



Ministry
of Justice

Diversionsary and Community Cautions

Draft Code of Practice

Part 6 of the Police, Crime, Sentencing and Courts Act 2022

August 2023

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of Justice

Diversions and Community Cautions – Draft Code of Practice

Part 6 of the Police, Crime, Sentencing and Courts Act 2022

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of His Majesty

August 2023



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About this consultation

- To:** This consultation is aimed at prosecution agencies authorised to make operational use of the Code of Practice, including Police and Crown Prosecutors. We also welcome views from members of the public and professionals across the legal, local authority, health, Think Tank, research, and charitable sectors.
- Duration:** From 02/08/23 to 13/10/23
- Enquiries (including requests for the paper in an alternative format) to:** Youth Justice and Offender Policy Directorate; Probation Policy – Community Diversion
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- How to respond:** Please send your response by 13/10/2023 to:
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Email: oozd_consultation@justice.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by 12/01/24 at: <https://consult.justice.gov.uk/>

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Foreword

Serious, persistent offenders will always be pursued rigorously through the courts, for the safety of the public.

But for lower-level and first-time offences, dealing swiftly and proportionately with the crime outside of court can be the most effective way of dispensing justice. An Out of Court Disposal (O OCD) can give victims a voice, while dealing firmly but fairly with the offender and their crime.

O OCDs currently cover a range of sanctions used by the Police and other prosecution authorities to deal with lower-level offending, where it isn't in the public interest to go to court. They are an important way of tackling the early stages of offending behaviour.

Despite their value, the existing framework of O OCDs has grown unwieldy – a patchwork of statutory and non-statutory cautions, warnings and penalties that has been added to piecemeal over the years. These O OCDs come with a variety of consequences for the offender, rather than imposing mandatory conditions tailored to their offence.

That is why, through the Police, Crime, Sentencing and Courts (PCSC) Act 2022, we introduced a simplified, strengthened two-tier O OCD framework of two new cautions to apply to offenders aged 18 and over. The Diversionary Caution (upper tier) and Community Caution (lower tier) will replace the existing mix of O OCDs with a tougher, more consistent framework of out of court sanctions across England and Wales.

Breach of conditions attached to the Community Caution can result in a fine registered with the Magistrate's Court, whereas breach of a Diversionary Caution can result in prosecution for the original offence. This progression makes it clear to offenders that their actions have consequences.

Offenders must admit their offence to be eligible for the new cautions, which means taking responsibility for their actions and engaging with their punishment.

Our new cautions will strengthen the O OCD framework by ensuring that meaningful conditions are attached. Both cautions must be issued with one or more, focusing on rehabilitative and reparative conditions that can help tackle the underlying causes of the offence or provide direct restitution to the victim or the local community. Financial penalties are also available where appropriate.

Rehabilitative and reparative conditions could include treatment courses designed to help the offender tackle an underlying substance misuse problem, a compensation payment to the victim, or targeted unpaid work placements to make good the damage caused by the

offence – for example, cleaning up graffiti. This spectrum of conditions will allow a flexible, case-by-case approach with tougher consequences for the offender.

Victim involvement and satisfaction underpins public confidence in the justice system, and we want to enshrine this in the future use of OOCs. That’s why we are reinforcing victims’ position at the heart of the decision-making process for the new cautions – Police and other decision makers must consider their views when deciding whether to issue, as well as on what conditions to attach.

This consultation sets out the draft Code of Practice for Diversionsary and Community Cautions. Once finalised, the Code will provide operational guidance on the use, administration, and scrutiny of the new cautions. It will be used by Police, Crown Prosecutors, and other authorised bodies when considering sanctioning an offence out of court.

The draft Code of Practice sets out our proposals for how the new cautions will work, including factors to consider case-by-case for their repeat use and available financial penalties. We are also proposing to exclude certain serious crimes from being dealt with by the lower tier caution, sending a strong signal that serious offences will be pursued through the courts.

We have worked closely with stakeholders across the justice system to develop the draft Code of Practice and I am grateful for their views, which have been instrumental in shaping this work so far.

I would encourage anyone with an interest in this area to contribute to our consultation. Your continued engagement and feedback is vital as we finalise the Code of Practice and move ahead with new cautions, which balance public protection and a firm but fair approach to lower-level offences.



Rt Hon Damian Hinds MP

Minister of State for Justice

Executive summary

Out of Court Disposals (OOCs) is the term used for a range of pre-charge sanctions, used by Police and other prosecution agencies to deal with less serious offending. OOCs aim to reduce the risk of people being drawn further into the court and criminal justice system than they need to be, by using community-based diversions in instances when there is no public interest to prosecute.

The Police, Crime, Sentencing and Courts (PCSC) Act 2022 set out reforms to replace the current framework of warnings, penalties, and cautions with a new statutory two-tier framework. This reformed framework consists of:

- The Diversionary Caution, which is the upper-tier disposal with conditions attached. A breach of conditions can result in prosecution for the original offence.
- The Community Caution, which is the lower-tier disposal with conditions attached. A breach of conditions can result in the imposition of a financial penalty. Non-compliance with conditions can also result in a court fine but cannot be prosecuted.

In appropriate circumstances, Police will also retain use of the existing non-statutory Community Resolution. Once the new cautions framework is implemented, the other five OOCs that are currently available will be abolished, namely Cannabis Warnings, Khat Warnings, Penalty Notice for Disorder, Adult Simple Caution, and Adult Conditional Caution.

The Government is committed to implementing an OOC framework which is simpler for practitioners and the public to understand. This is coupled with a focus on victims and attaching meaningful conditions to Diversionary Cautions and Community Cautions to help address the underlying causes of offending behaviour.

This consultation covers the draft Code of Practice for the new Diversionary Cautions and Community Cautions. The Code sets out the operational parameters for the use, administration, and scrutiny of the new cautions by Police and other authorised persons.

Through a series of questions, this public consultation invites views on the operational impact and workability of the newly drafted Code of Practice for the statutory two-tier framework. These includes, but are not limited to, views on the approaches to maximum financial penalties, excluded offences, and repeat use of cautions. The Government would also like to hear from any authorised persons or prosecution bodies on how the new cautions framework works with their operational requirements.

We look forward to the representations we receive through this consultation and welcome all views in helping us strengthen the draft Code of Practice further. The responses to this consultation will be used by the government to determine whether revisions are required to the draft Code of Practice and to further drive the implementation of the new OOCDF framework. After the consultation concludes, a government response to the consultation will be published. The finalised Code of Practice will then be laid before both Houses of Parliament and formally enacted through secondary legislation.

This consultation process meets the statutory requirement under section 116(3) of the PCSC Act for the Secretary of State to publish a draft Code of Practice and consider any representations made to the Secretary of State about the draft.

Introduction

This paper sets out for consultation the newly drafted Code of Practice for Diversionary and Community Cautions. A number of questions are being asked to understand the operational impact of the Code of Practice and to invite wider views on the new statutory two-tier framework for Out of Court Disposals (OOCs). The consultation is aimed at prosecution agencies and authorised personnel who will make operational use the Code of Practice in England and Wales, such as the Police and Crown Prosecutors. We also welcome views from members of the public.

The link to view the Welsh version will be published shortly on <https://consult.justice.gov.uk/>.

The Impact Assessment published with the Police, Crime, Sentencing and Courts (PCSC) Act 2022 indicates that Police (including the British Transport Police), HM Courts and Tribunals Service, the Crown Prosecution Service, offenders, treatment providers, Police and Crime Commissioners, and victims are not likely to be particularly affected. The proposals are unlikely to lead to additional costs or savings for the voluntary sector or the public sector. An updated Equalities Impact Assessment is also attached to this consultation.

The Impact Assessment is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073440/MOJ_Sentencing_IA_-_OOC_2022_.pdf.

Copies of the consultation paper are being sent to interested parliamentarians, the Justice Select Committee, National Police Chiefs Council, OOC Leads in police forces, College of Policing, Association of Police and Crime Commissioners, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, Local Government Association, the Magistrates Association, as well as a range of other stakeholders. Copies of the consultation paper will also be sent to Staff Associations, namely the Police Federation of England and Wales, Police Superintendents' Association and Unison. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

The draft Code of Practice for Diversions and Community Cautions is enclosed here.

Diversions and Community Cautions – Draft Code of Practice

Part 6 of the Police, Crime, Sentencing and Courts Act 2022

Application of the Code of Practice

1. This Code of Practice is statutory guidance issued under the provisions of section 116 of The Police, Crime, Sentencing and Courts Act 2022 (“the Act”) and replaces all previously published guidance relating to Adult Conditional Cautions (2013), Penalty Notices for Disorder (2014) and Adult Simple Cautions (2015).
2. It applies only to persons aged 18 and over where the Police, Crown Prosecutors or other prosecution authorities are considering disposing of an offence by way of a Diversionary Caution or a Community Caution.
3. It applies to the Police (all forces in England and Wales, the British Transport Police Force, Civil Nuclear Constabulary and Ministry of Defence Police), Crown Prosecutors (the Crown Prosecution Service (CPS)), other named prosecution authorities, and authorised persons as defined by s.98(7) of the Act.
4. It sets out what the Police, the CPS and other named prosecution authorities must do to comply with the law. As statutory guidance, it seeks to expand on the primary legislation but cannot change any part of it. If in any doubt as to the scope of Diversionary Cautions or Community Cautions, authorised users and prosecution authorities should refer to the primary legislation.
5. It must be read in conjunction with guidance issued by the Director of Public Prosecutions (“the DPP”), other prosecution authorities, and local policy.
6. Neither this Code nor the Act affects the continued use of Fixed Penalty Notices, which are issued under separate legislation.

Part 1: Introduction

- 1.1 The Police, Crime, Sentencing and Courts Act 2022 (“the Act”) introduced changes to the Out of Court Disposal (“O OCD”) framework for persons aged 18 and over. Alongside Community Resolutions, which Police will retain use of as the only remaining non-statutory disposal, the Act establishes two tiers of statutory cautions that form the new framework for O OCDs. The new framework for O OCDs abolishes the Adult Simple Caution, the Adult Conditional Caution, Penalty Notices for Disorder, and Cannabis and Khat Warnings.
- 1.2 The Act introduces **Diversionsary** and **Community Cautions**. These cautions must have one or more conditions attached to them, aimed at rehabilitation and/or reparation. A financial penalty can be set as the only punitive condition available.
- 1.3 This Code of Practice sets out further detail on the use of the new framework and places greater emphasis on individual case-by-case decision making. Authorised persons should be empowered to make decisions based on the full circumstances of the case and any views of the victim. Consequently, this means we are strengthening obligations to record the full rationale and reasoning behind a particular decision so that victims and communities have greater confidence in disposal decisions taken at the front end of the criminal justice system.

Transitional arrangements

- 1.4 Once brought into use, only a Diversionsary or Community Caution can be given for an offence, regardless of the date it was committed. In accordance with section 118(4) of the Act, Adult Conditional Cautions and Penalty Notices for Disorder issued prior to the date of implementation are preserved and their attached conditions and financial penalties must be completed.

Part 2: Aim and purpose

- 2.1 O OCDs are an opportunity to provide intervention and support to offenders at an earlier stage, including diverting them into rehabilitative services to help reduce escalation of offending. In doing so, they recognise the strategic objectives of His Majesty’s Government and the National Police Chiefs Council to establish a framework where conditions are used to address underlying causes of offending behaviour.
- 2.2 Diversionsary and Community Cautions aim to address differing levels of offending behaviour alongside proportionate consequences for breaching conditions. Community Cautions (as the lower tier disposal) are designed to address lesser offences than the Diversionsary Caution and apply to cases where the public interest would not be served by prosecuting breaches. The restrictions on the

availability of the Community Caution for some offences have been implemented to ensure additional public confidence in their use. The Diversiory Caution (upper tier) is intended for more serious offences where the public interest can best be served through prosecuting breaches of conditions.

- 2.3 The upper and lower tier structure of Diversiory and Community Cautions, the requirement for the offender to admit the offence, and attaching rehabilitative and reparative conditions which the offender must engage with means that these cautions can offer effective outcomes for lower-level and first-time offences. These could include personal drugs offences or instances of antisocial behaviour, where the offender can be required to either engage with the underlying factors behind their substance misuse or undertake reparative activity for the victim or wider community.
- 2.4 A Community Caution is a case ending disposal, as once it has been administered, there can be no prosecution for the original offence. A Diversiory Caution is not a case ending disposal, as it can still result in prosecution for the original offence if the offender does not comply with one or more of the conditions attached to the caution and a breach occurs.
- 2.5 Non-statutory Community Resolutions remain a non-cautioning option within the OOC framework for Police, alongside Diversiory and Community Cautions. A decision to issue a caution should be made in the context of the wider framework and consideration of how authorised persons or prosecution authorities can best achieve the desired outcome, whilst taking into account the views of the victim and needs of the offender.

Part 3: Explanation of cautions

- 3.1 Diversiory and Community Cautions have significant differences in use and enforcement, and these are outlined below. For clarity, reference to the Community Resolution is included:

	Community Resolution	Community Caution	Diversionsary Caution
Use	No statutory restrictions on use. Use is in line with National Police Chiefs Council policy and guidance.	Can be used for any offence – other than an excluded offence. (Excluded offences are indictable-only and either way or summary only offences as prescribed in regulations – see Part 5).	Can be used for any offence. In the case of indictable only offences – only in exceptional circumstances <i>and</i> with consent of the Director of Public Prosecutions.
Enforcement	Non-compliance with a Community Resolution is not enforceable. No power of arrest or detention following non-compliance.	Non-compliance cannot be prosecuted. Authorised user can rescind the condition and attach a financial penalty (if this was not originally a condition). If this penalty remains unpaid, it can be registered for enforcement as a court fine. No power of arrest or detention following non-compliance.	Non-compliance with conditions can result in the offender being prosecuted for the original offence. Power of arrest and detention following non-compliance.

Further comparison of the disposals is available at Annex A

3.2 The key difference between the Diversionsary and Community Caution is the consequences for breaching conditions. In making a choice between the Diversionsary or Community Caution, the authorised person or prosecution authority should consider both the public interest factors and the views of the victim. In circumstances where the public interest strongly points away from prosecution, the Community Caution may be preferred.

3.3 If applicable and available, the views of the victim should also be considered as to whether they would support a prosecution in the event of non-compliance.

It should be explained to the victim that breach of a Community Caution cannot result in prosecution.

- 3.4 Police should consider whether the use of a Community Resolution would better address the circumstances of a minor offence than a Diversionary or Community Caution. In making this decision, Police may ask themselves the following questions:
- a) Would a Community Resolution adequately address the behaviour?
 - b) Is it in the public interest to enforce the matter in this way?
 - c) If applicable, does it meet the needs and wishes of the victim?
 - d) If the recipient does not comply with any or all conditions, is it acceptable that no enforceable action could be taken?
- 3.5 If the answer to these questions is 'yes', and all other requirements of a Community Resolution are satisfied, as described in National Police Chiefs Council guidance, then a Community Resolution may be preferred, particularly in cases of first-time offending or where on-the-spot resolution can be achieved.

Part 4: Eligibility

The five requirements

- 4.1 Sections 99 and 108 of the Act set out the five requirements that must be met before a Diversionary or Community Caution can be given. Each requirement is separate and all of them must be met before any caution can be administered.

1. The authorised person or prosecution authority decides that there is sufficient evidence to charge the offender with the offence, and that the public interest is better served through a Diversionary or Community Caution rather than prosecution in respect of the offence.
2. The offender admits having committed the offence.
3. The offender consents to being given the caution.
4. The authorised person must explain the effect of the caution and warn the offender that failure to comply with any of the conditions may, in the case of a Diversionary Caution, result in prosecution for the original offence, or in the case of a Community Caution, subsequently result in a financial penalty being imposed.
5. The offender signs a document containing details of the offence, an admission that the offender committed the offence, consent to be given a caution and details of the conditions attached.

Repeat offending

- 4.2 Decisions around the repeat use of cautions for the same offender should be undertaken on a case-by-case basis, considering a number of factors, rather than a specific time period. This means that decision makers must fully record their justification and decision in such cases to ensure that repeat cautions are not subject to misuse. It is particularly important for this record to be available to scrutiny panels (see Part 11 below).
- 4.3 Previous convictions, cautions, or other OOCs in relation to earlier offences do not preclude giving a Diversiory or Community Cautions to an offender in relation to the current offence. However, the decision maker should take into account whether they consider that sufficient time has elapsed from the giving of a previous caution for the same or a similar offence, such as within a time-period of the preceding 12–24 months.
- 4.4 A repeat caution may be appropriate where one or more of the following apply:
- a) The current offence has not escalated in severity/harm and is either of the same level or lower level.
 - b) The circumstances of the offence are different to the last.
 - c) The offender has previously complied with conditions, even if the conditions were not effective in achieving desistance.
 - d) There has been a sufficient lapse of time following a previous caution or conviction, for the same or similar type of offence, to suggest that it had a deterrent effect within the intervening period.
 - e) Giving a Diversiory or Community Cautions is likely to be the best outcome for both the victim and offender. Views of the victim must be sought in these circumstances.
 - f) Changing the number or type of conditions attached may achieve desistance. This may be particularly relevant where interventions or services were not available at the last occasion, or where a legacy OOC¹ was used and no conditions were given.
 - g) It is in the public interest to issue a further caution. Public interest factors may suggest that a Diversiory Cautions is a more appropriate escalation from a Community Cautions, particularly in cases where criminal justice is better served by the ability to prosecute breach of a Diversiory Cautions.
 - h) Rehabilitative or reparative conditions have been used and were unsuccessful or have been exhausted, and a punitive financial penalty may be more suitable.
- 4.5 A repeat caution may not be appropriate where:
- a) The offence forms part of a pattern of long-term offending and/or the severity or harm caused has increased.

¹ Adult Simple Cautions, Cannabis/Khat Warning, Penalty Notice for Disorder

- b) Any previous OOC had no effect on criminogenic behaviour. The decision maker may consider that a different form of resolution, such as a prosecution, would be a more appropriate alternative for dealing with the offence.
- c) The offender failed to comply with the conditions of the previous caution. However, consideration should be given to whether there were reasonable mitigations for previous non-compliance, as well as to setting different conditions as set out at Part 4.4(f).

Part 5: Decision making

Indictable only offences

- 5.1 A Diversionary Caution may only be given for an indictable-only offence in exceptional circumstances, authorised by a decision maker with at least the rank of Inspector, and with consent of the Director of Public Prosecutions (DPP), which is delegated to the CPS decision maker. The decision maker should assess what exceptional circumstances exist before referral to the CPS. Community Cautions may not be given for indictable-only offences under any circumstances.

Summary only and either-way offences

- 5.2 A Diversionary Caution may be given for any summary only or triable either-way offence.
- 5.3 A Community Caution may be given for any summary only or triable either-way offence other than an excluded offence. Excluded offences are defined as any indictable-only offence and the specific triable either-way offences listed at Annex C.
- 5.4 Decision makers should ensure that they read any guidance that has been issued by the DPP on issuing a caution for an either-way offence, which is routinely dealt with at the Crown Court or is likely to attract a high-level Community Order or sentence of imprisonment.

Excluded offences

- 5.5 An excluded offence is defined as an indictable only offence, or a specific either-way or summary only offence.
- 5.6 Diversionary Cautions may be given for excluded offences but only with the authority of a decision maker with at least the rank (or equivalent) of Inspector, who must record their reasons.
- 5.7 An offender must not be given a Community Caution for an excluded offence under any circumstance. This includes exceptional circumstances, which cannot

be applied to Community Cautions regardless of the seniority of the authorised person issuing the caution.

- 5.8 A full list of specific excluded offences is available at Annex C but are summarised as follows:
- a) Offensive weapon and bladed article offences
 - b) Carrying a firearm in a public place
 - c) Child cruelty
 - d) Sexual offences against children (including those relating to child prostitution and pornography)
 - e) Sex-trafficking offences
 - f) Indecent and pornographic images of children
 - g) Importing, exporting, producing, supplying and possession with intent to supply to another Class A drugs

Domestic abuse and hate crime offences

- 5.9 Domestic abuse and hate crime offending are matters of important public interest. Our response to these offences must be robust, driven by evidence-led policy, and with the best interests and safety of the victim in mind.

Domestic abuse

- 5.10 The statutory definition for domestic abuse is set out in Part 1 of the Domestic Abuse Act 2021. Decision makers must familiarise themselves with this definition but, in broad terms, it covers the abusive behaviour of a person towards another person where both are aged 16 or over, and are personally connected to each other,² that can consist of:
- a) Physical or sexual abuse
 - b) Violent or threatening behaviour
 - c) Controlling or coercive behaviour
 - d) Economic abuse
 - e) Psychological, emotional, or other abuse
- 5.11 Following an evaluation of domestic abuse police pilots undertaken in several forces, all forces can now use Diversions Cautions in relation to standard risk domestic abuse offences (intimate and non-intimate abuse), subject to the principles agreed with the DPP. The Police do not need to apply to the CPS for dispensation for this. These principles are in addition to meeting the requirements of a caution under the Act.
- 5.12 The principles, which apply to all forces in England and Wales including existing domestic abuse pilots, are set out at Annex C of this Code. The principles stipulate

² Personally connected as defined by a.2(1) of the Domestic Abuse Act 2021. Found online at <https://www.legislation.gov.uk/ukpga/2021/17/section/2/enacted>.

that the conditions set as perpetrator interventions must contain the key rehabilitative elements used in Project CARA (Cautioning and Relationship Abuse), namely the principles and processes of motivational interviewing, peer support, peer challenge, victim focus, offender focus, rapport, non-shaming, listening, and questioning.

- 5.13 For cases that do not fulfil the criteria and principles set out at Annex C of this code, decision makers can remit cases to the CPS for consideration on an exceptional basis.
- 5.14 Community Cautions cannot be used in relation to domestic abuse related offences as defined by Part 1 of the Domestic Abuse Act 2021.

Hate crime

- 5.15 A Diversionsary or Community Caution may be given for a hate crime case, but only once authorisation has been obtained from the CPS. The Police can use Community Resolutions where National Police Chiefs Council policy allows.

The Full Code Test

- 5.16 In accordance with the Full Code Test set out in the Code for Crown Prosecutors, before a Diversionsary or Community Caution can be given, there must be sufficient evidence available to provide a realistic prospect of conviction. Decision makers should ensure they refer to the Code and any related guidance issued by the DPP.

Full Code Test – evidential stage

- 5.17 There must be sufficient evidence available to provide a realistic prospect of conviction. A finding that there is a realistic prospect of conviction is based on the prosecutor applying the Full Code Test to make an objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. Other factors considered in this assessment include:
- a) The suspect has made a clear and reliable admission to the offence and has said nothing that could be used as a defence, or
 - b) The suspect has made no admission but has not denied the offence or otherwise indicated it will be contested and the commission of the offence and the identification of the suspect can be established by reliable evidence, or the suspect can be seen clearly committing the offence on a good quality visual recording.³

³ The application of the evidential stage of the full code test does not negate the requirement for a full admission as one of the five requirements set out at Part 4 of this Code of Practice

- 5.18 In determining whether there is sufficient evidence to provide a realistic prospect of conviction,⁴ the decision maker should consider all available evidence, including any admission made by the suspect. A decision maker must not offer a caution in order to secure an admission that could then provide sufficient evidence to meet the evidential stage of the Full Code Test.
- 5.19 Circumstances may arise where a suspect has made no admission but has not denied the offence or otherwise indicated it will be contested, and the commission of the offence and the identification of the suspect can be established by reliable evidence, or the suspect can be seen clearly committing the offence on a good quality visual recording. Whilst this may be sufficient to satisfy the evidential stage of the Full Code Test, this is separate to the requirement for an admission to the offence(s) under the five requirements of the Act (sections 99 and 108).

Full Code Test – public interest stage

- 5.20 Where there is sufficient evidence to provide a realistic prospect of conviction, the decision maker must go on to consider whether it is in the public interest to offer a caution in respect of the offence.
- 5.21 Decision makers must assess the seriousness of the case to ensure that a caution provides an appropriate and proportionate response to the offending behaviour and justice can be served.
- 5.22 The decision maker must be satisfied that the public interest can best be served by the offender complying with suitable conditions aimed at reparation, rehabilitation, or punishment (financial penalty), taking into the account the interests of the victim, the community, and/or needs of the offender. In the case of Foreign National Offender (“FNO”) cautions, the decision maker should ensure public interest can be met by removal from the UK and ensuring no return for a specified period. This will apply to use of Diversionsary Cautions only with foreign offender conditions attached as per section 103 of the Act.
- 5.23 At the time this assessment is made, the decision maker must also be satisfied, that in cases where a Diversionsary Caution is being considered, that a prosecution will continue to be necessary, and could go ahead, should the offer of a Diversionsary Caution be declined, or the offender does not complete the conditions.
- 5.24 In most cases, a caution should not be given where, upon conviction, a court would be likely to impose a higher-level Community Order or immediate custodial

⁴ This requirement also applies to the Community Caution, irrespective of the fact that non-compliance cannot be prosecuted.

sentence. Decision makers are encouraged to consult up-to-date sentencing guidelines to make this assessment.

Admissions

- 5.25 Before administering a Diversiory or Community Caution, the authorised person should ensure that the offender has the opportunity to receive free and independent legal advice in relation to the criminal offence (which may be by telephone for certain offences). This will be undertaken for individuals who have voluntarily attended a police station or other place of issue, as well as those who have been detained.
- 5.26 The offender must admit the offence to be eligible for a Diversiory or Community Caution in accordance with the five requirements set out at sections 99(2)(b) and 108 (2)(b) of the Act and Part 4 of this Code. A Diversiory or Community Caution cannot be given to an offender who does not make a clear and unambiguous admission to committing the offence. An admission can include offenders who state that they have no recollection of the offence but do not dispute the prosecution case against them and accept they are responsible. Admission of the offence is an important legal safeguard to ensure fairness to an offender and complies with established case law for cautions.
- 5.27 The requirement to admit guilt in order to receive a caution may not necessarily be understood by the suspect during investigation, particularly if they are not legally represented. This may lead the suspect to believe their admission may constitute a harsher outcome such as prosecution. A suspect who gives a no-comment interview is not eligible for a Diversiory or Community Caution.
- 5.28 As a response, forces may wish to prepare a generic note setting out the relevant legislation to provide to the suspect and/or their legal representative and appropriate adult, that details why an admission is needed to receive a caution and be diverted from prosecution. Care should be taken to ensure the wording could not be interpreted as either inducement or a guarantee of a certain outcome. The note should set out this position in generic terms and must be cleared for use by the police force solicitor. Any case-specific discussion regarding admission with the suspect must be recorded.
- 5.29 The admission of guilt does not need to be made within a formal interview under the Police and Criminal Evidence Act 1984 (PACE). However, the method for obtaining and recording the admission must be PACE-compliant. PACE provides the following options:
- a) An admission made in response to questions asked in a formal interview which is conducted and recorded in accordance with the relevant provisions of the PACE Codes, whether within the police station or elsewhere.

- b) An unsolicited admission made without inducement or invitation to comment at any time, outside the context of an interview. A written record must be made, and the suspect invited to sign the record to confirm its accuracy in accordance with the PACE Codes. Depending on whether the suspect has been arrested, the record must be made in the officer's notebook or by the Custody Officer or reviewing officer in the offender's custody record. If a formal interview takes place after an unsolicited admission, the admission must be put to the suspect at the start of the interview and the suspect asked to confirm or deny what was said.
- c) A formal written statement under police caution made and recorded in accordance with the PACE Codes.

- 5.30 PACE Codes C, E & F concern and regulate the conduct and recording of interviews (questioning under Police caution) of suspects. Whilst the term Body Worn Video is not used in PACE Codes, Code E describes the minimum requirements for a recording device to be compatible with PACE.
- 5.31 The Act does not require an admission to be made by the offender before the decision maker determines whether a Diversionary or Community Caution is appropriate. However, in compliance with the five requirements, the suspect must make an admission that they committed the offence before the caution is given and, at the time the caution is given, sign a document admitting to the offence. Signing of the document alone does not satisfy the requirements of giving a caution and all five must be met.
- 5.32 The requirement for an admission is not to be confused with the separate requirement for sufficient evidence to charge under the Full Code Test in the Code for Crown Prosecutors or The Director's Guidance (Charging).
- 5.33 Decision makers should be particularly careful about accepting an admission in cases where the suspect is treated as a vulnerable adult and there is any doubt about their mental state or capacity to make an admission, accept a caution, or understand the consequences of accepting a caution. Safeguards must be in place to provide an appropriate assessment of the suspect for the decision maker to refer to when deciding whether to issue a caution.
- 5.34 Where this needs assessment indicates that the suspect is vulnerable or their capacity to make an admission requires further safeguards, an appropriate adult must be present for any interview, discussion of the implications of the caution, and release of the suspect.

Victim considerations

- 5.35 When deciding what conditions to attach to a caution, the decision maker must make reasonable efforts or ensure that reasonable efforts are or have been made,

to consider the views of any victim or victims of the offence. These views should be taken into account when assessing all other public interest factors in the case.

- 5.36 The views of any victim or victims of the offence include, in particular, views as to whether the offender should carry out any of the actions listed in the Community Remedy Document. Where the caution is being issued by a local policing body covered by relevant legislation,⁵ decision makers should familiarise themselves with the definition and scope of the Community Remedy Document.
- 5.37 Where it is the view of the victim or all the victims that the offender should carry out a particular action listed in the Community Remedy Document, the authorised person or prosecution authority must attach that as a condition unless the authorised person or prosecution authority judge that either a) the action is not one that can be attached as a condition to a Diversionary Caution, or Community Caution, or b) it would be inappropriate to do so.
- 5.38 The requirement to obtain victim views also ensures compliance with sections 6.6 – 6.8 of the Victims Code Practice (2020) (found online at <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>) which states '*Where the police or the Crown Prosecution Service are considering an out of court disposal you have the **right** to be asked for your views and to have these views taken into account when a decision is made*'.
- 5.39 Police and prosecution authorities must ensure these views are recorded in any record of decision making.
- 5.40 Once these views have been considered by the decision maker, a caution may still be given against the views expressed by a victim or victims of an offence where the decision maker considers it appropriate given the circumstances of the offence.

Deciding on conditions

- 5.41 The conditions (set out at Part 6) attached to a Diversionary or Community Caution are to be decided by:
- a) The authorised person *or*
 - b) A prosecution authority (in cases where the decision to issue a caution has been taken by them).

Authorising a caution

- 5.42 The decision to authorise the issuing of a caution must be made by an officer of at least the rank Sergeant (or Police staff equivalent). Where a caution is given by a Constable in the first instance, the decision to caution must be reviewed by a

⁵ Part 6 (section 101), <https://www.legislation.gov.uk/ukpga/2014/12/contents>.

Sergeant or equivalent before the caution is offered to the offender. See Part 9 for further guidance.

Record of decision making

5.43 The decision maker must ensure a full written record of their decision to issue a caution, including any mitigating or aggravating factors. Compliance with any relevant part of the Code or DPP guidance must also be recorded in a format accessible to supervisors, managers, scrutiny panels or inspectorates as applicable.

Substituting one caution for another

5.44 Circumstances may occur where the decision maker decides that the offender should be given a Diversionary Caution, but the offender indicates that they would only accept the lower-tier Community Caution, or even a Community Resolution.

5.45 Decision makers should return to the public interest test and consider whether the giving of a lower-tier disposal would still be an appropriate response, and if necessary further consult with the victim. If this is deemed inappropriate, the decision maker may have no alternative but to proceed to prosecution.

5.46 It may not be possible to issue a Community Caution as an alternative disposal because of excluded offences in the Community Caution.

Deciding whether to caution after an offender has already been charged

5.47 Where an offender is charged with an offence, the relevant prosecutor, on reviewing the case, may decide that a disposal under the OOC framework would be more appropriate. If so, the relevant prosecutor may direct the authorised person to offer an OOC to the offender. The prosecution will be halted pending the decision of the offender about whether to accept an OOC. If not accepted by the offender, then the prosecutor can decide to pursue a prosecution.

5.48 If the decision to offer an OOC results in a caution being offered to the offender, this must be made in accordance with this Code and any guidance issued by the DPP or prosecution authority.

Part 6: Conditions

6.1 Diversionary and Community Cautions must have one or more conditions attached to them, aimed at rehabilitation and/or reparation. A financial penalty can be set as the only punitive condition available.

- 6.2 The evidence base for the effectiveness of conditions is developing at a national and local level, including as to the types of conditions that may reduce reoffending and rehabilitate offenders.
- 6.3 Where there is a victim, authorised users and prosecution authorities should take their views into account as described at section 100(3) and 109(3) of the Act.
- 6.4 They should also take the needs and capacity of the offender into account. It is recommended that a needs assessment is undertaken to ensure rehabilitative conditions are relevant to the offender and there is a problem-solving approach to identifying suitable conditions. Where this needs assessment indicates further safeguards are required for the offender, an appropriate adult must be consulted on the conditions sought to be imposed to ensure that they are appropriate, proportionate, and achievable, as per 6.20. This consultation should also be recorded in the rationale for the conditions ultimately attached to the caution.

Rehabilitative and reparative conditions

- 6.5 Conditions that can be attached to a Diversionary or Community Caution with the object of rehabilitating the offender, or ensure they make reparation, include:
- a) Unpaid work condition – To carry out specified work for a maximum period of 20 hours (Diversionary Caution) or 10 hours (Community Caution).
 - b) Attendance condition – Requiring the offender to attend a specified place for a specified purpose (e.g., attending a drug or alcohol service), and for a specified number of hours. This must not exceed 20 hours (Diversionary Caution) or 10 hours (Community Caution) where the condition has the sole objective of the offender making reparation for an offence.
Where an attendance condition requires the offender to attend somewhere for the purpose of participating in any education or training, or receive any other service, the attendance condition may also require the offender to pay for the reasonable cost of the provision of the education, training, or service. This is a decision for the force or Police and Crime Commissioner according to availability of services.
 - c) Reparative conditions – To repair (either directly or indirectly) any damage caused; reparative activity within a community more generally; compensatory payment to an individual victim, business, or community; financial compensation to a charitable or community fund. Compensation can also be made in respect of personal injury, and the DPP may issue separate guidance on the appropriate amounts for these.
 - d) Apology – either in person or writing. Care should be taken with this condition to ensure an apology is made in good faith and accepted by the victim. The apology should be from the offender and the condition should be clear as to what the apology is in relation to. This condition should be planned carefully and witnessed by the authorised person.

- e) Restrictive condition – not to meet or communicate with specified individuals; not to be in, or go to, specified addresses, places, or areas in the United Kingdom; not to carry out or participate in specified activities; not to engage in specified conduct (which may include conduct constituting a criminal offence).

A table of further suggested conditions is contained at Annex B

- 6.6 A compensatory payment to a victim, business, or community, is a reparative condition and is not the same as issuing a financial penalty to an offender. Attaching financial penalties to Diversionsary and Community Cautions is set out by Part 7 of this Code.
- 6.7 The total amount of any compensation payment attached to a Diversionsary or Community Caution must be within the means of the offender and be capable of being paid within a reasonable period of time, in compliance with part 6.25. In instances where a financial loss suffered by a victim would be beyond the means of the offender, the decision maker can suggest a compensation payment lower than full amount if they deem it appropriate. In such cases, before deciding on this as a condition, the decision maker should consider whether a court order for compensation (which can be paid over a longer period of time) would be a more suitable disposal, considering the circumstances of the case.
- 6.8 In circumstances where all possible conditions have been considered, but none are deemed to be appropriate, proportionate, or achievable, decision makers may consider a condition that may require an offender not to engage in specified conduct, which may include conduct constituting a criminal offence.
- 6.9 Such a condition would be an agreement not to commit a further similar offence for a specified period. In practice, this means that for the duration of this period the offender must not be found, through either sufficient evidence or the outcome of an investigation, to have committed an offence of the same nature or any new offences. This should be specified in the condition.
- 6.10 This condition must be precise so that breaches can be easily identified and enforced. A condition of this nature must be fully justified with reference to exhausting all other conditions and should be subject to monitoring in the same way as all other conditions as described in Part 8. scrutiny panels must also monitor use of such conditions to ensure they are not subject to over-use.

Restorative justice

- 6.11 Restorative justice offers an opportunity to bring those harmed by crime and those responsible for perpetrating it into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way

forward. There is a strong evidence base for its effectiveness in achieving victim satisfaction.

- 6.12 This process can be used where both the victim and the offender agree to it. A restorative justice conference brings together both parties in a controlled environment, along with other relevant individuals, in a process which is facilitated by a Police Officer, staff or externally commissioned facilitator.
- 6.13 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.
- 6.14 Restorative justice conferencing requires voluntary engagement from both the victim and offender. Therefore, as part of a condition of a caution, an offender could be offered the opportunity to undertake an assessment for suitability for restorative justice by a trained facilitator. Offenders should not be asked to take part as a condition in itself. This is because a trained facilitator may, following assessment, deem the offender unsuitable for restorative justice, or the victim could decline at any point prior to the conference. Restorative justice should be entered into freely and willingly by both parties.
- 6.15 Decision makers should also ensure that there are no known coercive factors, and the victim is not under pressure to engage. The decision maker may draw on the views of others involved with restorative justice processes to determine suitability and reach a decision.
- 6.16 Restorative justice is only relevant to cautions considered by the Police who should ensure that, in every case where there is a named victim, that restorative justice has been considered and the victim has been consulted, except for domestic abuse cases involving intimate partner abuse where this will not be appropriate. These considerations are in compliance with section 3.4 of the Victim's Code of Practice which states the victim has the right to receive information about Restorative Justice.
- 6.17 In circumstances where this is not appropriate, it cannot take place for any other reason, or the victim declines from the outset, then a record of this decision must be made.

Punitive condition

- 6.18 A financial penalty (punitive) condition should only be attached where a rehabilitative or reparative condition is not practical or possible following careful consideration, and in circumstances set out in Part 7.

- 6.19 In circumstances where rehabilitative or reparative conditions have already been used with an offender who has received a previous caution for a similar offence, the decision maker should consider whether desistance can be achieved on this occasion with rehabilitative or reparative conditions or whether a financial penalty is more suitable. In both of these circumstances, the reason should be recorded.

Selection of conditions

- 6.20 Conditions attached to a Diversiory or Community Caution must always be **appropriate, proportionate, and achievable**.
- 6.21 **Appropriate** – The decision maker should seek to apply a problem-solving approach aimed at changing an offender’s behaviour and, where possible, providing redress to the victim of the offence. For most offenders, these two aims will be regarded as the priority.
- 6.22 For relevant FNOs, foreign offender conditions should be considered first before any other conditions.
- 6.23 **Proportionate** – When determining the conditions to be attached to a caution, the decision maker should consider the totality of the conditions and seek to achieve proportionality to the offending behaviour. The objectives ought to be achieved by the attachment of the minimum number of conditions.
- 6.24 The same principle applies to conditions that may be well intentioned, such as treatment, but which risk being disproportionate to the offence.
- 6.25 **Achievable** – Offenders must be able to complete the conditions satisfactorily and within a reasonable time period. The decision maker should take into account the offender’s circumstances, physical and mental capacity, and ensure that any financial conditions (compensation or a financial penalty) are commensurate with the means of the offender.

Time limit for completing conditions

- 6.26 In deciding on the time period in which the conditions must be completed, for a Diversiory Caution, the decision maker must take into account any time limits affecting the commencement of proceedings for the original offence (as summary-only offences must be prosecuted within six months of the date of the offence) and must ensure that the option of prosecuting the original offence in the event of non-compliance remains available.
- 6.27 All rehabilitative, reparative, and punitive conditions must be capable of being completed within 16 weeks in the case of a summary-only offence. Exceptionally, a period of longer than 16 weeks may be suitable for an offence triable either-way or an indictable-only offence, depending on the facts of the particular case, but

must not exceed 20 weeks. A longer period must still be appropriate, proportionate, and achievable. Periods of time in this paragraph start from the date the caution was given.

6.28 **Foreign National Offender conditions:** See Part 8

Part 7: Financial penalties

Overview and penalty amounts

- 7.1 A condition requiring the offender to pay a financial penalty may be attached to a Diversionsary or Community Caution with the object of punishing the offender.
- 7.2 A financial penalty condition should only be used where there are no appropriate reparative, rehabilitative, or restorative justice conditions or where such conditions do not provide a proportionate response to the offending behaviour.
- 7.3 A financial penalty is not the same as a compensatory payment to a victim. The Act does not make separate provision for compensation. However, this is covered under reparative conditions in this Code and under sections 101 and 109 of the Act.
- 7.4 In accordance with Part 7.2 of this Code, decision makers should not mix compensation (reparative) and a financial penalty (punitive) as part of the initial conditions of the caution. One or the other must be applied. This is due to current operational limitations in processing financial elements of cautions. This does not prevent a financial penalty being applied following non-compliance with a reparative compensation condition.
- 7.5 At this time, financial penalty conditions (along with compensation elements to a caution) may only be given by Police as part of a caution. These are not available to other prosecution authorities, except where a decision to issue a caution is taken by the CPS, and subsequently given by Police.
- 7.6 Care should be taken to ensure that where an offender is offered a rehabilitative course or intervention at their own cost, that it is not financially more attractive for them to agree to a financial penalty instead.
- 7.7 When considering the Community Caution with a reparative condition for compensation for loss or damage, the decision maker should explain the effect of non-compliance to a victim, i.e. the offender can then only be dealt with by way of a financial penalty leading to registration of a fine with a court and compensation cannot be pursued further via the caution. The decision maker should consider carefully whether a Diversionsary Caution may be more suitable as non-compliance

could then be pursued via prosecution and an application to a court for compensation upon conviction.

7.8 A financial penalty condition must specify:

- a) the amount of the financial penalty
- b) the person to whom the financial penalty must be paid
- c) how it must or may be paid, and
- d) the date on or before which it must be paid, which must be the last day of the 28 day period beginning with the day on which the caution is given.

7.9 The amount payable is prescribed in Regulations and must not exceed this amount. These amounts will be reviewed regularly to ensure they are set at appropriate levels. Currently only financial penalties of a fixed amount are allowed. Part payment or instalments are not allowed. For each of the cautions these fixed amounts are outlined below:

	Diversionsary Caution	Community Caution
Summary or Either-Way offence	£100	£100
Indictable only offence	£150	N/A

Escalation for non-payment

7.10 Community Caution: The date by which payment must be made is no later than 28 days from the date the caution is given. In accordance with section 111 of the Act, if the financial penalty is not paid on or before the date specified under section 111(2)(d), the amount of the penalty required to be paid by the condition is automatically increased by 50%, bringing the financial penalty to £150.

7.11 Diversionsary Caution: The date by which payment must be made is no later than 28 days from the date the caution is given. If, without reasonable excuse the offender does not make payment within the specified time period then this may be taken as non-compliance and the steps in Part 9 of this Code may be taken in respect of breach and prosecution.

Enforcement

7.12 If the increased penalty of a Community Caution is not paid within the period of 21 days beginning with the day after the date specified under section 111(2)(d), the amount of the increased penalty may be registered under section 112 of the Act for enforcement against the offender as a fine.

7.13 At this point, Police can also decide to withdraw the financial penalty, for example, if the offender’s circumstances change or the condition is no longer proportionate

or achievable for any reason. This condition may also be varied and substituted with another condition in accordance with Part 9.46 of this Code.

- 7.14 Following a decision to proceed with enforcement, the Police may issue a certificate (“a registration certificate”) giving particulars of the financial penalty, stating that the amount is registrable for enforcement against the offender as a fine, and stating the name and last known address of the offender. This must be sent to the designated officer for the local justice area (Magistrates’ Court) in which the offender appears to reside.
- 7.15 The Diversionary Caution cannot be enforced via a fine. Enforcement can only take the route of prosecution for the original offence.

Administration of financial penalties

- 7.16 In accordance with sections 102(4) and 111(4) of the Act, financial penalties associated with Diversionary and Community Cautions will be handled by HM Courts & Tribunals Service (HMCTS). They will also handle any compensatory payments as part of a reparative condition of a caution.
- 7.17 The operational process applicable to issuing financial penalties will be issued separately to this Code.

Part 8: Foreign National Offenders

- 8.1 As per the memorandum of understanding between the CPS, Immigration Enforcement (“IE”) and national policing, a Diversionary Caution with foreign offender conditions attached may be offered to a FNO where the five requirements of a caution are met. The objects of the conditions are:
- a) Bringing about the departure of the relevant FNO from the United Kingdom.
 - b) Ensuring that the relevant FNO does not return to the United Kingdom for a period of time.
- 8.2 If considering a foreign offender condition, the decision maker must consult with the CPS to ensure there is no conflict with priority prosecutions or CPS immigration policy considerations.
- 8.3 If the condition specifies that the offender must not return to the United Kingdom for a period of time, the expiry of this period does not of itself give rise to any right on the part of the offender to return to the United Kingdom.
- 8.4 In addition, the decision maker should also determine that the public interest may be met by the FNO departing from the United Kingdom and agreeing not to return for a specified period of time.

- 8.5 Foreign offender conditions require careful planning, and the decision maker must consult with IE before deciding whether to give a foreign offender condition to an offender. In particular, the decision maker should obtain confirmation about the offender's immigration status, the likelihood of removal from the United Kingdom within a reasonable period and whether any dependants are required to be removed too under the relevant immigration rules. IE are responsible for monitoring compliance with foreign offender conditions and for reporting non-compliance to the authorised person.
- 8.6 When considering the use of foreign offender conditions, Police should also engage with the CPS to ensure there is no conflict between removal of an FNO for immigration offences and any public interest in prosecuting priority offenders. Police should refer to comprehensive guidance issued by the DPP regarding these conditions and the practical arrangements for dealing with such cases.
- 8.7 Foreign offender conditions may be given to bring about the departure of the offender from the United Kingdom and ensure that the offender does not return for a specified period of time. The conditions may require the offender to:
- a) Regularly report to an immigration office, reporting centre, police station or other similar place.
 - b) Obtain or assist authorities in obtaining a valid national travel document.
 - c) Comply with any lawful instruction given by the Secretary of State or an immigration officer.
- 8.8 Conditions to bring about the departure of the relevant FNO as part of a Diversionsary Caution should be completed as soon as reasonably practicable and in most cases within 16 weeks. Exceptionally, a longer period may be set where the administrative process in certain destination countries is likely to take longer than 16 weeks. This type of condition will not be appropriate where it will take longer than 24 weeks to complete. Periods of time in this paragraph start from the date the Diversionsary Caution was given.
- 8.9 Conditions concerned with ensuring that the relevant FNO does not return for a period of time will generally be in accordance with the Immigration Rules. Exceptionally, the condition may specify a period longer than that set out in the Immigration Rules. Such longer period must still be appropriate, proportionate, and achievable. For example, this may be required for serious offences that are either triable either way or that are indictable only offences.
- 8.10 Foreign offender conditions cannot be given where:
- a) There are reasonable grounds for believing that that the offence is connected to human trafficking, where the offender is either a victim or perpetrator; or

- b) There are barriers to removal, which may include where an FNO has made an asylum or human rights claim to remain in the UK and that claim is outstanding. This is particularly relevant where the offender is suspected of committing document or identity fraud in order to claim asylum or to raise a human rights claim. This does not, however, prevent foreign offender conditions from being offered where the asylum or human rights claim has been refused (and any appeal against that refusal has been finally determined), where the relevant FNO voluntarily withdraws the claim, or where the relevant foreign offender's grant of asylum has been revoked or not renewed by virtue of paragraph 339A of the Immigration Rules. In such cases, consideration can be given to whether foreign offender conditions can be offered. This may be particularly relevant where the offender has been charged with the offence and a Diversionsary Caution is considered post-charge. Other barriers to removal include the requirement to establish whether the offender needs to remain in the UK in order to provide evidence (as a witness) in criminal proceedings and evidence cannot be given by live link from overseas.

8.11 The following general points also apply to foreign offender conditions:

- a) Diversionsary Cautions with foreign offender conditions may be administered at a port or immigration removal centre or similar place if not administered at a police station.
- b) In relation to administering a caution with a foreign offender condition, or when dealing with non-English speakers, the authorised user must ensure that the effect of the caution and the administration of the caution are explained in a language that the offender can understand.
- c) A relevant FNO who has accepted a Diversionsary Caution with foreign offender conditions may still apply to remain in the UK on asylum or human rights grounds. Where this occurs, the relevant FNO may choose to withdraw from the caution. In addition, the decision maker should consider whether to treat the application to remain in the UK as non-compliance and whether the offender should be prosecuted with the original offence.
- d) Indictable-only offences must be referred to the CPS decision maker, to whom consent of the DPP is delegated, to determine whether a Diversionsary Caution is appropriate, including where foreign offender conditions may be suitable.
- e) Foreign offender conditions may be offered in a case that would ordinarily result in the imposition of imprisonment following conviction. However, it may only be offered where, in all the circumstances of the case, the decision maker assesses that the sentence likely to be imposed for the offence under consideration would be less than two years imprisonment.
- f) The relevant FNO may choose to withdraw from the Diversionsary Caution. In addition, the decision maker should consider whether to treat the application to remain in the UK as non-compliance and whether the offender should be prosecuted for the original offence.

Part 9: Administration and process

Authority to give a caution and make decisions on conditions

- 9.1 A Diversionsary or Community Caution may be **given** by an authorised person. Under section 98(7) of the Act, an authorised person means:
- a) a constable
 - i. an investigating officer, meaning an officer of Revenue and Customs appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005
 - ii. a person designated as a policing support officer or a policing support volunteer under section 38 of the Police Reform Act 2002
 - b) a person authorised by a prosecution authority for purposes relating to cautions of that kind.
- 9.2 Under section 121 of the Act, prosecution authority means:
- a) the Attorney General;
 - b) the Director of Public Prosecutions;
 - c) the Director of the Serious Fraud Office;
 - d) the Secretary of State;
 - e) a person prescribed in regulations.
- 9.3 The conditions attached to a caution are to be decided upon by:
- a) An authorised person, or
 - b) In a case where the CPS has been asked to authorise the issuing of a caution, normally only in cases involving indictable-only offences, domestic abuse or hate crimes, then the CPS will agree the conditions with the Police before giving authorisation.
- 9.4 In accordance with Part 5 of the Code, the decision to issue a caution must be authorised by an officer not below the rank of Sergeant (or Police staff equivalent).
- 9.5 Reference table for Police:

May be given by	Authority to issue	Authority to issue for excluded offence (Diversionsary Cautions only)	Decide on conditions
Constable or above (or Police staff equivalent)	Sergeant (or Police staff equivalent)	Inspector or above	Constable or above (or Police staff equivalent)

Place of administration

- 9.6 A Diversionary or Community Caution may be administered in a police station, court building, the offices of any prosecution authority, solicitor's office, or any other suitable location consistent with achieving the appropriate impact on the offender.
- 9.7 It will not generally be appropriate to administer a caution in public (for example, in the street) or in the offender's home. This highlights the clear distinction between a caution and the informal Community Resolution, which may be issued on the street or in the offender's home.
- 9.8 However, in exceptional circumstances, such as an elderly, physically impaired, or vulnerable offender, or in the case of a requirement to maintain physical distance or stay-at-home advice, the caution may be administered in an offender's home or similar place, providing the correct procedure for administering the caution is adhered to. The decision to issue a caution by Police in such circumstances should be agreed by an officer not lower than the rank of Sergeant or Police staff equivalent.
- 9.9 In these circumstances, and to safeguard the issuing officer and integrity of the process, the administration should be recorded on Body Worn Video (where available). The officer should ensure the written declaration and acceptance of the caution is captured on video.
- 9.10 Where the CPS or other prosecution authorities is the decision maker for a caution, the Police are still required to make the provisions to administer the caution in any place where this can be done fairly and with privacy. In most cases, this will be at a police station and never at a CPS or other prosecution authority office.
- 9.11 Before administering a caution, the decision maker should ensure that the offender has the opportunity to receive free and independent legal advice in relation to the criminal offence. The decision maker should ensure that the offender understands that they have a right to legal advice at any time during the process.

Effect of cautions

- 9.12 Diversionary Cautions and Community Cautions have implications for the offender. Before the cautions are administered, it is important that these are fully explained to offenders, alongside the implications of any failure to comply with the conditions that are attached.

Effect of the Diversionary Caution

- 9.13 Where a Diversionary Caution is given, criminal proceedings may be commenced against the offender for the offence for which the caution was given if, but only if,

the offender fails without reasonable excuse to comply with any of the conditions attached to the caution. The document signed by the offender on acceptance of the caution is admissible in these proceedings. Where a prosecution is commenced, the Diversionary Caution ceases to have effect.

Effect of the Community Caution

9.14 Where a Community Caution is given, criminal proceedings may not be instituted against the offender for the offence in respect of which the caution was given.

9.15 If the offender fails without reasonable excuse to comply with any condition imposed, an authorised person or prosecution authority may rescind the condition and attach a financial penalty. If this remains unpaid, it may follow the process set out at Part 7 – see financial penalties.

Offering and explaining the effect of the caution

9.16 Upon offering a Diversionary or Community Caution, but before administration, the authorised person must explain the effect of the caution and ensure that the offender has the opportunity to receive independent legal advice in relation to the criminal offence.

9.17 The authorised person must:

- a) Inform the offender of the evidence against them and the decision made by the decision maker (authorised person or prosecution authority);
- b) Explain the requirements of the caution, including exactly what each condition requires the offender to do;
- c) Explain the requirement for, and consequences of, making an admission to the offence, and in the case of a Diversionary Caution, explain that the admission may be used in evidence should the case result in prosecution;
- d) Make it clear to the offender that an admission should never be made merely to receive a caution;
- e) Explain that the caution will form part of the offender's criminal record and may need to be disclosed in certain circumstances including to an employer or prospective employer where a criminal records check is requested. It must also be explained that there may be circumstances where the acceptance of a caution means that the offence may be taken into account in determining whether an offender is prevented from working with children or vulnerable people (see Part 10 of this Code for further guidance);
- f) Explain that a Diversionary Caution given in relation to an offence in Schedule 3 to the Sexual Offences Act 2003 will require the offender to comply with the notification requirements in that Act;
- g) Explain that the offender may decide, at any stage, to withdraw from the caution, whether it is before, during, or after it has been administered;

- h) Warn the offender that any failure to comply with the conditions will be investigated. The offender will be given an opportunity to explain the reasons for non-compliance with the conditions. The decision maker will consider the report and the circumstances of the case, including the extent of any compliance to date, and
 - may (in the case of a Diversionary Caution) decide that the offender should be prosecuted for the original offence;
 - may (in the case of a Community Caution) decide that the offender should pay a financial penalty, or if this condition has already been used decided to enforce non-compliance by way of a court fine;
- i) Inform the offender that the victim or victims may be informed of the conditions agreed (unless there is good reason for this not happening) and may be provided with the details of the offender for any civil proceedings; and
- j) confirm that the offender accepts the conditions and agrees to accept the caution.

9.18 When complying with the above section, the authorised person must have regard to the provisions of PACE Code C (concerning mentally disordered or mentally vulnerable offenders) and the use of an appropriate adult. Also, when dealing with non-English speakers, the authorised person must ensure that this section is explained in a language that the offender can understand.

Administering the caution

- 9.19 At the point of administering the caution, the authorised person should ensure that the offender understands the following:
- a) The offender has the right to independent legal advice.
 - b) The effects of accepting a caution, in particular, that although it is not a criminal conviction, the caution will form part of an offender's criminal record, and depending on the caution received, it may be disclosed in certain circumstances, which may prevent the offender from working in some occupations (see Part 10 of this Code for further guidance).
 - c) The means by which compliance with each of the conditions will be verified (including any responsibilities of the offender for demonstrating compliance).
 - d) That if the offender does decide to withdraw from the caution, the offender should inform the authorised person as soon as possible. The decision maker may then decide that the offender should be charged with the original offence and prosecuted.
 - e) The process for contacting the Police (or other prosecution agency monitoring compliance) should any problems arise in complying with the conditions or if the offender decides to withdraw from the caution process.
 - f) The consequences of failing to complete the caution, namely that in the case of the Diversionary Caution, the offender may be liable for arrest and prosecution

for the original offence, or in the case of a Community Caution, a financial penalty followed by a court enforced fine may be given.

- g) Any requirement to notify the Police (or other agency monitoring compliance) immediately upon change of address.

- 9.20 When complying with the above, the authorised user must have regard to the provisions of PACE Code C (concerning mentally disordered or mentally vulnerable offenders) and the use of an appropriate adult. Also, when dealing with non-English speakers, the authorised person must ensure that this section is explained in a language that the offender can understand.

Documenting the caution

- 9.21 Under section 99(2)(e) and 108(2)(e), at the point of administration of the caution, the offender must sign a document which sets out the following:
- a) The details of the offence, including relevant Act and section
 - b) The offender's admission to having committed the offence
 - c) The offender's consent to being given the caution
 - d) The conditions attached to the caution
- 9.22 The MoJ does not publish national mandated forms (MG14 or otherwise) for the giving of cautions. It is the responsibility of forces and prosecution authorities to ensure any forms issued, signed, or recorded in relation to cautions contain sufficient information as outlined in this Code.

Monitoring compliance

- 9.23 When determining the conditions to be attached to a caution, the decision maker should consider the mechanism by which compliance with the conditions will be monitored and demonstrated.
- 9.24 The monitoring process must be made clear to both the offender and any organisation responsible for providing such information. Where reasonable and appropriate, the onus for providing confirmation of compliance may be placed specifically upon the offender.
- 9.25 IE are responsible for monitoring compliance with foreign offender conditions and for reporting non-compliance to the authorised person. For all types of conditions, the authorised person will have overall responsibility for monitoring compliance with conditions.
- 9.26 A robust process for demonstrating compliance must be in place. This may include agreements with:
- a) Organisations involved in delivering the conditions, e.g. drug treatment services
 - b) Police Officers and other police staff

- c) IE in relation to foreign offender conditions
- d) His Majesty's Prison and Probation Service
- e) His Majesty's Courts and Tribunals Service (for collection of monies).

Non-compliance

9.27 Monitoring the progress of conditions attached to a Diversionary or Community Caution may identify instances of non-compliance, whereby the authorised person or body needs to establish the circumstances and decide on next steps.

Establishing non-compliance with conditions

9.28 Where it appears to the authorised person, or other agency, or body monitoring compliance that an offender is failing to comply with one or more conditions, they should provide the offender an opportunity to explain and demonstrate compliance or to establish whether any reasonable excuse exists for non-compliance. If another agency or organisation is monitoring compliance, a report of the non-compliance together with the offender's response must be given to the authorised person.

9.29 Where there is no response from the offender, or where the decision maker concludes that there is no reasonable excuse for the failure or that the non-compliance is likely to continue, further assessment of the options available must be made.

Decisions to be made following non-compliance or withdrawal

9.30 Where the decision maker is satisfied that there is a reasonable excuse for the offender's failure to meet the conditions, or there has been substantial part-compliance, the decision maker will have to decide whether:

- a) The caution should be regarded as complete.
- b) The caution should be regarded as incomplete but that the public interest requires no further action.
- c) A new time limit should be set for completing the original conditions or the original conditions should be varied.

9.31 If there is no reasonable excuse or only part-compliance, then the decision maker should consider further action.

Further action following non-compliance with Diversionary Caution

9.32 Even in circumstances where conditions are not complied with, for Diversionary Cautions, it should never follow that a prosecution would automatically commence. At this point, the Full Code Test must be re-applied to ascertain if there remains sufficient evidence to charge and that it is in the public interest to prosecute.

9.33 The DPP's Guidance on Charging specifies those offences for which the Police have authority to charge and those offences where the CPS must make this

decision. If the Police have issued a Diversionsary Caution for an offence that requires CPS authority to charge, then a decision to charge following a breach of the attached conditions can only be made by the CPS.

Prosecution following non-compliance with Diversionsary Caution

- 9.34 Where the decision maker has determined that an offender has failed without reasonable excuse to comply with a Diversionsary Caution, they must ensure that the Full Code Test continues to be met. As such, it should remain that there is sufficient evidence to charge the offender with the original offence, and it is in the public interest to prosecute. If the Full Code Test is met, then proceedings should be commenced as soon as possible.
- 9.35 The authorised person must ensure that the offender is notified and that any local and national Police records are amended accordingly. Once proceedings are instituted, the Diversionsary Caution ceases to have effect. However, the fact that a Diversionsary Caution was given and not complied with should be recorded.
- 9.36 Where a prosecution for the original offence follows a failure to complete conditions attached to a Diversionsary Caution, the prosecutor should ensure that the court is made aware of this fact and provide details of the conditions that were attached to the caution and the extent of any partial compliance. This information may be used by the court when considering the case. Section 105 of the Act provides that the document recording the Diversionsary Caution and signed by the offender is admissible in such proceedings.

Further action following non-compliance with Community Caution

- 9.37 Non-compliance with a Community Caution cannot result in prosecution. If the offender fails without reasonable excuse to comply with any rehabilitative or reparative condition, the authorised person or prosecution authority may rescind the original condition and attach a financial penalty condition. In accordance with section 111 of the Act, if the financial penalty is not paid on or before the date specified, the amount of the penalty required to be paid by the condition is increased by 50%.
- 9.38 If the increased penalty is not paid within the period of 21 days beginning with the day after the date specified, the amount of the increased penalty may be registered with a Court for enforcement against the offender as a fine.
- 9.39 The fact that a Community Caution was given and not complied with should be recorded.

Powers of arrest and detention

- 9.40 Under section 106 of the Act, if a Police Constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with

any of the conditions attached to a Diversionsary Caution, the Constable may arrest the offender without warrant. Section 106 specifies the further action that must be taken upon arrest.

- 9.41 This power allows police to deal effectively with any breach, as long as the arrest necessity criteria of PACE and Code G are met, which may in this case, be to allow the prompt and effective investigation of the offence or of the conduct of the person in question.
- 9.42 Once arrested, detention may be authorised where it is necessary to investigate whether the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the Diversionsary Caution or to seek a charging decision from a prosecutor and formally charge an offender.
- 9.43 An offender arrested under this power must be:
- a) charged with the original offence in question, or
 - b) released without charge. If released without charge, this must be with bail if the release took place to enable a charging decision to be made and if the pre-conditions for bail are satisfied as set out in section 50A of PACE. In all other circumstances, release must be without bail, and this may be with or without any variation to the conditions attached to the Diversionsary Caution.
- 9.44 This power also provides that the same process applies to an offender who, having been released on bail, attends a police station to answer bail or who has been arrested for failure to answer to police bail. Where an offender is released on bail, the Custody Officer must inform the offender that the release is to enable a charging decision to be made.
- 9.45 An offender being dealt with under this section may be kept in Police detention until they have been dealt with in accordance with the provisions of this section, or in order to appoint a different or additional time for answering bail under section 47(4A) of PACE (as modified by section 107(3) of the Act). If a person is not in a fit state to be dealt with, they may be kept in police detention until they are. This power to detain someone includes the power to do so for the purposes of investigating whether the offender has failed without reasonable excuse to comply with any of the conditions. However, the process to be followed after arrest must be carried out as soon as practicable.
- 9.46 An offender who is in Police detention in relation to a matter other than failure to comply with a condition does not need be released if they are liable to continued detention in relation to that other matter.
- 9.47 No powers of arrest or detention exist in relation to the Community Caution.

Variation of conditions

- 9.48 An authorised person or prosecution authority may, with the consent of the offender, vary the conditions attached to a Diversionary Caution or Community Caution by varying or omitting any of the conditions or adding a condition. The request to vary conditions may be made by the decision maker or the offender themselves.
- 9.49 Where the offender then refuses to accept varied conditions because they consider them to be unreasonable, the decision maker may decide to allow the caution to continue so that the offender can comply with the original conditions.
- 9.50 Any changes to the conditions must be recorded and explained to the offender by the authorised person. A document clearly setting out the conditions as they stand from that point forward should be produced and must be signed by an authorised person and by the offender to indicate acceptance of the new conditions.
- 9.51 Such a document must comply with the requirements set out in Part 9.20 of this Code. Any non-compliance with the new or revised conditions should be dealt with according to the same process that applies for non-compliance with the original conditions, according to the caution given.

Withdrawal from conditions

- 9.52 An offender may withdraw from one or more of the conditions attached to a caution after it has been administered. Where this occurs, the decision maker should consider whether to treat this behaviour as non-compliance and what action should be taken in respect of the original offence, depending on the caution given.
- 9.53 Where the offender wishes to withdraw from one or more of the conditions, the offender should inform the decision maker or agency responsible for monitoring compliance. The decision maker should then consider what action should be taken depending on the caution given.
- 9.54 Where a caution has been given for multiple offences, the decision maker must also determine what action to take with the offender for one or all of the offences. This is particularly relevant in cases of partial compliance, where the offender may have completed one of the conditions that related to a specific offence, but not to another.
- 9.55 If a Diversionary Caution was given, then prosecution for those offences in relation to which the offender has not complied with may still be appropriate if it is in the public interest. If a Community Caution was given, then the decision maker should consider whether the public interest is satisfied by the completion of conditions

relating to one of the offences, or whether further action is required to rescind the conditions relating to other offences and attach a financial penalty.

- 9.56 Where relevant, the victim should be consulted. This may be particularly important in cases where the victim was subject to multiple offences.

Part 10: Criminal records

- 10.1 This section of the Code sets out what information will appear following criminal records check of an individual, or otherwise, in law, known as a criminal conviction certificate. The disclosure rules for criminal records are set out in further detail in the Government's [DBS filtering guide](https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide), which can be found online at <https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide>.
- 10.2 For most cautions and convictions there is a 'spending period'. That is the period someone is required to disclose a caution or conviction when asked, for example, when someone applies for a position of employment. The information that appears on a criminal record certificate is aligned with the information they are required to disclose.
- 10.3 The Diversionary Caution is considered spent after three months from the date it is given, or earlier, where the conditions of the caution are satisfied.
- 10.4 The Community Caution is spent immediately upon being given.
- 10.5 If an offender is applying for a non-sensitive role and a basic criminal records check is carried out, they will not have to disclose that they have received a Community Caution at any point, as the caution is considered immediately spent when it is given.
- 10.6 An offender would be required to disclose a Diversionary Caution under a basic check for up to three months following the date it is given, or earlier, if they have satisfied the conditions of the caution and it has been spent. This is in accordance with the Rehabilitation of Offenders Act 1974 and section 112 of the Police Act 1997.
- 10.7 If the offender applies for a job in a sensitive role, the employer is entitled to request a standard or enhanced criminal record check. That shows details of all unspent convictions and cautions, and some spent cautions and convictions provided they have not been filtered.
- 10.8 Both Diversionary and Community Cautions will be filtered and will not need to be disclosed six years after they have been given. The exception to this is if either

type of caution was given in respect of a specified offence, which will never be filtered, meaning they will always need to be disclosed. There is a list of the relevant offences available here: <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>.

- 10.9 It should be noted that this list should not be confused with the giving of a Diversionary Caution for indictable-only offences in exceptional circumstances authorised by a decision maker with at least the rank of Inspector, and with consent of the DPP which is delegated to the CPS decision maker.
- 10.10 Formal methods of disposal, such as cautions, represent a form of entry into the criminal justice system which should be recorded on the Police National Computer. Consideration should therefore be given by the decision maker to whether a less formal response is more appropriate.

Part 11: Scrutiny and transparency

Data retention

- 11.1 In accordance with existing data requirements set by the Home Office, the Police must record and retain records of Diversionary and Community Cautions issued and the offence for which they were given. They must also retain records of conditions used, along with offender compliance. Offender demographics should be recorded by age, gender, and ethnicity.
- 11.2 Upon request, and within mutually agreed timescales, this data should be made available to the Home Office, the Ministry of Justice, Police and Crime Commissioners and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services for the purposes of research, analysis, or inspection.
- 11.3 Other prosecution authorities should also record and retain this data for inspection purposes in accordance with their internal policies or any guidelines from a relevant Inspectorate.

Scrutiny

- 11.4 The use of OOCs requires forces and prosecution authorities to be open, transparent, and accountable in their decision making.
- 11.5 Every police force in England and Wales should have an established scrutiny panel in place. Guidance published by the National Police Chiefs Council sets out the arrangements for these panels. The Police should comply with this guidance.
- 11.6 In order to improve public confidence in the use of OOCs, the Police and other prosecution authorities must be transparent about their use, including where

inappropriate decisions were made, and lessons learnt to improve future decision making.

- 11.7 Panels also hold an important function in identifying whether decisions may have contributed to disproportionality in enforcement against offenders belonging to ethnic minority groups, female offenders, or those with other protected characteristics.
- 11.8 Following a scrutiny panel (whether a general panel or thematic), the police force must publish a written summary report of the findings of the meeting. This must be published within a reasonable period of time and in a format and place accessible to the public, which may be via a force website.
- 11.9 These findings must not contain any details identifying any offender, victim or witness discussed as part of a panel, but must contain sufficient detail for the public to understand:
- a) the number and type of cases reviewed, including the outcome of the panel decision as to the appropriateness of the disposal that was given; and
 - b) lessons learnt and what steps have been taken to change an existing process or culture within that force, including how any inconsistency in decision making was addressed.
- 11.10 In addition to external scrutiny panels, police forces should also consider other forms of internal accountability. This may include ‘dip-sampling’ or auditing of decision-making in the force after the decision has been made. This may involve officers of a higher rank or within a different team reviewing a sample range of, or all, OOC decisions to ensure they are suitable and in line with this Code, any Director’s guidance, and police force policy.

Part 12: Matters arising after administration

- 12.1 There is no formal right of appeal against the administration of a caution once it has been accepted by the offender and administered by the authorised user. However, it may be challenged by way of a complaint against the police force or prosecution authority that administered it.

Annex A – Disposals comparison

Disposal	Diversionsary Caution	Community Caution	Community Resolution
Type	Statutory – established in legislation	Statutory – established in legislation	Non-statutory Police disposal – private agreement
Offences	Any offence – in the case of indictable only offences, only in exceptional circumstances and with consent of the DPP	All offences other than an excluded offence – indictable only, either-way or summary only offence as prescribed in regulations	Lower level less serious crime or incident / summary only offences / some either-way offences which would be tried in the Magistrates Court Should not be used for intimate partner domestic abuse
Repeat Use	Case-by-case basis 4.2–4.5 of this Code of Practice	Case-by-case basis 4.2–4.5 of this Code of Practice	No relevant offending history No Community Resolution for same or similar offence within 12 months unless exceptional circumstances
Conditions	<ul style="list-style-type: none"> • Rehabilitative • Reparative • Restorative Justice • Financial penalty • Foreign offender conditions 	<ul style="list-style-type: none"> • Rehabilitative • Reparative • Restorative Justice • Financial penalty 	<ul style="list-style-type: none"> • Apology • Make right (Reparative) • Compensation • Diversion – education/rehabilitation
Enforcement if Breached	<ul style="list-style-type: none"> • Power of arrest • Could be prosecuted 	<ul style="list-style-type: none"> • No power of arrest • Cannot be prosecuted • Rescind original condition & attach a financial penalty 	<ul style="list-style-type: none"> • None

Disposal	Diversionsary Caution	Community Caution	Community Resolution
		<ul style="list-style-type: none"> If unpaid, can be raised as a fine to a Court 	
Evidential Requirement	Sufficient evidence to charge	Sufficient evidence to charge	Reasonable suspicion of crime or incident having occurred
Decision Maker	Police or CPS (indictable only offences must go to CPS)	Police or CPS	Police
Admission	Admission of guilt	Admission of guilt	Acceptance of responsibility
Offender Consent	Yes	Yes	Yes
Victim Consent / Involvement	<ul style="list-style-type: none"> Make reasonable effort to obtain views of victim Victim may be called to give evidence (if breach and prosecution occur) 	<ul style="list-style-type: none"> Make reasonable effort to obtain views of victim No further requirement on victim once Community Caution issued – they would not have to give evidence as case cannot be prosecuted 	<ul style="list-style-type: none"> Yes, but may proceed without (with supervisors agreement) No further requirement on victim once Community Resolution issued
Criminal Record / DBS	<ul style="list-style-type: none"> Spent after 3 months (same as Conditional Caution, or sooner if condition(s) satisfied) Diversionsary Caution would show on a basic check for 3 months when unspent 	<ul style="list-style-type: none"> Spent immediately Community Cautions would never appear in the basic criminal record check as they are spent immediately, and only unspent matters appear on such checks Community Caution would be disclosed for up to 6 years in 	<ul style="list-style-type: none"> Not part of a criminal record but may be disclosed as part of enhanced DBS check Community Resolution may appear on an enhanced check where the person is looking to do a sensitive job or activity

Disposal	Diversionary Caution	Community Caution	Community Resolution
	<ul style="list-style-type: none"> Diversionary Cautions would be disclosed whilst unspent or for up to 6 years in standard or enhanced checks where the person is looking to do a sensitive job or activity 	standard or enhanced checks where the person is looking to do a sensitive job or activity	
Record Held	Forces Records Management System / PNC	Forces Records Management System / PNC	Forces Records Management System

Annex B – Principles for Domestic Abuse Diversionary Cautions

Pre-Conditions

1 – Force agrees to abide by this guidance agreed by MoJ, CPS and the National Police Chief Council (covering offence types, level of risk, appropriate conditions, use of Restorative Justice and Community Resolutions etc.). In particular, the force should ensure that in all DA offences:

- a) The offender has made a full admission and has not raised the possibility of a defence, for example, self-defence in a case of assault, and the decision maker feels that the individual would benefit from such an outcome.
- b) The offender accepts full responsibility.
- c) The offender has no previous convictions or cautions for domestic abuse in the previous two years; past minor convictions are permitted unless the offender is currently serving a community-based sentence or Order; must not be under Police investigation or on bail for another offence; has no history of controlling or coercive behaviour in this or other relationships.
- d) The offender has not committed a serious offence. The starting point for assessing seriousness is to consider the likely penalty if the matter went to court. Where the circumstances of the offence indicate that an immediate custodial sentence or high-level Community Order is the appropriate sentence, then a caution should not be offered.
- e) The express wishes of the victim are met by following this route after the victim has been provided with a full explanation of all options and their consequences. However, the final decision will always rest with the Police supervisor or CPS.
- f) There is no evidence of coercive or controlling behaviour, stalking or harassment on the part of the suspect within the relationship (to be verified where possible by support services).
- g) A DASH, DARA or other risk assessment tool shows that the risk to the safety of the victim and/or family is not higher than the “standard” classification.
- h) The conditions imposed for the disposal under consideration are in line with those identified as suitable and sanctioned by the National Policing Lead on Domestic Abuse. These conditions set that perpetrator interventions must contain the key rehabilitative elements used in Project CARA (Cautions and Relationship Abuse).

This guidance will be reviewed and amended periodically, in the light of experience from forces.

2 – Risk Assessment and selection of cases

- a) The victim should be contacted, and a risk assessment completed by a trained officer. Selection criteria for the type of case must ensure that there is no coercive control which is affecting the victim's decision making.
- b) Police forces must have a robust approach to assessing risk and should only use Diversions Cautions for cases where a DASH, DARA or other risk assessment tool shows that the risk to the safety of the victim and/or family is not higher than the "standard" classification.

3 – Decision Making

Domestic Abuse Diversions Cautions must still be compliant with legislation and this Code of Practice. This means that those approving a domestic abuse Diversions Caution must be a Police Officer not below the rank of Sergeant. They must also have relevant domestic abuse experience, with the appropriate knowledge / experience, skillset, and access to information on perpetrator interventions and other interventions available. The authorised person should reassure themselves that the initial assessment of risk is correct and that a risk management plan has been put in place. Other specialists may be involved in the recommendation of suitable conditions, as long as the decision maker is described as above.

4 – Condition Types

Forces must offer a range of conditions:

- a) For cases of intimate partner abuse, there must be a focus on rehabilitation of domestic abuse perpetrators and a perpetrator intervention must be available and used (this cannot be generic anger management, it must be a domestic abuse tailored intervention). However, it is accepted that a perpetrator programme may not be the most appropriate intervention for a female offender. In this instance a women's diversion may be a more suitable option and can be considered on a case-by-case basis.
- b) For perpetrators of intimate partner abuse, any related intervention should be quality assured, be evidence-based, and have clear arrangements in place for ongoing evaluation/assessment. These arrangements should be robust enough to contribute to national and local evidence bases on the impact of the intervention on frequency and harm of offending, and risk to the victim, until there is sufficient evidence to support its ongoing use and national roll out. Perpetrator interventions should contain the key elements used in Project CARA namely the principles and processes of motivational interviewing, peer support, peer challenge, victim focus, offender focus, rapport, non-shaming, listening, and questioning.
- c) For non-intimate partner relationships, consideration should be given to an appropriate rehabilitative diversion which, unlike intimate partner cases, where there is no element of coercive controlling behaviour, this could include anger management or other appropriate intervention

- d) For all incidents, forces should also consider the possibility of onward referral/signposting to other services (e.g. drugs, alcohol, or financial support), in addition to specific DA focused rehabilitation.
- e) Conditions could also be restrictive or reparative. For intimate partner abuse, conditions must NOT include a punitive financial element.
- f) Restorative Justice (RJ) will never be suitable for intimate partner domestic abuse cases.
- g) In cases where there is no intimate-partner relationship, or history of such, and offences do not include violence, stalking, harassment or sexual offences, RJ may be considered as part of a Diversionsary Caution if certain criteria are met:
 - It should only be used as an exception, where the call is in isolation and there is no previous history or concern. The incident should also be extremely low-level, such as minor criminal damage or theft.
 - RJ should only be considered after cases have been subject to thorough risk assessment by specialist officers, trained and experienced in managing domestic abuse (an 'on the spot' or 'street' RJ meeting would not be appropriate). Where forces utilise restorative justice options, cases should also be subject to regular retrospective review by specialist officers.
 - Forces must ensure that clear policy and procedure is available and careful consideration should be given to the authority levels for approving its use i.e. Specialist Public Protection Inspector and above.
 - Any officer/person undertaking the RJ process must have received accredited facilitator training (3–5 day training input) and ideally specific training to deal with this type of offence.

5 – Monitoring Compliance

A robust and accurate process must be in place to monitor and report on compliance with conditions. Commissioned services should include within the service level agreement a requirement for the service supplier to supply robust and auditable information on compliance to the Police.

6 – Data Collection

Police forces must record and retain sufficient data in compliance with Part 11 of the Code of Practice. This is to ensure ongoing monitoring of reoffending rates and crime harm can be carried out to ensure diversionsary cautions remain an effective response to reducing harm and reoffending.

7 – Scrutiny Arrangements

An independent scrutiny panel with membership to ensure a cross criminal justice view (for example magistrates and CPS) and independent representation from an advisory group, should meet regularly to review an agreed percentage of domestic violence (abuse) cases.

Annex C – Specified excluded offences

The following either-way offences are specified as excluded for Diversionsary and Community Cautions, for the purposes of section 98(6)(b) or (c) of the Police, Crime, Sentencing and Courts Act 2022:

Offensive weapon and bladed article offences

- Having an offensive weapon in a public place, contrary to section 1(1) of the Prevention of Crime Act 1953
- Threatening another person with an offensive weapon in a public place, contrary to section 1A(1) of the Prevention of Crime Act 1953
- Having a bladed or pointed article in a public place, contrary to section 139(1) of the Criminal Justice Act 1988
- Having a bladed or pointed article on school premises, contrary to section 139A(1) of the Criminal Justice Act 1988
- Having an offensive weapon on school premises, contrary to section 139A(2) of the Criminal Justice Act 1988
- Threatening another person with a bladed or pointed article in a public place or on school premises, or threatening another person with an offensive weapon on school premises, contrary to section 139AA(1) of the Criminal Justice Act 1988

Carrying a firearm in a public place

1. Having a firearm in a public place, contrary to section 19 of the Firearms Act 1968, where the offence was committed in relation to a firearm within the meaning of section 57(1) of that Act and is triable either way (see Schedule 6 to the Firearms Act 1968)

Child cruelty

2. Child cruelty, contrary to section 1(1) of the Children and Young Persons Act 1933

Sexual offences against children (including those relating to child prostitution and pornography)

3. Sexual assault, contrary to section 3(1) of the Sexual Offences Act 2003, where the victim of the offence was under 16 at the time of the offence Causing a person to engage in sexual activity without consent, contrary to section 4(1) and (5) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 4(4) of that Act), where the victim of the offence was under 16 at the time of the offence
4. Sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003
5. Causing or inciting a child under 13 to engage in sexual activity, contrary to section 8(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 8(2) of that Act)
6. Sexual activity with a child, contrary to section 9(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 9(2) of that Act)

7. Causing or inciting a child to engage in sexual activity, contrary to section 10(1) and (3) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 10(2) of that Act)
8. Engaging in sexual activity in the presence of a child, contrary to section 11(1) of the Sexual Offences Act 2003
9. Causing a child to watch a sexual act, contrary to section 12(1) of the Sexual Offences Act 2003
10. Arranging or facilitating the commission of a child sex offence, contrary to section 14(1) of the Sexual Offences Act 2003
11. Meeting a child following sexual grooming, contrary to section 15(1) of the Sexual Offences Act 2003
12. Sexual activity with a child in abuse of a position of trust, contrary to section 16(1) of the Sexual Offences Act 2003
13. Causing or inciting a child to engage in sexual activity in abuse of a position of trust, contrary to section 17(1) of the Sexual Offences Act 2003
14. Engaging in sexual activity in the presence of a child in abuse of a position of trust, contrary to section 18(1) of the Sexual Offences Act 2003
15. Causing a child to watch a sexual act in abuse of a position of trust, contrary to section 19(1) of the Sexual Offences Act 2003
16. Sexual activity with a child family member committed by a person who was aged 18 or over at the time of the offence, contrary to section 25(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 25(6) of that Act)
17. Sexual activity with a child family member committed by a person who was under 18 at the time of the offence, contrary to section 25(1) and (5) of the Sexual Offences Act 2003
18. Inciting a child family member to engage in sexual activity committed by a person who was aged 18 or over at the time of the offence, contrary to section 26(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving the penetrative activities specified in section 26(6) of that Act)
19. Inciting a child family member to engage in sexual activity committed by a person who was under 18 at the time of the offence, contrary to section 26(1) and (5) of the Sexual Offences Act 2003
20. Paying for the sexual services of a child where the victim of the offence was under 16 at the time of the offence, contrary to section 47(1) and (4)(b) of the Sexual Offences Act 2003 (i.e. not involving a victim who was under 13 at the time of the offence or the penetrative activities specified in section 47(6) of that Act)
21. Paying for the sexual services of a child where the victim was 16 or over at the time of the offence, contrary to section 47(1) and (5) of the Sexual Offences Act 2003
22. Causing or inciting child prostitution or pornography, contrary to section 48(1) of the Sexual Offences Act 2003

23. Controlling a child prostitute or a child involved in pornography, contrary to section 49(1) of the Sexual Offences Act 2003
24. Arranging or facilitating child prostitution or pornography, contrary to section 50(1) of the Sexual Offences Act 2003
25. Indecent assault on a woman, contrary to section 14(1) of the Sexual Offences Act 1956, where the victim of the offence was under 16 at the time of the offence
26. Indecent assault on a man, contrary to section 15(1) of the Sexual Offences Act 1956, where the victim of the offence was under 16 at the time of the offence
27. Indecent conduct with or towards a child, contrary to section 1(1) of the Indecency with Children Act 1960
28. Sexual activity with a child in abuse of a position of trust, contrary to section 3(1) of the Sexual Offences (Amendment) Act 2000

Sex trafficking offences

- Trafficking another person into the UK for sexual exploitation, contrary to section 57(1) of the Sexual Offences Act 2003
- Trafficking another person within the UK for sexual exploitation, contrary to section 58(1) of the Sexual Offences Act 2003
- Trafficking another person out of the UK for sexual exploitation, contrary to section 59(1) of the Sexual Offences Act 2003
- Trafficking another person for sexual exploitation, contrary to section 59A(1) of the Sexual Offences Act 2003
- Trafficking an individual into the UK for prostitution, contrary to section 145(1) of the Nationality, Immigration and Asylum Act 2002
- Trafficking an individual within the UK for prostitution, contrary to 145(2) of the Nationality, Immigration and Asylum Act 2002
- Trafficking an individual out of the UK for prostitution, contrary to 145(3) of the Nationality, Immigration and Asylum Act 2002

Indecent and pornographic images of children

- Making etc indecent photographs of children, contrary to section 1(1) of the Protection of Children Act 1978
- Possessing indecent photographs of children, contrary to section 160(1) of the Criminal Justice Act 1988
- Possessing prohibited images of children, contrary to section 62(1) of the Coroners and Justice Act 2009

Class A drug offences

- Producing etc a controlled drug, contrary to section 4(2) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

- Supplying etc a controlled drug, contrary to section 4(3) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug and is triable either way, (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Possessing a controlled drug with intent to supply it to another, contrary to section 5(3) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Importing a controlled drug, contrary to section 50(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Importing a controlled drug, contrary to section 50(3) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Exporting a controlled drug, contrary to section 68(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Importing or exporting a controlled drug, contrary to section 170(1) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)
- Importing or exporting a controlled drug, contrary to section 170(2) of the Customs and Excise Management Act 1979 and in connection with a prohibition having effect by virtue of section 3(1) of the Misuse of Drugs Act 1971, where the offence was committed in relation to a Class A drug (as defined in section 2(1)(b) of the Misuse of Drugs Act 1971) and is triable either way (i.e. not a third drug trafficking offence within the meaning of section 110 of the Powers of Criminal Courts (Sentencing) Act 2000)

Annex D – Example conditions

Reparative	Rehabilitative	Restorative	Punitive	Foreign Offender
<p>To repair or make good, loss or damage to a victim(s) or community:</p> <ul style="list-style-type: none"> • Repairing directly or indirectly damage caused • To make an apology, either in writing or if appropriate in person • To pay compensation to a victim, community, or charity • To carry out unpaid work (up to 20 hours for a Diversionary Caution or 10 hours for a Community Caution) 	<p>To stop or modify offending behaviour through attendance at a service or intervention to:</p> <ul style="list-style-type: none"> • Drugs addiction • Alcohol abuse • Gambling addiction • Other addiction • Money / debt advice service • Anger management <p>(Attendance must not exceed 20 hours in the Diversionary Caution and 10 hours in the Community Caution)</p>	<p>To facilitate communication between victim and offender</p> <p>Attendance at a restorative justice conference with the victim, where both parties agree to it</p>	<p>Financial penalty:</p> <ul style="list-style-type: none"> • To punish where there are no other appropriate conditions, or those conditions do not provide an appropriate or proportionate response to offending behaviour • £100 summary or either-way offence (Diversionary or Community Caution) • £150 indictable only offence (Diversionary Caution only) 	<p>(Applies to Diversionary Caution only)</p> <p>To effect departure from the UK and ensure non-return for a specified period:</p> <ul style="list-style-type: none"> • To depart from the UK as soon as reasonably practical and no later than (specified date) • To comply with any lawful instruction to effect removal from the UK • To produce and surrender to UKVI a valid national travel or identity document • To not return to the UK for five years as set out in the immigration Rules and thereafter only in accordance with the Immigration rules

Reparative	Rehabilitative	Restorative	Punitive	Foreign Offender
<p>Restrictive conditions with the objective of rehabilitation or reparation:</p> <ul style="list-style-type: none"> • Not to meet or communicate with specified individuals • Not to be in, go to a specified address, within specified distance of a place or area in the United Kingdom – e.g. a victim’s address, place of business, place of offence (retail premises) 	<p>Restrictive conditions with the objective of rehabilitation or reparation:</p> <ul style="list-style-type: none"> • Not to meet or communicate with specified individuals • Not to be in, go to a specified address, within specified distance of a place or area in the United Kingdom – e.g. a victim’s address, place of business, place of offence (retail premises) 			

Annex E – Definitions

“The Act” – means the Police, Crime, Sentencing and Courts Act 2022

“Authorised person” – has the meaning given in Section 98(7) of the 2022 Act

“Caution” – unless specified, caution refers to both diversionary and community caution

“Community Remedy Document” – means the Community Remedy Document (as revised from time to time) published under section 101 of the Anti-social Behaviour, Crime and Policing Act 2014 for the police area where the offence in question was committed

“The CPS” – means the Crown Prosecution Service

“Decision Maker” – means either the authorised person or the relevant prosecutor who is required to make a decision

“The DPP” – means the Director of Public Prosecutions

“Directors Guidance” – Guidance Issued by the Director of Public Prosecutions under the provisions of section 37A of the Police and Criminal Evidence Act 1984

“Excluded offence” – has the meaning given by section 98(6)

“Financial Penalty” – means a punitive condition requiring the offender to pay a financial penalty may be attached to a diversionary or community caution with the object of punishing the offender

“Fine” – means a court enforced fine

“FNO” – means foreign national offender

“IE’ – means Immigration Enforcement (previously UK Border Agency)

“Indictable-only offence” – means an offence which, if committed by an adult, is triable only on indictment

“Investigating officer” – means (a) an officer of Revenue and Customs appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or (b) a person designated as a policing support officer or a policing support volunteer under section 38 of the Police Reform Act 2002

“O OCD” – means Out of Court Disposal

“Police detention” – has the same meaning as in the 1984 Act (see section 118(2) of that Act)

“Prosecution authority” – means (a) the Attorney General; (b) the Director of Public Prosecutions; (c) the Director of the Serious Fraud Office; (d) the Secretary of State; (e) a person prescribed in regulations

“Victim” – in relation to an offence, means the particular person who appears to have been affected, or principally affected, by the offence.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- 1. Are you an ‘authorised person’ representing a prosecution agency that issues OOCs?**

(Please select one: yes; no)

If yes, please specify the agency you represent and how the new framework will impact you.

- 2. Do you agree or disagree that the Code of Practice strikes the right balance between providing a clear framework for decisions and individual case flexibility?**

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

- 3. Do you agree or disagree that the guidance on the relationship between the Community Resolution, Community Caution and Diversionary Caution, and their respective use is clear in the Code of Practice?**

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

- 4. Do you agree or disagree that there is an appropriate level of emphasis in the Code of Practice on a) victim involvement? b) victim satisfaction?**

(For both part a) and b)) please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

- 5. For Community Cautions (lower tier), the Police, Crime, Sentencing and Courts Act 2022 specifies that they may be issued for any offence other than an excluded offence (defined as an indictable-only offence, or an either-way or summary only offence prescribed in regulations). We have proposed retaining the excluded offences that limit the use of existing Simple Cautions. Do you agree or disagree with this approach?**

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree)

Please specify your proposed additions, removals, or amendments to the excluded offences for Community Cautions and reasons for suggesting these.

6. We have proposed an amended financial penalty structure for the new cautions. What is your view on this structure?

(Please explain your answer)

7. In regard to the repeat use of cautions, would you make any amendments to the proposed specifications detailed in the Code of Practice?

(Please select one: yes; no)

If yes, please specify what changes you would make and why.

8. In accordance with Part 5 of the Code of Practice, the decision to issue a caution should be countersigned by an Officer not below the rank of Sergeant (or Police staff supervisor equivalent). Do you agree or disagree that this rank of seniority to issue a caution is appropriate?

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your response and the rank you feel is of appropriate seniority to issue a caution)

9. Some Police Forces have centralised OOC teams, which employ Police staff (rather than Police Officers). To reflect this, the Code of Practice uses the term ‘Police staff equivalents’. In your view, is this term clear and workable?

(Please select one: yes; no)

If you selected no, please explain your answer, and suggest how this could be improved.

10. The Code of Practice sets out a requirement for compensation payments to be achievable.

a) Do you agree or disagree that this requirement is sufficient?

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

b) Do you agree or disagree that setting an upper limit for compensation payments would be preferable?

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

11. Do you agree or disagree that the distinction between the cautions admission requirement and the full code test (of the Code for Crown Prosecutors) is made clear in the Code of Practice?

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree)

Please provide any suggestions to make this distinction clearer.

12. Do you agree or disagree that the requirement for and method of reporting the use of cautions should be mandated more strongly in the Code of Practice?

(Please select one: Strongly agree; Agree; Neither; Disagree; Strongly Disagree – please explain your answer)

13. When offering, explaining, and administering a caution, are there other accessibility considerations that the Code of Practice should include other than those already stipulated?

(Please explain your answer)

14. From an operational perspective, are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects?

(Please select one: yes; no)

If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to accommodate operational practicalities.

15. Do you agree or disagree that the following annexes in the Code of Practice are clear and helpful: Annex A: Disposals comparison; Annex B: Principles for Domestic Abuse Diversionary cautions; Annex C: Excluded offences; and Annex D – Example conditions.

(For each of the above please select: Strongly agree; Agree; Neither; Disagree; Strongly Disagree)

If you disagree, please specify how the annex(es) could be made more helpful.

16. Are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects for individuals with protected characteristics?

(Please select one: yes; no)

If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to address these concerns or adverse effects.

17. In your view, are there any parts of the Code of Practice (not already covered in previous questions) that need greater clarification?

(Please select one: yes; no)

If so, please specify which part of the Code of Practice requires greater clarification and why.

18. What other comments, if any, do you have that have not been covered in the previous questions throughout the document?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 13/10/2023 to:

**Youth Justice and Offender Policy Directorate; Probation Policy –
Community Diversion**

Ministry of Justice
Post Point 7.14
102 Petty France
London
SW1H 9AJ

Email: oozd.consultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from oozd.consultation@justice.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published by January 2023. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment and Equalities

Impact assessment

The Impact Assessment for the Police, Crime, Sentencing and Courts Act: Reform of the Adult Out of Court Disposals Framework can be found on-line at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073440/MOJ_Sentencing_IA_-_OOCDFramework_2022.pdf.

Equalities

1. Under the [Equality Act 2010](#), when exercising its functions, the MoJ has an ongoing legal Public Sector Equality Duty (PSED) to pay due regard to the need to –
 - (a) eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
 - (b) advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not;
 - (c) foster good relations between different groups.

We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, the MoJ as a service provider, has a duty to make reasonable adjustments for disabled people. The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics of race, sexual orientation, marriage and civil partnership, gender (sex), religion or belief, gender reassignment, disability, age and pregnancy and maternity.

2. **Direct discrimination.** This occurs when a policy would result in someone being treated less favourably because of a protected characteristic. We believe that reforming the OOCDF framework is not directly discriminatory within the meaning of the 2010 Act, as it applies in the same way to all individuals regardless of their protected characteristics. It is the nature of the offence and the offender's criminal record which determines whether it is appropriate to deal with the matter without recourse to the courts. Therefore, no offender would be treated less favourably in relation to any protected characteristic as a direct result of this policy.
3. **Indirect discrimination.** This occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. We believe that reforming the two-tier OOCDF

framework may pose a risk of indirect discrimination within the meaning of the Equality Act, as explained below.

For both tiers of the statutory framework, the offender needs to admit guilt and agree to the particular OOC in order for the offence to be dealt with outside the court process. This reflects the current status of most OOCs, with the exception of Penalty Notices for Disorder and Fixed Penalty Notices, which do not require the offender to admit the offence but have a mechanism by which the offender can elect to have their case heard in court.

We know from the Lammy Review that some ethnic minority defendants have little trust in the criminal justice system or in the Police Officers at the Police station, which can lead them to offer a ‘no comment’ response interview or not admitting to the offence. This can result in an escalation of the matter by the Police, resulting in a prosecution.

There is therefore a risk that the requirement to accept responsibility or admit guilt would mean individuals from an ethnic minority would be less likely to receive an early intervention via an OOC and would be more likely to be prosecuted. The public consultation will ask about equality considerations.

It is therefore important that in approaching this policy, we work to mitigate risk that this could be perceived to disadvantage anyone. We are, therefore, taking two important steps –

- i. To undertake a full review of the forthcoming evaluation of, and collaborate with, Chance to Change pilot sites.
- ii. Operate this policy in the context of criminal justice system scrutiny panels, with independent chairs, who should carefully consider any disproportionality in respect of race and OOCs.

The Chance to Change model places less emphasis on admission of guilt and can divert offenders to intervention services. A full admission is not required in order for an offender to be diverted in this way, although outright denials are not allowed. Evaluation of the pilots will be undertaken.

All Police Officers already undergo mandatory training, which includes substantial coverage of ethics, equalities, self-understanding, hate crimes and policing without bias. The College of Policing, who set and maintain training standards for policing, published a Code of Ethics in 2014, which includes a set of principles for policing, including that all Police Officers and staff should take active steps to oppose discrimination and make their decisions free from prejudice. Despite the risk identified above, we consider that this change is a proportionate means of achieving the legitimate aim of creating an OOC framework that provides consistency,

simplification, and opportunity for engagement with intervention services. Overall, therefore, we do not consider that the policy change is likely to result in any unlawful indirect discrimination.

4. **Discrimination arising from disability and duty to make reasonable adjustments.**

Related to the point made above on the requirements for an OOC, it is important to ensure that individuals with disabilities (including those with learning difficulties or mental health issues) understand the implications of admitting guilt or accepting responsibility for the offence committed, and how they can comply with the conditions imposed on them. The current Code of Practice for Adult Conditional Cautions states that officers must have regard to the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offenders and the use of an appropriate adult. This provision would be reinforced in the new Code of Practice.

In so far as this change extends to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment so that those with disabilities are out of scope of the proposals, but it remains important to make reasonable adjustments to ensure appropriate support is given. We do not consider that any adjustments are required for disabled people over and above the ones already in place for those receiving OOCs.

5. **Harassment and Victimisation.** We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of this change.

6. **Advancing Equality of Opportunity.** OOCs offer an opportunity to refer low-level offenders to relevant interventions services, such as health and substance misuse services, to address underlying factors that are contributing to offending behaviour. There may also be opportunities for referrals to mentoring and employment support opportunities. OOCs can help to divert first time and low-level offenders away from further contact with the criminal justice system and into meaningful and rewarding life choices. These opportunities will apply, where available, to all recipients of an OOCs. We therefore consider that these changes will help advance equality of opportunity.

7. **Fostering Good Relations.** In addition, we recognise that in order to build the trust of all communities, the Police workforce must better reflect today's modern, diverse society. The Police Officer workforce is more diverse in terms of ethnicity and gender than ever before, but there is still much more to be done. The Home Office sought to recruit 20,000 additional Police Officers (over three years) by March 2023 and this recruitment drive has been fulfilled. As of March 2023, 20,951 additional Police Officers have been recruited from funding for the Police Uplift Programme.⁶ This recruitment drive provided us with a significant opportunity to attract a wide range of people into a career in policing and support the Police to achieve this aim. We believe the policy aim

⁶ [Police officer uplift. England and Wales. quarterly update to 31 March 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/police-officer-uplift-england-and-wales-quarterly-update-to-31-march-2023)

of the reform the OOCDF framework is a proportionate means of achieving our legitimate aim and that there will be positive impacts for victims and recipients of the disposals.

8. **Continuing Analysis.** The equality duty is an ongoing duty, and we will draw on any data that could provide evidence on the impact of this change.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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