



Ministry of  
**JUSTICE**

# **Code of Practice for Youth Conditional Cautions**

Crime & Disorder Act 1998  
(as amended by the Criminal Justice  
& Immigration Act 2008 and the  
Legal Aid, Sentencing and  
Punishment of Offenders Act 2012)

March 2013



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Presented to Parliament pursuant to section 66G of the  
Crime and Disorder Act 1998

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## Code of Practice for Youth Conditional Cautions

## Section 1: Introduction

### 1. Definitions

1.1 In this Code of Practice:

- “*the 1998 Act*” means the Crime and Disorder Act 1998;
- “*authorised person*” has the meaning given in section 66A(7) of the 1998 Act;
- “*the CPS*” means the Crown Prosecution Service;
- “*YOT*” means the Youth Offending Team;
- “*decision maker*” means either the authorised person or the relevant prosecutor who is required to make a decision, (for example, about whether there is sufficient evidence to give a conditional caution);
- “*the DPP*” means the Director of Public Prosecutions;
- “*the DPP guidance*” means guidance issued by the DPP under section 37A of the Police and Criminal Evidence Act 1984; and
- “*relevant prosecutor*” has the meaning given in section 66H of the 1998 Act.

1.2 Reference to “*the offence*” means one or more offences.

### 2. Aim and purpose of Youth Conditional Cautioning

2.1 A youth conditional caution allows an authorised person (usually a police officer) or a relevant prosecutor (usually a member of the CPS) to decide to give a caution with one or more conditions attached. When a young person is given a conditional caution for an offence, criminal proceedings for that offence are halted while the young person is given an opportunity to comply with the conditions. Where the conditions are complied with, the prosecution is not normally commenced. However, where there is no reasonable excuse for non-compliance, criminal proceedings may be commenced for the original offence and the conditional caution will cease to have effect.

2.2 Youth conditional cautions can only be given to an offender aged 10 to 17 years old inclusive. Offenders aged 18 and over, irrespective of their age when the offence was committed, should be given a conditional caution rather than a youth conditional caution.

- 2.3 Youth conditional cautions provide an opportunity, in appropriate cases, to achieve an early, positive response for those young people who are willing to admit their offending and to comply with certain conditions. They aim to support the principal aim of the Youth Justice System which is to prevent offending by children and young people.<sup>1</sup> They allow:
- for a proportionate response in appropriate cases;
  - offenders to make swift reparation to victims and communities;
  - offenders to be diverted at an early opportunity into rehabilitative services reducing the likelihood of re-offending;
  - an offender to be punished by means of a financial penalty.
- 2.4 Youth conditional cautions are intended as a more robust response to offending than a Youth Caution in circumstances where public interest in the case can be met by offering a conditional caution rather than by prosecuting an offender. Operational guidance provides further information on suitable disposal options for individual cases.
- 2.5 The 1998 Act permits the authorised person or the relevant prosecutor to decide to give a conditional caution to an offender. DPP Guidance will set out those offences for which the authorised person may offer and administer a conditional caution and those which must be referred to a CPS prosecutor to decide whether a condition caution can be given. Generally, more serious offences will be referred to the relevant prosecutor.

### **3. Relevant legislation**

- 3.1 Youth conditional cautions were introduced by the Criminal Justice and Immigration Act 2008, Section 48, which inserted Section 66G into the Crime and Disorder Act 1998. These provisions are further amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. There are equivalent provisions for adults set out in Part 3 of the Criminal Justice Act 2003 as amended by the Commissioners for Revenue and Customs Act 2005, the Police and Justice Act 2006; the Criminal Justice and Immigration Act 2008 and the Legal Aid Sentencing and Punishment of Offenders Act 2012. The Code of Practice governs the use of youth conditional cautions. A separate Code governs the use of conditional cautions for adult offenders.

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<sup>1</sup> S37 Crime and Disorder Act 1998.

- 3.2 This Code of Practice was prepared by the Secretary of State for Justice under section 66G of the 1998 Act and was published with the consent of the Attorney General following public consultation. It was laid before both Houses of Parliament and comes into force on the 8<sup>th</sup> April 2013. This Code of Practice replaces any earlier versions of the Code of Practice.
- 3.3 It is the duty of key agencies who work with children and young people, including the Police and YOTs, to put in place arrangements to make sure that they take account of the need to safeguard and promote the welfare of young people.<sup>2</sup> It is also the duty of local authorities and public services, private and voluntary organisations to cooperate to improve outcomes for children and young people. Agencies should ensure that a youth conditional caution or specific conditions should not be offered if they jeopardise the welfare and safeguarding of the young person.
- Director of Public Prosecutions guidance*
- 3.4 Under section 37A of the Police and Criminal Evidence Act 1984 the DPP may issue guidance (“the DPP guidance”) for the CPS and custody officers which will prescribe the offences and circumstances in which a youth conditional caution is permitted.

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<sup>2</sup> S11 Children Act 2004.



## Section 2: Decision making

### 4. The five requirements

- 4.1 Section 66B of the 1998 Act sets out five requirements that must all be met before a youth conditional caution may be given. These requirements should be addressed in order.
1. The authorised person must have evidence that the young person has committed an offence.
  2. The authorised person or relevant prosecutor must determine that there is sufficient evidence to charge the young person with the offence. The authorised person or relevant prosecutor must also determine that a youth conditional caution should be given to the young person in respect of the offence.
  3. The young person must admit to the authorised person that he has committed the offence.
  4. The authorised person must explain the effect of the youth conditional caution and warn the young person that failure to comply with any of the conditions may result in prosecution for the original offence. Where the young person is aged 16 years or under, the explanation and warning must be given in the presence of an appropriate adult.
  5. The young person must sign a document containing details of the offence, the admission to the authorised person, consent to be given a youth conditional caution and details of the conditions attached.

### 5. Grounds for giving a conditional caution

- 5.1 In deciding if there is sufficient evidence to charge the offender with the offence the decision maker should apply the evidential stage of the Full Code Test set out in the Code for Crown Prosecutors.

#### *The Full Code Test – evidential stage*

- 5.2 The decision maker must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence.

#### *Admissions*

- 5.3 In determining whether there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence, the decision maker should take into account all available evidence including any admission made by the offender. A decision maker may not offer a conditional caution in order to secure an admission that could then provide sufficient evidence to meet the evidential stage of the Full Code Test.

*The public interest stage*

- 5.4 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 conditional caution in respect of the offence.
- 5.5 A youth conditional caution should not be given where a court, if the young person were convicted, would be likely to impose a significant community sentence or a period of imprisonment for the offence.

**6. Additional considerations**

- 6.1 In addition to considering the public interest test in deciding whether to give a youth conditional caution the decision maker will take into account:
- the seriousness of the offence;
  - the circumstances of the case;
  - the age of the offender;
  - any views expressed by the victim;
  - any wider neighbourhood or community considerations or concerns;
  - the background, circumstances and previous offending history of the offender;
  - the willingness of the offender to comply with possible conditions;
  - the likely effect of the youth conditional caution on preventing offending;
  - the likely outcome if the offender was prosecuted; and
  - other relevant guidance.
- 6.2 Where a number of offences are related<sup>3</sup> and an out-of-court disposal is considered suitable for all of them, the decision maker may decide to group the offences and deal with them using one youth conditional caution. Before making this decision the decision maker should consider whether the number of offences increase the gravity of the offending behaviour to a level where the public interest requires prosecution.

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<sup>3</sup> They could arise out of the same incident or alternatively they may be similar offences related to the same underlying problem (for example, acquisitive crime to fund a drug habit).

*Deciding whether to give a conditional caution after an offender has been charged*

- 6.3 Where a young person is charged with an offence but it appears upon review by a prosecutor that a youth conditional caution may be appropriate, a prosecutor may decide that a youth conditional caution should be offered. The prosecutor should direct an authorised person to make the offer of a youth conditional caution to the young person. In such cases the prosecution will be halted pending the decision by the young person whether to accept the offer of a youth conditional caution. The decision to give the youth conditional caution in these circumstances must be made in accordance with the guidance within this Code and supporting guidance. This includes the referral to the YOT for consideration before the offer of a youth conditional caution is made. A prosecutor is permitted to make such a decision even in cases where authorised persons are permitted to charge or make the decision to offer a youth conditional caution.

*The offender*

- 6.4 Previous convictions, reprimands, warnings, cautions or other out-of-court disposals do not preclude the use of a youth conditional caution, however, decision makers should consider whether the new offence is part of a pattern of offending that requires a more serious response such as a prosecution. A youth conditional caution may be appropriate where:
- there has been a sufficient lapse of time to suggest that a previous caution or conviction has had a significant deterrent effect;
  - where the current offence is not similar or is unrelated to any previous offence;
  - it is the best outcome for the victim and offender dependent on the circumstances of the individual case;
  - the offender is willing to comply with possible conditions and has previously complied with interventions. For example if they have complied with voluntary interventions as part of a warning or youth caution.
- 6.5 A youth conditional caution is unlikely to be appropriate where the offence forms part of a pattern of offending. 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.
- 6.6 A second youth conditional caution should not generally be given for the same or similar offence unless there are exceptional circumstances indicating that it may be appropriate; for example, where the previous youth conditional caution was more than two years earlier. Generally, it will not be appropriate to give a second youth conditional caution where the offender failed to comply with the conditions of the previous youth conditional caution.

- 6.7 If the young person reaches 18 years of age before the youth conditional caution can be given, an adult disposal (including an adult conditional caution) may be considered.

## 7. Conditions

### *Type of conditions*

- 7.1 The conditions that can be attached to a youth conditional caution must have one or more of the following objectives:

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

### *Rehabilitative conditions*

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

### *Reparative conditions*

- 7.3 Reparative conditions may include apologising, repairing or otherwise making good any damage caused, provided this is acceptable to the victim. Specific financial compensation may be paid, for example, to a victim. Where the offending has resulted in damage to community property, reparation may take the form of:

- reparative activity to repair that damage;
- reparative activity within the community more generally; or
- a payment to an appropriate local charitable or community fund.

### *Punitive conditions*

- 7.4 Conditions may include the payment of a financial penalty, unpaid work for a period not exceeding 20 hours or attendance at a specified place to undertake an agreed activity for a period not exceeding 20 hours, not including any attendance for the purposes of facilitating the young person's rehabilitation. A financial penalty should only be used where rehabilitative and reparative conditions are not suitable. A punitive unpaid work condition might be appropriate where there is no individual victim who has suffered quantifiable loss or where the damage caused by the offending cannot be repaired by the young person, but it is appropriate for the young person to make indirect reparation to the community through other unpaid work. Unpaid work delivered by the National Offender Management Service (NOMS is only available for

young people aged 16 and 17. Further details of a financial penalty condition can be found in section 11.

*Foreign offender conditions*

7.5 Foreign offender conditions are not available as part of a youth conditional caution.

**8. Selection of appropriate, proportionate and achievable conditions**

8.1 Conditions attached to a youth conditional caution must always be:

- Appropriate;
- Proportionate;
- Achievable.

Factors such as the young person's age, maturity and personal circumstances should be taken into account when considering appropriate conditions. When deciding on the conditions that should be attached to a youth conditional caution the decision maker may draw on the views of others. This includes the local YOT and may include outcomes of restorative justice practices, see sections 12, 13 and 15.

*Appropriateness*

8.2 The decision maker should seek to apply a problem solving approach aimed at changing a young person's behaviour and, if possible, providing redress to the victim of the offence. For most offenders these two aims will be regarded as the priority.

8.3 The financial penalty condition should only be used where there are no appropriate reparative or rehabilitative conditions or where those conditions do not provide a proportionate response to the offending behaviour.

In considering the appropriate conditions to achieve one or more of the objectives set out in paragraph 8.1, a decision maker should also consider whether any of the following are applicable to the case:

- opportunities to provide reparation or compensation to any victim or relevant neighbourhood or community;
- use of conditions to reflect and secure the interests of the victim and neighbourhood or community (for example, by requiring the young person to stay away from a specific area);
- use of restorative and reparative processes to have a positive impact on the community or individuals affected by the offending behaviour;
- opportunities to provide reparative unpaid work that benefits the community;

- use of a financial penalty condition to punish the offender and deter future offending (see section 11).

*Proportionality*

- 8.4 When determining the conditions to be attached to a conditional caution, the decision maker should consider the totality of the conditions and seek to achieve proportionality to the offending behaviour.<sup>4</sup> The objectives sought ought to be achieved by the attachment of the minimum number of conditions.

*Achievability*

- 8.5 The young person must be able to complete the conditions satisfactorily and within a reasonable time period. The decision maker should take into account the young person's circumstances, physical and mental capacity, and ensure that any financial conditions are commensurate with the means of the young person.
- 8.6 Conditions should avoid any conflict with the young person's religious beliefs and any interference with the times, if any, at which they normally work or attend school (or any other educational establishment) or attend other specialist services.

**9. Time limits for completing conditions**

- 9.1 In deciding on the time period within which conditions must be completed, a decision maker must take into account any time limits<sup>5</sup> affecting the commencement of proceedings for the original offence and must ensure that the option of prosecuting the original offence in the event of non-compliance remains available.
- 9.2 All rehabilitative, reparative and punitive conditions must be capable of being completed within 16 weeks of the date of the original offence where it is a summary only offence. Exceptionally a period of longer than 16 weeks from the date the conditional caution is administered 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. However a longer period must still be appropriate, proportionate and achievable.

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<sup>4</sup> Where a number of offences have been grouped together, the authorised person or relevant prosecutor should consider all the offences when determining whether the conditions attached are proportionate.

<sup>5</sup> For example, see section 127 of the Magistrates' Courts Act 1980.

## **10. General considerations**

- 10.1 Conditions which impose restrictions on a young person may only be used where they contribute towards the aims of rehabilitation, reparation or punishment. Such conditions could be used to prevent the young person from contacting individuals, visiting certain locations or participating in particular activities.
- 10.2 Conditions may include reference to the future behaviour of an offender, such as an agreement not to commit further offences for a specified period.

## **11. Conditions with a financial element**

- 11.1 Youth conditional cautions with a financial element include:
- a compensation payment as part of a reparative condition (for example a payment to a victim or to a community fund);
  - a financial penalty as part of a punitive condition.
- 11.2 Financial penalty conditions can only be used in those cases in which they are permitted by virtue of an order issued under s.66C of the Act (“the Order”).
- 11.3 The maximum amount of any financial penalty condition in relation to each offence or description of the offence will be specified in the Order. The decision maker should determine the financial penalty, taking into account information from the YOT regarding the financial means of the young person and the circumstances of the case, including the seriousness of the offence and the assessment of the YOT. The DPP guidance contains more detailed information including a matrix of the maximum amounts for different offences.
- 11.4 There are no restrictions in the 1998 Act on the offences for which a compensation payment can be given as part of a reparative condition or on the amount of the compensation. However, guidance produced by the relevant prosecutor in accordance with paragraph 3.5 should set out the use of compensation payment as part of a reparative condition.
- 11.5 Financial penalty and compensation conditions will not be the subject of enforcement procedures by the court. Failure to make payment in relation to any condition with a financial element without reasonable excuse will amount to non-compliance with the condition of the conditional caution which may lead to prosecution for the original offence.
- 11.6 Any financial penalty conditions must specify to whom the young person must make payment.

- 11.7 When considering any conditions with a financial element that may be attached to a youth conditional caution, particularly where the young person is of limited financial means, the decision maker should always prioritise compensation for the victim ahead of any financial penalty condition.
- 11.8 Financial penalty conditions are available for all young people who are eligible for a youth conditional caution. The responsibility for payment of the financial penalty rests with the young person who accepts the caution and there is no obligation for parents or carers to pay this penalty. It is particularly important to consider the means of the young person and not the means of their parent or guardian.
- 11.9 The extent of any financial loss suffered by the victim may mean that the full amount of any compensation sought is beyond the means of the young person. This does not preclude the use of a youth conditional caution where it is appropriate and meets the justice of the case as the total amount of compensation to be paid may be reduced to take into account the means of the youth.
- 11.10 Where multiple conditions involving financial payment are attached to a youth conditional caution, the total required to be paid must be commensurate with the individual's financial means and be capable of being paid within a reasonable period of time.

## **12. Considering the views of others**

- 12.1 The decision maker will have in mind, where appropriate, the views of others. For example, victims, liaison and diversion schemes or neighbourhood justice panels.

### *Restorative Justice*

- 12.2 Restorative justice processes and initiatives may be used to help inform decisions as to the conditions to be attached to a conditional caution. However such initiatives cannot give or administer a conditional caution. Before any conditions that are proposed as a result of these processes or initiatives are attached to a conditional caution, the decision maker must ensure that they are appropriate in accordance with the requirements of the 1998 Act, this code of practice and any relevant guidance issued by a relevant prosecutor. In particular the decision maker should ensure that the offender has admitted the offence and agrees to accept the conditions attached to the conditional caution.



### **13. Involvement of the victim**

- 13.1 The views of the victim should be obtained wherever possible. These should be taken into account in deciding whether a youth conditional caution is appropriate and in determining suitable conditions. The victim's consent must be obtained in any case where direct reparation or restorative justice processes are being considered or where the victim is directly involved in some way. If the victim does not consent to such conditions, the decision maker may still consider giving a youth conditional caution with other conditions attached that do not directly involve the victim.
- 13.2 The views of the victim will be important but cannot be conclusive. The decision as to whether to give a youth conditional caution and the conditions to be attached lies with the decision maker who will take into account the views of the victim. In some circumstances the decision maker may consider that proportionality with the level of the offence requires the inclusion of conditions that may be more or less onerous than those the victim wants. Care must be taken not to raise the expectations of the victim whilst seeking their views.
- 13.3 Where the conditions attached to a caution have a direct impact on the victim,<sup>6</sup> the victim should be informed of the conditions given to the offender and the intended outcome. The victim should be informed of any changes to the expected outcome, for example, if the offender has failed to comply with the youth conditional caution and will not be completing the conditions.
- 13.4 Victims who are not directly affected by the conditions<sup>7</sup> should also be informed of the outcome of the case where possible, including whether the youth conditional caution was completed or whether the offender was prosecuted for the original offence as a result of non-compliance.

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<sup>6</sup> For example, where compensation is to be paid, or work that benefits the victim is undertaken.

<sup>7</sup> For example, where the offender has been given a rehabilitative condition, and no compensation is necessary.

## Section 3: Process to follow

### 14. Administration of a youth conditional caution

- 14.1 The youth conditional caution may be administered in a police station, court building, YOT premises, the offices of any prosecutor, or any other suitable location consistent with achieving the appropriate impact on the young person. In most cases it is not suitable for a conditional caution to be delivered on the street or in the offender's home. However, in exceptional circumstances such as when dealing with a disabled or vulnerable offender, the youth conditional caution may be administered in the offender's home or similar place, providing the correct procedure for administering the conditional caution is adhered to.

#### *Admissions of guilt*

- 14.2 The offender must admit the offence. The 1998 Act does not require an admission to be made by the young person before the decision maker determines whether a conditional caution is appropriate. However, the offender must make an admission at the time the youth conditional caution is given that he has committed the offence (or all the offences) for which the youth conditional caution is being given. This is true for all cases, irrespective of whether a previous admission has been made by the offender.
- 14.3 A youth conditional caution **cannot be given** to an offender who does not make a clear and unambiguous admission to committing the offence when the conditional caution is administered. This is particularly important where there is any doubt at all about the mental state or capacity of the offender. The authorised person should be particularly careful about accepting an admission in these circumstances.

## **15. Referring cases to the Youth Offending Team (YOT)**

- 15.1 In any case where an authorised person or prosecutor is considering offering a youth conditional caution the case should be referred to the local YOT.<sup>8</sup>
- 15.2 The local YOT should put in place arrangements to consider these referrals. These arrangements should include:
1. An initial screening to ensure early identification of those cases where a youth conditional caution may be administered without delay;
  2. An initial screening of the young person to identify any appropriate conditions or referral schemes where necessary;
  3. Early notification to the police and prosecutor of the outcome of the screening so that a youth conditional caution can be administered immediately in suitable cases.
- 15.3 Where a young person is released so as to allow the YOT to assess them and identify any appropriate conditions or referral schemes it will generally be appropriate to include conditions requiring attendance at an assessment where required and co-operation with the YOT.
- 15.4 The decision as to whether a youth conditional caution is appropriate, and the conditions to be offered, is for the decision maker. However, they will take into account any information and recommendations provided by the YOT and/or police in considering whether to give a youth conditional caution. In particular, the YOT report should provide information relevant to the authorised person or prosecutor's consideration.
- 15.5 Where the authorised person or prosecutor has considered a report from a YOT and has decided that a youth conditional caution is appropriate, an authorised person, with input from the YOT will proceed to administer the youth conditional caution.
- 15.6 Where a young person is charged with an offence but it appears upon review that a youth conditional caution may be appropriate this can be offered instead. The authorised person or prosecutor should ensure that the young person is referred to the YOT for an early assessment for the purposes of identifying and recommending appropriate conditions. In such cases the prosecution will be halted pending the decision to offer a youth conditional caution and the decision of the young person on whether to accept the offer of a youth conditional caution.

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<sup>8</sup> Further detail on the protocol required for sharing information between the YOT, CPS and police will be contained in the DPP guidance.

## 16. Explaining the effect of the conditional caution

16.1 Before administering a conditional caution the authorised person shall ensure that the young person has the opportunity to receive free and independent legal advice in relation to the offence. In accordance with section 66B(5) of the Act the explanation of the effect of the youth conditional caution must be given in the presence of an appropriate adult if the young person is aged 16 or under. The authorised person should also ensure that an appropriate adult is present in the case of a young person aged 17 where there is reason to doubt the capacity or ability of the young person to fully understand the nature and requirements of a youth conditional caution.<sup>9</sup>

The authorised person must:

- inform the young person of the evidence against them and the decision made by the decision maker;
- explain the requirements of a youth conditional caution including exactly what each condition requires the young person to do;
- explain the requirement for and consequences of making an admission to the offence, including the fact that the admission may be used in evidence should the case result in prosecution;<sup>10</sup>
- make it clear to the young person that an admission should never be made merely to receive a youth conditional caution;
- explain the implications of accepting the conditional caution, including any circumstances in which it may be disclosed;
- explain, in particular, that the conditional caution will form part of the young person's criminal record and may need to be disclosed in certain circumstances including to an employer or prospective employer. It must also be explained that there may be circumstances where the acceptance of a conditional caution means that the offence may be taken into account in determining whether an offender is prevented from working with children or vulnerable people;
- explain that a conditional caution given in relation to an offence in Schedule 3 to the Sexual Offences Act 2003 will require the young person to comply with the notification requirements in that Act;
- explain that the young person may decide at any stage to withdraw from the conditional caution whether it is before, during or after it has been administered;

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<sup>9</sup> See PACE Code C.

<sup>10</sup> Where a prior admission has been made by the offender, the offender should already be aware of this.

- warn the young person that any failure to comply with the conditions will be investigated. The young person 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 decide that the young person should be prosecuted for the original offence;
- inform the young person that the victim(s) 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;
- confirm that the young person accepts the conditions and agrees to accept the conditional caution.

16.2 At the point of administering the conditional caution the authorised person should ensure that the young person understands the following:

1. that the young person has the right to legal advice at any time during the process;
2. the effects of accepting a youth conditional caution, in particular that although it is not a criminal conviction, the youth conditional caution will be recorded, form part of the young person's criminal record and may be disclosed in certain circumstances;
3. the means by which compliance with each of the conditions will be verified (including any responsibilities of the young person for demonstrating compliance);
4. that if the young person does decide to withdraw from the conditional caution they should inform the YOT as soon as possible. The decision maker may then decide that they should be charged with the original offence and prosecuted;
5. the process for contacting the person in the YOT monitoring compliance should any problems arise in complying with the conditions or if the young person decides to withdraw from the youth conditional caution process;
6. the consequences of failing to complete the youth conditional caution (in particular that the young person may be liable for arrest and prosecution for the original offence);
7. any requirement to notify the YOT immediately upon change of address.

- 16.3 It should be borne in mind throughout the process that the offender is aged under 18 years and is not an adult. Particular care must be taken to ensure that the young person understands what is happening and the options open to them. It is essential that appropriate time is allowed throughout the process so that the young person is able to engage in it as required. The authorised person must also bear in mind the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offenders and the use of an appropriate adult. When dealing with non English speakers or considering a conditional caution generally, the authorised person must ensure that the provisions of paragraphs 3.7 and 3.8 are explained in a language that the offender can understand.

*Recording the caution*

- 16.4 Section 66B(6) of the 2003 Act requires that the offender sign a document recording the youth conditional caution. The form for recording the conditional caution must:
1. Contain the details of the offence(s) for which the caution is administered;
  2. Clearly set out all the conditions to be complied with;
  3. Set out the arrangements for monitoring compliance;
  4. Specify the effect of the youth conditional caution and the consequences of any failure to comply with the conditions, including the possibility of future prosecution for the offence(s);
  5. Record the young person's clear admission to the offence(s), consent to being given the youth conditional caution and agreement to and undertaking to abide by the condition. This admission must be made at the time the youth conditional caution is administered;
  6. Provide details of the person in the YOT who will supervise completion of the youth conditional caution that the young person should contact in the case of non-compliance, or if they are unable or unwilling to comply with the conditions.

**17. Monitoring and compliance**

*Monitoring of conditions*

- 17.1 When determining the conditions to be attached to a youth conditional caution, the decision maker should consider the mechanism by which compliance with the conditions will be monitored and demonstrated.
- 17.2 The local YOT will put in place and maintain a robust process for demonstrating compliance. This may include (but not exclusively) agreements with:
1. organisations involved in delivering the conditions (such as drugs referral agencies);
  2. police officers and other police staff;
  3. Her Majesty's Courts & Tribunals Service (for collection of monies).

- 17.3 The monitoring process must be made clear to both the young person and any organisation responsible for providing such information. Where reasonable and appropriate, the onus for providing confirmation of compliance may be placed specifically upon the young person. However, the YOT will have overall responsibility for monitoring compliance with conditions.

*Compliance with conditions*

- 17.4 The decision maker will determine whether there has been non compliance with the conditions and what action should be taken. DPP guidance on charging specifies those offences where the police can decide to charge the offender and those offences where the CPS makes the decision to charge.
- 17.5 Compliance with the condition(s) attached to the conditional caution within the agreed timescale will normally preclude the possibility of prosecution for the original offence. Failure to comply with a condition is not an offence in itself, but may result in the offender being prosecuted for the original offence. Alternatively it may be appropriate to vary the conditions or, in some cases, take no further action.

*Establishing non-compliance with conditions*

- 17.6 Where it appears that a young person is failing to comply with one or more conditions, the YOT should seek to give the offender the opportunity to clarify the situation and demonstrate compliance or establish whether any reasonable excuse exists for non-compliance. Having investigated the case the YOT should forward a report to the authorised person or prosecutor for a decision regarding the future of the youth conditional caution. Where the YOT report that there is no response from the young person, or where the prosecutor or authorised person concludes that there is no reasonable excuse for the failure, or that the non-compliance is likely to continue, a prosecution for the original offence should usually follow.
- 17.7 Whether any excuse given is reasonable or not is a matter for the decision maker to determine on all the available evidence. The decision and the reasons for it should be recorded.

*Withdrawal from conditions*

- 17.8 A young person may choose to withdraw from any of the conditions attached to a youth conditional caution after it has been administered. However, this should be treated as non compliance and consideration should be given to whether to prosecute for the original offence. In any case where the offender wishes to withdraw from the conditions he or she should inform the YOT Authorised persons and prosecutors should then consider whether to prosecute for the original offence in the same manner as any other failure to comply with the conditions.

*Actions that may be taken following non-compliance or withdrawal*

- 17.9 Where the decision maker is satisfied that there is a reasonable excuse for the young person's failure to meet the conditions, or that there has been substantial part compliance, they will have to decide whether:
1. the youth conditional caution should be regarded as completed;
  2. the youth conditional caution should be regarded as incomplete but that the public interest requires no further action;
  3. a new time limit should be set for completing the original conditions;  
or
  4. the original conditions should be revised.

*Variation of conditions*

- 17.10 The conditions attached to the caution may be varied or changed by a relevant prosecutor or authorised person if the offender agrees to this. If the offender refuses to accept varied conditions and the decision maker does not consider this to be unreasonable, they may decide to allow the youth conditional caution to continue so that the offender can comply with the original conditions. If the refusal is not thought to be reasonable, proceedings may be instituted for the offence or no further action may be taken. It will not usually be appropriate to revise conditions more than once.
- 17.11 Any changes to the conditions must be recorded and explained to the young person and any relevant victim. Any variation of conditions cannot take place without the consent of the young person. Any unreasonable refusal by the young person to agree to revised conditions should usually result in prosecution for the original offence. It will not usually be appropriate to revise conditions more than once.
- 17.12 A document clearly setting out any amendments to the conditions should be produced and must be signed by the authorised person on behalf of the YOT and by the young person to indicate acceptance of the new conditions. Such a document must comply with the requirements set out in paragraph 16.4 of this Code. Any non-compliance with the new conditions will follow the same process as the original conditions.

*Multiple offences*

- 17.13 Where the youth conditional caution has been given for multiple offences, the authorised person or prosecutor must also determine which of the original offences requires prosecution. This is particularly relevant in cases of partial compliance, where the young person may have completed one of the conditions that related to a specific offence.



## **18. Arrest and detention of young people**

- 18.1 A specific power allowing a police officer to arrest and detain offenders is provided by s.24A(1) of the Criminal Justice Act 2003 (as amended). The power arises when a constable has *reasonable* grounds for believing that a young person has failed without reasonable excuse to comply with any conditions attached to a youth conditional caution but should only be exercised where considered necessary. In determining when arrest might be necessary regard should be had to the criteria in s.24(4) and (5) of the Police and Criminal Evidence Act 1984. Once arrested, detention may be authorised where it is necessary to investigate reasons for any non-compliance or to seek a charging decision from a prosecutor and formally charge a young person.
- 18.2 The young person should only be detained for as long as is necessary to explore the reasons for any breach and/or to undertake any charging procedures. This should be done as soon as practicable after arrest or arrival at the police station. Where it is clear that this cannot be achieved in a short period of time, the young person should be released on bail under s.24A(2)(b) of the Criminal Justice Act 2003.
- 18.3 Once the YOT has concluded any enquiry into the non-compliance, the case will be referred to a relevant prosecutor or authorised person for decision. Where it appears likely that referral may not be concluded within a short period of time, the young person will be released on an appropriately short period of bail.

## **19. Prosecution following failure to comply**

- 19.1 Where the decision maker has determined that a young person has failed to comply with a conditional caution and is to be prosecuted, proceedings should be commenced as soon as possible. The authorised person must ensure that the young person is notified and that any local and national police records are amended accordingly. Once proceedings are instituted, the conditional caution ceases to have effect. However, the fact that a conditional caution was given and not complied with will remain on an offender's record.
- 19.2 Where a decision maker determines that a prosecution for the original offence(s) is to go ahead, the YOT will ensure that the young person is notified and provide relevant information to the Police who will then amend any local and national police records accordingly. Once proceedings are instituted, the youth conditional caution ceases to have effect; however the fact that a youth conditional caution was given and not complied with will remain on a young person's record and may be cited in court in a subsequent prosecution.

19.3 Where a prosecution for the original offence follows a failure to complete conditions attached to a conditional caution, the prosecutor should ensure that the court is made aware of this fact and provide details of the conditions that were attached to the caution and the extent of any partial compliance. This information may be used by the court when considering the case.<sup>11</sup>

## **20. Recording and citing conditional cautions.**

20.1 In regard to youth conditional cautions given by the police, records must be kept in accordance with relevant directions.<sup>12</sup> Other relevant prosecutors and authorised persons may issue similar directions to ensure that records are kept in accordance with any relevant legal responsibilities.

20.2 Youth conditional cautions can be cited in any subsequent criminal proceedings subject to relevant legislation regarding the rehabilitation of offenders.

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<sup>11</sup> The court will be dealing with the original offence. Non-compliance with a conditional caution is not an offence in itself.

<sup>12</sup> For example ACPO Retention Guidelines for Nominal Records on the Police National Computer.



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