

**THE DIRECTOR'S GUIDANCE ON
CONDITIONAL CAUTIONING**

**The
Prosecution
Team**



**Guidance to
Police Officers and Crown Prosecutors
Issued by the Director of Public Prosecutions
under S37A of the Police and Criminal
Evidence Act 1984**

6th Edition: January 2010

THE DIRECTOR'S GUIDANCE ON ADULT CONDITIONAL CAUTIONS: SIXTH EDITION 2009

GUIDANCE TO POLICE OFFICERS AND CROWN PROSECUTORS ISSUED UNDER SECTION 37A OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984

1. INTRODUCTION

- 1.1 This Guidance enables Custody Officers and Crown Prosecutors to decide how an offender should be dealt with when:
- a Custody Officer determines that there is sufficient evidence and is considering charging an offender with an offence specified in [Annex A](#); and
 - a Custody Officer considers that suitable conditions may provide reparation to the victim or community; be effective in modifying offending behaviour; or provide an appropriate penalty; and
 - a Crown Prosecutor considers that a Conditional Caution is appropriate in all the circumstances of the case.
- 1.2. This Guidance specifies:
- the information that must be sent to Crown Prosecutors to enable a Conditional Cautioning decision to be made, and
 - the practical arrangements for the referral of cases and for dealing with any non-compliance.
- 1.3 This guidance has immediate effect in all Local Criminal Justice Board areas. However, only those LCJB areas specified in relevant commencement orders under the Police and Justice Act 2006 can offer a financial penalty condition. See [Annex D](#) for details.

2. KEY PROVISIONS AND PRINCIPLES

- This Guidance should be read in conjunction with all relevant legislation, including the Criminal Justice Act 2003 (the Act) as amended and the Revised Code of Practice for Conditional Cautions – Adults (2009).
- Conditional cautioning is an out-of-court disposal which can be used where conditions can meet the justice of the case, taking into account the views of the victim. It provides an opportunity to achieve an early positive response to offending behaviour for those offenders willing to admit their offending and comply with certain conditions.
- A Conditional Caution should not be offered in any case where the offence is denied or any defence has been raised.
- The decision to administer a Conditional Caution will bring about the suspension of the prosecution while the offender is given an opportunity to comply with the conditions. Where the conditions are complied with, the prosecution will not normally proceed. However, where there is no reasonable excuse for any non-compliance, the prosecution for the original offence should go ahead as if the Conditional Caution had not been administered.
- Where a prosecution takes place, the Act provides that the Conditional Caution will cease to have effect. The issue as to whether or not a reasonable excuse for any non-compliance existed will not be a matter for consideration during any subsequent prosecution.
- In order to facilitate the swift and effective use of this out of court disposal, referral to Crown Prosecutors will be by telephone. Chief Crown Prosecutors and Chief Constables should agree working arrangements for this locally.

- Once a Crown Prosecutor has determined that an offender is to be conditionally cautioned or charged, they will be so conditionally cautioned or charged as soon as practicable in accordance with Section 37B PACE.

3. REFERRAL TO PROSECUTORS OF CASES IN WHICH A CONDITIONAL CAUTION IS PERMISSIBLE

3.1 Police officers and Crown Prosecutors should work together to ensure that a Conditional Caution is considered wherever it is permitted and appropriate.

Factors which will determine if a Conditional Caution should be offered

- 3.2 Where the Custody Officer is considering whether to charge an offender and establishes that:
- a. The offence is one specified in [Annex A](#), and
 - b. During interview, the offender has admitted the offence or made no comment or no interview has taken place, and
 - c. The Police consider that instead of charging the offence, a Conditional Caution with suitable conditions may provide reparation to the victim or community; be effective in modifying offending behaviour; or provide an appropriate penalty,

the offender should not be charged. The case should be referred to a Crown Prosecutor who will determine whether a Conditional Caution is appropriate or whether the offender should be charged.

Making prompt decisions

3.3 Wherever possible, the decision to administer a Conditional Caution should be made while the offender is still in custody. If, for any reason, this is not possible, the offender may be released on bail, with or without conditions, under section 37(7) PACE for a period not exceeding 21 days, unless there are operational reasons or other circumstances relating to the victim or offender justifying a longer period, or further information is required relating to the consideration of any specific condition.

Prosecutor's post charge review – cases that should have been considered for a Conditional Caution

3.4 Where an offender is charged with an offence, but it appears upon review that a Conditional Caution is more appropriate, the reviewing Prosecutor must consider whether one should be offered. If so, the current prosecution should be adjourned pending a decision as to whether a Conditional Caution is to be administered.

4 DECIDING WHETHER A CONDITIONAL CAUTION IS A SUITABLE RESPONSE

4.1 In determining whether a Conditional Caution is appropriate, Crown Prosecutors should take into account the following factors to ensure that this out of court disposal provides an appropriate and proportionate response to the offending behaviour.

Offenders who have had a previous out of court disposal

4.2 Previous simple cautions do not preclude the use of a Conditional Caution. A second Conditional Caution should not generally be offered unless there are exceptional circumstances indicating that it may be appropriate; for example, where the previous Conditional Caution was more than 2 years earlier; or where any referral scheme may not have had sufficient time to prove effective. It will generally not be appropriate to issue a further Conditional Caution where a previous one was not complied with.

- Offenders with previous criminal convictions**
- 4.3 The existence of a history of convictions does not necessarily rule out the possible use of a Conditional Caution. However, Crown Prosecutors must be satisfied that the proposed conditions are likely to be effective in modifying offending behaviour or provide appropriate reparation or a proportionate response to the offending behaviour. That is unlikely to be the case where there is a history of recent convictions of a violent or sexual nature.
- Sufficient evidence to charge the offender with an offence**
- 4.4 Before a Conditional Caution can be given, there must be sufficient evidence available to meet the evidential requirements of the Full Code Test as set out in the Code for Crown Prosecutors. If an offender is not interviewed, or makes no admission in interview, but does not deny the offence, a Conditional Caution may still be offered if upon review there is a realistic prospect of conviction in the case. Where an offender denies the offence in interview or raises a defence, it will not be appropriate to offer a Conditional Caution.
- Public interest factors to determine whether a Conditional Caution should be offered**
- 4.5 Where the evidential test is met, the Crown Prosecutor must be satisfied that the public interest can best be served by the offender complying with suitable conditions aimed at reparation, rehabilitation or punishment taking into account the interests of the victim, community and/or needs of the offender. The Crown Prosecutor must also be satisfied that a prosecution will continue to be necessary should the offer of a Conditional Caution be declined or the offender fails to comply with the conditions.
- Seriousness of the offence**
- 4.6 The Crown Prosecutor must carefully consider the seriousness of the offence and the range of penalties likely to be considered taking into account the Magistrates' Court Sentencing Guidelines. Cases likely to be considered for a substantial community order or period of imprisonment should always be charged.
- 4.7 Any aggravating circumstances, including the methodology employed by the offender (for example, any breach of trust or advantage taken of the vulnerable or young) may all increase the seriousness of the offence to the point where the case should proceed to court.
- Dealing with more than one offence**
- 4.8 Where more than one offence is being considered on any one occasion, the Crown Prosecutor will assess the impact of all the offending behaviour in determining whether it is appropriate to administer a single caution or whether the case should proceed to court. Where it is considered appropriate to administer a Conditional Caution, a single Conditional Caution should be administered unless it is necessary to specify particular conditions relating to individual offences, such as restrictive conditions or compensation.
- Involvement of victims**
- 4.9 The police should inform the victim that the case may be considered for a Conditional Caution. The views of the victim should be sought and submitted to the Crown Prosecutor. The victim's consent must be obtained where direct reparation or restorative justice processes are being considered. Information may also be provided to the Crown Prosecutor as to the views of the local community including any community impact assessment.
- 4.10 The Crown Prosecutor should consider the effect of the offence on any individual victim and/or the community as a whole. The decision to conditionally caution is one for the Crown Prosecutor who must determine what weight is to be given to the victim's views in all the circumstances of the case. Any views of the victim whether in favour of prosecution or otherwise should not be the overriding consideration but will be a matter for the Crown Prosecutor to take into account in determining the action to be taken.
- Circumstances of the offender**
- 4.11 The offender's attitude to both the offending behaviour and the proposed conditions should be considered. An offender who has shown genuine remorse for the offending behaviour and who has demonstrated a willingness to comply with the conditions is more likely to be suitable for a Conditional Caution. A Conditional Caution will not be appropriate for an offender who fails to accept full responsibility at the time of the administration of the caution.
- 4.12 Before a Conditional Caution can be administered the offender must admit the offence and agree to comply with the conditions. If the Crown Prosecutor has reason to believe that the

offender is unlikely to do so or that the conditions will not be effective in modifying the offending behaviour, the offer of a Conditional Caution will not be appropriate.

Dealing with multiple offenders

- 4.13 The charging of one offender in a case does not prevent the offer of a Conditional Caution to a co-defendant. A Conditional Caution can still be considered where it is appropriate either due to the level of involvement in the criminality or the circumstances of the offender. When presenting the case against an offender charged, the court should be informed of any decision by a Crown Prosecutor to conditionally caution another offender.

5. SELECTION OF APPROPRIATE CONDITIONS

The Revised Code of Practice for Conditional Cautions – Adults

- 5.1. In determining conditions, the police and Crown Prosecutors will have regard to this Guidance and the Revised Code of Practice for Conditional Cautions – Adults (2009). A table providing further guidance on the selection of appropriate conditions is set out in [Annex B](#). The police may propose conditions appropriate to the circumstances of the case but the Crown Prosecutor will determine which conditions will apply in each case. Conditions must not be included that impose obligations on or require the co-operation of third parties, including victims, without first obtaining their agreement.

Types of conditions

- 5.2 Conditions attached to a Conditional Caution may be reparative, rehabilitative or punitive (*punitive in pilot Areas only) and may impose restrictions on an individual where these contribute to the achievement of those objectives. Crown Prosecutors should seek to achieve these objectives by the attachment of the minimum number of conditions. In addition, conditions must always be appropriate, proportionate and achievable.
- 5.3 Crown Prosecutors should seek to apply a problem solving approach aimed at changing offending behaviour and/or providing redress to the victim. These aims will be regarded as the priority. Punitive conditions should only be used where there are no appropriate reparative or rehabilitative conditions or where they are required to provide a proportionate response to the offending behaviour.
- 5.4 The conditions, taken as a whole, must be proportionate to the level of offending and not so burdensome so as to seem to offer a disadvantage as compared to a likely court outcome. In addition, conditions must not be imposed which are not achievable or which would prevent an offender travelling to their home, place of work, place of religious worship or education, or for which access is ordinarily required for the necessities of every day living.

Considering Victims – Reparative Conditions

- 5.5 Priority consideration should be given to reparation or compensation for the victim of the crime in a manner that is acceptable to the victim. Reparative conditions may include apologising, repairing or otherwise making good any damage caused and paying financial compensation. Where the offending has resulted in damage to community property, reparation may take the form of unpaid work to repair that damage or of payment to an appropriate local charitable or community fund.

Respecting the views of the victim

- 5.6 Individual victims should, where possible, be consulted and suitable conditions canvassed. Any conditions involving the participation of a victim in any way, including the sending of a letter of apology or payment of compensation, must not be required of an offender unless the victim has been consulted and clear agreement obtained.

Compensation and the views of the victim

- 5.7 The payment of compensation may be coupled with other conditions so long as the overall requirements contained in the conditions remain proportionate to the offending behaviour. Payment of compensation must be commensurate with the means of the offender and if too large an amount is involved, this may indicate that the case is too serious for a Conditional Caution. An explanation should be provided to victims where it is proposed that the sum to be paid by the offender as a condition falls short of the totality of the compensation claimed.
- 5.8 In the absence of agreement with the victim as to the amount to be paid, the Crown Prosecutor must decide on the amount of compensation and make a decision that is fair and

reasonable in all the circumstances having regard to what action a court would be likely to take in all the circumstances. A guide to the amount of compensation to be considered for personal injury is set out at [Annex B](#).

The Community as the victim

- 5.9 The victims of certain offences, especially anti-social behaviour, may be a local community or a part of it. Where possible, a suitable representative of a community should be consulted where it is proposed that the offender makes good the harm caused. It is possible that the community representative may suggest conditions or be willing to report when the task has been completed satisfactorily. The police should confirm that consultation has taken place with the victim or community representative.

Retention of a victim's civil rights

- 5.10 Victims retain the right to take civil proceedings against an offender and can be provided with the contact details of the offender for this purpose. The offender should be informed of this when the caution is explained prior to its administration.

Considering the offender - Rehabilitative Conditions

- 5.11 Next in priority will be conditions designed to tackle offending behaviour, rehabilitate or help to reintegrate the offender into society. A review of the case may reveal underlying problems leading to the offending. A condition not to commit an offence within a specified period may be all that is required where the offending was isolated and out of character and the offender appears responsive to the intervention of the police and appropriately remorseful.
- 5.12 Where it appears that offending behaviour is linked to debt, behavioural problems, addiction to drugs or alcohol or other substance misuse and a suitable scheme is operating locally which is able to take referrals and provide therapy and/or counselling, conditions requiring attendance at such schemes should be considered. The appropriate agency offering such referrals should be consulted on the conditions that need to be included to maximise the potential benefits.
- 5.13 An offender with sufficient means may be expected to pay the reasonable costs associated with rehabilitative or reparative conditions in order to render the conditions effective and a requirement to do so might be an additional condition. This is subject to the offender having means to pay and must be appropriate, proportionate and achievable.

Punitive Conditions – financial penalty conditions [*This only applies in the pilot areas listed in [Annex D](#)*]

- 5.14 The only punitive condition available for adult offenders is the payment of a financial penalty. A financial penalty condition may be offered either alone or in addition to other conditions where it is considered appropriate for a degree of punishment to be included. A financial penalty condition will generally not be appropriate where a Crown Prosecutor determines that rehabilitation will be a priority in the case. Where the means of the offender indicates that it may not be possible to include reparative conditions and a financial penalty, the reparative conditions should take priority.

Offering a financial penalty condition [*This only applies in the pilot areas*]

- 5.15 A financial penalty can only be offered in accordance with the scales set out in [Annex B](#) to this Guidance **but only for those offences contained in an Order made under section 23A of the Act**. These are the offences set out in [Annex A](#) (but excluding those marked *) Ordinarily, the standard penalty should be offered. Where, however, the Crown Prosecutor is satisfied that there is substantial mitigation for the commission of the offence or the offender is in receipt of state benefit (such as income support or job seeker's allowance) as their main or only source of income, the mitigated penalty in the table in [Annex B](#) may be imposed instead.
- 5.16 When attaching a financial penalty condition, the Crown Prosecutor must ensure the amount of the penalty, the designated officer for the local justice area to whom the penalty must be paid and the address of that officer for payment are noted in the documentation to be handed to the offender at the time of the administration of the Conditional Caution.
- #### **Restrictive Conditions**
- 5.17 Conditions that impose restrictions may be included as part of a package of measures designed to rehabilitate offenders, make good harm caused or impose punishment.

- 5.18 Restrictive conditions must be clear and unambiguous. They must clearly define any geographical restriction to be imposed. A marked map may be used to aid understanding and avoid uncertainty. Persons not to be approached or contacted must be clearly named or described.

6. TIME LIMITS FOR THE COMPLETION OF CONDITIONS

- 6.1 The time for completion of any conditions must allow sufficient time for prosecution in the event of any non-compliance. In particular prosecution for most summary only offences must be commenced within 6 months of the date of the offence. The period allowable for completion of any conditions for any summary only offence should be limited to 16 weeks from the date of the offence, and not the date of the administration of the Conditional Caution. It may be possible to achieve the objectives of the condition in a shorter period. 16 weeks will also be an appropriate maximum time period for the completion of most conditions relating to either way offences. It may be possible to achieve the objective of the condition, particularly a restrictive condition, in a much shorter period of time.
- 6.2 When determining the length of time to be allowed for payment, regard should be had to the offender's disposable income. However, conditions with a financial element should not be regarded as simply another item of household expenditure ranking the same as or of a lesser priority to other debts. They should take priority over all outgoings except essential living expenses. Offenders may make arrangements for periodic payments with the court where this method of payment is easier to manage.

7. THE CROWN PROSECUTOR'S DECISION

The Prosecutor's review

- 7.1 A Conditional Caution may be appropriate where a Crown Prosecutor believes that while the public interest requires a prosecution in the first instance, the interests of the victim, community or offender are better served by the offender complying with suitable conditions aimed at reparation, rehabilitation or punishment.
- 7.2 The Crown Prosecutor will determine whether a Conditional Caution is likely to be effective and should be offered. Where the offender indicates a willingness to be cautioned and comply with the proposed conditions, an authorised person will administer the caution. Where the offender indicates that they do not wish to accept the caution or any of the conditions at that stage, the case will be referred back to the Crown Prosecutor who will determine whether alternative conditions are appropriate or whether the case should proceed to prosecution.

Recording the Prosecutor's decision

- 7.3 The Crown Prosecutor must make a brief record of the reasons why a Conditional Caution was or was not considered appropriate in the case and why any particular conditions were selected. The reasons should specify whether reparative, rehabilitative or punitive objectives were sought to be achieved. This should be recorded within the Review Screen of CMS.

8. PRACTICAL ARRANGEMENTS FOR THE REFERRAL OF CASES

Decisions by telephone

- 8.1 To facilitate the prompt handling of cases in which a Conditional Caution is to be considered, consultation between the police and CPS will be by telephone. Local arrangements will be made to provide a single telephone point of contact for immediate office hours' telephone referrals. This will be supplemented by CPS Direct outside office hours and at weekends.

Requirements for an MG5

- 8.2 In any case which is to be referred to a Crown Prosecutor for a Conditional Cautioning decision, the police will prepare an MG5 report (without attaching witness statements).

Contents of the MG5 Report

- 8.3 The MG5 report should set out the brief circumstances of the offence, summarising any admissions in interview, providing the details of any victims and any previous convictions or cautions applicable to the offender. The report should contain any views of the victim as to any restorative or reparative conditions and details of any compensation to be claimed. The

report should set out the proposed conditions to be included and confirm that the offender is willing to admit the offence and be cautioned.

Prompt decision making

- 8.4 The police will then send the MG5 report to the designated prosecutor's office, or CPS Direct by fax, e mail or electronic exchange and then telephone to obtain confirmation whether the case is considered suitable for a Conditional Caution. A Crown Prosecutor will confirm that there is a realistic prospect of conviction and the case is suitable for a Conditional Caution. The range of possible conditions will be discussed, including those proposed by the police and any other the Crown Prosecutor thinks appropriate.

Authorising the Conditional Caution

- 8.5 Once satisfied that the Conditional Caution and the proposed conditions are an appropriate and proportionate response to the offending behaviour, the Crown Prosecutor will complete the *Authority to Give a Conditional Caution* and provide copies to the police by return using fax, e mail or electronic exchange. A copy of the Prosecutor's Authority to Give a Conditional Caution is attached at [Annex C](#).

Prompt notification of non-compliance

- 8.6 Referrals to Crown Prosecutors in the event of any non-compliance should also be by telephone. Whenever an offender has been arrested for non-compliance and is detained in custody, referral to the Crown Prosecutor for determination that the prosecution is to proceed should be undertaken as early as practicable.

Retention of papers to prosecute offences following non-compliance

- 8.7 Once a Conditional Caution has been authorised in any case, the MG5, the Authority to give a Conditional Caution and confirmed MG14 will be retained by the local prosecutor's office pending completion of the conditions. This material (together with the CMS case review note) will be used in the event of a prosecution resulting from any non-compliance. *Any information concerning the personal details of victims and their views must not be included in any advance information.* The police will only be requested to provide witness statements following a case management hearing where the issues in dispute in the case have been identified following a not guilty plea.

9. MAKING THE OFFER OF A CONDITIONAL CAUTION

- 9.1 Once the police have been notified that a Conditional Caution is appropriate the offer of a Conditional Caution can be made. Before making the offer, the authorised person shall:
- a. ensure that the offender has the opportunity to receive free and independent legal advice before agreeing to be Conditionally Cautioned;
 - b. inform the offender of the evidence available, the decision made by the Crown Prosecutor, and that the offender can still request the case to be heard at court;
 - c. explain the Conditional Caution, including the conditions, and the implications of accepting it and when details of the offence may be disclosed to others, including to the victim who may choose to bring civil proceedings for any loss suffered;
 - d. explain the requirements for and consequences of making an admission to the offence, and the fact that the admission, which must be evidenced by the offender's signature, may be used in evidence should the case result in prosecution;
 - e. make it clear to the offender that an admission should not be made simply to receive a Conditional Caution;
 - f. explain that the offender may decide at any stage to withdraw from the Conditional Caution; make it clear that if the offender does decide to withdraw, he should inform the authorised person as soon as possible; tell the offender that withdrawal will be reported to the Crown Prosecutor, who may then decide that the offender should be charged with the original offence and prosecuted at court;
 - g. warn the offender that any failure to comply with the conditions will be investigated and reported to the Crown Prosecutor. The Crown Prosecutor will consider the

report and the circumstances of the case including the extent of any compliance, and may then decide that the offender should be charged with the original offence and prosecuted at court.

10. ADMINISTERING THE CONDITIONAL CAUTION

10.1 Once the police have been notified that a Conditional Caution is appropriate and the offender has indicated that a Conditional Caution will be accepted, an authorised person will proceed to administer the Conditional Caution. The authorised person should ensure the offender understands the following:

- a. the offender has the right to legal advice at any time during the process;
- b. 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;
- c. the means by which compliance with the various conditions will be verified (including any responsibilities of the offender for demonstrating compliance);
- d. the victim may be informed of the conditions agreed (unless there is a good reason for this not to happen);
- e. the victim may be provided with the details of the offender for any civil proceedings;
- f. 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;
- g. the consequences of failure to complete the Conditional Caution (in particular that the offender may be liable for arrest and prosecution for the original offence);
- h. any requirement to notify the police (or other agency monitoring compliance) immediately upon change of address.

10.2 The authorised person shall then:

- a. confirm that the offender admits the offence;
- b. confirm that the offender is willing to comply with the conditions and is aware of the name and address of the person to whom any financial payment must be made;
- c. obtain the offender's signature to the MG14;
- d. provide the offender with a named contact and telephone number for early notification in the event of any difficulties in complying with the conditions;
- e. provide a copy of the MG14 to the offender.

Finalising documentation

10.3 The authorised person will inform the Crown Prosecutor that the Conditional Caution has been administered by forwarding a copy of the signed MG14.

Dealing with cases where it is not possible to administer a Conditional Caution

10.4 In any case where it proves not possible to administer the Conditional Caution or where the offender indicates an unwillingness to comply with the proposed conditions, the authorised person shall instead refer the case back to a Crown Prosecutor for further consideration.

Authorised persons

10.5 An authorised person (for the purpose of administering a Conditional Caution) is a constable or any person authorised by the Director of Public Prosecutions

11. DEALING WITH NON COMPLIANCE AND VARIATION OF CONDITIONS

- Helping offenders complete the conditions**
- 11.1 Offenders must be made aware that a prosecution is likely to proceed if they fail to comply with conditions without reasonable excuse. They should also be encouraged to make early communication with the identified contact where difficulties are encountered in complying with the conditions. The continued engagement of the offender with the programme of conditions is more likely to be maintained where sensitivity is shown to any genuine change of circumstances.
- Dealing with non-compliance or requests to vary conditions**
- 11.2 Where the police or any other agency required to monitor compliance becomes aware that an offender is not complying with a condition, they should seek to obtain as much information of the non-compliance as possible, including giving the offender an opportunity to provide an explanation. The police or other agency monitoring compliance should then determine whether it would be appropriate to provide further guidance to the offender and allow the original conditions to be completed within the original time frame. Where this is not considered appropriate, the case should be referred back to a Crown Prosecutor.
- Prosecutor's role in dealing with partial or non-compliance**
- 11.3 A Crown Prosecutor will then consider whether there has actually been a failure to comply, the extent of that non-compliance and whether there is a reasonable excuse for the non-compliance. Where it is determined that there is a reasonable excuse, the Crown Prosecutor, taking into account the views of the police or other agency, will then decide whether it is appropriate to extend the period of time for completion of the conditions or vary the original conditions. Where there has been substantial part compliance, the Crown Prosecutor will decide whether the Conditional Caution should be regarded as completed or, although the Conditional Caution should be regarded as incomplete, the public interest requires no further action in the case.
- Variation of conditions**
- 11.4 Conditions may be altered in the light of any change of circumstances (including a request by the offender) after the Conditional Caution has been administered, although the Crown Prosecutor should be satisfied that the change in circumstances is genuine and impacts directly on the ability of the offender to complete the original conditions. The Crown Prosecutor should consider the effect on the victim of any significant variation of conditions and should arrange for the police to notify the victim where appropriate. An amended MG14 will be produced to accurately record any variation to the original conditions. The significance of these changes will be explained to the offender who will be required to sign the amended document. In any case where the variation of any condition could impact on the victim, the victim should be informed by the police promptly.
- Decisions on prosecution**
- 11.5 Where it is determined that there is no reasonable excuse, the Crown Prosecutor will decide whether or not the offender is to be charged with the original offence (where practicable by post) and notify the police accordingly. The police will inform the victim. Where the Conditional Caution was given for more than one offence, the Crown Prosecutor will determine which of the original offences requires prosecution, taking into account the extent of compliance with any conditions related to a specific offence.
- Recording reasons for the decision to prosecute**
- 11.6 The reasons for instituting a prosecution following any non compliance should be recorded and retained on the Review Screen on CMS.
- Arrest for non-compliance**
- 11.7 A constable may arrest any person whom he has reasonable grounds for believing has failed without reasonable excuse to comply with any conditions of a Conditional Caution.
- 11.8 Where following arrest the Custody Officer determines that further enquiries are required into the non-compliance that cannot be resolved quickly, the offender should be released on bail under section 24A(2)b of the Act, with or without conditions. The Custody Officer must inform the offender that he is being released to enable a decision to be made as to whether he is to be charged with the offence for which he was originally given a Conditional Caution. The offender should only be detained where this is necessary and for as short a period as is possible in order for a decision to be made.

Information to be provided to the court

- 11.9 In any prosecution brought following a failure to complete conditions, the Prosecutor should ensure that the court is made aware that a Conditional Caution had been offered to the offender but the conditions were not complied with. Details of the conditions themselves should only be provided where it would assist the court in considering sentence.

12. CONFIRMATION OF SUCCESSFUL COMPLETION OF CONDITIONS

- 12.1 The police will notify the Crown Prosecutor and the victim of the successful completion of the conditions.

13 COMMENCEMENT

- 13.1 This Guidance will take effect from 26th January 2010.

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ANNEX A: OFFENCES THAT MAY BE CONDITIONALLY CAUTIONED

The following specific offences may be considered for diversion by way of a Conditional Caution:

SUMMARY ONLY OFFENCES

Any **summary only offence**, including:

- Common assault (level 5)
- Assaulting a police officer (level 5)
- Section 4 and 4A Public Order Act 1986 (level 5)
- Unlawful taking of a motor vehicle (level 5)
- Interference with vehicles (level 4)
- Section 5 Public Order Act 1986 (level 3)
- Obstructing a police officer (level 3)
- Drunk and disorderly (level 3)
- Simple drunk (level 1)

Loitering or soliciting for the purposes of prostitution (level 2 or level 3 if previous conviction)*

but excluding any offence under the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 excepting the forgery of documents offence listed below.

EITHER WAY OFFENCES AND ATTEMPTS TO COMMIT THESE OFFENCES

The following offences **triable either way** specified in the **Theft Act 1968**:

- Theft
- Removal of articles from places open to the public
- Abstracting electricity
- False accounting
- Handling stolen goods
- Going equipped for stealing etc

The following offence **triable either way** specified in the **Theft Act 1978**:

- Making off without payment

The following offences **triable either way** specified in the **Fraud Act 2006**

- Making a false representation
- Failing to disclose information
- Fraud by abuse of position
- Possession of articles for use in frauds
- Making or supply articles for use in frauds
- Obtaining services dishonestly

The following offences **triable either way** specified in the **Criminal Damage Act 1971**

- Destroying or damaging property
- Threats to destroy or damage property
- Possessing anything with intent to destroy or damage property

The following offence **triable either way** specified in the **Misuse of Drugs Act 1971***

- Possession of any class of drug (consistent with personal use)

The following offence triable either way specified in the **Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988** ←

- Forgery of documents (including offences involving use of driving licence and insurance with intent to deceive)

The following offence triable either way specified in the **Vehicle Excise and Registration Act 1994** - Forgery and Fraud (including fraudulent use of excise licence)

NOTE: Indictable only offences and Hate Crimes All indictable only offences or those classified as hate crime, including any racially or religiously aggravated offence, any offences involving homophobic or transphobic aggravation, disability hate crime and domestic violence are excluded from consideration and may not be conditionally cautioned.

*** NOTE 2: No financial penalty condition** may be imposed for loitering or soliciting for the purposes of prostitution, possession of any class of drug or an offence under the Road Traffic Act or Road Traffic Offenders Act 1998 (except ←)

ANNEX B: GUIDANCE FOR THE SELECTION OF APPROPRIATE CONDITIONS

REPARATIVE	REHABILITATIVE	PUNITIVE
<p>To make good the loss sustained by the victim or community and to repair relationships: e.g.</p> <ul style="list-style-type: none"> to pay compensation, or to make payment to an appropriate local charitable or community fund to personally repair or make good the damage to undertake unpaid work not exceeding 20 hours to write a letter of apology to participate in restorative justice mediation 	<p>To stop or modify offending behaviour, or help reintegrate the offender into society: e.g.</p> <ul style="list-style-type: none"> not to commit further offences for a defined period of time to attend a referral programme specifically related to the nature of the offending behaviour 	<p>To punish where there are no other appropriate conditions or those conditions do not provide an appropriate and proportionate response to offending behaviour, specifically:</p> <ul style="list-style-type: none"> to pay a financial penalty
<p>A restrictive condition may be included with any of the above where to do so would assist in the achievement of one of the above objectives provided it is appropriate and proportionate to the offending behaviour and subsists for a reasonable period of time, e.g. not to approach a named victim, or specified property, or geographical location or specified event.</p>		

FINANCIAL PENALTY CONDITIONS BANDING [only applicable in the pilot Areas]

Penalty Band	Standard Penalty	Mitigated Penalty	Offence Scales
A	50	40	Summary only Level 1 - 3
B	100	50	S5 Public Order Act and Summary only Level 4
C	150	100	Summary only Level 5, & either way offences, including criminal damage

The Standard Penalty scale will apply unless the Crown Prosecutor is satisfied that there is substantial mitigation or the offender is in receipt of state benefit as his main or only source of income

COMPENSATION FOR PERSONAL INJURIES

Type of injury	Description	Award
Graze	Depending on size	Up to £75
Bruise	Depending on size	Up to £100
Black eye		Up to £125
Minor cut - no permanent scar	Depending on size and whether stitched	£100 to £200
Sprain	Depending on loss of mobility	£100 to £200

PROSECUTORS AUTHORITY TO GIVE AN ADULT CONDITIONAL CAUTION

Police Force	BCU	Case URN:
		A/S No:

Offender's surname Forename(s) D.O.B Male / Female
 Ethnicity Code: PNC.....16-point +1:
 Address Postcode.....
 Tel no: (home)..... (work)(mobile)

Date	Details of Offence(s)	CCCJS Code

I am satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of all offences under consideration and that the Directors Guidance permits the giving of a conditional caution for these offences.

I am satisfied that the proposed conditions are appropriate, achievable and a proportionate response to the offending behaviour.

I am satisfied that the victim has been consulted.

I authorise..... [..... Police/Constabulary]
 to give a Conditional Caution in this case.

Signature Crown Prosecutor. Date
 Full Name

Certificate of Completion/or Notification of Non Compliance

I hereby certify that the conditions attached have/have not been completely satisfactorily (attach evidence of non-compliance)

Name of officer/authorised person finalising the caution:

Rank/Job Title: No:
 Station:

Signature: Tel No: Date:

CONDITIONS ATTACHED TO THE CAUTION (MG 14)

Condition(s)	Compliance requirements, including completion / progress check dates	Evidence required
1.		
2.		
3.		
4.		

Contact details for reporting and confirmation of compliance with the conditions

Name..... (Tel).....

DECLARATION OF OFFENDER

I admit to the offence(s) set out above. I understand I have the right to legal advice, and that I should not admit the offence(s) solely in order to receive a Conditional Caution. I agree to comply with the conditions specified and I understand,

- 1) That if I fail within the agreed time to comply with, or to complete, any of the conditions attached to this caution, I will be liable for prosecution for the offence(s) outlined above and this signed form admitting the offence(s) may be presented as part of the case against me.
- 2) I must inform the contact shown above without delay if I am unable to comply with any of these conditions and explain why, or if I no longer wish at any stage to comply with the terms of the conditional caution, or if I change my normal place of residence, as shown above.
- 3) A record of this conditional caution will be kept; Conditional Cautions will be entered on the Police National Computer (PNC) if they have been administered for a recordable offence. Such records will be retained in accordance with the police Retention Guidelines.
- 4) That the conditional caution may be disclosed, when appropriate to an employer or certain potential employers, or in connection with any future criminal proceedings; and may affect my ability to travel abroad or gain employment.
- 5) That I have been informed of the evidence against me and the decision by the Crown Prosecution Service to administer a conditional caution. I understand that I do not have to accept a conditional caution and can instead have the case heard against me in court.
- 6) Information on my compliance with conditions will be provided to the police by service providers.
- 7) That this caution may not preclude a prosecution being brought in future and that a victim may still take out a private prosecution or civil action against me. The Police may disclose my details to a victim for this purpose.

Signature of person cautioned: Date

Caution administered by: Rank BCU

Signature

Signature of appropriate adult (where applicable)

Annex D

PILOT AREAS AUTHORISED TO OFFER A CONDITIONAL CAUTIONS WITH A PUNITIVE CONDITION

A Conditional Caution with a financial penalty condition may only be offered in the following Local Criminal Justice Board Areas until further notice:

Cambridgeshire
Hampshire
Humberside
Merseyside
Norfolk