



Ministry of
JUSTICE

Draft Code of Practice for Youth Conditional Cautions

Government Response

Response to Consultation CP(R)11/2013

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Draft Code of Practice for Youth Conditional Cautions

Government Response

Response to consultation carried out by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

About this consultation

- To:** This consultation was aimed at criminal justice practitioners in England and Wales, particularly those in the Police Service and the Crown Prosecution Service, Youth Offending Teams, magistrates, defence practitioners, victims and offenders.
- Duration:** From 04/10/12 – 01/11/12
- Enquiries to:** Conditional Cautions
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Introduction and contact details

This document is the post-consultation report for the consultation paper, Draft Code of Practice for Youth Conditional Cautions.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Toby Hamilton** at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk

Background

1. The consultation paper Draft Code of Practice for Youth Conditional Cautions was published on 4th October. It invited comments on the new Code of Practice for Youth Conditional Cautions which was drafted to:
 - a. support the changes to the youth conditional cautions scheme set out in Section 66 of the Crime and Disorder Act 1998 following amendments made by the Legal Aid Sentencing and Punishment of Offender Act 2012; and
 - b. clarify certain elements in the current Code of Practice.
2. The consultation paper was distributed to a wide range of criminal justice practitioners and key stakeholders. It was also made available on the Ministry of Justice website. A consultation took place concurrently on the Code of Practice for adult conditional cautions.
3. The consultation period closed on 1st November 2012 and this report summarises the responses, including how the consultation process influenced the final shape of the Code of Practice.
4. Conditional cautioning is a statutory out-of-court disposal first introduced by Part 3 of the Criminal Justice Act 2003 as amended by the Police and Justice Act 2006. The legislation provides for conditional cautions to be administered for adult offenders. The Criminal Justice and Immigration Act 2008, Section 48, extended the use of conditional cautions to young people aged 10-17 by inserting the youth conditional caution scheme into the Crime and Disorder Act 1998 ("the 1998 Act"). This makes provision for youth conditional cautions as a means of dealing with young offenders in certain circumstances, as an alternative to prosecution.
5. At present the legislation for youth conditional cautions is only implemented for 16 and 17 year olds in five areas namely Merseyside, Hampshire, Norfolk, Humberside and Cambridgeshire.
6. Section 66G of the 1998 Act requires that a Code of Practice is issued in relation to Youth Conditional Cautions governing their use and sets out provisions on the contents of the Code of Practice. The Code of Practice governs the use of conditional cautions and gives effect to requirements in the 1998 Act that must be met to administer the caution and set appropriate, proportionate and achievable conditions. It may include factors such as the circumstances in which conditional cautions may be given, the procedure to be followed in connection with the giving of such cautions and the conditions which may be attached to such cautions. Section 66G also requires a draft Code to be published to enable any representations to be made on the Code.

7. The policy behind the Code of Practice for Youth Conditional Cautions has previously been consulted on in the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010 together with the supporting Impact Assessment and Equality Impact Assessment).
8. The changes have also been subject to Parliamentary scrutiny as part of the passage through Parliament of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
9. In addition to the Code, guidance is issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984. The guidance is for police and crown prosecutors on the operational approach to be taken in deciding whether to offer a conditional caution with appropriate conditions. This guidance identifies any aspects which may render a case unsuitable for a conditional caution; for example circumstances which may make charging the offender the appropriate response. The guidance will be revised to support the new Code of Practice.
10. An Impact Assessment and Equality Impact Assessment was not published with the Code of Practice as these had previously been prepared for the consultation on the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010). The consultation on the draft Code of Practice did ask whether any of the protected characteristics within the Equality Act 2010 are affected by the way in which the Code is drafted and a summary of responses are provided below.

A list of respondents is at Annex A.

Summary of responses

11. A total of 37 responses to the consultation paper on the code of practice were received. Of these, approximately 16 were from the police service, 10 from magistrates, three from Youth Offending teams and the remaining 8 from the CPS, youth services, professional associations and the third sector. 6 responses covered both adult and youth Codes.
12. Generally the responses were positive, commenting that the code gives greater clarification on using conditional cautions appropriately and was a comprehensive reference for decision maker. In responding to what should change, many responses requested more explicit detail on a particular aspect of the process. A break down of responses to the individual questions is set out below.
13. Some responses commented on the policy of youth conditional cautions in general which was outside the scope of the consultation. These responses focused on opposition to the police being able to offer conditional cautions without the requirement to refer to the CPS for authorisation in every case, when the CPS should authorise the decision and the types of offences youth conditional cautions should be available for.

Responses to specific questions

14. Question One: Are you satisfied that the draft Code of Practice for youth conditional cautions (Annex A) fully support the amendments made by the Legal Aid, Sentencing and Punishment of Offender Act 2012 to Section 66 of the Crime and Disorder Act 1998?

15. 26 (70%) of respondents answered yes to this question. 8 (22%) did not respond specifically to this question. 3 respondents (8%) answered no to this question, commenting that it was not appropriate for police to have the power to offer conditional cautions, that more detail was needed in the Code on other disposals and processes and that referral to YOTs should take place prior to issue. Generally however, comments were positive stating that the guidance was clear and the changes made by the 2012 Act were welcomed by practitioners.

16. Question Two: Are you satisfied that the draft Code of Practice for Youth Conditional Cautions adequately clarifies certain provisions in the existing Code of Practice?

17. 25 (68%) of respondents answered yes to this question. 8 (22%) did not respond specifically to this question. 4 (10%) of respondents answered no to this question. Generally the comments were positive with some specific suggestions of where wording could be changed in some places to give greater clarification. These are set out below in response to question three.

18. Question Three: If not, what changes do you think should be made?

19. Changes suggested by respondents were focused on wanting more explicit detail on particular issues. The Government response to the consultation responses and amendments to the Code of Practice is set out at paragraph 34.

The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Police powers to authorise conditional cautions

20. Some respondents suggested there should be more guidance on what offences conditional cautions are available for and when the decision to offer a conditional caution must be made by the CPS. Others commented that it should be made clearer which bodies are able to vary the conditions after the conditional caution has been administered.

21. There was some criticism of the policy to give the police power to authorise conditional cautions without the involvement of the CPS and that this might lead to inappropriate decision making or pressure on a young person to admit guilt. There were also comments that magistrates should be consulted as part of the decision making process to offer a conditional caution and that areas should set up a review panel to oversee the use of conditional cautions and ensure the Code of Practice is being complied with by the police. Respondents who made this suggestion stated that magistrates should have a major role in these panels. A few respondents also suggested that more details on other youth out-of-court disposals introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 should be included in the Code.

Clarification of existing provisions

22. Some respondents queried whether it would be possible to combine the adult and youth code of practice into one code of practice covering all offenders.
23. Several respondents commented that it was not helpful that text setting out the five requirements that must be met before a conditional caution may be given had been removed and that these should be put back into the code.
24. There were some comments that the language of the code should be firmer and that many of the references to something that “*should*” be done would be better expressed as “*must*” be done. For example, it was suggested that where there was no reasonable excuse for non compliance the offender must be prosecuted, that a financial penalty condition must only be used where there are no suitable rehabilitative or reparative conditions and that decision makers must take certain things into account.
25. In relation to offering a conditional caution to offenders with a previous criminal history at paragraph 6.4 some respondents commented that more explanation should be given of what a “sufficient lapse of time” would entail.
26. Several respondents commented on the additional guidance on dealing with mentally vulnerable offenders commenting that this was welcomed, however, the code should make explicit reference to identifying and dealing with such offenders.
27. One respondent queried the statement in the Code that Youth Conditional Cautions should be delivered in a young person’s home except only in exceptional circumstances.
28. A few respondents stated that the Code should be clearer as to what ages of offender were eligible for a Youth Conditional Caution.
29. Several responses from the judiciary queried why a referral to the Youth Offending Team is made after the Youth Conditional Caution is given and not before.

30. A theme to responses was the guidance on the implications of the conditional caution. Respondents commented that this was clear and helpful, however others suggested that there should be more detail on what the implications are, including notification requirements following a conditional caution for an offence under the Sexual Offences Act 2003, and that it should be made clear to an offender that the failure to comply with the conditions can be used against him or her in court.

Government response

31. The Government is grateful to all those who responded to this consultation exercise. The responses were all given careful consideration and the Government has considered what amendments need to be made to the Code in light of the comments made, particularly with a view to clarifying guidance.
32. Responses regarding the policy of Youth Conditional Cautions and the changes made to the scheme by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, were beyond the remit of this consultation. For example, the creation of panels that includes Magistrates to oversee the use Youth Conditional Cautions outside the scope of the Code of Practice. The Government does recognise the value of such panels, however, this piece of work is being taken forward separately as highlighted in the recent White Paper: *Swift and Sure Justice*.
33. The responses regarding the power for the police to offer a Youth Conditional Caution are also considered to be outside the scope of this consultation. This power is set out in legislation.

Police powers to authorise conditional cautions

34. The Government agrees that it is important to have guidance on the offences conditional cautions are available for and when the decision to offer a conditional caution must be made by the CPS. This will be set out in the Director of Public Prosecutions (DPP) guidance on Youth Conditional Cautions.
35. Some responses stated that it should be made clearer which bodies are able to vary the conditions after the conditional caution has been administered. This has been made clearer by amending paragraph 17.10 to clarify that only a relevant prosecutor or authorised person can vary the conditions.

Clarification of existing provisions

36. Combining the adult and youth code of practice into one code of practice is not currently possible. The two codes of practice cover different processes within the conditional caution scheme, for example the adult scheme deals with foreign offender conditions which are not available for youths, while the youth scheme requires involvement of Youth Offending Teams which the adult scheme does not. The two Codes of Practice are also subject to different Parliamentary processes.

37. The Government agrees that the inclusion of the five requirements that must be met before a conditional caution may be given should be included within the Code and this has been done at paragraph 4.1.
38. In relation to altering the language of the Code to change certain aspects to “must” rather than “should”, this is not always appropriate. For example, where there was no reasonable excuse for non compliance a prosecution may follow, and in most cases should, but it must still be considered in every case whether a prosecution is in the public interest and so it must not always follow.
39. Some respondents commented that the Code should give a greater explanation of what “a sufficient lapse of time” means in relation to offering a conditional caution to offenders with a previous criminal history. The Government considers that this will depend on the circumstances of each case and that police and prosecutors should be able to use their own professional judgement on how this applies to the case before them and therefore explicit guidance would not be appropriate.
40. In relation to comments that the Code should make explicit reference to identifying and dealing with mentally vulnerable offenders, the Government considers that this would not be appropriate. Police officers already have existing guidance on identifying and dealing with such offenders and the Code sign posts this guidance. This guidance should be followed rather than separate guidance on conditional cautions.
41. The Government considers that Youth Conditional Cautions should only be delivered in a young person’s home in exceptional circumstances and so this guidance has been retained in the Code. It is vital that the seriousness of offending and the importance of complying with a Youth Conditional Caution are impressed on the Young Person and this will usually be better imparted in more formal venues.
42. Regarding the ages of offenders eligible for a Youth Conditional Caution further detail has been added to paragraph 2.2 of the Code to provide clarity.
43. In relation to the referral of cases to the Youth Offending Team the Code states that cases must be referred both when a Youth Conditional Caution is being considered and after the Youth Conditional Caution is administered (Section 15 of the Code “Referring cases to the Youth Offending Team (YOT)”).
44. In relation to comments regarding guidance on the implications of the conditional caution, the Government considers that the existing guidance is comprehensive and makes clear what should be explained to an offender. It is not considered necessary to set out in more detail the notification requirements following a conditional caution for an offence under the Sexual Offences Act 2003 as this is provided in separate guidance.

- 45. Question 4: What do you consider the equality issues arising from the way the Code has been drafted to be, and why? Please list any sources of evidence to support your response.**
46. Most respondents did not comment on this question or merely stated that there were none. Some comments were received on three equality issues.
47. Comments were generally positive stating that respondents were pleased to see the Code include provision on mental vulnerability. Some respondents wanted more guidance on dealing with such offenders. The Government considers this would not be appropriate for the reasons set out above at paragraph 40.
48. Once respondent suggested that Appropriate Adults should be available in every case where a Youth Conditional Caution is considered. This is beyond the scope of the Code of Practice.
49. Another respondent suggested that Foreign National Offender conditions should be available as part of Youth Conditional Cautions as they are for adults. This is not covered by the Code as the power to do this is not provided for by legislation.

Conclusion and next steps

50. Several changes have been made to the draft code, as described above, as a result of the consultation process. The amendments have been agreed by the Attorney General as required by section 66G of the Crime and Disorder Act 1998.
51. The draft code will be laid in both Houses of Parliament through a negative resolution procedure. It is planned for the Code to come into effect in April 2013 alongside the commencement of the provisions on conditional cautions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
52. Separately, prior to commencement, the Director's Guidance on Youth Conditional Cautions (issued by the Director of Public Prosecutions) will be updated to reflect the changes in the Legal Aid, Sentencing and Punishment of Offenders Act and the Code of Practice.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact Sheila Morson on 020 3334 4498, or email her at: sheila.morson@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

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London SW1H 9AJ**

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Number of responses received: 37

Respondent sectors	Number of responses
Police/ACPO	16
Crown Prosecution Service	1
Magistrates	10
Third Sector	3
Youth Offending Teams	3
Professional Association	3
Targeted Youth Support	1

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