



**CONDITIONAL CAUTIONING
CRIMINAL JUSTICE ACT 2003,
SECTIONS 22-27**

**CODE OF PRACTICE
& associated annexes**

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INTRODUCTION

1.1 This Code of Practice has been approved by Parliament and brought into force by statutory instrument (*SI2004- 1683*). It extends to England and Wales. The Code governs the use of Conditional Cautions under Part 3 of the Criminal Justice Act 2003 (“the Act”). The text of the relevant provisions of the Act is attached at Annex A.

1.2 Conditional Cautioning enables offenders to be given a suitable disposal without the involvement of the usual court processes. Where rehabilitative or reparative conditions (or both) are considered preferable to prosecution, Conditional Cautioning provides a statutory means of enforcing them through prosecution for the original offence in the event of non-compliance. The key to determining whether a Conditional Caution should be given – instead of prosecution or a simple caution – is that the imposition of specified conditions will be an appropriate and effective means of addressing an offender’s behaviour or making reparation for the effects of the offence on the victim or the community.

1.3 The Act defines a *Conditional Caution* as ‘a caution which is given in respect of an offence committed by the offender and which has conditions attached to it’. If an offender fails without reasonable excuse to comply with the conditions attached to a Conditional Caution the Act provides for criminal proceedings to be instituted and the caution cancelled.

1.4 Such a caution may only be given by an *authorised person*, defined as a constable; a person designated as an investigating officer under section 38 of the Police Reform Act 2002; or a person authorised for the purpose by a relevant prosecutor. The authorised person should be suitably trained.

1.5 A *relevant prosecutor* is defined as –

- (a) the Attorney General,
- (b) the Director of the Serious Fraud Office,
- (c) the Director of Public Prosecutions,
- (d) a Secretary of State,
- (e) the Commissioners of Inland Revenue,
- (f) the Commissioners of Customs and Excise, or
- (g) a person specified as a relevant prosecutor in an order made by the Secretary of State for the purposes of this Part of the Act.

1.6 Although this Code is expressed largely in terms of the police and CPS, it applies equally to Conditional Cautions given on the authority of other relevant prosecutors, who should ensure that their procedures (with any necessary adaptations) comply with the relevant provisions of the Code. Where appropriate, references to the police should be read as including other authorised persons, and references to the CPS as including other relevant prosecutors.

CONDITIONAL CAUTIONING AS A DISPOSAL

2.1 A Conditional Caution is a statutory development of the non-statutory police caution (‘simple caution’) which has long been available, at the discretion of the police and CPS, as an alternative to prosecution in suitable cases. The basic criteria for a Conditional Caution – ie those which must be satisfied before this disposal can be considered – are:

- that the offender is 18 or over¹;
- that the offender admits the offence to the authorised person; and
- that there is, in the opinion of the relevant prosecutor, evidence sufficient to charge the offender with the offence².

2.2 In cases where these criteria are satisfied, a Conditional Caution may be considered as an alternative to charge, taking into account the factors outlined in section 3 of this Code. The simple caution will remain available as a disposal, and may be appropriate in cases where no suitable conditions readily suggest themselves, or where prosecution would not be in the public interest, or where the suspect has forestalled what would otherwise have been a suitable condition by (for example) paying compensation to the victim (and can establish that he has done so). For those offences for which there is the option of issuing a fixed penalty notice, that will generally be the appropriate disposal unless such a notice has previously been issued to the offender, in which case a Conditional Caution might be more suitable.

2.3 The issue of simple cautions and penalty notices will continue to be a matter for the police. The discretion of the police in respect of decisions whether to charge has been reduced with the introduction of the arrangements in Schedule 2 to the Criminal Justice Act 2003, whereby the Director of Public Prosecutions is empowered to issue guidance about how custody officers should proceed in cases where they consider that there would be sufficient evidence to prosecute. The effect of the guidance³ which the DPP has issued pursuant to section 37A of the Police and Criminal Evidence Act 1984 is that it is for the CPS to decide whether or not a suspect should be charged and to determine which charge should be brought, although the police retain the discretion to charge in minor, routine cases.

2.4 But the police have no such discretion in respect of Conditional Cautions, which may be given only where the prosecutor considers that it is appropriate to do so, even in cases where it would have been open to the police to charge without reference. It follows that, where it appears to the police that the statutory requirements are met and that a Conditional Caution might be appropriate, it is for the prosecutor to decide that a Conditional Caution is the right disposal and what condition(s) would be suitable. It is also open to the prosecutor to take the view that a Conditional Caution is an appropriate disposal without this having been suggested by the police.

2.5 The necessary consultation should be carried out as quickly as possible, either face-to-face with a Crown Prosecutor located in the police station, by telephone, or using any arrangements whereby advice may be sought out of hours. It is acknowledged that Restorative Justice (RJ) processes will involve consultation with the parties at the outset. This process should be carefully managed to balance the

¹ at the time of disposal. For offenders under 18, simple cautions were replaced with reprimands and final warnings under section 65 of the Crime and Disorder Act 1998; for further details, see *Final Warning Scheme: Guidance for the Police and Youth Offending Teams* (Home Office, November 2002, available at www.homeoffice.gov.uk).

² Note that the person to whom the admissions are made may be a police officer but the decision as to sufficiency of evidence must be taken by a prosecutor

³ *Guidance to Police Officers and Crown Prosecutors in respect of the making of charging decisions.*

benefits of using restorative methods against the desirability of early disposal. Where, exceptionally, the necessary reference to the CPS cannot be done on the spot, the suspect should be bailed under s37(7)(a) of the Police and Criminal Evidence Act 1984 for a sufficient period to enable the CPS to decide whether prosecution or a Conditional Caution would be appropriate.

2.6 Where, in RJ cases, the decision of the CPS is that a caution would be appropriate if acceptable conditions can be agreed upon through RJ processes, the suspect should be bailed under s37(7)(a) for a period that will allow those processes to take place before the resulting conditions are approved by the prosecutor and the offer of a caution made to the offender.

2.7 Where several related or similar offences are admitted they may be grouped and dealt with by a single Conditional Caution; breach of any of the conditions would make the offender liable for prosecution for all of the offences.

2.8 A Conditional Caution is a statutory disposal and may be cited in any subsequent court proceedings.

DECIDING WHEN A CONDITIONAL CAUTION MAY BE APPROPRIATE

3.1 Guidance about existing cautions advises the police that, in considering whether an offender should be charged or cautioned, they should have regard to the seriousness of the offence and to the offender's criminal record. The same considerations will apply to Conditional Cautions, and authorised persons as well as relevant prosecutors should apply the principles of the Code for Crown Prosecutors and take into consideration the latest Home Office Circular in relation to cautions, when deciding whether an offence may be suitable for a Conditional Caution. Careful account should be taken of any current guidance in relation to domestic violence and hate crime including homophobic crime and crime involving a racist element.

3.2 Conditions attached to cautions must either facilitate the rehabilitation of the offender or ensure that the offender makes reparation for the offence, or both. Where the circumstances of a particular case or offender readily suggest conditions of this type, and where such conditions will provide a proportionate response to the offence bearing in mind the public interest, a Conditional Caution will usually be appropriate. It must be remembered that the offender must consent to the conditions as a prerequisite to imposing them⁴.

3.3 It is not intended to establish a progression so that a Conditional Caution is regarded as the logical next step for an offender who has received a simple caution. Indeed a person who has recently been cautioned⁵ for a similar offence should not be given a Conditional Caution, unless exceptionally it is believed that the condition might be effective in breaking the pattern of offending. Previous cautions (or indeed convictions) for quite dissimilar offences may be disregarded, however, as may cautions or convictions more than 5 years old, although failure to complete a previous Conditional Caution would normally rule out the issue of another.

THE REQUIREMENTS SET OUT IN THE ACT

⁴ Where the proposed conditions would involve a restorative justice mediation process, this might affect the time of administering a conditional caution; see related guidance on the use of restorative justice.

⁵ or given a reprimand or Final Warning

4.1 The following requirements must be complied with:

The authorised person has evidence that the offender has committed an offence.

This will be the evidence on the basis of which the suspect would otherwise fall to be charged, which must include an admission made under caution in interview and any witness statements. In order to avoid any suggestion that an admission has been obtained by offering an inducement, the prospect of a Conditional Caution should on no account be mentioned until the suspect has made a clear and reliable admission under a cautioned interview to all the elements of the offence.

- (i) **The relevant prosecutor decides -**
(a) that there is sufficient evidence to charge the offender with the offence, and
(b) that a Conditional Caution should be given to the offender in respect of that offence.

The relevant prosecutor will apply the evidential test in the usual way according to the Code for Crown Prosecutors – ie that there would be a realistic prospect of conviction if the offender were to be prosecuted. The prosecutor must also conclude that the public interest would be served by the offender receiving a Conditional Caution, if he accepts it and subject to his performing the agreed conditions. In addition, since the fall-back is that the offender will be prosecuted if he either does not accept or fails to perform the conditions, the prosecutor must be satisfied that prosecution would be in the public interest in those contingencies.

- (ii) **The offender admits to the authorised person that he committed the offence.**

In addition to the admission made in interview (see (i) above), it is necessary that at the time the Conditional Caution is administered the offender admits to the authorised person that he committed the offence. Offenders should be advised at that point of their right to seek legal advice⁶ to ensure they give informed consent to accepting both the caution and the conditions, whether or not they have availed themselves of that right at an earlier stage.

- (iii) **The authorised person explains the effect of the Conditional Caution to the offender and warns him that failure to comply with any of the conditions attached to the caution is likely to result in the offender being prosecuted for the original offence.**

The implications of the caution should be explained, including that there are circumstances in which it may be disclosed (such as to certain potential employers, and to a court in any future criminal proceedings) and, where the offence is listed in Schedule 1 to the Sex Offenders Act 1997, that accepting a caution will result in the offender being required to notify the police of their name and address and certain other details.

There should not be any bargaining with the offender over the conditions: if he does not accept them in full, he should be prosecuted.

⁶ Advice is available either from a Duty Solicitor or own solicitor free of charge, although in some circumstances this may be limited to telephone advice only.

It should be made clear in explaining the consequences of non-compliance that the conditions are to be performed within the agreed time. It must be explained clearly that failure to comply will prompt a reconsideration of the case and usually result in the offender being prosecuted for the original offence.

- (iv) **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 Conditional Caution,**
 - (d) **an agreement to comply with the conditions attached to the caution, which must be set out on the face of the document, and**
 - (e) **an explanation of the implications referred to in (iv) above.**

After the offender has admitted to the offence and, having heard the explanation referred to above, has agreed to the conditions, he must sign a pro-forma to this effect. A standard form is available and must be used by all forces. This document will contain details of the offence, the offender's admission, and the conditions and timescale for completing them to which he has agreed. It must be explained to the offender before the form is signed that it will be admissible as evidence in court if the offender is subsequently prosecuted for the original offence in the event of non-compliance.

TYPES OF CONDITION

5.1 Conditions attached to a caution must be -

- *Proportionate* to the offence. The offender is unlikely to agree to a condition that is more onerous than the sentence that would probably be imposed if the case were taken to court. On the other hand, conditions that amount to far less than the punishment that would be probably be given by a court are unlikely to satisfy the public interest or engender confidence in the criminal justice system.
- *Achievable*: the conditions must be clearly defined in terms of what must be done and within what period of time. Conditions must be realistic and should take account of the particular offender's circumstances, including physical and mental capacity, so that he could reasonably be expected to achieve them within the time set; otherwise the only result will be a delayed prosecution.
- *Appropriate*: the conditions should be relevant to the offence or the offender⁷ or both.

5.2 The Act requires that conditions should fall into one or both of two categories: rehabilitation and reparation.

- **Rehabilitation**: this might include taking part in treatment for drug or alcohol dependency (e.g. attendance at self-help groups provided it can be verified, or on a drug awareness and education programme including assessment of personal needs and appropriate onward referral), anger management courses, or driving rectification classes and the like, or involvement in a restorative justice process (which may lead to reparation). The offender would be expected to pay reasonable costs, if there are any, and a requirement to do so should be one of the conditions. Where the offender cannot afford to pay and this rules out a particular condition, every effort should be made to identify an alternative. The

⁷ The conditions must not require the offender to do anything unlawful (eg contrary to a court injunction).

fact that provision of some sorts of course may be subject to resource implications (and possibly a waiting list) will need to be taken into account, bearing in mind that completion of any conditions should be swift and achievable within a reasonable time (see section 6 below).

- **Reparation:** this might include repairing or otherwise making good any damage caused to property (e.g. by cleaning graffiti), restoring stolen goods, paying modest financial compensation, or in some cases a simple apology to the victim. Compensation may be paid to an individual or to the community in the form of an appropriate charity.

5.3 Offenders should be required as standard to comply with a condition not to commit further offences⁸ until the conditions have been performed.

5.4 Specific conditions such as that the offender should avoid a particular street or public house may be included, but consideration should also be given as to whether alternatives such as Anti-Social Behaviour Orders or Restriction Orders etc would be more appropriate or timely.

5.5 The police, CPS and National Probation Service (NPS) should take steps at local level (e.g. through the Local Criminal Justice Board or Crime & Disorder Reduction Partnership) to identify agencies, groups or organizations, voluntary or statutory, which provide courses or other activities that might form part of a Conditional Caution, and which it may be appropriate to consult when deciding whether a case is suitable for a Conditional Caution. The NPS could be approached in appropriate cases to assist in determining whether certain offenders are suitable for a Conditional Caution, for example where there are concerns about the health, behaviour or background of the offender.

5.6 When conditions are imposed that require the performance of some task other than the simple payment of compensation or the attendance on a course supervised by an organization responsible for monitoring attendance, careful thought should be given to how performance will be measured and who will be the appropriate person to give assurances that the condition has been completed. This should be documented as part of the description of the condition, in order that the relevant prosecutor and the offender are in no doubt as to the conditions and the measurement of performance. (See also section 10.1.)

⁸ Where further offending is alleged, it will be for the CPS to decide whether it is such as to require the conditional caution to be cancelled and the original offence prosecuted.

TIME LIMITS

6.1 The deadline for the completion of conditions should not be too long. This is particularly important in relation to summary offences, for most of which there is a time limit of six months within which a prosecution must commence; for these offences the deadline set should leave enough time for a prosecution to proceed in the event of non-compliance.

6.2 Where the condition is for an offender to go on a course of treatment for behaviour/ substance abuse, which may take longer than six months to deliver, the relevant prosecutor will need to consider whether this is appropriate, depending on the attitude of the offender and the likelihood of compliance. There is no reason why undertaking a course of longer duration should not be a condition, provided that (to satisfy the reasonableness test) the offender is only required under the terms of the Conditional Caution to attend for part of it. For example, a course may last 12 months to achieve best results. In such a case, the offender might agree, under the conditions of his caution, to attend for 4 months, and thereafter it will be up to him to continue the treatment for his own benefit, rather than under any legal compulsion.

INVOLVEMENT OF VICTIMS

7.1 In the course of interviewing the victim about the offence, it would be important to ascertain whether any resulting loss, damage or injury is such that it could readily be made good; what the victim's attitude would be towards an offer of reparation from the offender, should one be made; and whether they would be content for such reparation to be made the condition of a caution. Where a caution (simple or conditional) is at that stage regarded as a possibility, the fact may be mentioned to the victim in order to ascertain their views, but it is vital not to give the impression that the victim's views (if any) will be conclusive as to the outcome, which (it should be explained) is at the discretion of the CPS. In some circumstances the relevant prosecutor may consider that in order to be proportionate to the level of the offence, conditions should be more or less onerous than those the victim would accept, in which case the prosecutor should consider whether some explanation to this effect will be helpful to the victim or to the offender.

7.2 The Victim Personal Statement (VPS) scheme provides victims with the opportunity to describe the effects of the crime and to have these effects taken into account as the case progresses through the criminal justice system. If it is subsequently proposed to approach the victim for an interview specifically about Conditional Cautioning, the contents of the VPS (if he or she has made one) should be considered beforehand, but it should not be considered sufficient, on its own, to inform a decision to pursue a restorative justice route.

7.3 Further information and guidance on the victim personal statement scheme can be found on the Home Office website at:

<http://www.homeoffice.gov.uk/justice/victims/personal/index.html>

RESTORATIVE JUSTICE

8.1 Restorative justice processes bring victims and offenders, and sometimes community members, into contact, either face to face or indirectly, to focus on the impact of a particular crime, and together to agree what can be done to repair the harm caused by that crime. Such processes must always be voluntary for both the victim and the offender. Any person delivering a restorative process, including preparatory work with victims and offenders, must be trained in restorative justice

and must meet the required standards. See guidance on this at www.homeoffice.gov.uk/justice/victims/restorative/index.html

8.2 Restorative justice processes can be used as a condition of the caution (where the contact with the victim, direct or indirect, is itself the condition) if both victim and offender consent to this. Alternatively, they can be used as the decision-making process whereby conditions, such as compensation, rehabilitative activities, or other kinds of reparation, are agreed. It should be noted that in this second case, the 'outcome agreement' arising from the process forms a basis for conditions to be approved or formulated by the prosecutor. Notwithstanding the outcome agreement, the prosecutor retains a duty to ensure that the conditions are proportionate to the offending and meet the public interest requirements of the case. Taking account of the views of the victim, and any other conditions attached to the caution, the CPS/police will need to take a view as to which use of restorative justice is appropriate in a particular case.

8.3 It is desirable that, where RJ-trained personnel are available and a case with a personal victim is being considered for a Conditional Caution, the victim should be contacted (unless there are exceptional reasons not to do so) to ask for their views on reparation as a condition of the caution, or (if the offender has already indicated they are willing) whether they would like to be involved in a direct or indirect restorative justice process. Restorative justice processes may also be appropriate for crimes with a corporate victim, or crimes where the community as a whole has suffered. In these cases, or in cases where a personal victim has chosen to have no involvement, it may still be desirable to deliver the caution (and decide any conditions) in a restorative manner.

PLACES WHERE CAUTIONS MAY BE GIVEN

9.1 Conditional Cautions will usually be given at the local police station, but there is the option of selecting a location appropriate to the offence; e.g. there may be value in giving it at the place where vandalism has occurred. It will be for the authorised person to determine the venue for administering the caution. However, it is not suitable for Conditional Cautions to be delivered on the street, or in the offender's home.

MONITORING AND COMPLIANCE

10.1 It is essential that there should be robust monitoring of compliance with the conditions of a caution. The onus is on the offender to show that the conditions have been met, and the conditions should be expressed in a way that makes clear to the offender what is to be done, by when, and what will be acceptable as evidence that it has been done. For example, an offender who agrees to attend a course might be required to produce a letter from the organiser confirming that he has done so. Depending on the nature of the condition, it may be appropriate for other agencies⁹ managing the Conditional Caution to monitor performance and report to the relevant prosecutor any failure fully to comply. At the end of the process the offender will sign a form that will include a declaration that the conditions have been met.

⁹ Monitoring may be carried out by any appropriate agency nominated by the authorised person. This might include the use of Community Support Officers or Neighbourhood Wardens, where available, who could check on the completion of a condition which includes public work in the community.

10.2 Failure to comply with any one of the conditions means that the offender may be prosecuted for the original offence. The offender will be required as a standard condition to report any failure to comply and explain whether there are circumstances that might amount to a reasonable excuse. Where the offender fails to report and give reasons, a prosecution may (following a prompt CPS review) be commenced, usually by the issue of a summons.

10.3 Whether any excuse given is reasonable or not is a matter for the relevant prosecutor to determine on all the available evidence. Such a decision may be reviewable by a court. The decision and reasons for it should be carefully recorded. Where the CPS are satisfied that there is a reasonable excuse for the offender's failure to meet the conditions, they will have to decide whether the case should be regarded as closed, or whether it would be appropriate to set a new time limit for completing conditions or (exceptionally) to revise the conditions, although they should not be made more onerous. Where this is done, the revisions should be recorded and the offender must sign the revised Conditional Caution form acquiescing in the changes. A refusal by the offender to agree to revised conditions will usually result in prosecution for the original offence. It will not usually be appropriate to revise conditions more than once.

10.4 Where conditions have been partially completed, it is for the prosecutor to decide whether the offender should be prosecuted, or whether the extent of the part-compliance is sufficient to regard the Conditional Caution as having been fulfilled (in which case it would remain on the record).

10.5 In general, however, failure to complete the conditions without reasonable excuse will lead to the offender being prosecuted for the original offence. The CPS will inform the police of the decision. The charge may be brought at the police station (if the offender attends voluntarily – there is no power of arrest), or more usually by way of summons (or, when the relevant provision of the Criminal Justice Act 2003 has been implemented, in accordance with the 'charge by post' procedure, which may be used by the CPS as well as by the police). Where it is believed that the service of a summons or charge by post will be ineffective, eg because the offender's whereabouts are no longer known, an application for a warrant at first instance should be made to the magistrates' court. At the same time the Conditional Caution should be formally terminated, the offender so informed, and relevant police records (PNC and any locally stored) amended accordingly. Court proceedings will then go ahead in the usual way.

10.6 Whenever proceedings are instituted, the Conditional Caution ceases to have effect.

10.7 Personal victims, unless they have expressed a contrary wish, should be informed when a Conditional Caution has been completed or, where it is not completed, about the outcome of subsequent court proceedings.

RECORDING CONDITIONAL CAUTIONS

11.1 Pending modifications to the Police National Computer, Conditional Cautions should be recorded in accordance with directions from the Home Secretary.

ENQUIRIES

Enquiries about this guidance should be addressed to:

The Office for Criminal Justice Reform
Portland House
London SW1E 5RS
020 8282 6322

CRIMINAL JUSTICE ACT 2003
Part 3
CONDITIONAL CAUTIONS
SECTION 22 TO 27

22 Conditional Cautions

- (1) An authorised person may give a Conditional Caution to a person aged 18 or over (“the offender”) if each of the five requirements in section 23 is satisfied.
- (2) In this Part “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 either or both of the following objects—
- (a) facilitating the rehabilitation of the offender,
 - (b) ensuring that he makes reparation for the offence.
- (4) In this Part “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.

23 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 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 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) 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 Conditional Caution, and
 - (d) the conditions attached to the caution.

24 Failure to comply with conditions

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the Conditional Caution, criminal proceedings may be instituted against the person for the offence in question.
- (2) The document mentioned in section 23(5) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the Conditional Caution is to cease to have effect.

25 Code of practice

- (1) The Secretary of State must prepare a code of practice in relation to Conditional Cautions.
- (2) The code may, in particular, include provision as to—
 - (a) the circumstances in which 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 22,
 - (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, and
 - (h) the monitoring of compliance with conditions attached to such cautions.
- (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 apply to an original code.

26 Assistance of National Probation Service

- (1) Section 1 of the Criminal Justice and Court Services Act 2000 (purposes of Chapter 1) is amended as follows.
- (2) After subsection (1) there is inserted—

“(1A) This Chapter also has effect for the purposes of providing for—

 - (a) authorised persons to be given assistance in determining whether Conditional Cautions should be given and which conditions to attach to Conditional Cautions, and
 - (b) the supervision and rehabilitation of persons to whom Conditional Cautions are given.”
- (3) After subsection (3) there is inserted—

“(4) In this section “authorised person” and “Conditional Caution” have the same meaning as in Part 3 of the Criminal Justice Act 2003.”

27 Interpretation of Part 3

In this Part—

- “authorised person” has the meaning given by section 22(4),
“Conditional Caution” has the meaning given by section 22(2),
“investigating officer” means a person designated as an investigating officer under section 38 of the Police Reform Act 2002,
“the offender” has the meaning given by section 22(1),
“relevant prosecutor” means—
- (a) the Attorney General,
 - (b) the Director of the Serious Fraud Office,

- (c) the Director of Public Prosecutions,
- (d) a Secretary of State,
- (e) the Commissioners of Inland Revenue,
- (f) the Commissioners of Customs and Excise, or
- (g) a person who is specified in an order made by the Secretary of State as being a relevant prosecutor for the purposes of this Part.

RESTORATIVE JUSTICE CONDITIONAL CAUTIONS

1. WHAT IS RESTORATIVE JUSTICE?

1.1 Restorative justice processes bring victims and offenders into contact so that victims can describe the impact of the crime on them, have their questions answered, and receive an apology, and so that offenders can understand and make good the harm caused by their crime. Community members are often also involved in restorative processes – for example, in cases where the community rather than a particular individual suffers as a result of crime, or as supporters of the victim or offender. Restorative justice helps meet victims needs, confronts offenders with the effects of their actions and can help to engage the community and build confidence in the criminal justice system.

1.2 Restorative processes can be either direct (face to face) or indirect (where the participants communicate either via the practitioner, or through letters for example). All restorative processes work towards an outcome agreement detailing how the offender will make some amends for the crime.

1.3 Restorative Conditional Cautioning needs to be seen in context as part of the wider programme of criminal justice reform, including the Government's restorative justice strategy; the community engagement strand of the police reform agenda¹⁰; the confidence and justice gap targets; and the national Victims and Witnesses Strategy¹¹

1.4 In particular, the Government's restorative justice strategy sets out the benefits restorative justice has to offer, some case studies, and the existing research and evidence base for the strategy¹².

THE EVIDENCE SUPPORTING THE USE OF RESTORATIVE JUSTICE

2.1 Research shows that restorative justice processes meet the needs of the great majority of victims who choose to take part. In recent studies over 75% of victims who took part in restorative justice said that they were glad to have done so. Practitioners report that restorative processes help to reduce victims' fear of crime and reprisal and that it can help them to overcome the trauma of the crime.

2.2 Research also suggests that for some offenders, or some types of crime, restorative processes can help to reduce reoffending. This is why the Government's strategic aim is to maximise the use of restorative justice where we know it works well, to meet the victims' needs and reduce re-offending.

RESTORATIVE JUSTICE AND CONDITIONAL CAUTIONING

¹⁰ <http://www.policereform.gov.uk/consultation>

¹¹ <http://www.homeoffice.gov.uk/justice/victims/index.html> .

¹² The strategy document (published July 2003) is available at <http://www.homeoffice.gov.uk/docs2/restorativestrategy.pdf>; and updated version of the strategy (April/May 2004) is included in the summary of responses <http://www.homeoffice.gov.uk/docs3/bestpracticeforrestorativepractitioners.pdf>

3.1 Restorative processes can be used in conjunction with Conditional Cautioning as a condition of the caution or as the means by which the conditions are agreed. However Conditional Cautions do not have to be administered restoratively and restorative justice can similarly take place at other points in the criminal justice process.

IMPLEMENTATION OF A RESTORATIVE JUSTICE APPROACH WITH CONDITIONAL CAUTIONING.

4.1 There is strong evidence that restorative justice can produce clear benefits, especially for victims, when well delivered. At the same time, the sensitivity of bringing victims and offenders into contact means that poor practice presents significant, though manageable, risks. Successful delivery of restorative justice requires commitment and oversight from senior managers to ensure the benefits are realised and the risks managed. It is crucial that Forces introducing restorative approaches do so as part of a clear and comprehensive strategy, and ensure that adequate resources are dedicated to it. Experience has shown that they will need to consider carefully all of the following areas.

Aims and targets

4.2 To make the culture change a reality, clear aims for taking up restorative justice (linked into the wider aims and objectives of the organization) and perhaps targets for its use in particular areas or types of case (Conditional Cautions) need to be in place.

Training, supervision and quality assurance

4.3 The Conditional Cautioning Code of Practice makes clear that anyone facilitating restorative processes must be appropriately trained. ACPO, along with a wide range of statutory and voluntary sector partners, has helped produce and has endorsed Home Office *Best Practice guidance for restorative practitioners*¹³. Any training commissioned to enable areas to deliver Conditional Cautioning restoratively should equip anyone involved in delivering restorative processes with the skills outlined in the Best Practice Guidance. The material in the Best Practice Guidance will form the basis of new national occupational standards and accredited awards for restorative practice, available from late 2005.

4.4 There will also need to be training available for anyone more tangentially involved in the process, for example, CPS colleagues, to ensure they understand the restorative ethos, and awareness raising in the force as a whole.

4.5 Restorative practitioners also need ongoing supervision of and support for their restorative practice. If support and supervision of restorative practice takes place outside the normal line management structure, clear reporting lines and accountability need to be established. The police force (or partnering voluntary organisation) should also develop some form of independent quality assurance of restorative practice.

Partnership with voluntary and statutory organisations

4.6 Conditional Cautions can be delivered using restorative justice through more formal partnerships with voluntary sector providers.

¹³ This is available at <http://www.homeoffice.gov.uk/justice/victims/restorative/training.html>

4.7 Voluntary sector providers, if available locally, could be contracted by police forces to provide restorative justice facilitators¹⁴. Such contracting out arrangements are common in the Youth Justice Sector, where some YOTs have chosen to contract out responsibility for restorative justice processes, rather than to develop the expertise in-house¹⁵. Community-based or voluntary providers may be seen to be more appropriate to the ethos of restorative justice.

4.8 It is also possible under the terms of the Code for a Force to contract out Conditional Cautioning 'wholesale' to a voluntary sector provider. This would involve naming appropriate facilitators or managers within the voluntary agency as authorised persons within the terms of paragraphs 1.4 and 1.5 of the Code. The authorised persons would then co-ordinate the process on behalf of the Police and this would reduce the need for operational officers being involved in work that could be carried out by outside agencies.

4.9 Similarly, Forces could contract with voluntary sector organisations to provide and supervise reparative work by offenders in the community.

4.10 Forces will of course retain ultimate responsibility for Conditional Cautioning, and will need to ensure that any voluntary agency staff or other community members used in this way are properly trained, supported and supervised.

4.11 It could be beneficial for Forces to explore the potential for partnership with other CJS providers, including the local probation area and youth offending team, if they have staff trained as restorative justice practitioners. For example, CJS agencies could develop a co-ordinated service for all CJS partners in an area.

4.12 The National Criminal Justice Board will publish Restorative Justice Implementation Guidance for Local Criminal Justice Boards early in 2005 covering many of these issues in more detail.

CORE PRINCIPLES AND THEIR IMPLICATIONS FOR PRACTICE

Involvement of Victims

5.1 Restorative processes are about victims, offenders and community members finding ways to repair the harm caused by crime. As such, restorative processes are innately victim focussed, and should not be used solely to benefit or impact upon the offender. Forces must ensure that where restorative Conditional Cautioning is available it is offered systematically and impartially to all victims where offenders are eligible, not on an ad-hoc basis.

5.2 It is vital that victims understand that it is not they who will decide whether or not the offender is to be prosecuted. If the victim is not interested in participating in restorative Conditional Cautioning, Crown Prosecutors must consider whether the offender should be given other conditions.

5.3 Where the victim does not want to participate in any direct or indirect process, and no community member is available or appropriate, officers may still wish to use a restorative approach to delivering the Conditional Caution, by encouraging the

¹⁴ Such providers should be able to demonstrate that their facilitators practice according to the *Best practice guidance for restorative practitioners*

¹⁵ The Youth Justice Board's *Restorative Justice Reader* (2003) sets out some points in favour of outsourcing or keeping in-house RJ provision, that would also be relevant factors for police forces.

offender to consider what harm their offence may have caused, and how best they might repair it, in a one to one discussion with the officer/facilitator.

Involvement of Offenders

6. Restorative processes must always be voluntary for offenders as well as victims, as forcing offenders to meet their victims has the potential to result in damaging effects on the victim.

Involvement of Community Members

7. Forces using restorative justice in conjunction with Conditional Cautioning should consult community groups to ascertain what role they might play or ideas they might bring to restorative processes. Individual members of the community can be involved in restorative Conditional Cautioning as supporters of the victim or offender; as victims of a crime that has affected the community as a whole; as members of a Community Justice Panel (as is being tested in Chard in Somerset); or as trained facilitators for the restorative process.

The role of the Crown Prosecutor

8.1 The Crown Prosecutor acts as a gatekeeper in determining whether cases are suitable for Conditional Caution and also in ensuring that the conditions are appropriate. Where a restorative approach is used to decide the conditions of the caution the prosecutor has the discretion to (i) set mandatory conditions, (ii) add conditions to those agreed during the restorative process or (ii) reject part or all of the measures agreed during the restorative process as conditions for the caution.

8.2 It is expected that prosecutors will only very rarely amend the proposed conditions, as this might otherwise undermine the basic tenet of restorative justice, which is empowering the victim, offender and community to decide an appropriate response to the crime. Proper preparation of all the parties involved, by helping them to consider at an early stage what might constitute appropriate reparation, will help to reduce the need for later amendment by the CPS.

Further guidance

9. Further detailed information on restorative justice and Conditional Cautioning can be found in the *RJ operational guidelines for Conditional Cautioning*, which can be found on the Home Office website at www.homeoffice.gov.uk/justice/victims/restorative.

THE DRUG RELATED REHABILITATIVE CONDITIONAL CAUTION

THE LINKS BETWEEN DRUG USE AND OFFENDING

- 1 Drug using offenders come into contact with the criminal justice system for drug related offences in three main ways:
 - Where the offending is a consequence of drug use (e.g. possession of an illegal drug)
 - Where drug use contributes to offending (e.g. committing offences while under the influence of drugs)
 - Where drug use is an underlying cause of offending (e.g. committing offences to finance drug purchases)

THE POLICY RESPONSE

2 Where offending is related to drug use, eliminating the offender's demand for drugs is likely to result in a reduction in offending rates. The Drugs Interventions Programme, formerly the Criminal Justice Interventions Programme is a critical part of the Government's strategy for tackling drugs. It is a three-year programme to develop and integrate a range of interventions at various points in the criminal justice system, to direct problematic adult drug-misusing offenders out of crime and into treatment. Conditional Cautioning provides the opportunity for early intervention to prevent the escalation of drug usage to such problematic levels. Conditional Cautioning supports this policy response for those drug-using offenders who are deemed suitable for a Conditional Caution, by offering the offender a rehabilitative condition.

THE DRUG RELATED REHABILITATIVE CONDITIONAL CAUTION

3.1 For those offenders whom the police and CPS deem suitable for such a Conditional Caution, the condition attached will require the offender to attend a Drugs Assessment, Awareness and Referral Programme, (referred to henceforth as the Programme).

3.2 The Programme is compatible with the NHS National Treatment Agency for Substance Misuse, *Models of care* national framework definition of a tier 2 treatment intervention.

3.3 It is recommended that the Programme comprises the following:

Session 1 - an individual initial assessment of needs with a suitably skilled drugs worker (competent in conducting a *Models of care* tier 2 triage assessment).

Session 2 - an information and education presentation on drugs and drug related issues, with discussion, facilitated by a drugs worker.

Session 3 - an individual post-course review with a drugs worker to discuss particular issues raised in Session 2 and, if appropriate, to develop a care plan with the

offender which could include referral to specialist drug treatment, and/or other helping agencies. Taking up any onward referral will be voluntary and will not form part of the condition.

WHY TAKING UP THE REFERRAL TO SPECIALIST DRUG TREATMENT IS VOLUNTARY

4 The option for the condition to require the offender to engage with specialist drug treatment, if so referred from the Programme, was rejected on the grounds that:

- Such a condition would be disproportionate. It would coerce the offender into treatment, which can only currently occur via a Magistrates or Crown Court sentence disposal of a Drug Treatment and Testing Order (DTTO).
- Those currently selected for a DTTO are highly problematic drug misusers who are often also prolific and persistent offenders. The Conditional Caution will be appropriate for lower level offending and drug use and the penalty should be in line with this.
- Such an option would also extend and make widely variable the time-scale to be allowed for completion of the condition because of waiting times for entry into specialist drug treatment and the time required to complete treatment. (Conditional Cautions must be capable of completion within a maximum of six months of the original offence (if it is a summary offence), to enable prosecution for the original offence in the event of a breach.)
- Most offenders appropriate for the recommended Programme will not require specialist drug treatment, because of their comparatively low level of drug use. A condition that required them to enter treatment with a drugs agency, if so referred, may be counter-productive, by deterring some from accepting the caution.

Key Points

- The condition of offenders attending a Programme, combining drug awareness with an initial assessment and follow up review and appropriate referral, would be proportionate, achievable and appropriate for drug users committing relatively low gravity offences.

TARGET GROUPS FOR THE DRUG-RELATED REHABILITATIVE CONDITIONAL CAUTION

5.1 Four potential target groups who may be suitable for this type of Conditional Caution have been identified. They represent offenders at different stages of their drug using and offending careers. They are:

- Individuals whose drug use is recreational
- Individuals whose drug use is becoming problematic
- Individuals who are committing offences and using drugs but whose offending is not caused by drug use
- Individuals who have begun to offend in order to finance their drug misuse

Target group 1: Adult recreational drug users

Description

5.2 This prime target group comprises those (mainly younger) adults whose drug use is recreational and non-problematic i.e. not causing any real problems to themselves or others at this stage. These young adults will, in the main, be in employment or education, be otherwise law abiding, and will not have previously come to the attention of the police. They are likely to have been arrested for the first time for possession of an illegal drug. They will not perceive their drug use as problematic. They should **only** be considered for a Conditional Caution if local CPS policy deems them suitable for prosecution.

Aim

5.3 Given that the majority of this target group are law abiding, apart from their drug use, the Programme intervention will not have a significant crime reduction impact. Rather it will contribute to preventing their progression towards a problematic drug career and related offending. These offenders are least likely to require referral to specialist drug treatment agencies or other helping agencies.

Outcome

5.4 Likely outcomes might include:

- a reduction in the quantity of, or range of drugs being consumed ; or
- the cessation of all illegal drug use sooner than would otherwise have occurred;
or
- the prevention of an escalation of usage, which for some vulnerable individuals would have become problematic to both themselves and the community around them.

Target group 2 - Adults whose drug use is becoming problematic

Description

5.5 This group will include those whose drug misuse is causing physical, psychological, social or legal problems for themselves and may be affecting others. They may have come to the attention of the police before, possibly for an issue directly related to drug misuse. They may or may not perceive their drug misuse as problematic.

They are likely to have been arrested for possession or a minor offence to which their drug misuse contributed.

Aim

5.6 The intervention is unlikely to significantly reduce levels of offending, as this group are not persistent offenders. The prime aim will be to reduce drug use or, at a minimum, prevent further escalation of problematic use and offending and any further contact with the criminal justice system. It is probable that in addition to the Programme, some of these offenders will also benefit from referral to a specialist

drug treatment agency to reduce their drug usage and other support agencies to address related problems.

Outcome

5.7 Likely outcomes might include:

- a reduction in the quantity of, or range of drugs being consumed e.g. cessation of using Class A drugs whilst possibly continuing to use cannabis; or
- the cessation of all illegal drug use sooner than would otherwise have occurred; or
- the cessation of escalation of usage, which would probably have become increasingly problematic to both themselves and the community around them.

Both of the above target groups are likely to be using legitimate income to fund their drug usage.

Target group 3 - Adults who are committing offences and using drugs

Description

5.8 These will be low-level offenders whose lifestyle includes the use and misuse of drugs. They will have been arrested for a comparatively minor offence, possibly including possession, and in the course of the investigative interview suspicions may be raised or confirmed that they use/misuse drugs. They will not be offending to finance their drug use. A Conditional Caution may be used to encourage them to address their drug usage. They may or may not perceive their drug usage as problematic. Some of these offenders will benefit from referral to specialist Tier 3 drug treatment agencies and other helping agencies.

Aim

5.9 The aim of the Conditional Caution will be to reduce drug usage, so reducing the risk of escalation and preventing some offending behaviour.

Outcome

5.10 Likely outcomes might include:

- a reduction in the quantity of, or range of drugs being consumed e.g. cessation of using Class A drugs whilst possibly continuing to use cannabis; or
- the cessation of all illegal drug use sooner than would otherwise have occurred;
- some reduction in offending.

Target group 4 - Adults who have begun offending in order to fund their drug misuse

Description

5.11 These are adults whose drug use is becoming problematic and who are beginning to commit acquisitive offences to fund their drug use. There is a causal link between their offending and their drug misuse. They will probably have come to the attention of the police before for either drugs or acquisitive crime offences or a

combination of both and, in the absence of the Conditional Cautioning disposal, would probably have been charged rather than cautioned.

It is very likely that, in addition to the Programme, these offenders will require referral to specialist drug treatment and other support. Complying with the referral recommendation will not form a part of the Conditional Caution (as explained in paragraph 4.1 above).

Aim

5.12 There may be instances where a Conditional Caution would be appropriate for this group e.g. this is the first time they have come to the attention of the police or they perceive their lifestyle as problematic and appear to genuinely want to change their drug misusing and acquisitive criminal lifestyle. To be considered for a Conditional Caution, given their previous record, the current offence would need to be relatively minor.

Conditional Cautioning is likely to be appropriate for only a minority of these offenders. The aim would be to reduce crime by tackling problem drug misuse.

Outcome

5.13 Likely outcomes might include:

- significant crime reduction given their probable frequent acquisitive offending behaviour; and
- a reduction in the quantity of, or range of drugs being consumed; e.g. cessation of using Class A drugs whilst possibly continuing to use cannabis; or
- the cessation of all illegal drug use sooner than would otherwise have occurred.

DELIVERING A PROGRAMME APPROPRIATE TO A BROAD RANGE OF OFFENDERS

Differences and similarities in the four target groups

6.1 The four main target groups, previously identified in paragraph 5.1, may be divided into two broader sets for the purposes of Programme delivery.

Set A: Offenders who are drug users but do not tend to commit other crimes, namely:

- target group 1 - recreational drug users
- plus target group 2 - those whose drug use is becoming problematic.

Set B: Offenders who are drug users and do commit other crimes, namely:

- target group 3 - those who commit various crimes and may be using or misusing drugs
- plus target group 4 - those who offend in order to fund their drug misuse.

6.2 Research findings indicate that set A offenders do not respond as well to drug awareness programmes if they attend with set B offenders. The two sets also have differing needs and the Programme should, therefore, separate the two sets for the education / awareness session.

The content of the Programme.

7. 1 The minimum recommended content for the Programme is described below:

Session One (applies to both Set A and B)

The offender meets the facilitator (drugs worker) in a 1:1 session at which:

- the purpose of the Programme is explained to him;
- an initial assessment is undertaken to identify the offender's needs and to decide their allocation to either Set A or B for Session Two.

Session Two

The offender attends a facilitated information and education session. This is likely to take around 3 hours and will usually be conducted through group work discussion.

- Set A: Will benefit from information and education about the legal penalties, the physical and psychological health impairments, and other negative social consequences of drug use, plus harm minimisation advice. Emphasis should be on offenders making informed decisions about their drug use. The session should include information not only on the drugs they are using, but also the broad range of drugs that they might otherwise risk progressing to. This should assist a reduction in drug use and prevent escalation.
- Set B: Given that they are becoming, or already are problematic users, they may also benefit from information and education about the legal penalties, physical and psychological health impairments, and other negative social consequences of drug use, i.e. a similar approach as to set A. However there needs to be a greater emphasis on the class A drugs (especially heroin, cocaine and crack), which these offenders are considerably more likely to be using. Harm reduction information should also be delivered. Motivational interviewing techniques should be used to encourage offenders to recognise their situation and take appropriate action. This should be complemented by clear information about local helping agencies e.g. needle exchanges and other specialist drug treatment services. Emphasis should be on the offenders making informed decisions about their drug use.

There should usually be a gap of maybe two days between this and the third session, to allow time for individuals to reflect on and consider what they have learned and decided.

Session Three

The offender attends an individual advice session with the drugs worker to discuss any issues raised and further assistance that might be required. This follow-up advice session with individual offenders, should be used to:

- reinforce their positive intentions and behaviours;
- prompt action by the offender to change their behaviour;
- identify further needs and encourage offenders to accept referral to appropriate agencies.

Key points

- The four target groups vary in their levels of drug use/misuse, offending and needs.
- The content of the Programme must vary in order to respond to the drug and offending needs of the target groups.

DECIDING IF THE CONDITION HAS BEEN MET

8.1 The offender must attend each of the three sessions in order to comply with the condition.

8.2 During the evaluation of the early implementation sites, consideration will be given to the appropriate response should individuals prove disruptive, particularly in session two where such behaviour would be to the detriment of other participating offenders. It may be that, following reasonable warnings that such behaviour is unacceptable, the final recourse would be for the drug worker to tell the offender to leave the session and that this would constitute a breach of the condition. Until implementation demonstrates the extent of the potential for such disruptive behaviour, we are not stipulating what action should be taken by drug workers. They will be best placed to decide whether such behaviour makes the situation, for all parties, untenable and whether they should remove the offender from that session or not. Equally, they may determine whether this should render the Conditional Caution as having been breached, or whether they wish to give the offender a second chance to participate, perhaps following discussion with him/her outside the formal session. The national evaluation will assess whether clear rules are required for such situations.

PROGRAMME PROVIDER

9 The local police and Drug Action Team Joint Commissioning Group will commission an agency to deliver the Programme. The drug workers leading the Programme sessions will need to be competent in delivering National Treatment Agency for Substance Misuse framework *Models of care* tier 2 interventions.

