



Home Office

Using Conditional Cautions with Sobriety requirements Guidance

Issued November 2013

Guidance and lessons learned on Sobriety Conditional Cautions

Introduction

This document is designed to assist those intending to use a Conditional Caution with sobriety conditions (SCC) as a means of disposal for low level alcohol related crime and or disorder. It should be read in conjunction with the Code of Practice on Adult Conditional Cautions and the Director's Guidance on Adult Conditional Cautions (CCs) (Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under Section 37A of the Police and Criminal Evidence Act 1984). These can be found at: <http://www.justice.gov.uk/out-of-court-disposals> and http://www.cps.gov.uk/Publications/directors_guidance/adult_conditional_cautions.html

It uses the knowledge and experience gained from five sites used in a pilot scheme that ran from May 2012 to January 2013 and is intended to provide some insight into issues worthy of consideration when contemplating the use of such a scheme. For details of the results of the pilots please see annex A. This will also be helpful to PCCs considering the use of sobriety locally.

The Concept:

Sobriety conditions as part of a CC aim to tackle low level crime, within the existing out-of-court disposal scheme and utilise existing police breathalyser equipment.

Offenders accepting an SCC are required to abstain from drinking at key times and undergo regular testing. Any offender unreasonably failing to comply with any element of their sobriety regime may be liable to prosecution for the original offence.

The DPP Guidance states that Conditional Cautions are available for all offences except domestic violence (DV) and hate crimes which continue to be excluded from the scheme. Sobriety conditions can be used for any offence for which Conditional Cautions are available; however, police and prosecutors should give SCCs particular consideration in respect of the following offences:

- Common assault
- Assaulting a police officer
- Section 4 and 4A Public Order Act 1986
- Section 5 Public Order Act 1986
- Obstructing a police officer
- Drunk and disorderly
- Simple drunk
- Destroying or damaging property
- Threats to destroy or damage property

To encourage compliance and take up, those who refuse to accept an SCC maybe prosecuted for the original offence, and at court the CPS could apply for a drinking banning order on conviction (or its equivalent) if deemed appropriate.

Those eligible for this type of disposal

The conditions can be offered to offenders who meet all the following criteria:

- The offence is one for which a CC can be offered
- The offender was under the influence of alcohol at the time the offence was committed;
- The offender has admitted the offence;
- The offender agrees to accept a CC with sobriety condition(s) attached as a means of disposal.

In all the circumstances of the case a Conditional Caution is appropriate. It would not be appropriate to deal with a dependent drinker by way of an SCC.

Conditions

Offenders will be offered the following conditions:

- To completely abstain from drinking alcohol for a specified period on the days which they are likely to offend as a result of drinking alcohol (for example Friday – Sunday each week);
- To regularly attend a suitable venue for sobriety compliance testing;
- To not reoffend.

Other conditions could also be considered such as attendance at an alcohol project or similar, to assess the possible needs of the offender with a view to obtaining their voluntary compliance with a care and support plan.

The conditions will not be *imposed* on an offender. As with all simple cautions or CCs the offender must agree to accept it, admit the offence and there must be sufficient evidence to charge the offender with an offence. The offender is entitled to free and independent legal advice before accepting a CC and can withdraw from one before completing it, although they may then be prosecuted for the original offence.

The overriding principle is that conditions attached to CCs must be proportionate to the offence committed, appropriate and achievable. The sobriety conditions may be offered alongside other non-sobriety related conditions, for example reparative conditions such as a letter of apology or compensation. However, the totality of the conditions must be proportionate to the level of offending and not so burdensome compared to a likely court outcome so as to dissuade an offender from accepting the CC.

CCs should be considered with all other available case disposal options and the decision must rest with the police or CPS having regard to all the circumstances and the guidance. The consent of the offender is one of the requirements for administering a CC. Care must be taken however not to offer the detainee a menu of options for their own case disposal.

Once agreed, the CC is administered in the usual way and the subject is released with a duty to attend the nominated place of testing on the chosen dates and times. At this point the custody record is closed. The offender is not released on bail and no bail offences can be committed if they subsequently fail to attend for testing.

A condition should be set requiring the offender not to commit any further offences whilst subject to this CC. As a general rule this condition should be set for one week after the date of the completion of the last breath test on the last date of required attendance. Areas may set a

longer period (to a maximum of 16 weeks for summary offences, from the date the CC is administered) if the circumstances of the offence require it and this is a proportionate response. Factors such as consideration for those individuals not living within the same policing area should be made locally. Options could include making arrangements with the other police force area or it may exclude an offender from the scheme.

If the subject attends as required, a screening test should be conducted on an approved hand-held device. If the test is passed, the procedure is complete for that appearance. If the subject fails and alcohol is detected, this will be followed up with a test on an evidential standard electronic breathalyser machine. Police officers should develop their own process locally for delivering the second test within the police station.

Failure and non compliance

If this second test shows a reading of 4µg/ml or above, the offender will be considered to have failed the test and consumed alcohol. This should be considered as non compliance with the CC. A reading of 3µg/ml or less can be attributed to alcohol levels occurring naturally and should be considered as passing the test and should not result in non compliance action. Failure to appear for testing as required should also be considered under non-compliance procedures.

Local decisions on any reasonable excuse offered for breaching a condition must be made. Failure to comply with the conditions without reasonable excuse may lead to prosecution for the original offence. If following non compliance, the Police or CPS decide that the offender should not be prosecuted, he or she could continue with the original conditions, or in the case of variation to the original conditions, the new conditions. If the offender subsequently fails to comply with any of the conditions, without reasonable excuse they may be prosecuted for the original offence.

There is no offence of breaching a CC but a power of arrest exists within section 24A of the Criminal Justice Act 2003. For full details please see <http://www.legislation.gov.uk/ukpga/2003/44/contents>

Lessons learned

The pilot highlighted a general lack of understanding of the process. Areas intending to utilise this system would therefore be advised to have an early meeting with the various stakeholders and decision makers to ensure that each person understands their role and that of other parties involved.

The identification of any training needs and a raised awareness of the general benefits of sobriety schemes would also be beneficial. At the time of the pilot CPS were required to authorise a CC. Often the CPS office involved was unsighted in the scheme and therefore did not consider it as an option. The need for CPS authorisation ceased with the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provisions on 8 April 2013 when the revised Code and Guidance came into effect. This may influence uptake levels. The geographical nature of a particular place and the demographic of revellers in that area can present problems for any follow-up enforcement action. For example, some areas, particularly those with a high transient population may attract large numbers of both national and international visitors. It may therefore not be practical to require a person to submit to sobriety requirements in these circumstances.

Take up in Conditional Cautions is recognised as being low generally and this is reflected in the findings in this pilot. An SCC takes longer to administer, both initially and subsequently during attendances for testing. Issuing a PND is quicker and simpler to administer and provides an immediate sanction. Care must also be taken not to appear to offer an SCC and a PND as options to the offender, who would probably view a PND as the easier option. It is for the officer to make the decision on the suitable disposal taking into account the circumstances of the offence and the offender; views of the victim; and the relevant guidance.

Feedback from the pilot sites shows that having a nominated individual monitor the scheme locally proved beneficial. Such a person can:

- Provide suitable briefings to officers – Prisoner processing staff and those likely to deal with breath testing requirements.
- Arrange for any training needs to be addressed.
- Ensure attendance requirements are monitored
- Ensure staff and equipment are readily available
- Conduct any follow-up enquiries as necessary.

The Involvement of Arrest Referral Workers may also prove worthwhile.

Annex A - Conditional Caution Sobriety Pilot: summary of findings

Background

The 2012 Alcohol Strategy announced the government's intention to pilot sobriety schemes as a way of tackling alcohol-related offending by imposing restrictions on alcohol consumption for individuals whose offending is linked to excessive alcohol consumption.¹ Sobriety schemes using Conditional Cautions (CCs) were subsequently set up in May 2012, for a twelve month period.

The use of sobriety conditions as a way of reducing offending has previously been largely confined to addressing serial drink driving offences in the United States.² The sobriety CC pilot was designed to test whether Sobriety Conditional Cautions were practical and feasible in a UK context with a different group of offenders.

This summary provides an overview of the pilot and presents monitoring data on the take-up and throughput of offenders throughout the first six months of the scheme.³ The pilot sites also provided feedback on the set up and implementation of the scheme which is incorporated into the guidance in the main body of this report.

The sobriety scheme pilot

The 'proof of concept' sobriety CC pilot scheme was set up to gather evidence about the implementation and practicalities of delivering a sobriety scheme with low-level alcohol offenders under the current English and Welsh offending frameworks. Due to the limited scale and numbers expected to participate, the pilot was not designed to measure the impact of sobriety CCs on levels of reoffending or drinking behaviour.

Non dependent drinkers who admitted committing a low level alcohol related offence and for whom a CC was considered an appropriate disposal were eligible for a sobriety CC.⁴ This was a voluntary disposal which had to be accepted by the offender and authorised by the Crown Prosecution Service (CPS) at that time.

Five areas were selected to take part: Cardiff, Hull, Plymouth, St. Helens and Westminster. Areas were selected on the basis of having an identified issue with alcohol-related offending. This was based on having Drinking Banning Orders in place, historical high numbers of alcohol-related CCs issued and their willingness to participate. Each pilot site agreed to collect and share monitoring data with the Home Office on a monthly basis under a data sharing agreement. The data provided detailed information on the use and take up of the scheme along with evidence on compliance and breaches for those given the sobriety requirement.

¹ The Government's Alcohol Strategy (March 2012)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98121/alcohol-strategy.pdf

² South Dakota 24/7 Sobriety Program Evaluation Findings Report. Data Period 2005 through January 2010 Prepared by: Loudenburg, R., Drube, G., and Leonardson, G. <http://apps.sd.gov/atg/dui247/AnalysisSD24.pdf>

³ The Home Office ceased monitoring the pilot after six months due to low numbers of offenders receiving the sobriety CC. Pilot areas were able to continue to issue sobriety CCs after this time if they so wished.

⁴ The scheme focussed on lower level offences such as drunk and disorderly, criminal damage and public disorder.

For the purposes of the pilot, the conditions of the sobriety requirement were enforced sobriety for specified days of the week, for example, abstinence from drinking from Friday night to Sunday morning for a maximum period of four weeks. The CPS advised that offenders should not be asked to attend for testing more than three times a week as anything above this was unlikely to be considered proportionate or appropriate for a CC.

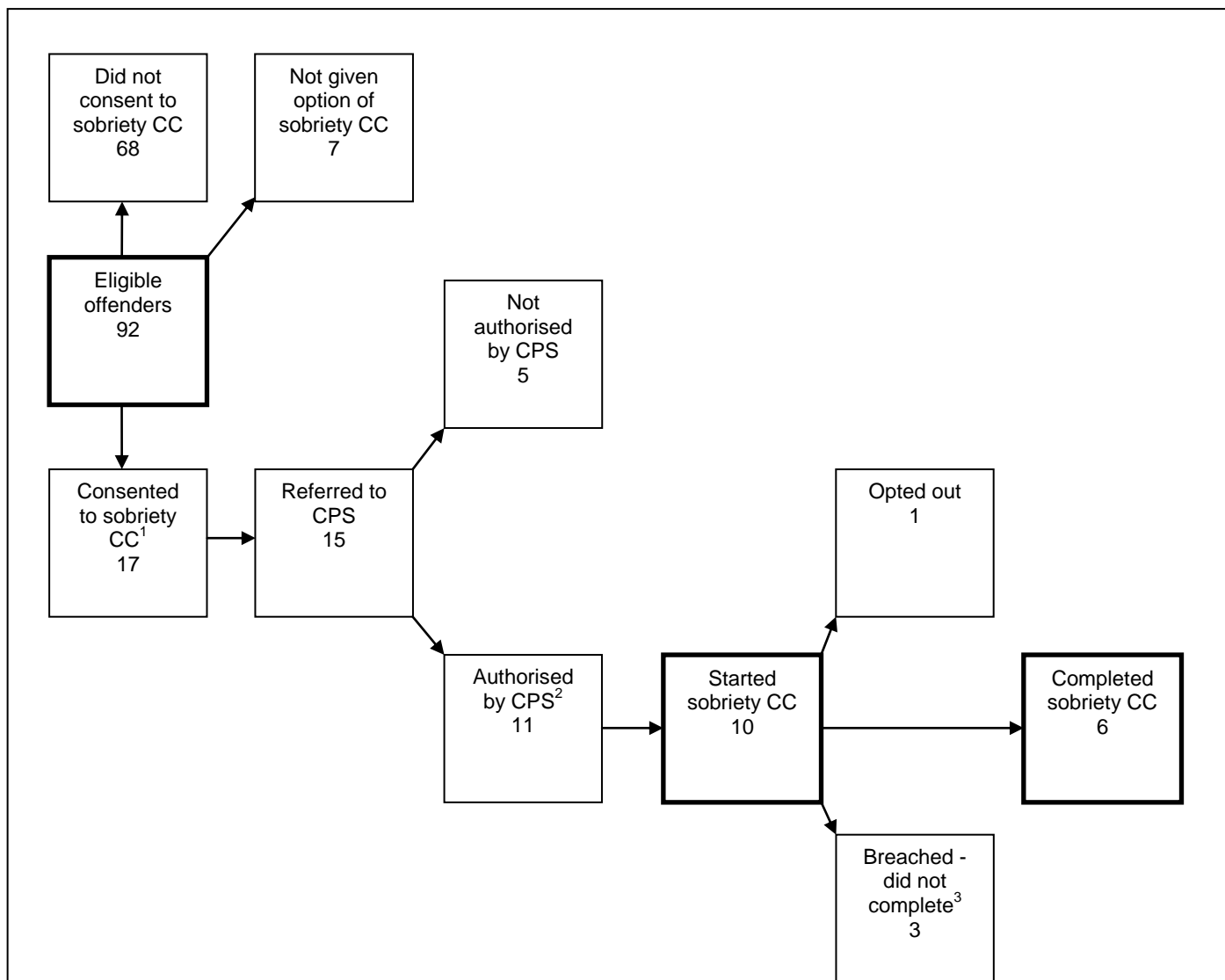
In order to check compliance, the offender was required to attend a police station for breathalyser testing on the days of abstinence, for example, Saturday morning, Saturday night and Sunday morning. The times set for the breathalyser test targeted when an offender was most likely to consume alcohol in breach of the abstinence condition and, in the case of morning appointments, to be early enough to record the presence of alcohol consumed the previous evening. In addition to the sobriety requirement, a condition was included not to re-offend during the period to cover days where there was no testing for sobriety.

Throughput

The pilot schemes commenced in May 2012. After six months, one of the pilots had not started the scheme and two of the remaining four pilots had not issued any sobriety CCs.

Numbers of offenders who admitted the offence and also agreed to accept the sobriety CC were low. As Figure 1 shows, of the 92 potentially eligible individuals (those who admitted committing an eligible offence), ten started the disposal and six of these completed the condition. There was variation between the schemes: one scheme gave SCCs to three offenders (one completed) and another gave SCCs to seven offenders (five completed).

Figure 1: Progress through the scheme.



- Notes:
1. The sentencing officer decided that two individuals who had consented to the sobriety CC were not suitable. They were therefore not referred to the CPS.
 2. The CPS authorised one post charge sobriety CC, however, the individual did not consent to the sobriety CC.
 3. One additional individual breached but was allowed to continue and subsequently completed the sobriety CC.

Of the 92 eligible offenders, 68 did not consent to the sobriety CC. Offenders who turned down the SCC were most often given a Penalty Notice for Disorder (PND). In the majority of cases, the reasons for non consent were not given.

The CPS did not authorise five SCCs. Two were rejected because the sentence was not considered proportionate; two because it was not in the public interest and one because the person's 'antecedent history' dictated that a charge was more suitable.

There were three breaches where the offender failed to report for the breath test, having complied with the conditions for between eight to 18 days. In one additional case an individual breached but was then allowed to continue and subsequently completed the condition.

The pilot demonstrated that it is feasible to set up a sobriety CC scheme, however, substantial implementation issues were experienced by the majority of the pilot sites. Brief information about the practicalities and challenges of delivering the scheme are incorporated within the lessons learned section of the main report.

Annex B

Sample conditions

I agree to all of the following conditions:

- 1) completely abstain from drinking alcohol during the period Friday 00.01am until Sunday 09.00am commencing from **start date** for the four weeks until **end date** inclusive;
- 2) attend **Specify Police station** for alcohol breathalyser testing at all of the following times:
 - Saturday **Date** at 08.00*
 - Saturday **Date** at 20.00
 - Sunday **Date** at 08.00

 - Saturday **Date** at 08.00*
 - Saturday **Date** at 20.00
 - Sunday **Date** at 08.00

 - Saturday **Date** at 08.00*
 - Saturday **Date** at 20.00
 - Sunday **Date** at 08.00

 - Saturday **Date** at 08.00*
 - Saturday **Date** at 20.00
 - Sunday **Date** at 08.00
- 3) Not to commit a further offence whilst subject to this conditional caution. This condition is effective from now until **End Date + (1 week up to a maximum of 16 weeks) from completion of the last breath test**. See notes above.

* The times set for the offender to take the breathalyser test should be determined locally. However, they should target the times when an offender is most likely to consume alcohol in breach of the abstinence condition. The time (particularly the early morning appointment) should be early enough to record the presence of any alcohol the offender had consumed the evening before.

Sample wording for the request for the second breath test

In requiring offenders to undertake the second evidential standard electronic breathalyser test the following wording may be used by police officers. This wording is an example and can be adapted as required. It is not necessary for this sample wording to be used.

“The hand held breath test has shown a positive reading which indicates you have consumed alcohol. I now want to administer you with a second test using an evidential standard electronic breathalyser machine. This will allow us to investigate further whether the failure of the hand held breath test is due to your consumption of alcohol. There will be short wait of 15-30 minutes before the second test to better test whether the positive reading is due to alcohol consumption rather than another liquid such as mouthwash containing alcohol. If this second test indicates that you have consumed alcohol then this will be treated as non compliance with the conditions of your caution. You do not have to take this second test but if you do not do so that will be treated as non compliance with the conditions of your caution.

You will be given an opportunity to provide an explanation for any non compliance. The decision maker will then consider this explanation together with the circumstances of the case. They may then decide that you should be charged with the original offence and prosecuted at court. Do you agree to the test with the evidential standard electronic breathalyser machine?”

Any response should be recorded contemporaneously and offered to the subject for a confirmation signature, along with the signature of the maker of the note.

Annex C – Process flowchart

