



Ministry of  
**JUSTICE**

# **Code of practice for Adult Conditional Cautions**

# CODE OF PRACTICE FOR ADULT CONDITIONAL CAUTIONS 2013

## Part 3 of the Criminal Justice Act 2003

Laid before Parliament in accordance with section 25 of the Criminal Justice Act 2003

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## SECTION 1: INTRODUCTION

### *Definitions*

#### 1.1 In this Code of Practice:

- “*the 2003 Act*” means the Criminal Justice Act 2003;
- “*authorised person*” has the meaning given in section 22(4) of the 2003 Act;
- “*decision maker*” means either the authorised person or the relevant prosecutor who is required to make a decision;
- “*relevant prosecutor*” has the meaning given in section 27 of the 2003 Act;
- “*foreign offender conditions*” mean conditions, the objects of which are set out in section 22(3E) of the 2003 Act, namely:
  - to bring about the departure of the relevant foreign offender from the United Kingdom; and
  - to ensure that the relevant foreign offender does not return to the United Kingdom for a period of time;
- “*relevant foreign offender*” has the meaning given in section 22(3G) of the 2003 Act. In practice it means an offender with no leave to enter or remain in the United Kingdom and in respect of whom there is a power to enforce their departure from the United Kingdom;
- “*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;
- “*the CPS*” means the Crown Prosecution Service; and
- “*the UKBA*” means the United Kingdom Border Agency.

### **Aim and Purpose of conditional cautions**

- 1.2 A conditional caution allows an authorised person (usually a police officer) or a relevant prosecutor (usually the CPS) to give a conditional caution with one or more conditions attached. When an offender is given a conditional caution for an offence, criminal proceedings for that offence are halted while the offender 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.

- 1.3** A conditional caution can be given only to offenders aged 18 or over. Offenders under the age of 18 may receive a youth conditional caution.
- 1.4** Conditional cautions provide an opportunity, in appropriate cases, for offenders who admit to their offence and comply with certain conditions—
- to offer a proportionate response to low level offending;
  - for offenders to make swift reparation to victims and communities;
  - for offenders to be diverted at an early opportunity into rehabilitative services thereby reducing the likelihood of re-offending; and
  - to punish an offender by means of a financial penalty.
- 1.5** In addition, foreign offender conditions can be given, whether or not in addition to the above conditions.
- 1.6** The 2003 Act permits the authorised person or the relevant prosecutor to give a conditional caution to an offender. Guidance issued by a relevant prosecutor will set out those offences for which an authorised person may give a conditional caution and those which must be referred to a prosecutor to decide whether a condition caution can be given. Generally, more serious offences will be referred to the relevant prosecutor.

### **Relevant legislation**

- 1.7** Conditional cautions were introduced by Part 3 of the 2003 Act (“the 2003 Act”) and came into force in July 2004.
- 1.8** This Code of Practice was prepared by the Secretary of State for Justice under section 25 Criminal Justice Act 2003 and was published with the consent of the Attorney General. It was subject to public consultation and was then laid before both Houses of Parliament. It was brought into force by the Criminal Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2013 (No. XXXX). It extends to England and Wales. The Code of Practice governs the use of conditional cautions under Part 3 of the 2003 Act. This Code of Practice replaces any earlier versions of the Code of Practice.

- 1.9** Where provided for in legislation, a relevant prosecutor will publish guidance to its prosecutors and relevant authorised persons on the approach to be taken in deciding whether to give a conditional caution for an offence.
- 1.10** This guidance will identify any aspects which render a case unsuitable for a conditional caution and where an alternative disposal should be preferred, such as prosecution. For example, certain offences may be excluded from being dealt with by a conditional caution, or specific circumstances surrounding the case may make charging the offender the most appropriate response. This guidance will also set out those, more serious, offences that must be referred to the relevant prosecutor who will decide whether to give a conditional caution to the offender.

*Director of Public Prosecutions guidance*

- 1.11** Under section 37A of the Police and Criminal Evidence Act 1984 the DPP may issue guidance (“the DPP guidance”) for custody officers and the CPS which will prescribe the offences and circumstances in which a conditional caution is permitted. Any other prosecutor may publish similar guidance.

## **SECTION 2: DECISION MAKING**

### **The five requirements**

- 2.1** Section 23 of the 2003 Act sets out five requirements that must all be met before a conditional caution may be given. These requirements should be addressed in order.
- 2.2** Section 23(1) requires that the authorised person has evidence that the offence has been committed. Section 23(2)(a) requires that either the authorised person or the relevant prosecutor decide—
- (a) that there is sufficient evidence to charge the offender with the offence, and
  - (b) that a conditional caution should be given to the offender in respect of the offence.

### **Evidential grounds for giving a conditional caution**

- 2.3** In deciding that 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*

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

### *Admissions*

- 2.5** 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 must 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*

- 2.6** Where there is sufficient evidence to provide a realistic prospect of conviction and therefore sufficient evidence to charge the offender as required by section 23(2)(a), the decision maker must go on to consider whether the offender should be given a conditional caution. In order to do this the second stage of the Full Code Test should be applied. This test requires the decision maker to consider whether the public interest is satisfied by the offender being given a conditional caution in respect of the offence.
- 2.7** In most cases, and subject to paragraph 2.10, a conditional caution should not be given where a court, if the offender were convicted, would be likely to impose a significant community sentence or a period of imprisonment for the offence. However, a conditional caution may be given for serious offences in exceptional circumstances. Those exceptional circumstances will be set out in guidance.

### **Deciding whether a conditional caution should be given**

- 2.8** In addition to the public interest test in deciding whether to give a conditional caution the decision maker will take into account:
- the seriousness of the offence;
  - the circumstances of the case;
  - 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 conditional caution;

- the likely outcome if the case proceeded to court;
- other relevant guidance; and
- for foreign offender conditions whether the foreign offender can be removed from the UK.

**2.9** Where a number of offences are related<sup>1</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 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.

#### *Foreign offenders*

**2.10** Foreign offender conditions<sup>2</sup> may be suitable for more serious offences which attract a custodial sentence of a specified maximum period. There is an additional consideration in these cases because the public interest may be better served where the offender departs from the United Kingdom and agrees to not return for a period of time.

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

**2.11** Where an offender is charged with an offence, the relevant prosecutor, on reviewing the case, may decide that a conditional caution would be more appropriate. If so, the relevant prosecutor should direct the authorised person to give a conditional caution to the offender. The prosecution will be halted pending the decision of the offender about whether to accept a conditional caution. The decision to give the conditional must be made in accordance with this Code of Practice and any guidance produced by a relevant prosecutor. The relevant prosecutor may make such a direction even where it does not ordinarily make such a decision for a particular offence.

#### *The offender*

**2.12** Previous convictions, simple cautions and other out of court disposals do not preclude giving a conditional caution to an offender. A conditional caution may be appropriate where:

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<sup>1</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).

<sup>2</sup> See section 22(3D) to (3G).

- 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 sufficient deterrent effect;
- the current offence is low level;
- the current offence is not similar or the same as any previous offence;
- giving a conditional caution is likely to be the best outcome for the victim and the offender;
- the offender has previously complied with another form of out-of-court disposal.

**2.13** A 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.

**2.14** A second 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 conditional caution was more than two years earlier. Generally, it will not be appropriate to give a second conditional caution where the offender failed to comply with the conditions of the previous conditional caution or would be in breach of a court order.

## **Conditions**

### *Type of conditions*

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

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



### *Rehabilitative conditions*

**2.16** Rehabilitative conditions may include attendance at drug or alcohol misuse programmes, or interventions tackling other addictions or personal problems, such as gambling or debt management courses.

### *Reparative conditions*

**2.17** 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—

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

### *Punitive conditions*

**2.18** At present only one punitive condition is available: the payment of a financial penalty. See paragraph 2.36.

### *Foreign offender conditions*

**2.19** Foreign offender conditions<sup>3</sup> may be given to bring about the departure of the offender from the United Kingdom and ensure that the offender does not return for period of time. The conditions may require the offender to—

- regularly report to an immigration office or removal centre;
- obtain or assist authorities in obtaining a valid national travel document; or
- comply with any lawful instruction given by the Secretary of State or an immigration officer.

**2.20** Foreign offender conditions can be given in addition to one or more conditions that are rehabilitative, reparative or punitive.

**2.21** Foreign offender conditions **cannot be given** where

- the offender is suspected of committing document or identity fraud in order to claim asylum or to raise a Human Rights claim; or

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<sup>3</sup> See section 22(3D) to (3G) of the Criminal Justice Act 2003

- where there are reasonable grounds for believing that that the offence is connected to human trafficking, where the offender is either a victim or perpetrator.

### **Selection of appropriate, proportionate and achievable conditions**

**2.22** Conditions attached to a conditional caution must always be:

- Appropriate;
- Proportionate;
- Achievable.

When deciding on the conditions that should be attached to a conditional caution the decision maker may draw on the views of others. This may include those involved with restorative justice processes, and the UKBA in relation to foreign offender conditions (see paragraph 2.50).

#### Appropriateness

**2.23** The decision maker should seek to apply a problem solving approach aimed at changing an offender'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.

**2.24** For relevant foreign offenders, foreign offender conditions should be considered first before any other conditions.

**2.25** 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 2.15 and 2.19, 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 offender 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 paragraph 2.36).

### Proportionality

**2.26** 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

**2.27** 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 are commensurate with the means of the offender.

**2.28** Conditions should avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends school or any other educational establishment or attends other specialist services.

### **Time limits for completing conditions**

**2.29** 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.

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<sup>4</sup> Where a number of offences have been grouped together, the 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

**2.30** 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 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.

**2.31** In relation to foreign offender conditions:

- conditions to bring about the departure of the foreign offender 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.
- conditions concerned with ensuring that the foreign offender does not return for a period of time, will generally, be in accordance with the Immigration Rules<sup>6</sup>. Exceptionally, the condition may specify a period longer than that set out in the Immigration Rules. For example this may be required for serious offences that are either triable either way or that are indictable only offences.

### **General considerations**

**2.32** Conditions which impose restrictions on an offender may only be used where they contribute towards the aims of rehabilitation, reparation, punishment or the aims of a foreign offender condition. Such conditions could be used to prevent the offender from contacting individuals, visiting certain locations or participating in particular activities.

**2.33** Conditions may include reference to the future behaviour of an offender, such as an agreement not to commit further offences for a specified period.

**2.34** An offender with sufficient means may be expected to pay the reasonable costs associated with a condition attached to conditional caution in order to render the conditions effective, and a requirement to do so might be an additional condition.

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<sup>6</sup> See the general grounds of refusal in the Immigration Rules

This is subject to the offender having means to pay and must be appropriate, proportionate and achievable. Where a condition cannot be given to an offender because they cannot afford to pay the reasonable costs, every effort should be made to identify an alternative condition provided that it is appropriate, proportionate and achievable.

### **Conditions with a financial element**

**2.35** 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;
- costs associated with reparative, rehabilitative, punitive or foreign offender conditions.

**2.36** Financial Penalty Conditions<sup>7</sup> can only be used for an offence that is prescribed in an Order made under section 23A(2) of the 2003 Act (“the Order”).

**2.37** 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 level of a financial penalty, taking into account the means of the offender and the circumstances of the case, including the seriousness of the offence. The DPP guidance contains more detailed information including a matrix of the maximum amounts for different offences.

**2.38** There are no restrictions in the 2003 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 prosecutor in accordance with paragraph 1.9 should set out the use of compensation payment as part of a reparative condition.

**2.39** Conditions with a financial element 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 caution and may lead to prosecution for the original offence.

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<sup>7</sup> The provisions of a financial penalty condition are set out in section 23A of the 2003 Act.

- 2.40** Any financial penalty conditions must specify to whom the offender must make payment.
- 2.41** When considering any conditions with a financial element that may be attached to a conditional caution, particularly where the offender is of limited financial means, the decision maker should always prioritise compensation for the victim ahead of any costs associated with other conditions and any financial penalty condition.
- 2.42** A conditional caution may contain more than one financial element. For example it may contain a requirement to pay compensation to a victim as part of a reparative condition together with a financial penalty condition. However the total amount of the financial element must be within the means of the offender and must be capable of being paid within a reasonable period of time.
- 2.43** In addition, the extent of any financial loss suffered by the victim may mean that the full amount of any compensation payable as part of a reparative condition is beyond the means of the offender. This does not preclude the use of a conditional caution in such circumstances where it is appropriate because the decision maker can suggest an amount that is less than full compensation. Before giving a conditional caution in such circumstances 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 response taking into account all the circumstances of the case.

### **Considering the views of others**

- 2.44** The decision maker will have in mind, where appropriate, the views of others, for example, victims, neighbourhood justice panels, and the UKBA in relation to foreign offender conditions.

### *Restorative Justice*

- 2.45** Restorative Justice processes and initiatives, such as Neighbourhood Justice Panels may be used to help inform decision 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 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.

#### *Involvement of the victim*

- 2.46** The views of the victim should be obtained wherever possible. These should be taken into account in deciding whether a 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 conditional caution with other conditions attached that do not directly involve the victim.
- 2.47** The views of the victim will be important but cannot be conclusive. The decision as to whether to give a 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.
- 2.48** Where the conditions attached to a caution have a direct impact on the victim<sup>8</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 conditional caution and will not be completing the conditions.
- 2.49** Victims who are not directly affected by the conditions<sup>9</sup> should also be informed of the outcome of the case where possible, including whether the conditional caution was completed or whether the offender was prosecuted for the original offence as a result of non-compliance.

#### *Foreign offender conditions*

- 2.50** The decision maker should consult with the UKBA before deciding whether to give a foreign offender condition to an offender. In particular the decision maker should

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<sup>8</sup> For example, where compensation is to be paid, or work that benefits the victim is undertaken.

<sup>9</sup> For example, where the offender has been given a rehabilitative condition, and no compensation is necessary.

obtain confirmation about the offender's immigration status and the likelihood of removal from the United Kingdom within a reasonable period and whether any dependants are required to be removed too.

## **SECTION 3 – PROCESS TO FOLLOW**

### **Administration of a conditional caution**

- 3.1** In a case in which the decision maker considers that there is sufficient evidence to charge but the case should be dealt with by means of a conditional caution, the offender may be given a conditional caution if the other requirements of section 23 of the 2003 Act are met.
- 3.2** The conditional caution may be administered in a police station, court building, the offices of any prosecutor or any other suitable location consistent with achieving the appropriate impact on the offender. Conditional cautions with foreign offender conditions may also be administered at a port or immigration removal centre or similar place.
- 3.3** It will not generally be appropriate to administer a conditional caution in public (for example, in the street) or in the offender's home. However, in exceptional circumstances such as an elderly or vulnerable offender the 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*

- 3.4** Firstly the offender must admit the offence. The 2003 Act does not require an admission to be made by the offender before the decision maker determines whether a conditional caution is appropriate. However, the offender must make an admission at the time the conditional caution is given that he has committed the offence (or all the offences) for which the conditional caution is being given. This is true for all cases, irrespective of whether a previous admission has been made by the offender.
- 3.5** A 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 health or intellectual capacity of the offender. The authorised person should be particularly careful about accepting an admission in these circumstances.



### *Explaining the effect of the conditional caution*

**3.6** Before administering a conditional caution the authorised person shall ensure that the offender has the opportunity to receive free and independent legal advice<sup>10</sup> in relation to the offence.

**3.7** In addition the authorised person must:

- inform the offender of the evidence against them and the decision made by the decision maker;
- explain the requirements of a conditional caution including exactly what each condition requires the offender 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>11</sup>;
- make it clear to the offender that an admission should never be made merely to receive a 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 offender'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

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<sup>10</sup> Where a foreign offender condition is being considered, the offender is entitled to free and independent legal advice in relation to the offence they have committed. They are not, however, entitled to free and independent legal advice in relation to most non-asylum immigration matters such as their immigration status. Please refer to Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which sets out the scope of civil legal aid.

<sup>11</sup> Where a prior admission has been made by the offender, the offender should already be aware of this.

offence may be taken into account in determining whether an offender is prevented from working with children or vulnerable people;

- must explain that a conditional 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;
- explain that the offender may decide at any stage to withdraw from the conditional caution whether it is before, during or after it has been administered;
- 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 decide that the offender should be prosecuted for the original offence;
- inform the offender 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 offender accepts the conditions and agrees to accept the conditional caution.

**3.8** At the point of administering the conditional caution the authorised person should ensure that the offender understands the following:

- the offender has the right to legal advice at any time during the process;
- the effects of accepting a conditional caution, in particular that although it is not a criminal conviction, the conditional caution will form part of an offender's criminal record and may be disclosed in certain circumstances and may prevent the offender working in some occupations;
- the means by which compliance with each of the conditions will be verified (including any responsibilities of the offender for demonstrating compliance);

- make it clear that if the offender does decide to withdraw from the conditional 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;
- the process for contacting the police (or other agency monitoring compliance) should any problems arise in complying with the conditions or if the offender decides to withdraw from the conditional caution process;
- the consequences of failing to complete the conditional caution (in particular that the offender may be liable for arrest and prosecution for the original offence);
- any requirement to notify the police (or other agency monitoring compliance) immediately upon change of address.

**3.9** When complying with the paragraphs 3.7 and 3.8 the authorised person must bear in mind the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offender and the use of an appropriate adult.

**3.10** In relation to a foreign offender condition, 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*

**3.11** Section 23(5) of the 2003 Act requires that the offender sign a document recording the conditional caution. The form for recording the conditional caution must:

- contain the details of the offence for which the caution is administered;
- clearly set out all the conditions to be complied with;
- set out the arrangements for monitoring compliance;
- specify the effect of the conditional caution and the consequences of any failure to comply with the conditions, including the possibility of future prosecution for the offence;

- record the offender's clear admission to the offence, consent to being given the conditional caution and agreement to and undertaking to abide by the conditions; and
- provide details of the person or department that the offender should contact in the case of non-compliance, or if they are unable or unwilling to comply with the conditions or wish to withdraw from the conditional caution.

## **Monitoring and Compliance**

### *Monitoring of conditions*

**3.12** When determining the conditions to be attached to a conditional caution, the decision maker should consider the mechanism by which compliance with the conditions will be monitored and demonstrated.

**3.13** 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. The UKBA 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.

A robust process for demonstrating compliance must be in place. This may include agreements with:

- organisations involved in delivering the conditions (such as drugs referral agencies);
- police officers and other police staff;
- the United Kingdom Border Agency (UKBA) and Border Force in relation to foreign offender conditions;
- probation and national offender management services;

- Her Majesty's Courts Service (for collection of monies).

#### *Compliance with conditions*

- 3.14** 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.
- 3.15** 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 (see paragraph 1.2). 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*

- 3.16** 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 seek to give the offender the opportunity to explain and demonstrate compliance or to establish whether any reasonable excuse exists for non-compliance. If another agency is monitoring compliance a report of the non-compliance together with the offender's response must be given to the authorised person.
- 3.17** 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, a prosecution for the original offence should usually follow.

#### *Withdrawal from conditions*

- 3.18** An offender may withdraw from one or more of the conditions attached to a conditional caution after it has been administered. Where this occurs, the decision maker should consider whether to treat this behaviour as non-compliance and whether the offender should be prosecuted with the original offence.
- 3.19** 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 whether the offender should

be prosecuted for the original offence in the same manner as when the offender fails to comply with the conditions.

#### *Foreign offenders*

**3.20** A foreign offender who has accepted a conditional caution with foreign offender conditions may still apply to remain in the UK on asylum or human rights grounds. Where this occurs, the decision maker should consider whether to treat this behaviour as non-compliance and whether the offender should be prosecuted with the original offence.

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

**3.21** 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:

- the conditional caution should be regarded as completed<sup>12</sup>;
- the conditional caution should be regarded as incomplete but that the public interest requires no further action;
- a new time limit should be set for completing the original conditions; or
- the original conditions should be revised.

#### *Variation of conditions*

**3.22** The conditions attached to the caution may be varied or changed if the offender agrees to this. If the offender refuses to accept varied conditions because it is deemed unreasonable, the decision maker may decide to allow the 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.

**3.23** 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

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<sup>12</sup> For example, where the offender has substantially engaged with a drug rehabilitation condition but missed one appointment or struggled to provide payment for the scheme.

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. Such a document must comply with the requirements set out in paragraph 3.11 of this Code of Practice. Any non-compliance with the new or revised conditions should be dealt with according to the same process as applies for non-compliance with the original conditions.

#### *Multiple offences*

**3.24** Where the conditional caution has been given for multiple offences, the decision maker must also determine whether the offender should be prosecuted 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 and so prosecution for that offence may not be appropriate whilst prosecution for those offences in relation to which the offender has not complied with the caution would still be appropriate.

#### *Arrest and detention of offenders*

**3.25** Under section 24A(1) of the 2003 Act an offender can be arrested where a constable has reasonable grounds for believing that an offender has failed without reasonable excuse to comply with any conditions attached to a conditional caution. While the necessity criteria in section 24(4) and (5) of the Police and Criminal Evidence Act 1984 do not apply to arrests under section 24A of the 2003 Act, as a matter of practice the same approach should be adopted and the power of arrest should only be exercised where considered necessary. 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 conditional caution. or to seek a charging decision from a prosecutor and formally charge an offender.

**3.26** Offenders should only be detained for as long as is necessary to explore the reasons for any non-compliance 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 offender should be released on bail in accordance with section 24A(2)(b) of the 2003 Act whilst the authorised person enquires into the non-compliance and the decision maker decides whether the original offence should be charged.

**3.27** If the offence is one for which only a prosecutor can make the charging decision the case must be referred to a prosecutor for decision. Where it appears likely that referral may not be concluded within a short period of time, the offender will be released on an appropriately short period of bail.

### **Prosecution following failure to comply**

**3.28** Where the decision maker has determined that an offender 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 offender 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.

**3.29** 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>13</sup>.

### **Recording and citing conditional cautions**

**3.30** In regard to conditional cautions given by the police, records must be kept in accordance with relevant directions issued by or on behalf of the Secretary of State. Other prosecutors and authorised persons may issue similar directions to ensure that records are kept in accordance with any relevant legal responsibilities.

**3.31** Conditional cautions can be cited in any subsequent court proceedings<sup>14</sup> subject to any relevant legislation regarding the rehabilitation of offenders.

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<sup>13</sup> The court will be dealing with the original offence. Non-compliance with a conditional caution is not an offence in itself.

<sup>14</sup> This includes civil proceedings.