

Possible justice outcomes following investigation

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This section describes the tools and processes available to policing, and how we work with relevant partners or agencies. It sets out a range of disposals available to the police to deal with offenders and secure an effective justice outcome. These are designed to provide an alternative outcome to the formal justice system.

Further investigation

Sometimes it may not be possible to gather sufficient evidence to provide a realistic prospect of conviction (or to prove the charge) within the [custody time limits](#) without further investigation.

In these cases it may be necessary to remand the suspect in custody or to release them with or without bail, pending completion of the necessary enquiries. For further information, see the [authorised professional practice \(APP\) on Detention and custody](#). If this is necessary, further investigation should be carried out as quickly as possible to ensure that an appropriate outcome is achieved.

Restorative justice

This process can be used where both the victim and the offender agree to it. A restorative conference brings together both parties in a controlled environment, along with other relevant individuals, in a process which is facilitated by a trained police officer or trained volunteer.

The meeting holds the offender personally accountable to both the victim and local community for the harm they have caused, and allows them an opportunity to make amends. It empowers the victims and places them at the centre of the process.

Restorative justice gives the police and wider practitioners an opportunity to support and improve outcomes for victims of crime, reduce reoffending through helping offenders take ownership for their actions and to, potentially, divert offenders away from the criminal justice system.

For further information see:

- [Association of Chief Police Officers \(ACPO\) \(2012\) Guidance on the use of Community Resolutions \(CR\) Incorporating Restorative Justice \(RJ\)](#)
- [ACPO \(2011\) Restorative Justice Guidance and Minimum Standards](#)
- [Restorative Justice Council \(2016\) Restorative justice and policing – what you need to know](#)

Out-of-court disposals framework

Outcomes are presented in the framework provided by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#).

See also:

- [APP on the national decision model](#)
- [APP on Domestic abuse](#)
- Forthcoming [APP on Hate crime](#) and [Knife crime](#)
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Community resolution

Community resolutions, which can include elements of restorative justice, can be used for adults or youths and are a non-statutory disposal. They are a method of dealing with an offender for a lower-level crime, in a way which is proportionate. Resolutions can be offered when the offender accepts responsibility for offending behaviour and, in most cases, where the victim has agreed that they do not want more formal action taken.

By encouraging offenders to face up to the impact of their behaviour and to take responsibility for making good any harm caused, a community resolution can reduce the likelihood of their reoffending.

The most appropriate offences to warrant a community resolution are likely to be low-level criminal damage, low-value theft, minor assaults (without injury) and anti-social behaviour.

Resolutions can include the offender being given advice about their behaviour, apologising or sending a letter of apology to the victim, or making some form of reparation such as repairing or paying for any damage done.

For further information see [ACPO \(2012\) Guidance on the Use of Community Resolutions \(CR\) Incorporating Restorative Justice \(RJ\)](#).

Community resolution: operational considerations

These should be taken into account when police officers are deciding whether to administer a community resolution.

- Actual offence – based on the circumstances of the offence, it must be in the public interest to offer a community resolution.
- Evidential standard – it must be clear that a crime or incident has occurred, and there is reasonable suspicion that the offender is responsible.
- Admission of guilt – the offender must accept responsibility for the offence.
- Offender consent – the offender must agree to participate in community resolution and be capable of understanding the situation and process.
- Offender history – the offender should have no relevant offending history. If they have previously offended, the police officer should refer the decision to a supervisor and record the reasons for the decision.
- Victim check – the victim(s) should be consulted and agreement sought. A community resolution can proceed without victim consent but the supervisor must agree to the decision and the rationale should be recorded.
- Implications – a community resolution does not form part of a criminal record, but it may be disclosed in an enhanced Disclosure and Barring Service (DBS) check.

Community resolution: administrative considerations

A police officer should carry out the following actions once a community resolution is administered.

- Confirm that the offender accepts responsibility for the offence.
- Explain the process to the offender, including how the offender will rectify the harm caused.

- Explain to the offender the implications of receiving a community resolution.
- Ensure the community resolution is recorded appropriately. Where the offence relates to a notifiable crime, a crime report must be completed. The offence must be recorded and subsequently detected in accordance with the National Crime Recording Standard (NCRS) and Home Office Counting Rules (HOCR) for crime, and a positive outcome shown.

Cannabis warning

Cannabis is a controlled drug under Class B of the Misuse of Drugs Act 1971. Cannabis warnings are a non-statutory disposal introduced in 2004 and are part of a three-stage escalation procedure for a first-time offence of simple possession of cannabis. Providing there are no aggravating factors, an offender will receive a cannabis warning for a first possession offence, a [penalty notice for disorder \(PND\)](#) for a second offence, and be arrested for a third offence.

A cannabis warning applies to adults over the age of 18 years possessing cannabis for personal use only. The warning cannot be given to a person under 18 years of age. It is an informal, verbal warning given by a police officer to an offender, either on the street or in a police station. No more than one cannabis warning can be administered.

Note: cannabis warnings issued after 26 January 2009 must be taken into account when deciding a level of intervention. Those issued before this date should be considered as part of any previous offending history.

For further information see [Drugs penalties](#).

Cannabis warning: operational considerations

These should be taken into account when police officers are deciding whether to administer a cannabis warning.

- Actual offence – is the possession of a small amount of cannabis consistent with personal use?
- Evidential standard – the police officer must have reasonable suspicion that an offence of cannabis possession has been committed and there is sufficient evidence for a realistic prospect of conviction.
- Admission of guilt – the offender must make a clear and reliable admission to all elements of the offence.

- Offender consent – the offender is not required to explicitly consent to accepting the cannabis warning.
- Offender history – the offender must be aged 18 years or over, with no evidence of dealing or possession with intent to supply. The offender must not be smoking cannabis in the company or vicinity of young or vulnerable people. They should not have raised a defence to the offence, must be able to understand what is happening, be compliant with the warning procedure, possess a verifiable name and address and have no previous record of a cannabis warning, PND, or drugs convictions.
- Victim check – none.
- Implications – the cannabis is confiscated and a record of the cannabis warning is made on local systems. Cannabis warnings can be placed before the court for use as evidence of bad character and may also be disclosed as part of an enhanced DBS check, if deemed relevant.

Cannabis warning: administrative considerations

A police officer should carry out the following actions once a cannabis warning is given.

- Confirm that the offender admits the offence.
- Explain the process to the offender, highlighting that any further offending is likely to result in a **penalty notice for disorder** or arrest, as they cannot receive multiple cannabis warnings.
- Explain to the offender the implications of receiving a cannabis warning, ie, it does not form part of a criminal record but a record will be made on local systems.
- Ensure the cannabis warning is recorded appropriately. Unlawful possession of cannabis is a notifiable crime which must be recorded in accordance with the NCRS and HOCR for crime. The crime should be recorded as 'detected by way of cannabis warning', in accordance with local policy.

Penalty notice for disorder

A PND is a statutory disposal established by the Criminal Justice and Police Act 2001. It is a financial punishment (fine) to manage low-level, anti-social and nuisance offending and can be administered on the spot or in a police station. It targets adult offenders aged 18 and over.

PNDs can be issued for 29 specified penalty offences, including:

- being drunk and disorderly in a public place

- retail theft under £100
- behaviour likely to cause fear, alarm or distress
- criminal damage (up to a value of £300) and cannabis possession

A PND-E option is also available. This provides a person with the opportunity to discharge their liability to be convicted of a penalty offence by paying for and completing an educational course relating to the penalty offence. A person can, alternatively, opt to pay the penalty amount in full or request a court hearing as is the case with a 'standard' PND. The same rules that apply to a PND also apply to a PND-E once this option has been selected.

Two levels of PND fines can be administered (£90 or £60). A PND recipient has 21 days in which to either pay the penalty or request a court hearing.

- If the recipient pays the penalty within 21 days of receipt they discharge all liability for the offence.
- If the recipient requests a court hearing within 21 days the case will be reviewed by a crown prosecutor, who will apply the evidential and public interest test under the Code for Crown Prosecutors.
- The offender may opt to attend an educational course related to the penalty offence. The individual must either book themselves on a course or be contacted by a course provider within 21 days. They must pay for the course in advance or on the day, and complete the course in order to discharge their liability.
- If the course is not booked or completed within a locally agreed timescale, the fine is 150% of the original penalty offence and is enforced by the courts in the usual way.
- If the recipient fails to respond within 21 days, a fine of 150% of the original penalty value will be registered against them and enforced by the magistrates' court.

For further information see [Ministry of Justice \(2013\) Penalty Notices for Disorder \(PNDs\)](#).

Penalty notice for disorder: operational considerations

These should be taken into account when police officers are deciding whether to administer a PND.

- Actual offence – PNDs may be issued for 29 penalty offences only, where the offence is not too serious.
- Evidential standard – the officer must have reasonable suspicion that a penalty offence has been committed and that sufficient evidence can be obtained to support a successful prosecution.

- Admission of guilt – this is not required. Accepting a PND is not an admission of guilt.
- Offender consent – explicit consent is not required but a PND should be issued to, and received by, the offender.
- Educational course – checks should be carried out to determine whether the force area has opted to run a relevant course. It is not mandatory and the chief officer decides whether or not to provide such an option.
- Offender history – the offender must be aged 18 years or over, have a verifiable address, be able to understand what is happening, and be compliant. The offending history should be assessed and a PND considered an appropriate disposal.
- Victim check – views should be sought and recorded, as a PND disposal removes the possibility of the criminal court awarding a compensation order in favour of the victim.
- Implications – a crime record is created as a result of a PND.

Penalty notice for disorder: administrative considerations

A police officer should carry out the following actions once a PND is given.

- Explain the PND process to the offender, including how they should pay the penalty, request a court hearing or choose the educational option, as well as the consequences of not paying or requesting a court hearing.
- Explain the implications of receiving a PND to the offender.
 - It does not form part of a criminal record but a crime record will be created.
 - It will show as an outcome on the police national computer (PNC) and may also be disclosed as part of an enhanced DBS check if deemed relevant.
 - It may also be cited as evidence of bad character in subsequent criminal proceedings and relied on as evidence at court in civil proceedings, for example, anti-social behaviour order (ASBO) applications.
- Ensure the PND is recorded appropriately. Where the offence relates to a notifiable crime, a crime report must be completed. The recording of the offence and the subsequent detection must be carried out in accordance with the NCRS and HOCR for crime.

Youth caution

Youth cautions are a statutory out-of-court disposal, introduced by LASPO.

A youth caution can be given for any offence, although it is intended for low-level offences. The police can make the decision to offer a youth caution. However, they must refer the young person to the youth offending team (YOT) for assessment if this is the second time that an out-of-court disposal has been given, or if they have concerns regarding the young person's development. An indictable only offence requires the authorisation of the CPS to offer any out-of-court disposal.

Suitability for a youth caution is determined by its appropriateness in relation to the offender, the offence and the likelihood of it being effective in preventing reoffending.

For further information see [Ministry of Justice – Youth Cautions](#).

Youth caution: operational considerations

These should be taken into account when police officers are deciding whether to give a youth caution. Note: the ACPO youth gravity matrix should be used to determine the seriousness of the offence and assist consistent decision making.

- Actual offence – based on the circumstances of the offence, including any aggravating factors, it must be in the public interest to offer a caution instead of prosecution.
- Evidential standard – there must be sufficient evidence to meet the standard for a realistic prospect of conviction.
- Admission of guilt – the offender must admit the offence and there must be sufficient evidence for a realistic prospect of conviction. However, a youth caution can only be given if it is not in the public interest to prosecute.
- Offender consent – provided the offender continues to admit the offence, they do not have to expressly accept a youth caution if it is determined to be the most appropriate disposal for the offence committed.
- Offender history – offenders must be between 10 and 17 years of age, inclusive. Any previous offending history and willingness to engage with interventions should also be considered at the decision-making stage.
- Victim check – the views of the victim must be considered in determining the seriousness of the offence, although the final decision to use the youth caution remains with the police.
- Implications – youth cautions form part of a criminal record. They are considered spent at the time that they are given, but may be disclosed in future criminal proceedings. A young person would not normally have to disclose a youth caution to a prospective employer, but the youth caution

may form part of an enhanced DBS check. If the youth caution is administered for an offence that, if dealt with at court, would have resulted in the offender being included on the sex offenders register, the offender will still be subject to the same registration requirements. He or she may also be prevented from working with children and vulnerable adults in some circumstances. If the conditions are not complied with or the offender withdraws from the caution, the offender may be prosecuted for the original offence.

Youth caution: administrative considerations

A police officer should carry out the following actions once a youth caution is given:

- Explain the process to the recipient including the right to legal advice, the requirements of the conditions, verification of compliance, and the consequences of not complying with the conditions attached to the caution.
- Explain the implications of receiving a youth caution, including the criminal record consequences and, if relevant, any implications for working with children and vulnerable groups and inclusion on the sex offenders register.
- Confirm that the offender admits the offence and is willing to comply – best practice would be to obtain a signature from the young person indicating admission and compliance with the caution, but this is not a legislative requirement. The decision maker should, however, be satisfied that the young person continues to fully admit the offence even if they choose not to provide a signature.
- Ensure the youth caution is recorded appropriately – all crime recording and subsequent detection in relation to notifiable crimes must be carried out in accordance with the NCRS and the HOCR for crime and a crime report must also be completed.
- Arrange to have an appropriate adult present. If the offender is aged 16 years or under, or is 17 years of age and deemed vulnerable and there is any doubt about their capacity or ability to understand the nature or implications of the process, all the points above should take place in the presence of an appropriate adult. The appropriate adult must also be given copies of any written information given to the young person.

If the offender complies with the conditions of the caution, no further action is required, unless voluntary conditions have been agreed. These can be complied with, but there is no sanction if this is not the case.

Adult caution

This is a formal warning given to an adult who has admitted an offence. It is a non-statutory disposal used when it is not in the public interest to prosecute an offender.

Adult cautions are available for any offence, but they are intended for low-level offending. Police officers are permitted to make the decision to offer a caution for [summary offences](#) and all [either way offences](#).

The exceptions to this are:

- possession of a bladed article, offensive weapon or firearm in public, including threatening with a bladed article or offensive weapon in a public place or a school
- child prostitution and pornography, cruelty to a child, indecent images of children
- supplying Class A drugs

A caution may only be administered for these offences where exceptional circumstances exist, and must also be authorised by a senior police officer.

All indictable only offences must be referred to the CPS, exceptional circumstances must be present and a superintendent must authorise the decision.

Requirements for an adult caution to be valid are:

- admission of guilt by an offender over 18 years of age
- sufficient evidence available for a realistic prospect of conviction
- proof that it is not in the public interest to prosecute the offender
- agreement of the offender to accept the caution

Suitability for an adult caution is determined according to its appropriateness in relation to the offender, the offence and the likelihood of its being effective in preventing reoffending. All offenders aged 17 years or under are dealt with under [youth offending procedures](#).

For further information see [Ministry of Justice – Adult Cautions](#).

Adult caution: operational considerations

These should be taken into account when police officers are deciding whether to administer an adult caution. Note: the adult offender gravity matrix is available on the police national legal database (PNLD) and should be used in all cases to decide whether or not to give a simple caution.

- Actual offence – based on the circumstances of the offence and including any aggravating factors, it must be in the public interest to offer a caution instead of prosecution.
- Evidential standard – sufficient evidence is needed for a realistic prospect of conviction.
- Admission of guilt – the offender must admit to committing the offence.
- Offender consent – the offender must be able to understand and explicitly consent to accepting the caution.
- Offender history – the offender must be 18 years or over, be willing to accept a caution and not raise a defence to the offence. Any previous offending history should be assessed to ensure the outcome is appropriate. In addition, exceptional circumstances must be present if a caution is being considered for a repeat offender. If they have been cautioned for a similar offence within a two-year period, the decision must be authorised by a senior police officer.
- Victim check – the victim should be consulted and their views sought. They do not, however, have the right to insist on a specific outcome.
- Implications – adult cautions form part of a criminal record and may be disclosed in some circumstances in future legal proceedings or to an employer, as part of a standard or enhanced DBS check. If the caution is administered for sexual offences, the offender may be placed on the sex offenders register and/or prevented from working with children and vulnerable adults.

Adult caution: administrative considerations

A police officer should carry out the following actions once an adult caution is given:

- Explain the process to the offender, including that they have the opportunity to consider the matter and take legal advice, and where the offender is a vulnerable adult, the implications must be explained to an appropriate accompanying adult.
- Explain the implications of receiving an adult caution, including the criminal record consequences and, if relevant, any implications for working with children and vulnerable groups, and inclusion on the sex offenders register.
- Confirm the offender admits the offence – the offender should sign a form to indicate admission and acknowledgment of the implications of accepting the adult caution.
- Ensure that the caution is recorded appropriately. Where the offence relates to a notifiable crime, a crime report must be completed. The offence should be recorded and subsequently detected in accordance with the NCRS and HOCR for crime.

Youth conditional caution

This is a statutory disposal introduced by LASPO. It is a caution with conditions attached. These must be reparative, rehabilitative or punitive.

Reparative conditions can include apologising to the victim, paying compensation and making good any damage caused. Rehabilitative conditions can include attendance at a treatment course.

Punitive conditions can include fines for damage and unpaid work, however, these should be used only where rehabilitative and reparative conditions are not suitable or sufficient to address the offence. All conditions administered must always be appropriate, proportionate and achievable.

Youth conditional cautions are available for any offence. They are intended for low-level offences but can be used for any offence where it is not in the public interest to prosecute.

The police consider whether an offender is suitable to be offered a conditional caution based on the ACPO gravity matrix score and any previous interventions offered (if applicable). The young person must then be referred to the YOT for mandatory assessment. Once the assessment is complete, the police and YOT together decide on the appropriate conditions to attach to the youth conditional caution. The young person must agree to comply with these conditions or the youth conditional caution cannot be offered. Conditions can last for three months only. Compliance with the conditions is monitored by the YOT.

Since the commencement of LASPO, the police service no longer needs to refer a conditional caution for an either way or summary offence to the CPS. However, in exceptional circumstances a conditional caution may be given for an indictable only offence, which must be referred to the CPS.

For further information see [Ministry of Justice – Code of Practice for Youth Conditional Cautions](#).

Youth conditional caution: operational considerations

These should be taken into account when police officers are deciding whether to give a youth conditional caution. Note: the ACPO youth gravity matrix should be used to determine the seriousness of the offence and assist consistent decision making.

- Actual offence – youth conditional cautions may only be offered for an offence set out in [CPS \(2013\) The Director’s Guidance On Youth Conditional Cautions](#). They are not generally

suitable where, if prosecuted, the offender would be likely to receive a substantial community order or imprisonment.

- Evidential standard – must have sufficient evidence to meet the standard for a realistic prospect of conviction, where it is ascertained that the public interest would be best served by the offender complying with suitable conditions rather than undergoing a formal prosecution. In this case, a youth conditional caution should be considered an appropriate disposal to reduce reoffending and make reparation for harm caused.
- Admission of guilt – the offender must admit to committing the offence.
- Offender consent – the offender must explicitly accept the conditional caution and the conditions attached.
- Offender history – offenders must be between 10 and 17 years of age, inclusive. Any previous offending history and willingness to engage with interventions should also be considered at the decision-making stage. The youth must then be referred to the YOT to be assessed.
- Victim check – the victim should be consulted and their views sought. They do not, however, have the right to insist that the matter is disposed of in a particular way. If appropriate, a victim can be awarded compensation or reparation.
- Implications – failure to comply with the conditions attached to a youth conditional caution can result in prosecution for the original offence. A youth conditional caution forms part of a criminal record, but is spent as soon as the conditions are complied with. Normally, the caution would not need to be disclosed to an employer. It may, however, form part of an enhanced DBS check if this is considered appropriate.

Youth conditional caution: administrative considerations

A police officer should carry out the following actions once a youth conditional caution is given.

- Explain the process to the recipient, including the right to legal advice, the requirements of the conditions, verification of compliance, and the consequences of not complying with the conditions attached to the caution.
- Explain the implications of receiving a youth conditional caution, including explaining the significance of an admission, criminal record consequences, implications for working with children and vulnerable groups, and that if the offence requires inclusion on the sex offenders register, the young person will need to comply with the conditions as if they were found guilty by a court.
- Confirm the offender admits the offence and is willing to comply – the offender should sign a form indicating admission and compliance with the caution.

- Ensure the youth conditional caution is recorded appropriately – all crime recording and subsequent detection in relation to notifiable crimes must be carried out in accordance with the NCRS and the HOCR for crime, and a crime report must also be completed.
- Arrange to have an appropriate adult present. If the offender is aged 16 years or under, or is 17 years of age and deemed vulnerable and there is any doubt about their capacity or ability to understand the nature or implications of the process, all the points above should take place in the presence of an appropriate adult. The appropriate adult must also be given copies of any written information given to the young person.

If the offender complies with the conditions of the caution, no further action is required.

Adult conditional caution

This is a statutory disposal introduced by the [Criminal Justice Act 2003](#). It is a caution with conditions attached which must be rehabilitative and/or reparative. Rehabilitative conditions can include attendance at a treatment course. Reparative conditions can include apologising to the victim, paying compensation and repairing any damage caused. The conditions must always be appropriate, proportionate and achievable.

Cautions are available for all summary (non-motoring) offences and common either way offences, including theft, fraud, criminal damage and simple possession of drugs. Offences for which a conditional caution can be given are set out in [CPS \(2013\) The Director's Guidance on Adult Conditional Cautions, 7th Edition](#). A conditional caution is spent after three months.

It is no longer necessary for the police to refer a conditional caution for an either way or summary offence to the CPS. However, in exceptional circumstances, a conditional caution may be given for an indictable only offence. This must be referred to the CPS by an inspector using an MG6 form.

Adult condition caution: operational considerations

These should be taken into account when police officers are deciding whether to administer an adult conditional caution.

- Actual offence – conditional cautions may only be offered for an offence set out in [CPS \(2013\) The Director's Guidance on Adult Conditional Cautions, 7th Edition](#), and are not generally suitable where, if prosecuted, the offender would be likely to receive a substantial community

order or imprisonment.

- Evidential standard – there must be sufficient evidence for a realistic prospect of conviction, where it is ascertained that the public interest is best served by an offender complying with suitable conditions rather than being prosecuted.
- Admission of guilt – the offender must admit to committing the offence.
- Offender consent – the offender must be likely to accept the caution and explicitly consent to the conditions.
- Offender history – the offender must be 18 years or over and be willing to comply with the conditions. Any previous offending should be assessed and a conditional caution dispensed only if considered appropriate to modify offending behaviour or make reparation for harm caused.
- Victim check – the victim should be consulted and their views sought. They do not, however, have the right to insist that the matter is disposed of in a particular way. If appropriate, a victim can be awarded compensation or reparation.
- Implications – if the conditions are not complied with or the offender withdraws from the caution, the offender may be prosecuted for the original offence. A conditional caution forms part of a criminal record and may, in some circumstances, be disclosed in future proceedings or to an employer when applying to work with children and vulnerable adults. This is as part of a DBS check.

Adult conditional caution: administrative considerations

The authorised person should carry out the following actions once a conditional caution is given:

- Explain the process to the offender, including the right to legal advice, the requirements of the conditions and verification of compliance, and the consequences of not complying with the conditions.
- Explain the implications of receiving a conditional caution, including the significance of the admission of guilt and criminal record implications.
- Confirm that the offender admits the offence and is willing to comply with the conditions – the offender should sign a form indicating admission and compliance with the conditions.
- Ensure the conditional caution is recorded appropriately. Where the offence relates to a notifiable crime, a crime report must be completed. The recording of the offence and the subsequent detection must be carried out in accordance with the NCRS and the HOCR for crime.

If the offender complies with the conditions of the caution, no further action is required.

Foreign national offender conditional caution

This is a statutory disposal introduced by LASPO. It is a caution with conditions attached which must be rehabilitative and/or reparative. Rehabilitative conditions can include attendance at a treatment course. Reparative conditions can include apologising to the victim, paying compensation and repairing any damage caused.

However, the primary condition must be one which requires the individual to leave the country, cooperate with the authorities and not return to the UK for five years. The conditions must always be appropriate, proportionate and achievable.

Foreign national offender conditional cautions are available for all summary (non-motoring) offences and either way offences with a penalty of up to two years' imprisonment. All the offences for which a foreign national offender conditional caution can be given are set out in [CPS \(2013\) The Director's Guidance on Adult Conditional Cautions, 7th Edition](#). Further information is available in [The Criminal Justice Act 2003 \(Conditional Cautions: Code of Practice\) Order 2013](#).

In the case of foreign national offender conditional cautions, an officer of the rank of sergeant or above can make the decision to issue a conditional caution. However, in exceptional circumstances a conditional caution may be given for an indictable only offence. These circumstances must be referred to the CPS by an inspector using an [MG6 form](#).

Foreign national offender conditional caution: operational considerations

These should be taken into account when police officers are deciding whether to administer a foreign national offender conditional caution.

- Actual offence – conditional cautions may only be offered for an offence set out in [CPS \(2013\) The Director's Guidance on Adult Conditional Cautions, 7th Edition](#). The police officer must take note of the different offence types applicable to a foreign national offender conditional caution, which relate to the penalty for the offence being up to two and a half years' imprisonment.
- Evidential standard – there must be sufficient evidence for a realistic prospect of conviction, where it is ascertained that the public interest is best served by an offender complying with suitable conditions rather than being prosecuted.
- Admission of guilt – the offender must admit to committing the offence.

- Offender consent – the offender must be likely to accept the caution and explicitly consent to the conditions.
- Offender history – the offender must be 18 years or over, must be able to be removed from the country on the authority of the UK Border Agency (UKBA), and be willing to comply with the conditions of the caution. Any previous offending should be assessed and a conditional caution dispensed only if considered appropriate to modify offending behaviour or make reparation for harm caused. If the offender claims asylum, or there are reasonable grounds for believing that the offence committed is connected to human trafficking, then a conditional caution cannot be used.
- Victim check – the victim should be consulted and their views sought. They do not, however, have the right to insist that the matter is disposed of in a particular way. If appropriate, a victim can be awarded compensation or reparation. The victim is entitled to legal advice for both the criminal and immigration matter.
- Implications – if the conditions are not complied with or the offender withdraws from the caution, the offender may be prosecuted for the original offence. The conditions will include leaving the country, complying with the authorities and not returning to the country within five years. If they fail to comply, the case will be returned from the UKBA to a force single point of contact for consideration, and the offender may be prosecuted for the original offence or the conditions varied.

A conditional caution forms part of a criminal record and may, in some circumstances, be disclosed in future proceedings or to an employer when applying to work with children and vulnerable adults. This is as part of a DBS check.

Foreign national offender conditional caution: administrative considerations

The authorised person should carry out the following actions once a foreign national offender conditional caution is given.

- Explain the process to the offender, including the right to legal advice, the requirements of the conditions and verification of compliance, and the consequences of not complying with the conditions.
- Ensure that the offender can understand what is being said and that they use an interpreter if necessary.

- Explain the implications of receiving a conditional caution, including the significance of the admission of guilt, the ban from the UK and criminal record implications.
- Confirm the offender admits the offence and is willing to comply with the conditions – the offender should sign a form indicating admission and compliance with the conditions.
- Ensure the conditional caution is recorded appropriately – where the offence relates to a notifiable crime, a crime report must be completed. The recording of the offence and the subsequent detection must be carried out in accordance with the NCRS and the HOCR for crime.

If the offender complies with the conditions of the caution, no further action is required.

No further action

Where, following advice from the CPS, no further action is to be taken against the suspect, the prosecutor should inform the investigator of this. The suspect should then be advised of that outcome in accordance with local force policy. The notification to the suspect should be made in writing. Suspects should be advised to retain and preserve any documents or other evidence that supports their defence, as the investigation could be resumed. This may happen where, for example, fresh evidence comes to light or new or historic allegations are made which are relevant to the circumstances of the original investigation.

Tags

Case management