (d) “the offender” has the meaning given by section 66A(1);
- (e) “relevant prosecutor” means –
  - (i) the Attorney General,
  - (ii) the Director of the Serious Fraud Office,
  - (iii) the Director of Revenue and Customs Prosecutions,
  - (iv) the Director of Public Prosecutions,
  - (v) the Secretary of State, or
  - (vi) a person who is specified in an order made by the Secretary of State as being a relevant prosecutor for the purposes of this Chapter;
- (f) “youth conditional caution” has the meaning given by section 66A(2).”
- (1) Section 114 (orders and regulations) is amended as follows.
- (2) In subsection (2) (which specifies orders that are subject to annulment in pursuance of a resolution of either House of Parliament), for “or 10(6)” substitute “10(6), 66C(1) or 66H(e)(vi)”.
- (3) After subsection (2) insert –
  - “(2A) Subsection (2) also applies to a statutory instrument containing –
    - (a) an order under section 66C(4) unless the order makes provision of the kind mentioned in subsection (3A)(a) below, or
    - (b) an order under section 66G(5) other than the first such order.”
- (4) In subsection (3) (which specifies orders that may not be made unless a draft has been approved by a resolution of each House of Parliament) after “41(6)” insert “,66A(6)”.
- (5) After subsection (3) insert –
  - “(3A) Subsection (3) also applies to –
    - (a) an order under section 66C(4) which makes provision increasing the figure in section 66C(3) by more than is necessary to reflect changes in the value of money, and
    - (b) the first order under section 66G(5).”



[www.tso.co.uk](http://www.tso.co.uk)

ISBN 978-0-11-706406-5



9 780117 064065