

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

1.0 Summary of Changes

This procedure has been updated on its yearly review as follows:

- Included on the new Force procedure template;
- Amended throughout to reflect Athena;
- Updated in section 3.8 for OIC to task CJU Finalisations to update PNC – not PNC Bureau.

2.0 What this Procedure is about

The purpose of this procedure is to:

- Provide guidance on the use of the simple caution;
- Clarify how the police responsibility for simple cautions is affected by the charging scheme;
- Give a clear outline of the practical process of administering a simple caution;
- Ensure accurate recording of simple cautions.

The aims of the simple caution are:

- To deal quickly and simply with less serious offences;
- To divert offenders, where appropriate, from appearing in the criminal courts;
- To reduce the likelihood of re-offending;
- To record an individual's criminal conduct for possible reference in future criminal proceedings or relevant security checks.

The simple caution can only be administered to an adult offender and in accordance with the process outlined in this procedure.

Officers should also be aware of the following documents:

- F 0104 Procedure – Youth Caution and Conditional Cautioning;
- A 0401 Procedure – Cannabis Simple Possession;
- F 0103 Procedure – Conditional Cautioning.

The simple caution formerly known as a formal caution is a non-statutory disposal for adult offenders only. It may be used for low-level criminal and non-criminal offences where the public interest can be met by a simple caution. Where the offence is subject of a crime report, making it a notifiable offence, the caution will be treated as a sanctioned detection or an offence brought to justice (OBTJ). The effective use of cautioning can contribute to improved public confidence in the Criminal Justice System as well as reducing the likelihood of re-offending.

Officers considering disposal by way of simple caution should ensure their decision is made in accordance with the Director of Public Prosecutions' Guidance on Charging.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

Essex Police retains the authority to administer a caution in all cases other than Indictable Only offences. Referral of cases to CPS to agree a caution is not permitted in the Directors Guidance on Charging. Cases should only be referred to CPS in exceptional instances if they are sensitive, complex or serious and the police are asking CPS to ensure that the evidential test has been met.

Where the caution relates to an indictable only offence the matter must be referred to the CPS, having been signed off by an officer not below the rank of Superintendent.

It is not possible to set out definitive rules on the circumstances in which simple cautions are appropriate (for example that first time offenders should always be cautioned or particular offences should always result in a simple caution only).

The questions to consider in each case are:

- Whether a simple caution is likely to be effective in the circumstances and appropriate to the offence and the offender;
- Whether it is in the public interest to deal with the offence in this way.

See the Ministry of Justice – Simple Caution for Adult Offenders guidance.

Compliance with this procedure and any governing policy is mandatory.

3.0 Detail the Procedure

3.1 Simple Cautioning Process

In considering whether a simple caution is appropriate, a police officer must consider the following facts:

- Is the offence indictable only and does the available evidence meet the Full Code Test? If the answer is 'yes', this disposal option must be referred to the Crown Prosecution Service;
- Has the suspect made a clear and reliable admission of the offence, either verbally or in writing and is there a realistic prospect of conviction in line with the Code for Crown Prosecutors. A clear and reliable admission of the offence is one which is corroborated by some other material or significant evidential fact. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation. A simple caution will not be appropriate where a person has refused or not made a clear and reliable admission of the offence, for example, if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered;
- Is it in the public interest to use a simple caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors February 2010;

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

- Is the suspect 18 years or over? Where a suspect is under 18, a Youth Caution would be the equivalent disposal. A suspect aged 17 or under when the offence was committed but 18 or older at the time the caution is to be administered should be given a SIMPLE CAUTION.

If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a simple caution.

3.2 Aggravating or Mitigating Factors

A Gravity Factors Matrix has been provided to assist officers in their decision making process. Officers should use the matrix to determine the seriousness of the offence and to decide whether or not a simple caution could be used as an appropriate means of disposal. As the matrix makes clear, the questions to be asked in determining the seriousness of the offence are:

- Are there any aggravating factors involved;
- Are there any mitigating factors involved?

If the answer to either question is yes, then the seriousness of the case will either increase or decrease by one level. The seriousness of an offence is initially determined on a scale between 1 and 4 (with 1 being the least serious). This can only increase or decrease by one level, regardless of the number of aggravating/mitigating factors. This is because the highest severity available is level 4, so additional factors cannot be added on indiscriminately. If there is one of each aggravating or mitigating factor, they simply cancel each other out.

3.3 Recording the Admission

The admission must be recorded correctly and in accordance with the Police and Criminal Evidence Act 1984 using any of the following methods:

- A tape recorded interview;
- A statement under caution;
- A record of the admission in the officer's notebook and signed by the suspect as an accurate record. This could cover any statement made by the suspect on arrest, after being cautioned;
- A statement made by the suspect whilst in police detention after being reminded they are still under caution. This could be recorded in the custody record and signed by the suspect as an accurate record;
- A contemporaneous interview under caution. This could be conducted where the suspect does not make a voluntary statement of admission or for clarification where the statement does not meet the required evidential standard. The notes should be fully documented.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

3.4 The Victim

Before a simple caution can be given, the police will establish:

- The views of the victim about the offence and the proposed disposal by way of a caution;
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances;
- Whether the offender has made any form of reparation or paid compensation. This would not be appropriate in some cases, such as offences of violence and officers should be careful not become involved in negotiating or awarding reparation or compensation. Where some form of reparation or compensation is warranted officers should consider whether a Conditional Caution would be more appropriate.

Where a victim is prepared to make a full statement, and a prosecution is considered to be the most appropriate course of action, the officers should refer to guidance on prosecutions. If a simple caution is being considered as a more appropriate disposal, the reasons for this should be explained to the victim and the consequences of the simple caution outlined. The fact that a victim declines to support a prosecution may not preclude the consideration of a simple caution.

Where there is a decision not to proceed with a prosecution but the case is still suitable for a simple caution the victim may be asked if they will affirm their support for a simple caution as a suitable method of disposal. In these cases the victim could be asked to give a statement confirming the facts of the offence and stating in their own words that, whilst they are not prepared to support a prosecution through the courts, they would be satisfied if the matter was dealt with by way of a simple caution.

In some cases where a simple caution is a viable option, officers may consider a prosecution is still warranted to protect the victim from further attention by the offender, or because the offence is too serious.

The CPS operates a pro-active policy on certain types of offence, which encourages prosecutors to proceed with cases, even where the complainant does not support the prosecution.

In all circumstances where the views of victims are sought, the officer should take care to explain that although their views will be taken into account, the final decision will remain at the discretion of the police or the CPS.

The victim must always be kept informed of the final outcome of the case.

3.5 Other Considerations

Does the suspect have a criminal record with similar offences?

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

Both national and any locally held records must be checked before a simple caution is given, to ensure that the suspect's criminal record is known and up-to-date and to avoid inappropriate use of a simple caution. If the suspect has previously received a simple caution, or a conditional caution, then a further simple caution should not normally be considered. If there has been a sufficient lapse of time to suggest that a previous caution has had a significant deterrent effect (two years or more) then a simple caution can be administered. A simple caution can also still be administered if the subsequent offence is trivial or unrelated, or as part of a mixed disposal.

If the suspect has previously received a reprimand, final warning and youth caution, a period of two years should also be allowed to elapse before administering a simple caution.

Has the suspect been made aware of the significance of a simple caution?

If a simple caution is being considered, then the full implications must be explained to the suspect. Under no circumstances should suspects be pressed, or induced in any way to admit offences in order to receive a simple caution as an alternative to being charged.

Has the suspect given informed consent to being cautioned?

If the suspect does not consent, then police may choose to continue with a prosecution. Officers must avoid any suggestion that accepting a simple caution is an 'easy option'. Similarly, every effort must be made to avoid any suggestion of the suspect being coerced into accepting a simple caution.

A simple caution should not be viewed as an appropriate method of disposing of offences by serving prisoners, persons subject to Recall, a Court Order or on Court Bail.

3.6 Making the Decision

When considering the suitability of an offence for disposal by simple caution, the decision should be referred to an officer of at least Sergeant rank for approval. This officer must be unrelated to the investigation of the offence.

Once the Sergeant is satisfied that the requirements for administering a simple caution have been met, they should give further consideration to:

- Whether a simple caution is likely to be effective in the circumstances and appropriate to the offence and the offender;
- Whether it is in the public interest to deal with the offence in this way

Sergeants should take into account the public interest principles set out in the Code for Crown Prosecutors. Officers should not opt to take no further action in circumstances in which the requirements of a simple caution are met.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

When the Sergeant has reached a decision in favour of issuing a simple caution, they should sign the custody record, to say that they have approved this as the appropriate method of disposal. **Where the offence relates to domestic abuse the authorisation of an Inspector is required.**

An Inspector is also required to authorise a simple caution for the following specific offences:

- Possession of a bladed article, offensive weapon, or firearm in a public place, including threatening with a bladed article or offensive weapon in a public place or school;
- Child Prostitution and pornography, cruelty to a child, indecent photograph of children;
- Supply Class A drugs.

A simple caution, other than in the above circumstances, can be administered by an officer of at least the rank of Sergeant. This should not unduly delay a person's release from custody.

The suspect should not be pressed to make an instant decision on whether to accept the simple caution. They should be allowed to consider the matter, and if need be, take independent advice. In order to facilitate this, a suspect may be required to attend at a later date to enable the simple caution to be administered.

Where the offender is in custody the Essex Police Caution Forms AD1 to AD4 are not required. The Athena caution process must be fully completed and the caution form AD5 signed by the offender. A copy of the caution form should be given to the offender.

Where the offender has not been in custody Forms AD1 to AD5 must be completed and a copy of form AD5 given to the offender. The forms will be uploaded to an Athena case and submitted with the crime report in line with current procedures

3.7 Consequences of Receiving a Simple Caution

The significance of the admission of guilt in agreeing to accept a simple caution must be fully and clearly explained to the offender before they are cautioned.

A simple caution is not a form of sentence nor is it a criminal conviction. It is, however an admission of guilt. A simple caution forms part of an offender's criminal record and may influence how they are dealt with, should they come to the notice of the police again.

The simple caution may also be cited in court in any subsequent proceedings, and can be quoted on a standard or enhanced disclosure issued by the Criminal Records Bureau and thus can be made known to a prospective employer. Fingerprints and other identification data can also be held on databases to which the PNC has links.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

A full list of the consequences of accepting a simple caution is contained within the caution form AD5 signed by the offender.

3.8 Recording the Caution

The accurate recording of all simple cautions is essential in order to avoid multiple cautioning and to ensure consistency.

Where the offender has been arrested, the disposal will be recorded on Athena which will, in the case of recordable offences, automatically create an arrest summons on PNC.

In respect of offenders not arrested it will be the responsibility of the officer in the case to task CJU Finalisations to update PNC.

A record of the simple caution will be retained on PNC up to the 100th Birthday of the person receiving the simple caution. The date used for this calculation will be from the date of birth given by the person at the time of the simple caution being administered

When the simple caution has been administered for a notifiable offence the caution form together with all case documents, for example, witness statements, will be forwarded without delay to the Divisional Service Desk. The Crime Recording System will be updated and the documents filed with the crime report.

In those cases where the simple caution is administered for an offence which is not notifiable (non-crime) the caution form and associated documents will be forwarded to the local Criminal Justice Unit.

3.9 Multiple Offences

It is possible to administer a simple caution for more than one offence, if, overall, it is deemed to be an appropriate and proportionate method of disposal.

Where more than one offence arises from the same incident, it is the most serious offence that must be considered in the decision-making process and when applying the gravity factors.

It should be borne in mind that mixed disposals can also be considered, if the offences are unrelated and part of the same incident. An offender, for example, could be cautioned for one offence and a penalty notice issued for another.

Where multiple unrelated offences are considered the decision to issue a simple caution or prosecute should again be based on the most serious offence and also the cumulative effect of all the offences.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

When considering a simple caution for more than one offence, the criteria for a simple caution must be applied to each offence i.e. there must be a reliable PACE compliant admission and a realistic prospect of conviction.

The caution form will be used to record all the offences for which the offender is to receive the simple caution.

Note: offences admitted where a simple caution is to be administered are not offences taken into consideration (TIC's). TIC's can only be used as a disposal when an offender is prosecuted.

3.10 Racial or Other Harassment

The two considerations for simple cautioning in harassment cases are:

- That administering a simple caution will render all conduct on which the caution is based inadmissible as evidence towards a course of conduct should this continue subsequently; and
- That since a restraining order may only be issued by the court, the only way in which a victim would be protected against future conduct would be by seeking an anti-harassment injunction from a civil court (which has the same effect as a restraining order and provides a power of arrest in the event of any breach). In cases of aggravated harassment, a prosecution should be pursued.

For these reasons, the views of the victim should be fully considered and a simple caution should only be administered where the police are confident that the harassment will not continue subsequently.

3.11 Traffic and Minor Process Offences

When considering a prosecution for a traffic or minor process offence it is important to bear in mind that for many members of the motoring public this may well be their first contact with the police.

It is important that offenders are dealt with in a professional and courteous manner; the priority being to promote all aspects of road safety and only to institute the process where necessary and appropriate.

Having established there is sufficient evidence to provide a realistic prospect of conviction, a simple caution can be considered as an appropriate method of dealing with the offence.

The following methods of disposal are also available as an alternative to prosecution:

- Fixed Penalty Notice;
- Commercial and Vehicle Defect Rectification Schemes (VDRS);
- Driver Improvement Scheme.

PROCEDURE – Simple Cautions

Number: F 0102

Date Published: 9 September 2015

4.0 Equality Impact Assessment

This is currently in progress, and will be linked as soon as completed.

5.0 Risk Assessment

There are no specific risks associated with the implementation of this procedure.

6.0 Consultation

The following were included in the consultation during the creation of this procedure:

- Unison
- Federation
- Health & Safety
- Diversity Unit
- Custody Sgt

7.0 Monitoring and Review

This procedure will be reviewed by, or on behalf of, the Head of Criminal Justice & Offender Management every 12 months to ensure that it remains fit for purpose and compliant with Home Office Guidance.

8.0 Governing Force policy. Related Force policies or related procedures

- F 0104 Procedure – Youth Caution and Conditional Cautioning;
- A 0401 Procedure – Cannabis Simple Possession;
- F 0103 Procedure – Conditional Cautioning.

9.0 Other source documents, e.g. legislation, Authorised Professional Practice (APP), Force forms, partnership agreements (if applicable)

- Home Office Circular 16/2008
- Ministry of Justice – Simple Cautions for Adult Offenders