

**THE DIRECTOR'S GUIDANCE ON
YOUTH 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**

1st Edition: January 2010

THE DIRECTOR'S GUIDANCE ON YOUTH CONDITIONAL CAUTIONS: FIRST EDITION 2009

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

1. **INTRODUCTION**

1.1 This Guidance enables Custody Officers, Crown Prosecutors and Youth Offending Teams to decide how a youth should be dealt with when:

- a Custody Officer determines that there is sufficient evidence and is considering charging a youth aged 16 or 17 with an offence specified in [Annex A](#) (attached); and
- the youth has not previously been convicted of an offence;¹ and
- a Crown Prosecutor considers that a Youth Conditional Caution is appropriate in all the circumstances of the case and those of the youth; and
- the Youth Offending Team (YOT) has reported on the suitability of the youth for a Youth Conditional Caution.

1.2. This Guidance specifies:

- The information that must be sent to Crown Prosecutors and the Youth Offending Team (YOT) to enable a Youth Conditional Cautioning decision to be made.
- The practical arrangements for the referral of cases and for dealing with any non-compliance, including the involvement of the YOT.

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 Criminal Justice and Immigration Act 2008 can administer a Youth Conditional Caution. See [Annex D](#) for details.

2. **KEY PROVISIONS AND PRINCIPLES**

- This Guidance should be read in conjunction with all relevant legislation, including section 48 of the Criminal Justice and Immigration Act 2008 (the Act) and the Criminal Justice Act 2003, as amended, together with the Code of Practice for Youth Conditional Cautions 2009.
- Youth Conditional Cautions are an out of court disposal aimed at reducing the number of youths taken to court where appropriate conditions can meet the justice of the case taking into account the interests of the youth together with the need to prevent offending and the views of the victim. They provide an opportunity to achieve an early positive response to offending behaviour for those youths willing to admit the offence and comply with certain conditions. They will operate as the 'next tier' from the Reprimand or Warning as a more serious disposal.
- A Youth Conditional Caution should not be offered in any case where the offence is denied or a defence has been raised.
- The decision to administer a Youth Conditional Caution will bring about the suspension of the prosecution while the youth is given an opportunity to

¹ For these purposes, a conviction which resulted in an absolute or conditional discharge is not to be regarded as a conviction (section 14(1) Powers of the Criminal Courts (Sentencing) Act 2000) and should not be regarded as precluding the giving of a Youth Conditional Caution.

comply with the conditions. Where the conditions are complied with, the prosecution should not proceed. However, where there is no reasonable excuse for any non-compliance, the prosecution for the original offence should go ahead as if the Youth Conditional Caution had not been administered.

- Where a prosecution takes place, the Act provides that the Youth 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 prosecutors will be by telephone. Chief Crown Prosecutors and Chief Constables should agree working arrangements for this locally.
- Wherever possible, following the YOT assessment, the decision as to whether a Youth Conditional Caution is to be given in any case should be made by a specialist youth Crown Prosecutor.
- Once a Crown Prosecutor has determined that a youth is to be reprimanded, warned, conditionally cautioned or charged, they will be so reprimanded, warned or conditionally cautioned or charged as soon as practicable in accordance with Section 37B PACE.

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

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

Applying the ACPO Youth Offender Case Disposal Gravity Factor System

3.2 Decision making by custody officers will be informed through use of the ACPO Youth Offender Case Disposal Gravity Factor System. Crown Prosecutors should also be aware of this System. Use of this System will assist in identifying those cases in which a reprimand or final warning should be considered as an appropriate outcome. However, if following application of the System, it is determined that the case should proceed to charge, unless the youth has a previously recorded conviction which resulted in a sentence other than an absolute or conditional discharge, the youth should be considered for a Youth Conditional Caution and the case referred to a Crown Prosecutor in accordance with this Guidance.

Factors which will determine if a youth should be referred for a Youth Conditional Caution

3.3 Where the Custody Officer is considering whether to charge a youth and establishes that:

- a. the youth is aged 16 or 17², and
- b. the offence is one specified in [Annex A](#), and
- c. during interview, the youth has admitted the offence or made no comment or no interview has taken place, and
- d. the youth has no previous convictions, and
- e. a reprimand and/or warning has previously been administered or is not considered appropriate due to the circumstances of the case,

the youth may not be charged. The case should be referred to a Crown Prosecutor

² Youths who become 18 years of age before a Youth Conditional Caution can be administered can receive an adult out of court disposal including a Conditional Caution. This may contain the proposed conditions apart from any requiring punitive unpaid work.

who will determine whether a Youth Conditional Caution is appropriate or whether the youth should be charged. Where the Crown Prosecutor considers the youth may be suitable for a Youth Conditional Caution, the police will refer the youth to the YOT for assessment.

Making prompt decisions

- 3.4 Wherever possible, the decision to administer a Youth Conditional Caution should be made while the youth is still in custody. If, for any reason, this is not possible, the youth 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 youth justifying a longer period, or further information is required relating to the consideration of any specific condition.

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

- 3.5 Where a youth is charged with an offence, but it appears upon review that a Youth Conditional Caution is more appropriate, the reviewing Prosecutor must consider whether one should be offered. The Prosecutor will then ensure that the youth is referred to the YOT for an early assessment to identify and recommend appropriate conditions. The current prosecution should be adjourned pending a decision as to whether a Youth Conditional Caution is to be administered.

4 DECIDING WHETHER A YOUTH CONDITIONAL CAUTION IS A SUITABLE RESPONSE

- 4.1 In determining whether a Youth 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.

Youths who have had a previous Youth Conditional Caution

- 4.2 A second Youth Conditional Caution should not generally be offered unless there are exceptional circumstances indicating it may be appropriate; for example, where the previous Youth Conditional Caution resulted from a first offence. However, no more than two Youth Conditional Cautions may be administered.

Sufficient evidence to charge the youth with an offence

- 4.3 Before a Youth 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 a youth is not interviewed or makes no admissions in interview, but does not deny the offence, a Youth Conditional Caution may still be offered if upon review there is a realistic prospect of conviction in the case. Where a youth denies the offence in interview or raises a defence, it will not be appropriate to offer a Youth Conditional Caution.

Public interest factors to determine whether a Youth Conditional Caution should be offered

- 4.4 Where the evidential test is met, the Crown Prosecutor must be satisfied that the public interest can best be served by the youth complying with suitable conditions aimed at reparation, rehabilitation or punishment taking into account the interests of the victim, community and/or needs of the youth. 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 youth fails to comply with the conditions..

Seriousness of the offence

- 4.5 The Crown Prosecutor must carefully consider the seriousness of the offence and the range of penalties likely to be considered by the youth court. Offences of a serious nature should proceed to court where the court is likely to consider imposing a custodial sentence or make a hospital order. The Crown Prosecutor must record the reasons to offer a Youth Conditional Caution rather than proceed to prosecution
- 4.6 Any aggravating circumstances, including the methodology employed by the youth (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.

- 4.7 When considering any offence, the Crown Prosecutor should in the first instance determine whether it is appropriate to issue a reprimand or warning. A Youth Conditional Caution may only be offered where the offence is considered too serious to be dealt with by reprimand or warning or if a reprimand or warning has previously been administered.

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 Youth 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 Youth Conditional Caution. The views of the victim should be sought and provided 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 youth

- 4.11 The youth's attitude to both the offending behaviour and the proposed conditions should be considered. A youth 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 Youth Conditional Caution. A Youth Conditional Caution will not be appropriate for a youth who fails to accept full responsibility at the time of the administration of the caution.

- 4.12 Before a Youth Conditional Caution can be administered the youth must admit the offence and agree to comply with the conditions. If the Crown Prosecutor has reason to believe that the youth is unlikely to do so or that the conditions will not be effective in modifying the offending behaviour, the offer of a Youth Conditional Caution will not be appropriate.

Dealing with multiple offenders

- 4.13 The charging of one person in a case does not prevent the offer of a Youth Conditional Caution to a co-defendant. A Youth 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 youth. When presenting the case against a person charged, the court should be informed of any decision by a Crown Prosecutor to offer a Youth Conditional Caution to another offender.

5. SELECTION OF APPROPRIATE CONDITIONS

- 5.1. The police may propose any conditions appropriate to the circumstances of the case and will detail those to the YOT when referring the case. Having considered all the circumstances of the case and those of the youth, the YOT will make a recommendation of any conditions to be included. However, the Crown Prosecutor will determine which conditions will apply in each case.

The Code of Practice for Youth Conditional Cautions

- 5.2 In determining conditions, the YOT and Crown Prosecutors will have regard to this Guidance and the Code of Practice for Youth Conditional Cautions (2009). A table providing further guidance on the selection of appropriate conditions is set out in [Annex B](#). Crown Prosecutors will not include conditions that impose obligations on or the co-operation of third parties, including victims and the YOT, without first obtaining their agreement.

Types of conditions

- 5.3 Conditions attached to a Youth Conditional Caution may be reparative, rehabilitative or punitive 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.
- 5.4 Crown Prosecutors should seek to apply a problem solving approach aimed at changing offending behaviour while having regard to the young person's welfare. Conditions may also provide 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. Conditions must not be imposed which are not achievable or which would prevent a youth 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 and takes into account the circumstances of the youth. 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 a youth 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 youth, and not of his or her parent or guardian 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 the victim where it is proposed that the sum to be paid by the youth as a condition falls short of the totality of the compensation claimed.
- 5.8 In the absence of agreement with the victim, when deciding how to proceed, the Crown Prosecutor must decide on the payment 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 victim of certain offences, especially anti-social behaviour, may be a local community or a part of it. Where possible, a suitable representative of that community should be consulted where it is proposed that the youth makes good the harm caused. It is possible that the community representative may suggest conditions or be willing to report to the YOT when the task has been completed satisfactorily. The YOT 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 a youth and can be provided with the contact details of the youth for this purpose. The youth should be informed of this when the caution is explained prior to its administration.

Considering the youth – Rehabilitative Conditions

- 5.11 Next in priority will be conditions designed to tackle offending behaviour, rehabilitate the youth or help to reintegrate the youth into society. A review of the case and the report of the YOT 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 youth 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.

Punitive Conditions

- 5.13 Punitive conditions may include the payment of a financial penalty, unpaid work for a period not exceeding 20 hours or attendance at a specified place to undertake an activity for a period not exceeding 20 hours. A punitive unpaid work condition might be appropriate where there is no individual victim who has suffered any quantifiable loss or where the damage caused cannot be repaired by the youth and it is appropriate for the youth to make indirect reparation to the community through other unpaid work.
- 5.14 A punitive condition may be offered either alone or in addition to other conditions where it is considered necessary to provide a proportionate response to the offending behaviour. A punitive condition will generally not be appropriate where a Crown Prosecutor determines that rehabilitation will be a priority in the case..

Offering a financial penalty condition

- 5.15 A financial penalty can only be imposed 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 66C 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 youth 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. Where the means of the youth indicate that it may not be possible to include reparative conditions and a financial penalty, the reparative conditions should take priority
- 5.16 When attaching a financial penalty condition, the Crown Prosecutor and YOT 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 youth at the time of the administration of the Youth Conditional Caution.

Restrictive Conditions

- 5.17 Conditions that impose restrictions may be included as part of a package of measures designed to rehabilitate the youth, 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. Restrictive 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.

6. TIME LIMITS FOR THE COMPLETION OF CONDITIONS AND FINANCIAL PAYMENTS

- 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 youth'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. Youths may make arrangements for periodic payments with the court where this method of payment is easier to manage.

7. ASSESSMENT AND THE CROWN PROSECUTOR'S DECISION

The Prosecutor's two stage review – preliminary stage

- 7.1 The review of youth cases suitable for a conditional caution will be a two stage process. Initially the Crown Prosecutor will determine whether the evidential requirements can be met and if so, whether the case is suitable in principle for a Youth Conditional Caution to be administered. Where it is, the Crown Prosecutor will direct the police to refer the case to the YOT.

YOT assessment

- 7.2 The YOT may provide the Crown Prosecutor with an assessment and recommendations as to the suitability of the youth to be offered a youth conditional caution. The YOT may also propose suitable conditions. Wherever practicable, the YOT should seek to achieve this during the initial period of detention. Where this cannot be achieved, the YOT will notify the Custody Officer who may arrange for the youth to be released on bail back to the police station but with a condition to report as required to the YOT in the meantime. This assessment should be provided to the Crown Prosecutor within 14 days of release on bail. The YOT may also consider that a formal assessment is not necessary, for instance if the case is straightforward and appropriate conditions are immediately identifiable.

Prosecutor's final review

- 7.3 Having considered any views or assessment of the YOT, a Crown Prosecutor will determine whether a Youth Conditional Caution is likely to be effective and should be offered to the youth. The Crown Prosecutor will notify the police and the YOT of the decision within 3 days. Where it has been decided that a Youth Conditional Caution is the most appropriate disposal, the police will make arrangements for the offer of a Youth Conditional Caution to be made. Where the youth indicates a willingness to be cautioned and comply with the proposed conditions, the police will administer the caution. Where the youth indicates that the caution or any of the conditions is not accepted, the police will refer the case 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

- 7.4 The Crown Prosecutor must make a brief record of the reasons why a Youth Conditional Caution was considered appropriate in the case and why the particular conditions were selected. This should specify whether reparative, rehabilitative or punitive objective were sought to be achieved. This should be recorded within the Review Screen of CMS.
- 7.5 Where, following the YOT assessment, the Crown Prosecutor determines that the case is not appropriate for a Youth Conditional Caution, the Crown Prosecutor will determine the appropriate outcome and notify the YOT and the police.

8. PRACTICAL ARRANGEMENTS FOR THE REFERRAL OF CASES

Decisions by telephone

- 8.1 To facilitate the prompt handling of cases in which a Youth 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, 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 Youth 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, confirm that there are no previous convictions and provide details of any reprimands or warnings applicable to the youth. The report should also contain details of any victims and their views as to any restorative or reparative conditions and details of any compensation to be claimed. The police may also include details of any conditions that they consider should be included in the case.

Prompt decision making

- 8.4 The police will then send the MG5 Report to the designated prosecutor's office by fax, e mail or electronic exchange and telephone to obtain confirmation that the case will be considered for a Youth Conditional Caution. A Crown Prosecutor will confirm that there is a realistic prospect of conviction and the case is suitable for further consideration of a Youth Conditional Caution. The police will then immediately forward the MG5 Report to the YOT by fax, e mail or electronic exchange. The police will also notify the YOT of any specific conditions they think should be considered for inclusion.

Prompt actions by the YOT

- 8.5 Upon receipt of the MG5 Report, the YOT will consider what conditions may be appropriate. The YOT will ascertain that the youth understands the nature of a Youth Conditional Caution, is willing to comply with the proposed conditions, accepts responsibility for the offending behaviour and is willing to admit the offence and be cautioned. The YOT will provide confirmation of this together with any proposed conditions to the Crown Prosecutor as soon as practicable by fax, e-mail or electronic exchange and will telephone for confirmation of the decision.

Authorising the Youth Conditional Caution

- 8.6 The Crown Prosecutor, upon receipt of the view or assessment of the YOT, will immediately consider the appropriateness of the proposed conditions, may make any amendments to the conditions following consultations with the YOT, and if satisfied that the Youth Conditional Caution and the proposed conditions are an appropriate and proportionate response to the offending behaviour, will complete the *Authority to give a Youth Conditional Caution* and provide copies to the police and YOT by return using fax, e mail or electronic exchange. A copy of the Prosecutor's Authority to give a Youth Conditional Caution is attached at [Annex C](#).

Prompt notification of non-compliance

- 8.7 Once the Conditional Caution has been administered, the YOT will be responsible for monitoring compliance with any of the conditions. Referrals to Crown Prosecutors in the event of any non-compliance should be by telephone. Whenever a suspect 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

- 8.8 Once a Youth Conditional Caution has been authorised in any case, the MG5, the Authority to give the Youth 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 on the prosecution 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 YOUTH CONDITIONAL CAUTION

9.1 Once the police have been notified that a Youth Conditional Caution is appropriate the offer of a Youth Conditional Caution can be made. Before making the offer, the authorised person shall:

- a. ensure that the youth has the opportunity to receive free and independent legal advice before agreeing to be Youth Conditionally Cautioned and where required is accompanied by an appropriate adult throughout the process³;
- b. inform the youth of the evidence available and the decision made by the Crown Prosecutor, or alternatively that the youth may request the case to be heard at court;
- c. explain the Youth Conditional Caution, including the conditions, and the implications of accepting this and when details 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 youth's signature, may be used in evidence should the case result in prosecution;
- e. make it clear to the youth that an admission should not be made simply to receive a Youth Conditional Caution;
- f. explain that the youth may decide at any stage to withdraw from the Youth Conditional Caution; make it clear that if the youth does decide to withdraw, he should inform the authorised person as soon as possible; tell the youth that withdrawal will be reported to the Crown Prosecutor, who may then decide that the youth should be charged with the original offence and prosecuted at court;
- g. warn the youth 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 youth should be charged with the original offence and prosecuted at court;

10. ADMINISTRATION OF THE YOUTH CONDITIONAL CAUTION

10.1 Once the youth has indicated that the Conditional Caution will be accepted, an authorised person will proceed to administer the Youth Conditional Caution. The authorised person should ensure the youth understands the following:

- a. the youth has the right to legal advice at any time during the process;
- b. the effects of accepting a Youth Conditional Caution, in particular that although it is not a criminal conviction, the Youth Conditional Caution will form part of the youth's criminal record and may be disclosed in certain circumstances;

³ In the case of a youth aged 16 years, and in the case of a youth aged 17 where there is reason to doubt the capacity or ability of the youth to fully understand the nature and requirements of a Youth Conditional Caution, the Code of Practice requires that the offer must be made and the caution administered in the presence of an appropriate adult.

- c. the means by which compliance with the various conditions will be verified (including any responsibilities of the youth for demonstrating compliance);
- d. the victim should be informed of the conditions agreed (unless there is a good reason for this not happening);
- e. the victim may be provided with the details of the youth for any civil proceedings;
- f. the process for contacting the agency monitoring compliance should any problems arise in complying with the conditions or if the youth decides to withdraw from the Youth Conditional Caution process;
- g. the consequences of failure to complete the Youth Conditional Caution (in particular that the youth 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 youth admits the offence;
- b. confirm that the youth 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 youth's signature to an MG14 (or the Prosecutor's Authority to give the Youth Conditional Caution);
- d. provide the youth 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 youth.

Finalising documentation

10.3 The police will inform the Crown Prosecutor and the YOT that the Youth Conditional Caution has been administered by forwarding a copy of the signed MG14 to them.

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

10.4 In any case where it proves not to be possible to administer the Youth Conditional Caution or where the youth 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 Youth Conditional Caution) is any constable or any person authorised by the Director of Public Prosecutions.

11. DEALING WITH NON COMPLIANCE AND VARIATION OF CONDITIONS

Helping youths complete the conditions

11.1 Youths 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 youth 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 YOT becomes aware that a youth is not complying with a condition, they should seek to obtain as much information of the non-compliance as possible,

including giving the youth an opportunity to provide an explanation. The YOT should then determine whether it would be appropriate to provide further guidance to the youth and allow the original conditions to be completed. 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 and if so, whether there is a reasonable excuse for the non-compliance or whether there has been substantial part compliance. Where it is determined that there is a reasonable excuse, the Crown Prosecutor, taking into account the views of the YOT, 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 Youth Conditional Caution should be regarded as completed or though the Youth Conditional Caution should be regarded as incomplete, the public interest requires no further action in the case.

Variation of conditions

- 11.4 Any conditions may be altered in the light of any change of circumstances (including a request by the youth) since the Youth Conditional Caution was administered although the Crown Prosecutor should be satisfied that the change in circumstances are genuine and impact directly on the ability of the youth to complete the original conditions. The Crown Prosecutor should consider the effect on the victim of any significant variation of conditions. An amended MG14 will be produced to accurately record any variation to the original conditions. The significance of these changes will be explained by the YOT and the youth 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 youth is to be charged with the original offence (where practicable by post) and notify the police and YOT accordingly. The YOT will inform the victim. Where the Youth Conditional Caution was given for multiple offences, 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 youth whom he has reasonable grounds for believing has failed without reasonable excuse to comply with any conditions of a Youth Conditional Caution. The YOT must be informed immediately following the arrest of any youth following non compliance with conditions.

- 11.8 Where following arrest the Custody Officer determines that further enquiries are required into the non-compliance that cannot be resolved quickly, the youth should be released on bail under section 24A(2)b of the Act, with or without conditions. The Custody Officer must inform the youth 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 Youth Conditional Caution. Youths 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 Youth Conditional Caution had been offered to the youth but the conditions were not complied with. Details of the conditions themselves should only be provided where it would assist the court in considering the disposal of the case.

12. CONFIRMATION OF SUCCESSFUL COMPLETION OF CONDITIONS

- 12.1 The YOT will notify the police and the Crown Prosecutor of the successful completion of the conditions by a youth.
- 12.2 The police will notify the victim of the successful completion of the conditions by the youth.
- 12.2 The YOT will provide a certificate to the youth marking the successful completion of the Youth Conditional Caution.

13 COMMENCEMENT

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

**KEIR STARMER QC
DIRECTOR OF PUBLIC PROSECUTIONS**

ANNEX A: OFFENCES THAT MAY BE YOUTH CONDITIONALLY CAUTIONED

The following specific offences may be considered for diversion by way of a Youth 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

THE FOLLOWING OFFENCES AND ATTEMPTS TO COMMIT THEM

The following offences 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 specified in the **Theft Act 1978**:

Making off without payment

The following offences 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 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 specified in the **Misuse of Drugs Act 1971***

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

The following offence 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 specified in the **Vehicle Excise and Registration Act 1994**

Forgery and Fraud (including fraudulent use of excise licence)

NOTE 1 : 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 Youth 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 youth 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: e.g.</p> <ul style="list-style-type: none"> to pay a financial penalty to undertake unpaid work not exceeding 20 hours to attend a specified place for a period not exceeding 20 hours
<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 e.g. not to approach a named victim, or specified property, or geographical location or specified event.</p>		

FINANCIAL PENALTY CONDITIONS BANDING

Penalty Band	Standard Penalty	Mitigated Penalty	Offence Scales
A	30	25	Summary only Level 1 – 3
B	50	40	Summary only Level 4
C	75	60	Summary only Level 5, & either way offences, including criminal damage offences

The Standard Penalty scale will apply unless the Crown Prosecutor is satisfied that there is substantial mitigation or either the youth or responsible parent/guardian is in receipt of state benefit as their main or only source of income

COMPENSATION FOR PERSONAL INJURIES *

Type of injury	Description	Award
Graze	Depending on size	Up to £25
Bruise	Depending on size	Up to £35
Black eye		Up to £50
Minor cut - no permanent scar	Depending on size and whether stitched	£35 to £65
Sprain	Depending on loss of mobility	£35 to £65

RESTRICTED (when complete)

ANNEX C

PROSECUTORS AUTHORITY TO GIVE A YOUTH 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 confirm this youth has no recorded convictions and has not denied the offence under consideration.

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 in this case.

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 (attached evidence of non compliance)

Name of officer/authorised person finalising the caution:

Rank/Job Title: No: Station/YOT:

Signature Tel No: Date:

RESTRICTED (when complete)

ANNEX C

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)..... Youth Offending Team (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 YOT or police by service providers.
- 7) I understand 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

Signature of parent or appropriate adult (where applicable)

Caution administered by: RankBCU

Signature:

ANNEX D

PILOT AREAS AUTHORISED TO OFFER A YOUTH CONDITIONAL CAUTION

A Youth Conditional Caution may only be offered in the following Local Criminal Justice Board Areas until further notice:

Cambridgeshire
Hampshire
Humberside
Merseyside
Norfolk