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Conditional cautions: An examination of the early implementation of the scheme

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The conditional caution was introduced through the Criminal Justice Act 2003 as an alternative disposal to a charge for certain either way or summary offences, and as a means of tackling low-level offending behaviour quickly and effectively outside court where appropriate. This report presents the findings from an examination of the conditional cautioning scheme in 13 Basic Command Units (BCUs) across six police force areas. The purpose of the study was to provide evidence to help inform the national roll out of the disposal. The early implementation areas started at various times between December 2004 and July 2005 and the study period ended in November 2005.

Key points

- 305 cases were considered for a conditional caution during the early implementation period; 72% (221) were administered.
- Areas varied in their use of conditional cautions, with the majority being administered by a small number of areas; over a quarter (59) of conditional cautions were administered by one area.
- Just under half (48%) of conditional cautions were administered within 14 days of arrest. A proxy measure of the time taken for a case to go through the court shows that the administration of a conditional caution took 65 days less than a prosecution in a guilty plea case.
- For cases that were not given a conditional caution the most common disposal was a charge (45). Thirty-three cases were, however, dealt with using a disposal lesser than a charge (11% of the total number considered). This demonstrates the potential for uptariffing to occur with the new disposal.
- Criminal damage offences accounted for half of all cases for which a conditional caution was administered. Other common offence types were theft and handling, and drug offences.
- Compensation was the most frequently used condition.
- 70% of conditional cautions were completed successfully. Offenders failed to comply with conditions in 24% of cases, the majority of whom were prosecuted for the original offence, mostly receiving a conditional discharge with or without compensation.
- Practitioners identified three main benefits of conditional cautions: addressing the causes of crime, increasing victim satisfaction, and contributing to efficiency savings in the courts.
- Barriers to the effective implementation of the scheme included a lack of understanding about the types of cases that should be targeted by a conditional caution and a perception among some practitioners that additional resources are required for conditional cautioning.

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The conditional caution is defined in the Criminal Justice Act 2003 as, “a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.” Conditions must be an appropriate and effective means of addressing an offender’s behaviour (i.e. rehabilitative – e.g. referral to a Drug Interventions Programme (the DIP condition) or an effective means of enabling the offender to make reparation for the effects of the offence on the victim and/or the community (i.e. reparative). In addition, conditions could be restrictive if that restriction served reparative or rehabilitative aims.

The areas introducing conditional cautions had a degree of flexibility over how they implemented the scheme to best serve local needs. Areas had discretion over the range of eligible offences to target (within the limits of a list in the Director of Public Prosecutions’ Guidance on Conditional Cautioning), types of conditions available e.g. using compensation or drug referrals, or the types of offenders targeted. In addition, specific interventions were available, namely a DIP condition (used in three areas) or Restorative Justice (RJ) processes (used in two areas), that could be used either to decide the condition or as a condition itself. This flexibility meant that the conditions administered varied across areas and could only be applied to some offenders and the conditions described in the report are not therefore necessarily representative of the type of conditions that might be administered as the scheme is rolled out further.

The process of administering a conditional caution

Deciding whether an offender should be given a conditional caution involves answering two questions:

- 1) does the case meet eligibility criteria;
- 2) does it meet prosecutorial criteria.

In the first instance the police consider whether the offender is eligible for a conditional caution. To meet the eligibility criteria, police must be satisfied that:

- the offender is over 18 years old;
- the offender admits the offence (the Code

specifies that this should be during a PACE interview¹); and

- there is sufficient evidence to charge the offender.

If eligibility criteria are met, the police submit the case to the Crown Prosecution Service (CPS) for consideration. If it is out of hours, the offender will be bailed until a conditional caution can be considered (at the time of early implementation, CPS Direct did not deal with conditional caution cases). Once passed to the CPS, the case is reviewed to determine whether there is a realistic prospect of a conviction and whether, while the public interest justifies a prosecution, the interest of the person, victim or community may be better served by the administration of a conditional caution. If these criteria are met, the CPS considers the seriousness of the offence (i.e. would it result in a low level disposal at court), the offender’s previous convictions, and the view of the victim before deciding whether to administer the conditional caution. The CPS makes the final decision as to whether to administer a conditional caution.

If a conditional caution is administered, the offender will be required to agree to meet the conditions set out and also not to re-offend during the period for which the conditional caution has been set. If the offender does not complete the conditions, or re-offends, then the case will be reviewed on the basis of non-compliance with the conditional caution. Non-compliance can result in the offender being prosecuted at court for the original offence.

The extent of conditional cautioning in early implementation areas

During the early implementation period, 305 cases were considered for a conditional caution across areas. Of these 305, a conditional caution was administered (i.e. the conditional caution was issued and the offender agreed to undertake it) in 221 cases (72%). Early implementation areas varied in their use of conditional cautions, with the majority being administered by a small number of areas. Of the 221 conditional cautions

¹ A PACE interview is an interview conducted following the Police and Criminal Evidence Act guidelines (1984).

administered, over a quarter (59) were administered by one area, and 67 by five areas that implemented conditional cautions four months before the end of the study. Three areas that implemented conditional cautioning for over eight months only administered four conditional cautions each.

Where information was available (201 cases) just under half of all conditional cautions (48%) were administered either on the same day or within 14 days of an offender being arrested. Restorative Justice (RJ) cases (including both those where RJ was used to determine the conditions and where the RJ was the condition) typically took longer. Ten out of the total of 16 RJ cases (63%) took 15–28 days to process, whilst the remaining six took anywhere from 29 days to over 71 days to administer. The average time from offence to administration of all conditional cautions was 48 days.

Time taken to administer conditional cautions should be considered in relation to the time taken to prosecute an offender. Although not strictly comparable, data on the average length of time from offence to completion at court for all summary non-motoring offences across England and Wales where the offender pleaded guilty shows that a prosecution took 65 days longer than the average time taken to administer a conditional caution.² However, these figures do not take into account any further time required to prosecute offenders for the original

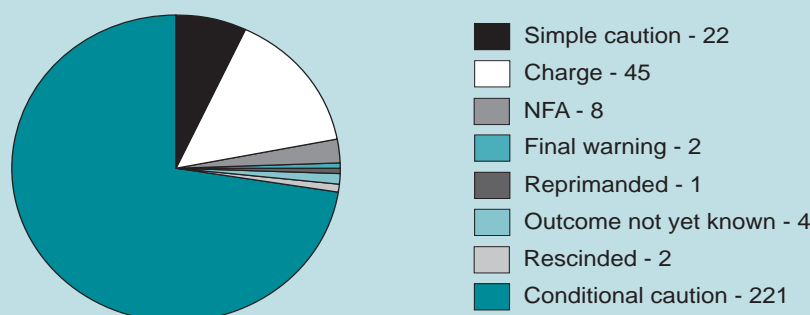
offence if it was found that they had not complied with their conditional caution.

Figure 1 shows disposals for the 84 cases considered for but not given a conditional caution (this information was available in 80 out of 84 cases). The most common disposal was a charge (45), as should be expected. Thirty-three cases were, however, dealt with using a disposal lesser than a charge i.e. a simple caution, no further action, final warning or a reprimand (11% of the total number considered). Final warnings and reprimands are only available for offenders who are under 18 and therefore these cases should not have been considered for a conditional caution as the scheme only applies to adults.

The finding that a proportion of cases not suitable for a charge were put forward by the police for consideration for a conditional caution suggests this new disposal does have potential for up-tariffing. The concept of up-tariffing is not a new one. It is based on the premise that introducing a new disposal between two forms of existing disposals is likely to draw in offenders from the less serious disposal. This has been found with the introduction of other initiatives such as conditional bail (Brown, 1998; Hucklesby, 2001). The evidence above suggests that some up-tariffing has occurred at the point of police decision making. For example, in 15 cases, the reason for not administering a conditional caution was due to the offence not being serious enough, as evidenced by the offender receiving a simple caution, final warning etc.

² The average time for offence to completion for guilty plea summary non-motoring cases was 113 days according to DCA time intervals data (December 2004 – September 2005).

Figure 1: Types of disposals issued for cases considered for a conditional caution



The nature of conditional cautioning across areas

Criminal damage was the offence type most frequently considered for a conditional caution, accounting for 143 cases, 110 of which were administered. This was largely a consequence of the volume of criminal damage cases administered in one police force that introduced conditional cautioning across all its BCUs (six of the early implementation areas). Theft and handling of stolen goods (44) and drug offences (33) were also commonly considered. Where known (295 cases for gender and 289 for age), the majority of offenders considered for a conditional caution were male (83%); one-fifth were 19 years or under and over half were 24 years or under (53%). Where known (274 cases), the majority of offenders were White (96%).

Twenty-seven different conditions were administered across the areas studies. 'Compensation only' conditions were by far the most frequently used (in just over half of cases where the condition was known). Again, this may reflect the volume of criminal damage cases administered with a conditional caution in one police force. DIP or drug referral conditions formed part, or all, of the

conditions in 39 cases and RJ was used in 19 cases (either with or without other conditions). Table 1 provides full details of the conditions administered.

Compliance with conditional cautions

Conditional cautions were recorded as being successfully completed in 154 cases (70% of those administered). However, where known, 54 offenders (24% of conditional cautions administered) failed to comply with some aspects of the conditional caution. Twelve cases were current at the end of the data collection period. The RJ and DIP conditional cautions had a higher proportion of completions (79% and 75%, respectively) than the other conditions.

Non-compliance cases are reviewed by the CPS for a decision as to whether to a) prosecute the offender for the original offence; b) take no further action (i.e. most of the conditional caution was satisfied so counted as a completion); or c) vary the conditions. In 48 of the 54 non-compliance cases the CPS decided to prosecute the offender. Where the outcome of court proceedings was known (43 out of 48 cases), only five offenders went on to receive

Table 1: Types of conditions administered

Types of conditions	Number
Compensation	113
Compensation + apology, restrictions, unpaid work or referrals	20
Apology (non-Restorative Justice) with or without restriction	5
Attend referrals (including non Drug Interventions Programme drug referrals)	10
Alcohol awareness with or without apology and restriction	8
Drug referral + restriction	1
Drug referral + compensation	2
Not to re-offend	1
Restorative Justice	6
Restorative Justice + compensation	8
Restorative Justice + referral and/or reparation and/or compensation	5
Drug Interventions Programme only	31
Drug Interventions Programme + compensation	2
Drug Interventions Programme + curfew or reflective interview	2
Drug Interventions Programme + restriction	1
Not known	6
Total	221

a higher level disposal than would be attached to a conditional caution (two imprisoned, one curfew order plus compensation, one community order and one community punishment order with compensation). Twenty-one cases received a conditional discharge either with or without compensation. Ten received compensation orders, six with fines, four without, and two cases were fined. One offender received an absolute discharge and four were withdrawn or found not guilty.³

Perceived benefits and barriers to the conditional cautioning scheme

Perceived benefits

The study asked practitioners to discuss the potential benefits they felt conditional cautioning could bring. Overall, practitioners were supportive of conditional cautions (although six of the 50 interviewed felt that there had been little or no benefit by the end of the study period). They felt conditional cautions had the potential to become an efficient way of dealing with low level offenders and was a useful addition to the range of disposals available to the police and the CPS.

Practitioners highlighted three main benefits. The benefit raised most frequently was that the scheme helped to address the causes of crime (16 out of 50 respondents) and this was endorsed by senior personnel who felt that a major benefit could be a reduction in re-offending in the long term.

“Ideally it would give first-time or second-time offenders an opportunity to address the problems that are driving their offending, whereas in the past that opportunity wasn’t offered.” (service provider)

“If they went to court for first-time offences they would probably get a fine or conditional discharge, and if they have drug problems they would go away without being given any help for their drug use – so we’re trying to get them

treatment without having to go through the court process, and nip their offending in the bud before it takes off.” (CPS decision-maker).

Tackling drug problems was perceived to be particularly relevant in this context.

Fourteen practitioners felt that use of conditional cautions had the potential to increase victim satisfaction, making particular reference to the ability of compensation conditions to get victims swifter payments as the case is processed faster than it would be if it went to court. However, it is probably worth noting that one practitioner warned of potential dissatisfaction if offenders failed to complete their conditions, *“it’s probably better than perhaps having to go through the court system – but only if it’s successful.”*

Thirteen practitioners raised the possibility of conditional cautions delivering efficiency savings for the courts through diversion of a proportion of cases away from the magistrates’ court. Senior personnel concurred in interviews, but did express concerns that it would simply transfer the burden of the work to the police who then had additional responsibilities in dealing with non-compliance with conditions.

Perceived barriers

Interviews with practitioners also elicited information on two potential barriers to the successful implementation of the scheme. The first focuses on the understanding that practitioners have of the scheme. As shown above, this study found evidence of potential upturning effects in relation to conditional cautions, and this may result in part from a lack of understanding of the scheme and how it should be applied.

Interviews with practitioners revealed some misunderstanding over the targeting of conditional cautions, with 23 out of 50 practitioners highlighting occasions when a conditional caution could have been administered but a simple caution or Fixed Penalty Notice was chosen instead. Despite this, when asked whether they understood the principles of the conditional caution process, all but one of the 49 practitioners interviewed reported that they understood them either ‘extremely well’ (30) or ‘quite well’ (18).

³ Although in accepting a conditional caution the offender has to make an admission of guilt this cannot be relied upon to prove the original offence should a subsequent prosecution take place if conditions are not fulfilled (Director’s Guidance on Conditional Cautions, 2004).

Evidence regarding the administration of simple cautions and reprimands suggests that differences in understanding and interpreting provisions may be the result of inadequate training (Adams, 1998; Gilbert, 2004). Fewer than half (21) of the 50 practitioners interviewed had attended a training course relevant to the implementation of conditional cautions. Of these 21, 16 had attended joint agency training and the other five had attended single agency training.

The majority of practitioners who had received training were positive about it. However, some were critical of the training. Criticism focussed on the experience of the trainer, the extent of their knowledge about conditional cautions, and the timing of the training. Training was delivered at an early stage in implementation when the throughput of conditional cautions was low. As a consequence some people felt that training was not always practicable. In addition, nine out of 21 practitioners felt the training did not cover all elements of the scheme, or at least did not cover them thoroughly enough.

One senior person suggested that the training should be extended to include the magistracy. Their experience was that the magistracy were concerned about conditional cautions because they perceived that they represented an infringement of their judicial powers. By providing awareness-raising training to the magistracy, their understanding of and support for the scheme could be improved.

Outside of formal training, practitioners could access information about conditional cautioning via a variety of national and local sources. In the main practitioners developed their knowledge of conditional cautions through local sources, in particular internal briefings and local communications or publications. All of these sources were rated as effective although some practitioners felt that it would be useful to extend the use of internal publicity.

The second potential barrier concerns the resources involved in the conditional caution scheme. Half of practitioners interviewed felt that the introduction of the conditional caution had led to an increase

in workload (although half also said it made no difference). This increase was felt mainly to be due to time spent completing paperwork, liaising with others or sorting out the conditions. For example, one custody officer felt the file police have to prepare for the CPS involved more work relative to other disposals; this was felt to be because the new role prosecutors were performing created a tendency for them to exercise more caution and request more information. It was also reported that more specific interventions, such as the DIP condition and RJ, involved higher investments of time, particularly by specialist case workers because of the need to assess more fully the offender, and deliver the conditions.

Whether or not additional time is required by the police in producing files for consideration of a conditional caution, there seems to be a perception that increased resources and bureaucracy are involved, which may undermine the buy-in of key staff involved in the scheme. Indeed, when asked to discuss improvements that could be made, 40 of the 50 practitioners could suggest at least one improvement, most commonly to reduce bureaucracy and paperwork. Some argued that without a reduction in paperwork other disposals would be viewed more favourably:

"... the difficulty is how much time do you put into individual cases for what at the end of the day is relatively low level offending? If you make it too difficult for people they'll just say: Oh charge them." (project manager)

In addition, senior personnel felt that the requirement to undertake a PACE interview to obtain an admission of guilt from the offender before a conditional caution could be considered also added a resource burden as this was not required for similar cases being given an alternative disposal. Furthermore, when CPS prosecutors were not available out of hours, police officers had to bail defendants to reappear at a later date.

Such procedural issues could discourage officers from pursuing this type of disposal and need to be addressed during roll out of the scheme.

Conclusion and recommendations

Practitioners and senior personnel generally supported conditional cautions and the wider roll out of the scheme. They felt conditional cautions had the potential to become an efficient way of dealing with low level offenders and were a useful addition to the range of disposals available to the police and the CPS. However, as has been discussed, conditional cautions are on occasion being considered by practitioners as alternatives to lower level disposals rather than as an alternative to a charge which will need to be addressed to ensure the effective use of the disposal.

Practitioners felt key benefits included the potential to more effectively address the causes of crime, improve victim satisfaction, and reduce the pressure on courts. Whilst practitioners were generally positive, they did inevitably identify some areas where further development would be beneficial. The following recommendations reflect those views.

Administration and delivery

- Review whether administration processes could be improved (e.g. providing out-of-hours advice from the CPS) in order to reduce the perceived burden on the police and reduce the need for bail.
- Consider the scope for more innovative use of conditions across areas; providing descriptions of the types of conditions that can be applied may be useful in this context.

Awareness and guidance

- Improve the publicity and awareness of conditional cautioning in areas through devices such as local intranets, posters, and

publicising useful case studies e.g. cases with innovative conditions, cases that have gone well or not.

- Provide guidance, and possibly resources, to help monitor compliance with conditions, clarify procedures for payment of compensation, and clarify what constitutes successful outcomes.

Training

- Utilise training more effectively through the use of joint agency training, the provision of top-up training and workshops to explore examples of good practice.
- Improve training on how to target conditional cautions, the decision-making process, and the suitability of offenders.
- Provide training for, and secure the engagement of the magistracy, pre-implementation.

Knowledge gaps

- Consider the possibility of putting in place work to examine the following:
 - the impact of conditional cautions – e.g. on police administrative duties, the additional capacity required to effectively monitor and deal with compliance, and the requirement for PACE interviews;
 - evidence of long-term effectiveness – e.g. in reducing offending;
 - offender and victim views on conditional cautions.

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Methodological note

The purpose of the study was to provide evidence to help inform the national roll out of the disposal. It was not intended to discern the impacts of the disposal as this was not feasible within the time frame of implementation. The main aims of the study were therefore:

1. to monitor the use and delivery of the conditional caution;
2. to establish the perceptions of practitioners, victims and offenders about the disposal⁴;
3. to gather data on the resource implications of providing conditional cautions;
4. to learn lessons from the implementation process.

The study examined 13 early implementation areas which ran from December 2004 until November 2005. The research employed a mixed methodological approach incorporating monitoring data from police official records exploring issues such as the take up of conditional cautions, the types of offences and offenders receiving conditional cautions and the compliance with conditions; interviews with practitioners and senior personnel in areas to assess the levels of understanding about the disposal, barriers to service and perceptions about the effectiveness of the conditional caution; and consultation with practitioners about the resources required to deliver conditional cautions.

⁴ Although interviews with offenders and victims were part of the research design, insufficient numbers were achieved during the course of the evaluation. As a result, a decision was made not to include these data in the report as they were not deemed to be sufficiently robust or representative and could therefore potentially be misleading.

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