



HM Government



College of
Policing

Consultation on out of court disposals

November 2013

This consultation begins on 14 November 2013
This consultation ends on 9 January 2014

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A consultation led by the Ministry of Justice and the police, in partnership with the Home Office the Attorney General's Office and the Crown Prosecution Service (CPS). It is also available at <https://consult.justice.gov.uk/>

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Ministerial Foreword



Out of Court Disposals (OOCs) are a valuable tool that the police use in dealing with low level offending. However, I recognise a lack of public confidence that OOCs are punishing offenders in the right way and I want to address this.

The OOCs regime has developed organically and in response to different needs at different times. As a result the current arrangements are complex. They are difficult for the public to understand and have faith in as well as being difficult for front line police officer to use consistently. The Government has decided that there should be a full wide ranging review of the whole

OOCs system. This formal consultation forms a critical part of that review. The review and this consultation are being jointly led by the Ministry of Justice and the police, in close partnership with the Home Office, the Attorney General's Office and the Crown Prosecution Service. This approach puts operational expertise at the heart of the process.

I want to know what the public and practitioners think could be done to improve the current OOC arrangements and make them easier for the public to understand and for practitioners to implement. My intention is that we should increase public confidence in the way that OOCs work. To do this we need to ensure that there are meaningful consequences for offenders. Whilst I appreciate that the system must allow for low level offending to be dealt with in a proportionate way, it is also essential that the public do not think that offenders are "let off" when they receive an OOC and that where the offender or the offence requires the powers of the court, it is the court process which is applied.

In some instances offenders may need help with rehabilitative measures that can help prevent them from reoffending. This is consistent with the Government's rehabilitation revolution and I also look forward to receiving suggestions on how this can better be achieved through reform of OOCs.

I have taken an open approach to this consultation. The questions posed invite wide ranging opinions on how we can deliver a better OOCs system. The themes that we have used to brigade these questions reflect the Government's shared outcomes for the Criminal Justice System (CJS). This demonstrates the consistent approach that I want to see throughout the CJS. The shared outcomes are: to reduce crime, punish offenders, protect the public, make reparation, reduce re-offending, increasing public confidence and be fair and just. OOCs should be designed to deliver these outcomes.

In addition to this formal consultation my officials will be running a series of open policy making events, including on line discussions and stakeholder meetings. I would invite all those who have a professional or personal interest in the OOCs regime to participate in the wider review of OOCs, in particular by responding to this consultation. I look forward to considering your responses.

A handwritten signature in black ink, appearing to read 'Damian Green'.

Rt Hon Damian Green MP
Minister of State for Policing, Criminal Justice and Victims

Consultation summary

Why are we consulting?

We are consulting in order to give the public and practitioners an opportunity to share their thoughts and experiences of out of court disposals (O OCD) and their use, and consider how they might be reformed. We want to pull together the knowledge, expertise, experience and opinions of policing and criminal justice stakeholders, and the public more widely, to ensure that out of court disposals are as effective, simple and transparent as possible. We also want to ensure that any changes to O OCDs made as a result of this consultation are based on full consideration of their potential impact on victims, offenders, communities and the criminal justice system (CJS).

Who is consulting?

This consultation is being led by the Ministry of Justice and the police, in partnership with the Home Office, the Attorney General's Office and the Crown Prosecution Service (CPS). This reflects the reality that O OCDs can only be delivered effectively if policy and operational objectives are aligned.

Scope of the consultation

Topic of this consultation:	The current out of court disposals framework
Scope of this consultation:	To seek views on the scale of reform needed to the current out of court disposals framework (the youth O OCDs framework is not in scope).
Geographical scope:	England and Wales

Basic information

To:	This is a full public consultation to seek the views of directly affected parties, including the police and criminal justice practitioners, victims groups, the voluntary and community sector, other government departments, individuals, communities and organisations with an interest in O OCD.
Duration:	14 November 2013 to 9 January 2014
Enquiries and responses:	<p>You can respond to any or all of the sections in the consultation by completing the online survey at https://consult.justice.gov.uk/</p> <p>You can also send your written responses to: Claire Steeksma, Post Point 8.06, 8th floor, 102 Petty France, London, SW1H 9AJ.</p> <p>Consultation on the out of court disposals Enquiries about the scope of the consultation or requests for hard copies should also be addressed to the contact details above.</p>

Alternative formats	Email: oo.cdreview@justice.gsi.gov.uk , or contact Claire Steeksma on 020 3334 4811 should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.
Additional ways to become involved:	In addition to holding workshops with police and CPS practitioners, we will establish discussion forums on http://oo.cdreview.wazoku.com for both practitioners and the public to share their views.
After the consultation:	Following the public consultation period, responses will be collated and analysed. The working group will review this analysis and use this as the basis for finalising any changes to the framework. The Government's response to the consultation will be published in the Spring on the Gov.uk website. This response will announce any changes to guidance or legislation required as a result of any changes to the framework.

Background

Getting to this stage:	<ul style="list-style-type: none"> • Simple Cautions Review • trilateral decision to widen the scope with police support • working group of all interested parties • analysis of evidence and practitioner workshops • analysis of published statistics and literature around OOCs
Previous engagement:	<p>The current proposals have been developed with the help of a working group of national policing and criminal justice partners from the Home Office, Ministry of Justice, Attorney General's Office, the police, College of Policing, the Crown Prosecution Service and the Youth Justice Board.</p> <p>The working group also arranged a practitioner-led workshop in late July and in September 2013, which gathered the views of police officers and CPS lawyers, on issues with the current out of court disposals framework.</p>

Chapter 1 – Background

The current out of court disposals landscape has evolved over a number of years. The need to deal with some offences flexibly and efficiently outside the court process has resulted in a number of different OOCs. These range from informal outcomes between parties, often developed by the police for use in their local area and drawing on restorative justice principles, through to formalised cautions with conditions attached which, if the offender fails to comply may result in prosecution for the original offence.

OOCs are a valuable tool to the police and others. They can reduce bureaucracy and keep police on the front line at a time when resources are constrained. Used correctly, they can represent a proportionate and effective response to anti-social behaviour and low level criminality. Research indicates that, where they form part of an OOC, reparative and restorative responses to low-level offending result in generally high levels of victim satisfaction. They can re-engage individuals with the justice system and improve public confidence. Importantly, local flexibility ensures that the police and the CPS can use their professional judgement to tackle local crime by deciding how best to proceed in any individual case. However, public confidence in the effectiveness or appropriateness of this system can be damaged by the perception that significant numbers of serious or violent offences have been wrongly dealt with by means of an out of court disposal.

There were 377,000 out of court disposals issued in 2012, with the volume having decreased by 42% since the peak over the last decade in 2007.

1a. Purpose of the Review

The OOCs landscape has developed in an ad hoc way and is complex. We feel that it is appropriate to take stock and review the operation of the system.

The Review of OOCs, of which this consultation is part, aims to make the OOC system simpler. Although the issues faced by practitioners are often complex; making the system simpler will make it more easily understood by the public and easier for practitioners to apply. The Review will consider whether we have the right number, and types, of out of court disposals.

The shared outcomes for the criminal justice system (CJS) set out the Government's objectives for the whole of the system and these should equally apply, where possible, to OOCs. We want to learn how you think the OOCs system can be made simpler and more effective in achieving those outcomes.

There is also particular concern that OOCs can be inappropriately applied to repeat offenders and/or serious offences. We are keen to know what you think could be done to ensure that the right consequence is achieved for the offence and the offender and that the system is transparent and accountable.

In the recent Simple Cautions Review the Government committed to making changes which would restrict the use of simple cautions for specific serious offences. We also committed to undertake a wider review of OOCs. This consultation forms part of that review; we want to know what you think about the consequences of offending and how OOCs can be used to appropriately respond to criminal behaviour.

This consultation sets out how the current landscape has developed and provides some information about how the existing OOCs are being used and how they have been used over time. A link is provided to the Ministry of Justice online description of OOCs (there is also a brief description of each of the current OOCs set out in Annex A, at the back of the consultation). We then take each of the shared outcomes in turn and invite you to comment on how well you think the current system delivers those outcomes, and whether you think change is required. If you think change is required you are asked what would help the system deliver against those outcomes in a simpler and more effective way.

In addition to this formal consultation, we are conducting a series of online discussions and stakeholder engagement activities. We would invite you to participate in these events. For more information, please contact ooctest@justice.gsi.gov.uk.

1b. The Scope

This review, of which this consultation is part, will consider all OOCs, including community resolutions. It will take into account and expand on the findings of the recent Simple Cautions Review. In order to understand how OOCs operate across the spectrum of criminal behaviour that is currently resolved out of court, to improve public confidence in their use, and to support practitioners in their effective delivery, the review will encompass:

- Mapping the current OOC landscape to understand gaps and issues
- Identifying opportunities to **simplify** the landscape and guidance
- Ensuring that the right person makes the right decision at the right time
- Establishing robust local **accountability** and **scrutiny** mechanisms
- Embedding mechanisms for ensuring **victims' views** are considered
- Making sure the **sanction** fits the crime and the **offender**
- Ensuring **transparency** by clarifying what information is gathered and how it is shared
- Clarifying how OOCs should be disclosed (for example, as part of employment checks)
- Understanding the impact of any changes to the way that young offenders are managed through the system.

The youth OOCs system was recently completely redesigned (see p.8). The outcomes of this review will take account of the impact any reform might have on youth OOCs. However, the youth OOC framework is out of scope for this review.

We therefore want to seek views on:

- a) how we can achieve the outcomes we have identified for OOC (Chapter 4);
- b) the application and simplification of any framework (Chapter 5).

The outcome of this consultation will inform the case for further reform of the OOC landscape and what this reform might look like.

Chapter 2 – Background to the current position

Green Paper – ‘Breaking the Cycle’

The Government’s Green Paper ‘Breaking the Cycle’ set out a number of proposals to reform the use of out of court disposals. These include a commitment to work with practitioners ‘to produce a clearer national framework for the use of out of court disposals which promotes the professional discretion of police officers while ensuring that out of court disposals are used appropriately, proportionately and effectively’.

Legal Aid Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”)

The 2012 Act made changes to various out of court disposals which came into effect in April 2013. Supporting guidance was amended to reflect these changes. In particular, the changes enabled the police to give a youth or adult conditional caution without reference to the CPS for most offences and made adult conditional cautions available for all offences in the same way as adult simple cautions (except domestic violence and hate crime see pg. 16). Given that the changes made by the 2012 Act only recently came into force, there is currently no statistical evidence available on the effectiveness of these changes. However, feedback to date from police practitioners suggests that officers are more likely to use conditional cautions now that they no longer have to gain CPS approval. CPS approval is still required for indictable only offences.

As outlined in the scope section (p.7) a new simplified and streamlined youth out of court framework was provided for in the 2012 Act and was brought into effect on 8 April 2013. This consists of a new flexible youth caution, available for all 10–17 year olds (which retains assessment and intervention by the youth offending team¹) and the revised youth conditional caution. The youth caution replaced reprimands and warnings for youths which, together were known as the Final Warning Scheme. This change did away with the inbuilt ‘escalator’ in the warning system that limited repeated use and was criticised for driving minor cases into a formal court process. The issue of a youth caution provides the trigger for intervention by the YOT where this is assessed as necessary. The youth caution is expected to be one of the primary disposals for youths. The police can issue an initial youth caution without referring the young person to the YOT, however they have a statutory duty to refer the offender to the youth offender team for a second or subsequent youth caution, or where a young person has previously received a youth conditional caution. The YOT has a statutory duty to carry out an assessment of the young offender and consider putting in place an intervention programme aimed at addressing offending and identifying risk factors and therefore preventing re-offending. Interventions associated with a youth caution can only be voluntary. A youth caution can only be given for an offence that is triable only on indictment in the case of an adult on the authority of the CPS. These act as safeguards against repeated or inappropriate use.

¹ The YOT will only be engaged on second or subsequent youth caution or if police have concerns and request YOT assessment.

Simple Cautions Review (recent changes)

Most recently on 3 April 2013, the Secretary of State for Justice, together with the Home Secretary and the Attorney General launched a review of simple cautions. This review examined the way in which simple cautions are currently used, and considered the need for any changes. Working closely with the police and other criminal justice professionals, the review examined:

- existing guidance and practice relating to the use of simple cautions;
- whether there are some offence types for which the use of simple cautions is generally inappropriate - particularly the use of simple cautions for serious offences, and persistent offenders – and if so, what procedures should be adopted;
- the reasons why multiple cautions are given to some offenders;
- the difference in the use of cautions by different police forces and whether increased scrutiny is needed to ensure they are used consistently;
- what more could be done to achieve greater transparency and accountability;
- the impact on individuals of accepting a caution including any potential impact on future employment; and
- how to improve public confidence in cautions.

The review ran from 3 April to the end of May 2013. The Home Secretary, Justice Secretary and Attorney General agreed to the following recommendations:

- i. Simple cautions should not be available for indictable only offences, unless there are exceptional circumstances and the use of the simple caution has been approved by a senior police officer as well as the CPS.
- ii. A conditional caution, appropriately cast with tough conditions, may still be used though and could help tackle the root causes of offending behaviour, and provide a more victim focused outcome where an out of court disposal is deemed necessary to deal with these very serious offences.
- iii. That simple cautions are no longer available for certain serious either way offences. Therefore certain offences will be removed from the simple caution regime; bar in exceptional circumstances where a senior police officer has made the decision that in all the circumstances of the case a simple caution is the appropriate disposal. These serious either way offences are:
 - possession of a bladed article, offensive weapon or firearm in public;
 - child prostitution and pornography, cruelty to a child, indecent photographs of children; and
 - supplying Class A drugs.

Again, a conditional caution may still be used where an out of court disposal is deemed necessary to deal with these serious offences.

- iv. There should be increased transparency and accountability surrounding the use of cautions, and Police and Crime Commissioners (PCCs) should play a greater role in accountability.
- v. There should be a wider review of OOCs.

Chapter 3 – Types of O OCD

The O OCDs in scope for this review are those applied to adults only. They are:

- i. Conditional Caution
- ii. Simple Caution
- iii. Penalty Notice for Disorder (PND) – a form of FPN
- iv. Fixed Penalty Notice (FPN)²
- v. Cannabis Warning
- vi. Community Resolution.

A detailed summary of the different out of court disposals can be found at <http://www.justice.gov.uk/out-of-court-disposals>. A brief description of O OCDs is set out in Annex A of this consultation.

Statistics

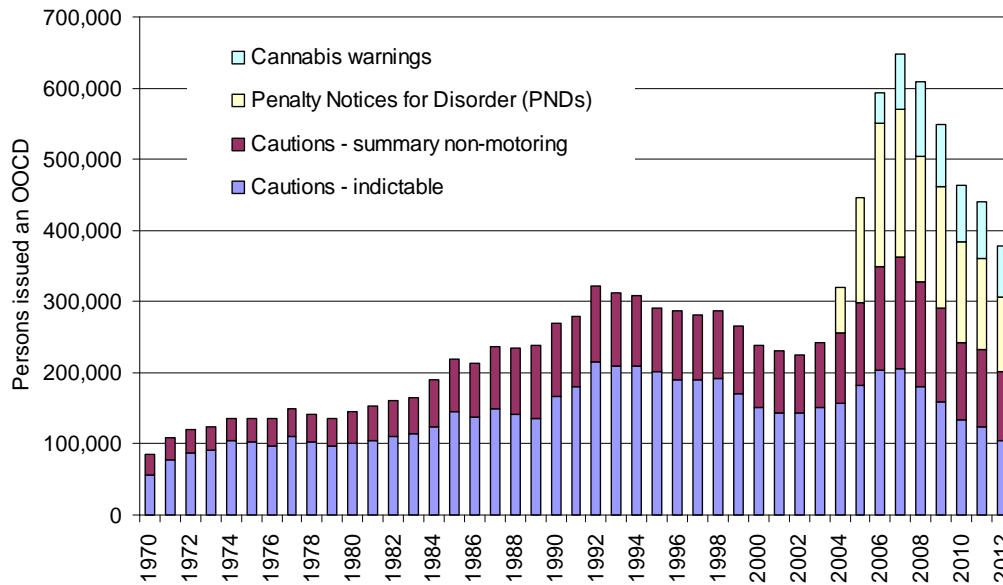
MoJ published statistics show:

- Between 2007 and 2012, there was a 42% decrease in the use of out of court disposals, including:
 - a 45% decrease in the use of cautions; and
 - a 49% decrease in the use of PNDs.

From 2002, the use of O OCDs increased rapidly and peaked in 2007, before decreasing year on year to 2012. The increase coincided with the introduction in 2001 of a target to increase offences brought to justice, and the decrease coincided with the replacement in April 2008 of the target with one placing more emphasis on bringing serious crimes to justice. The latter target was subsequently removed in May 2010.

² In certain circumstances Fixed Penalty Notices can also be given to those under the age of 18.

The long term trends in OOCs are set out in the chart below:



Cautions (adult and youth and includes both simple and conditional cautions)

- Almost half (47%) of all offenders cautioned in 2012 were for summary offences.
- Half of all cautions were given to first time offenders.
- Cautioning rates³ were much higher for offenders aged 10–17 than offenders aged 18 or over.
- 18% of adults and 25% of youths re-offended within 12 months of receiving a caution or reprimand/final warning.
- In 2007 there were 363,000 simple and conditional cautions issued, this had fallen to 201,000 in 2012.

Conditional Cautions (over 18s only)

- The number of conditional cautions administered is low when compared to all cautions. In 2012 4,600 conditional cautions were recorded by the CPS.
- Between 2009 and 2012, there was a 46% decrease in the use of conditional cautions.
- In 2012, the compliance rate for conditional cautions was 83%, and 67% of offenders who did not comply were charged.

³ The proportion of offenders who were either cautioned or convicted that were given a caution.

PNDs

- Four offences accounted for almost 90% of PNDs issued in 2012: low level shoplifting; drunk and disorderly, behaviour likely to cause harassment, alarm or distress; and cannabis possession.
- 53% of PNDs were paid in full before enforcement action commenced.
- In 2007 there were 208,000 PNDs issued, this had fallen to 106,000 in 2012.

FPNs

- Between 2007 and 2012, there was a 56% decrease in the use of FPNs for motoring offences.
- In 2007 there were 3.5m FPNs issued, this had fallen to 1.5m in 2012.
- The revenue generated from FPNs in 2011/12 was £60 million.

Cannabis Warnings

- There was a 33% decrease in the use of cannabis warnings between the peak in 2008, and 2012. In 2008, 108,300 first time offenders received a warning compared to 70,100 in 2012.

Chapter 4 – Principles for effective out of court disposals/aims of reforming them

We want to ensure that the OOCDF framework supports the delivery of the shared CJS outcomes, set out in the CJS Strategy and Action Plan,⁴ simply and effectively.

Shared Outcomes for Justice Reform

The shared outcomes apply to the whole CJS and not just OOCDFs. The shared outcomes are:

- **Reduce Crime:** to prevent crime, deter first time offenders and reduce the number of victims of crime. This includes general deterrence (e.g. using the sentence imposed on an offender as an example to deter others from committing a similar offence).
- **Punish Offenders:** to ensure there are consequences to committing crime by making sure offenders are caught and punished. This shows society's unhappiness with the offence committed. This includes both in and out of court disposals.
- **Protect the Public:** to reduce the risk to the public posed by crime. This could include preventing serious further offending by incapacitating and supervising offenders (e.g. removing an offender from society by putting them in prison), restrictions on their activities or supervision by probation, or measures to protect victims and witnesses.
- **Make Reparation:** to ensure that victims of crime receive reparation. This includes requiring the offender to make amends to those who have been directly affected by their criminal behaviour (e.g. through compensation or Restorative Justice) and ensuring offenders make reparation to wider society (e.g. through community payback or the Victim Surcharge to fund victims' services).
- **Reduce Re-offending:** to stop offenders from committing further crimes through effective rehabilitation. This includes individual deterrence aimed at preventing the individual offender from committing another crime.
- **Increase Public Confidence:** to build confidence, and improve perceptions of, and participation in, the system for the public and victims and witnesses.
- **Be Fair and Just:** to protect the innocent and punish the guilty, ensuring equal access to justice for all.

⁴ <https://www.gov.uk/government/publications/transforming-the-criminal-justice-system>

Chapter 5 – Key themes to be tested through the Review

We have set out the questions and themes that have emerged from our initial work on the review together with the shared outcomes headings.

a) Simplification

The early discussions that have taken place have confirmed that, from a practitioner and policy perspective, the current OOCs regime is complex. It is hard for the public to understand and can be difficult for practitioners to implement in a consistent manner. The result of this complexity is that when difficult decisions have to be made by practitioners, they can be hard to explain to the public; even when further investigation shows that the right outcome was achieved. This complexity has also resulted in a high volume of complex guidance which is not easily accessible for practitioners. We think that a simpler system could deliver transparency for the public who could then come to a properly informed view on whether the right decisions are being taken. A simpler system could also help practitioners to implement OOCs in an effective and efficient way.

A simpler regime could mean that there should be fewer types of OOCs. It could mean that the guidance should be shorter, easier to use and/or clearer. We need to consider what the implications of these changes might be to police discretion as well as police time and resources. Better enabling the public to understand the regime might require us to make clearer information about it more readily available.

You may wish to consider:

- other examples of systems which are set out simply, but deal with complicated issues;
- the possible future design of a simpler OOCs regime;
- the best way for guidance to be made available to practitioners and information available to the public.

Question 1: Do you think the OOCs regime needs to be made simpler? If so, how?

b) Reducing Crime and Protecting the Public

The current OOCs landscape provides a way in which low level offending can be addressed proportionately and quickly. If the public interest recognises that not every offence needs the full force of the court process, we need to have an effective out of court disposal regime. How do we ensure that in cases where the sentencing powers of the court are more appropriate (if the person is found guilty) that the offender goes to court?

Certain types of offences are currently considered by more senior practitioners or by different parts of the CJS.

You may wish to consider:

- OOCs should act as a deterrent against offending or reoffending;
- OOCs should be available for the right range of offence;

- there should be clear consequences of not complying with an OOC.

Question 2: Do you think the current OOC framework deters people from committing crimes?

- Yes
- No
- Not sure

Question 3: How do you think OOCs can make people less likely to commit crimes?

c) Disclosure of OOC

Some OOCs may be subject to disclosure in limited circumstances. For example, where an individual applies for a sensitive job such as working with children and information about the offence is considered relevant to the purpose of the application.

Further details around the operation of disclosure of OOCs is available at this link: <https://www.gov.uk/government/publications/dbs-filtering-guidance>

We are interested in your views on whether this should remain the case.

Question 4: Should the consequences of accepting or being given an OOC be clearer?

d) Punish Offenders

Where an offence has been committed and an offender has been identified there must be consequences for the offender. We need to ensure the public are confident that OOCs are an appropriate sanction.

It is important to ensure that the punishment fits the offender and the offence. The practitioner should consider the circumstances of the crime and the offending history of the offender. For example, if the offender has committed repeat offences and/or if they have committed repeat offences of a similar nature. Punitive elements include a fine for low level offending where a PND is given or a financial penalty as a condition of a conditional caution.⁵

The Review will consider whether the current regime allows practitioners to consider the right range of outcomes for the offence and the offender. The Simple Cautions Review has found that for certain types of serious offence simple cautions are not suitable unless there are exceptional circumstances. This could mean that simple cautions should not be available for additional offences other than in exceptional circumstances; this brings us to consider whether we have the right range of OOCs available to practitioners.

You may wish to consider:

- the range and level of punishment OOCs should deliver.

⁵ Maximum financial penalty for conditional cautions is £250.

Question 5: What type of punishment should OOCs deliver? An example might include financial penalties.

Question 6: What sort of offences do you think OOCs are appropriate for?

Domestic Violence and Hate Crime

In cases of domestic violence (DV) or hate crime there is a particular need to maintain public confidence in the criminal justice response. CPS and ACPO guidance states that simple cautions are rarely appropriate in DV cases. The DPP's guidance on conditional cautions excludes their use in domestic violence and hate crime cases. Generally, the public interest will require the prosecution of the suspect where there is sufficient evidence for charges to be brought.

Similarly, crime which targets a particular characteristic of a victim, whether it be race, faith, sexual orientation, gender identity, disability or anything else is likely to have a devastating impact on the victim, their family, and the wider community. Therefore these are the only crime types which are exempt from the adult conditional cautioning regime. It is important that, by creating these exemptions, other serious crime types are not seen as being downgraded and not serious enough to warrant court proceedings.

However, there have been calls by police forces to allow for the greater use of OOCs in responding to domestic violence and hate crime in a much more tailored manner, for example using conditional conditions to address the offender's behaviour and provide reparation to the victim (in the case of hate crime). At the current time there is inconsistency in the guidance with prohibited use of conditional cautions in domestic violence and hate crime cases, but guidance to suggest that simple cautions will be 'rarely appropriate' in DV cases.

Question 7: Do you think that OOC should be available for domestic violence?

- Yes
- No

Comment.

Question 8: Do you think that OOC should be available for hate crime?

- Yes
- No

Comment.

Question 9: If so, how can we make sure that the OOC system works well for this type of offence?

Repeat offenders

Currently, the guidance for all OOCs indicates that they are available for all offenders, but are primarily intended to address first-time offending. The table below outlines guidance, where possible, for each OOC and below are links to the full guidance documents.

<p>Adult conditional caution</p>	<p>“In assessing the seriousness of the offence under consideration and determining whether the case should proceed to court or is suitable for a Conditional Caution the decision maker should also take into account the totality of any current offending and any history of previous convictions and cautions particularly any which are recent or of a similar nature.</p> <p>However a record of previous offending should not rule out the possibility of a Conditional Caution especially where there have been no similar offences during the last two years or where it appears that the Conditional Caution is likely to change the pattern of offending behaviour.”⁶</p> <p>Forces can administer Women Specific Conditions (WSC) attached to an adult conditional caution to address criminal behaviour. Such a condition could include a referral to a Women’s Community Project.</p> <p>The referral of the offender to a Women’s Community Project or similar is a rehabilitative condition. Such a condition may be useful where various factors relevant to the woman concerned are identified at the time of decision making. These could include:</p> <ul style="list-style-type: none"> • evidence of domestic or sexual abuse; • mental health issues; • drug use; • alcohol dependency; and • parenting issues.”⁷
<p>Simple caution</p>	<p>“Simple cautions are available for any offence but are generally intended for low level, mainly first time offending.”⁸</p> <p>“A simple caution will not be appropriate where the offence forms part of a pattern of offending... A second simple caution should not be given for the same or similar offences unless there are exceptional circumstances indicating that it may be appropriate; and should not be given where a previous simple caution had been given during the last two years.”⁹</p>
<p>Penalty Notice for Disorder (PND)</p>	<p>“A PND may not be appropriate where it is known that the person has previous convictions for disorder offences or where it is known that the person has been given a PND in the recent past, or has been given a simple or conditional caution for such offences. Constables should use their discretion.”¹⁰</p>

⁶ http://www.cps.gov.uk/publications/directors_guidance/adult_conditional_cautions.html, 13.1.

⁷ [http://www.cps.gov.uk/legal/d_to_g/diverting_women_offenders_and_the_women_specific_condition_\(within_the_national_conditional_cautioning_framework\)/](http://www.cps.gov.uk/legal/d_to_g/diverting_women_offenders_and_the_women_specific_condition_(within_the_national_conditional_cautioning_framework)/)

⁸ <http://www.justice.gov.uk/out-of-court-disposals>, page 6.

⁹ Simple Cautions Review Findings

¹⁰ <http://www.justice.gov.uk/out-of-court-disposals>, page 15.

Fixed Penalty Notice (FPN)	N/A – As these are used for a wide range of purposes, there are a number of different guidance documents. They are only available for certain offences.
Community Resolution	“primarily aimed at first-time offenders” ¹¹ therefore where a Community Resolution is considered suitable for an offender who has previous convictions or previous Community Resolutions a second opinion by a supervisor is recommended.

The latest data (2012–2013) shows that 60.3% of those getting a caution (simple or conditional) have no previous cautions recorded on the PNC, 34% have 1–2 previous cautions, 5.7% have 3–6 previous cautions and 0.1% had 7 or more previous cautions.

We would like to know your views on whether OOCs are appropriate for repeat offenders in some circumstances and, if not, how we can ensure that repeat offenders do not receive them. For certain offences issuing more than one OOC could be made impossible, although this would impact on the flexibility of the system. A system whereby repeat offences resulted in the consequences for the offender automatically increasing in severity could be introduced, although this ‘escalator’ approach has recently been removed from the Youth OOCs regime. The decision to give a repeat OOC to an offender could need to be made by a more senior practitioner or a different part of the CJS.

You may wish to consider:

- whether the definition of a ‘repeat offender’ should include anyone who has ever committed an offence or whether time limits on this would be appropriate?
- the type of offence that should determine reoffending – e.g. whether a very different offence should be treated in the same way as a repeat of the same offence.

Question 10: What sort of OOC, if any, is appropriate for repeat offenders?

Level of punishment

Currently, the main punishment received through OOCs is a financial penalty (FPNs, PNDs and conditional cautions). There is also the potential, through a community resolution, for punishment to include some kind of reparation to the victim.

Consequences

Some OOCs have consequences attached to them if their conditions are not met – e.g. if you do not pay a financial penalty or comply with the conditions of your caution. The table below sets out these consequences for each disposal:

¹¹ Guidelines on the use of Community Resolutions (CR) Incorporating Restorative Justice (RJ), ACPO, 2012

Adult conditional caution	If you do not comply with the conditions of your caution, you may be prosecuted for the original offence.
Penalty Notice for Disorder (PND)	If the PND is not paid or the person does not request to be tried (or, where relevant, ask to attend an educational course) within 21 days then a fine is registered against the recipient at court – the fine is one and a half times the original penalty offence and is registered in a magistrates court for enforcement or, in exceptional circumstances, prosecution may be brought against the individual for the original offence. This may be where, for example, further evidence has emerged as to the seriousness of the offence. ¹²
Fixed Penalty Notice (FPN)	The consequences for non-compliance with FPNs varies from scheme to scheme.

The Review will consider whether the current levels of punishment are sufficiently robust to act as a deterrent to others or to prevent reoffending and whether the consequences of not complying with an OOCd achieve the shared CJS outcomes. We invite you consider changes that would improve the effectiveness of the levels of punishment and consequences of failing to comply with OOCds.

You may wish to consider:

- the effectiveness of the consequences attached to OOCds in deterring offending or reoffending;
- the time limits attached to the compliance with OOCds.

Question 11: Do some crimes or offenders need more significant consequences if the terms of their disposal are not met? For example, if they are asked to pay a fine but do not.

e) Make Reparation

An important part of a modern justice system is to require that the offender makes reparation for the harm they have caused to the victim. OOCds can be an effective way of achieving this. OOCds with reparative elements involve the offender paying back to the victim and/or society for their crime. (e.g. repairing damage caused or formally apologising to the victim(s)).

The current OOCd system encourages consultation with the victim before decisions are reached on an appropriate disposal outcome. The reforms to the OOCds landscape need to take account of victims' wishes and ensure that offenders are made to repair the damage they have done, where this is possible and viable.

Community Resolution is a type of informal police disposal that enables the police to deal more proportionately with low level crime and anti-social behaviour in a timely and transparent manner that takes into account the needs of the victim, offender and wider community, outside the formal criminal justice system. Community Resolutions are

¹² <http://www.justice.gov.uk/out-of-court-disposals>, page 19.

primarily aimed at first time offenders where genuine remorse has been expressed, and where the victim has agreed that they do not want the police to take more formal action.

There are a number of types and levels of Restorative Justice (RJ). It can be used out of court (for example as part of a conditional caution), RJ activities may also be imposed by the court post conviction but pre-sentence, providing the victim and offender consents. Provisions in the Crime and Courts Act 2013 place pre-sentence RJ on a statutory basis for the first time and are due to commence in December 2013. The court may order that the offender undertakes RJ activity as part of an activity requirement of a community order¹³ or a suspended sentence. RJ offers victims an opportunity to be heard and to have a say in the resolution of offences, including agreeing restorative or reparative activity for the offender. It can provide a means of closure and enable the victim to move on. RJ also provides an opportunity for offenders to face the consequences of their actions and the impact that it has had upon others. RJ and Community Resolution are fundamentally distinct and separate tools.

For some offences it is difficult to identify the victim or the victim may want nothing more to do with the offender. This does not mean that the offender cannot make reparation. They can still do so in the wider victim community through a contribution to paying for victims' services. This is already very effectively achieved by contributions being made from payments of PNDs to support victims' services.

Through the introduction of the Community Remedy, we are legislating to give victims a greater say in the way anti-social behaviour is dealt with locally, in order to make sure that victims and the public agree that the consequences are meaningful. It will place a duty on the Police and Crime Commissioner to consult with members of the public and community representatives on what punitive, restorative or rehabilitative actions they would consider appropriate to be on the community remedy document. When dealing with anti-social behaviour, or low-level offences out of court through community resolutions, the police officer may use the community remedy as a means of engaging the victim to ensure they have a say in the punishment of the offender. The community remedy document should also be considered when an offender is given a conditional caution or youth conditional caution.

The Review will consider the role of reparation and victims in the OOCs process.

You may wish to consider:

- the amount of influence a victim's views should have and how this should be balanced with the discretion that a police officer can exercise;
- the affect the seriousness of the offence should have over the amount of influence the victim should have over the outcome.

Question 12: When a practitioner (for example, a police officer) is deciding on an out of court disposal, how should victims be involved in that decision?

¹³ Offenders sentenced to a community order serve their whole sentence in the community rather than prison. However, they could be sent to prison if they do not comply with the order.

This review provides an opportunity to clarify the differences between Community Resolution and RJ, to test whether we should be doing more to ensure that where it has been agreed that the offender must make reparation, that that reparation actually happens, and that it is effective and improves victim satisfaction. Both PNDs and FPNs collect money from offenders. Some of that money is channelled into victims support services. Both these OOCs have good rates of compliance¹⁴ and are efficient ways for the state to collect money from offenders.

This review provides the opportunity to test whether the processes we have in place currently target the offenders and whether the way money is collected from those offenders could be made more efficient. This is also a chance to ask whether the state should increase the revenue for the victims fund through these OOCs.

You may wish to consider:

- the appropriateness of raising revenue in this way;
- this application of raising revenue to all offences;
- the efficiency of the ways that revenue is currently raised from OOCs and improvements that could be made.

Question 13: Currently, the OOCs system includes ways in which offenders can “pay back” to the victim and/or society, sometimes financially and sometimes in other ways. Do you think that there are ways we could improve this and make it more efficient?

f) Reduce reoffending

As we have described above one key objective for OOCs must be to reduce reoffending. One proven way of reducing reoffending for some offenders is to provide them with information or training to help them change their behaviour. This can be described as a rehabilitative approach. OOCs can be an efficient route for a person to be directed to drug, alcohol or other rehabilitative programme to enable them to overcome issues in their lives, address the root cause of their offending behaviour and help them to stop offending in the future.

Under the existing OOC system conditional cautions may have rehabilitative conditions attached to them which the offender must adhere to in order to avoid the possibility of prosecution for the original offence. Similarly PNDs can have a requirement attached for the offender to attend an educational course in order to address their offending behaviour.

As explained above, recent changes introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 mean that police officers can give a conditional caution in most cases without first referring the matter to the Crown Prosecution Service. This makes it easier for the police to give conditional cautions, which can include rehabilitative conditions. We are keen to know what the impact of these changes are for practitioners and whether greater use of rehabilitative conditions is likely as these changes take place.

¹⁴ In 2012 53% of PNDs were paid in full before enforcement action; 89% of FPNs issued by the police in 2011 were paid.

Could rehabilitation form a compulsory part of the OOCs regime for some offenders and offences? Non-compliance with the rehabilitative element of an OOC could carry further consequences for the offender. The provision of rehabilitation services is delivered locally. Practitioners could decide on the rehabilitative element of an OOC based on the availability of specific services at the time the offender is being given the OOC.

You may wish to consider:

- the effectiveness of rehabilitation as a way of addressing low level offending;
- the most effective way to direct resources to reach the people for whom rehabilitation will be most effective.

Question 14: How can we make sure that the right offenders are given the chance to address the root cause of their offending?

Question 15: How can we make sure that front line officers know what services are available in their local area when they are at the point of using an OOC?

Question 16: If you have anything else to add on how the OOC system can help reduce reoffending, please add it below.

g) Increasing Public Confidence

The general public may perceive the current system to allow perpetrators of serious offences and/or repeat offenders to “get away with” their crimes. This is, doubtless, not helped by the evolution of the current system over a number of years and the creation of various different types of disposal. It is perhaps unsurprising that the very difficult decisions that front line officers have to make are not always fully understood.

A simpler regime could help transparency and public confidence in the system. There may be other opportunities to build public confidence. Public awareness could be increased through publicity around some of the tough decisions practitioners make or instances where the decision on the outcome has been escalated because the offender has previously committed offences or it is a serious offence. The public could be offered the opportunity to test their own decision making against that of practitioners in an on-line forum, like the current “You be the Judge” web site.

PCCs also have a role in providing scrutiny of criminal justice delivery at a local level. Improving public confidence in OOCs could involve a greater role for PCCs in the scrutiny of their local application.

You may wish to consider:

- any difficulty the public may have in understanding the current OOCs regime;
- the specific aspects of the OOC regime that cause difficulty;
- the most effective way to simplify and improve public confidence in the regime.

Question 17: Is the current OOCs system difficult for the public to understand?

- Very difficult
- Fairly difficult
- Fairly easy
- Very easy
- Not sure

Question 18: How do you think it could be communicated better?

Question 19: What more could be done to improve public confidence in the OOCs system?

h) Transparency and accountability

Out of court disposals are often criticised for a lack of consistency and transparency, and because there is a perception that they are used in cases that should have gone to court. To help to address these concerns, forces have established arrangements to scrutinise the use of these disposals. We have not been prescriptive about how these arrangements should work, including which cases they should consider, because we want them to be able to respond to local needs.

Scrutiny arrangements are there to provide generalised feedback to local police forces about whether their use of out of court disposals appears to be consistent and appropriate based on a detailed consideration of an anonymised sample of cases. Feedback provided by the group will not endorse, rescind or change individual disposals in any way. Consideration will always be retrospective, and will be undertaken by a broad cross-section of criminal justice practitioners, such as magistrates, Probation Service, Crown Prosecution Service, and Youth Offending Teams, taking into account the nature of the wrongdoing alleged and the circumstances of the individuals concerned.

We have broadened the crime outcomes framework to better reflect the work that the police do to solve and resolve crime. This will boost transparency in local decision making, making it easier for communities to hold their local police to account for how they are responding to crime and anti-social behaviour in their area.

Capturing 100% of crime outcomes (from April 2014), including community resolutions, will give the public greater understanding of policing within their community, enabling them to support and, where necessary, challenge police activity.

There may be more that could be done to publicise and involve the public in the existing and future scrutiny arrangements. More information about the use of local OOCs could be made available and publicised more effectively. Local debate could be encouraged to engage the public in how OOCs were being used to address local issues.

You may wish to consider:

- if more data could be gathered and shared;
- if more could be done to involve magistrates, police and crime commissioners and the general public in the OOCs landscape.

Question 20: Do you think there is more information that should be shared?

- Yes
- No
- Not sure

If yes, please state what information that is.

Question 21: Do you think that the public are able to hold the police to account for the way that OOCs are used?

- Yes
- No
- Not sure

If no, how do you think we could make the system more accountable?

i) Be Fair and Just

OOCs should provide a proportionate response to crime which does not unnecessarily involve prosecution and criminalisation where the type or scale of the offending behaviour does not warrant this.

They must also promote public safety and seek to ensure consistent outcomes where possible. It is crucial that OOCs are fair and just. It is also important that police officers retain discretion so that they can respond appropriately and proportionately to local circumstances and individual offenders.

Operational partners have described the challenge particularly for new front line officers to grapple with the scale of guidance that currently exists in relation to OOCs. This review will provide an opportunity to better understand and test the existing decision making process and to establish whether this puts unreasonable pressure on front line officers.

The reformed OOCs regime could include a simple system whereby the decision was escalated to a more senior practitioner or a different part of the CJS; dependent on the offender and the offence. The escalation would be dependent on the severity of the offence that had been committed, but also the offender, for example whether it was a repeat offender or whether they are a vulnerable adult.

You may wish to consider:

- the clarity of the existing guidance on OOCs and how successful it is in providing police officers and others with clear information on when and how they should be used;
- the support and training police officers receive and its effectiveness in ensuring they feel confident using the OOC system;
- avoiding an overly bureaucratic regime;
- ensuring that appropriate cases can continue to be dealt with swiftly;
- the impact of removing the option to use OOCs in certain circumstances from front line officers.

Question 22: How can we ensure that the person making the decision about an OOCd has the right experience and skills?

Question 23: How can we best ensure that decision making about what OOCd to apply is both timely and thorough?

Equalities considerations

Equality must continue to be a key driver in all system design across the CJS to ensure fairness and equality of outcomes including within the OOCds landscape. The review is an opportunity to look at the current system and test whether there are currently any inequalities built into the existing system particularly for black and minority ethnic (BAME) groups, women, people with disabilities and others with protected characteristics. We must then robustly test the proposals emerging from this review to ensure that they deliver equal and appropriate application of OOCds.

As per our responsibilities under the Equality Act 2010 we will give consideration to the likely broad impacts of the OOCd proposals on individuals with protected characteristics. Under section 149 of the Equality Act 2010, the Department has a legal duty to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between people who share a protected characteristic and those who do not. The 'protected characteristics' under the Equality Act 2010 are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage and civil partnership.

You may wish to consider:

- evidence which tells us more about the equality impacts of OOCds and the way OOCds are applied to people with protected characteristics;
- the groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the OOCd proposals in this consultation paper;
- any examples, case studies, research or other types of evidence that support your views, together with actions to mitigate these effects.

Question 24: How can we make sure that front-line officers have the right tools to make the right decisions?

Question 25: How should we make sure that offenders are treated equally?

Local considerations

OOCds processes often vary from area to area. Local arrangements should reflect local needs and priorities. However, it is also important that there is a national, consistent approach to the way OOCds are used. Whilst there may be a public concern that offenders are 'let-off' with OOCds, there may be consequences to limiting officers' discretion in the decision making process, including; criminalising individuals unnecessarily, no further action being taken against offenders, where a prosecution was not possible, and additional burden being placed on the courts and other parts of the criminal justice system.

You may wish to consider:

- the impact of reducing police discretion in administering OOCs;
- some forces may need to address some offences in different ways to other forces depending on local challenges;
- the need to achieve consistency in the way OOCs are delivered to ensure fairness.

Question 26: How should the role of central guidance be balanced against the need for local choice?

About you

These details are voluntary and will be treated as personal data in compliance with government guidance on holding personal information.

- 1) Which of the following best describes your organisation or the professional interest that you represent?* Please select one option.
 - a. Police force
 - b. Police and crime commissioner (PCC)
 - c. Office of a Police and Crime Commissioner
 - d. Victims group
 - e. Voluntary sector / community organisation
 - f. Community safety partnership or body
 - g. Government department or agency
 - h. ONS or other statistical organisation
 - i. Academic institution or think tank
 - j. None – I am responding as a member of the public
 - k. Prefer not to say
 - l. Other (please specify)

- 2) Which organisation do you represent? Providing this information is optional.

- 3) In which of the following areas are you based? Please select one option.
 - a. East Midlands
 - b. East of England
 - c. Greater London
 - d. North East England
 - e. North West England
 - f. South East England
 - g. South West England
 - h. Wales
 - i. West Midlands
 - j. Yorkshire and the Humber
 - k. Prefer not to say
 - l. Other (please specify)

Annex A – Summary of existing OOCs

i) Adult Conditional Caution (ACC)

Statutory Basis: Sections 22 – 27 of the Criminal Justice Act 2003. Operational detail for ACCs is set out in the Secretary of State’s Code of Practice for Adult Conditional Cautions and the Director of Public Prosecutions (DPP) Guidance.

Overview: It is an adult caution but with conditions attached. The conditions can be rehabilitative, reparative, punitive including a financial penalty. The conditions should normally be completed within 3 months. The conditions can also require a relevant foreign offender to leave the UK and not return for a specified amount of time.

Who may give one? A constable, an investigating officer or a person authorised by a relevant prosecutor (Attorney General, Serious Fraud Office, DPP or a Secretary of State). In practice most ACCs are given by a police officer not below the rank of sergeant.

Which offenders? Must be over 18 and must make a clear admission of committing the offence and is willing to comply with the conditions.

For which offences can it be given? It can be given for any summary only or either way offence. A conditional caution cannot be given for an offence classified as a hate crime or domestic violence. Only exceptionally will a conditional caution be given for an indictable only offence and this must be approved by a Deputy Chief Crown Prosecutor.

Evidential and Public Interest Factors: There needs to be sufficient evidence to provide a realistic prospect of a conviction (The evidential stage of the Full Code Test). When the evidential stage is satisfied it needs to be considered whether it is in the public interest to offer an ACC.

Is an admission required? A clear and reliable admission is required.

Is the offenders consent required? Yes, to the caution, the conditions and the implications in terms of disclosure.

Implications for the victim: The victim’s views should be sought, but are not binding. One of the conditions could be to apologise to the victim or to make reparations.

Implications for the offender: The ACC will be spent 3 months after it was administered but may be disclosed as part of a disclosure and barring service (DBS) certificate and may be taken into account by those employers¹⁵ who are eligible to request such certificates. It may also be disclosed in subsequent criminal proceedings. The offender may also be subject to the notification requirements in the Sexual Offences Act 2003.

Implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013, enabled police officers to authorise a conditional caution without

¹⁵ Spent cautions and convictions can only be taken into account by employers if the occupation or activity is covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974.

reference to the CPS, it's currently unclear what behavioural impact these changes may have had in terms of frequency of the use of this type of disposal.

Is it required that the disposal is recorded on the Police National Computer? Yes.

ii) Adult Simple Caution

(These are currently subject to legislative changes as part of the Simple Cautions Review see Chapter 2, page 8.)

Statutory Basis: Currently no statutory basis though the Ministry of Justice is intending to set out in legislation certain requirements in relation to adult simple cautions as a consequence of the Simple Cautions Review.

Is it recorded on the Police National Computer? Yes.

Overview: To offer a proportionate response to low level offending where the offender has admitted the offence.

Who may give one? The police can give cautions for summary and either way offences. The police must seek the Crown Prosecution Service's (CPS) approval to give a caution for an indictable only offence. If the CPS instructs the police to give an offender a caution for a summary or either way offence then this decision is binding on the police.

Which offenders? The offender must be over 18. Any previous offending history will be considered by the police and/or the CPS.

For which offences can it be given? Any, however they are generally intended for low level, mainly first time offending. A simple caution should only be offered in exceptional circumstances where the offence is indictable only, is an either way offence routinely dealt with at the Crown Court or where the offence has a starting point at high level community order or a sentence of imprisonment.

Evidential and Public Interest Factors: The evidential stage of the Full Code Test needs to be met. Where this is satisfied consideration will be given to whether it is in the public interest to offer a simple caution as an alternative to a prosecution.

Is an admission required? A clear and reliable admission is required.

Is the offenders consent required? Yes. The offender must also confirm that he/she understands the implications of the caution.

Implications for the victim: Victim's views should be sought, but are not binding. A simple caution removes any possibility of compensation. However, this does not preclude a civil claim for compensation.

Implications for the offender: A simple caution is spent immediately and therefore does not need to be disclosed when applying for most jobs. However, the caution may be disclosed as part of a DBS certificate and may be taken into account by those employers who are eligible to request such certificates. It may also be disclosed in subsequent criminal proceedings. The offender may also be subject to the notification requirements in the Sexual Offences Act 2003.

Is it required that the disposal is recorded on the Police National Computer? Yes.

iii) Penalty Notices for Disorder (PND)

Statutory Basis: Sections 1 – 11 of the Criminal Justice and Police Act 2001.

Overview: A quick and effective alternative disposal for dealing with low-level, anti-social offending. PNDs are intended to provide a simple method of deterrence. An educational requirement can also be imposed.

Who may give one? Police officers are authorised to give PNDs as well as the following who can give a PND only for certain offences specified by the Police Reform Act 2002:

- Police Community Support Officers (section 38 and Schedule 4).
- Trading Standards Officers (Part 4, Chapter 1).
- The chief office of police can designate limited powers to employers of organisations who contribute towards community safety (section 40).

What offenders are eligible?

- Must be 18 and over.
- Must be able to understand the process – a PND may not be appropriate for a vulnerable adult.
- A PND may not be appropriate where it is known that the person has previous convictions, cautions or conditional cautions for a disorder offence or where the person has been given a PND in the recent past.

What offences are suitable? They can only be given for a specified list of offences set out in section 1 of the 2001 Act, which are at the low end of seriousness, for example being drunk and disorderly.

Evidential and Public Interest Factors: There must be reason to believe that the offender has committed a penalty offence and the evidential stage of the Full Code Test needs to be met. If this is met then a PND can be given if it is in the public interest to pursue a prosecution but it is more appropriate to give a PND.

Is an admission required? No.

Is the offenders consent required? No.

Implications for the victim: Victim's views should be sought as it removes the possibility of a compensation order.

Implications for the offender: If the penalty is paid the recipient discharges all liability to conviction of the offence they were suspected of committing, and it does not form part of a criminal record. However for certain offences it may be disclosed as part of an enhanced DBS certificate if it is relevant to a particular application. If the recipient chooses to pay the penalty this is not an admission of guilt and so PNDs cannot be relied on as evidence in court proceedings. If unpaid after a period of time the amount is converted to a fine at 1½ times the penalty.

Is it required that the disposal is recorded on the Police National Computer? No.

iv) Fixed Penalty Notices (FPN)

Statutory basis: The powers to give fixed penalty notices are set out in a wide array of legislation.

Overview: A quick and effective alternative disposal for dealing with low-level offences. A range of different bodies will be involved in giving the FPN and different conditions will apply in different situations. Normally an admission is not required from the offender and their consent is not required in order to give a FPN.

Who may give one?

The following are just a few examples of who may give FPNs:

- FPNs can be given by the police.
- The Vehicle Operator Services Agency for certain road traffic offences (Road Traffic Offenders Act 1988, Part 3).
- The Care Quality Commission can give FPNs for certain offences under the Health and Social Care Act 2008.

What offenders are eligible? FPNs can be used for adults and in some circumstances for people under 18 years old.

What offences are suitable? Originally designed for traffic offences they can now be issued for a range of offences which are at the low end of seriousness.

Evidential and Public Interest Factors: There must be reason to believe that the offender has committed a penalty offence.

Is an admission required? No.

Is the offenders consent required? No.

Implications for the offender: If the penalty is paid the recipient discharges all liability to conviction of the offence they were suspected of committing, and it does not form part of a criminal record. However, for certain offences it may be disclosed as part of an enhanced DBS certificate if it is relevant to a particular application. If the recipient chooses to pay the penalty this is not an admission of guilt and so FPNs cannot be relied on as evidence in court proceedings.

Is it required that the disposal is recorded on the Police National Computer? No.

v) Cannabis Warning

Statutory Basis: No.

Overview: A disposal designed to free up police time to focus on more serious offences.

Who may give one? A police officer, either on the street or at a police station.

What offenders are eligible?

- They are used as part of a 3 stage escalation procedure for a first time offence of simple possession of cannabis.

- The offender must be over 18.
- They must be able to understand the process.
- The officer must be able to identify the offender's name and address.
- They should not normally have any relevant offending history.

What offences are suitable? Only possession of a small amount of cannabis, which is consistent with personal use. It is not appropriate if the offender was using the cannabis with aggravating circumstances such as in the presence of a young or vulnerable person.

Evidential and Public Interest Factors: Reasonable suspicion that an offence has been committed and that the evidential stage of the Full Code Test is met.

Is an admission required? A clear and reliable admission is required.

Is the offenders consent required? No.

Implications for the victim: N/A.

Implications for the offender: Cannabis will be confiscated. Cannabis warnings may be disclosed as part of an enhanced DBS certificate and they may be recorded on the police national computer (PNC).

Is it required that the disposal is recorded on the Police National Computer? No.

vi) Community Resolution (CR)

Statutory Basis: No.

Aim: To provide the police with a swift, effective and transparent means for dealing with less serious crime and anti-social behaviour incidents by providing a tool that enables officers to use their professional judgement to assess an offence, the wishes of the victim, and the offender's history, and decide on an outcome which best meets the interests of the victim and the wider community.

Responsible body: The police or statutory body.

What offenders are eligible? The offender needs to be able to understand the process. They should not normally have any relevant offending history. Can be used for adults and for youths.

What offences are suitable? Low level crime such as low level criminal damage, low value theft, minor assaults (without injury) and anti-social behaviour.

Evidential and Public Interest Factors: It should normally be clear that an offence has been committed and the offender must accept responsibility. However in some instances (for example where both parties have contributed to the issue during a dispute among neighbours) a no blame approach can be used.

Is an admission required? Yes.

Is the offenders consent required? Yes.

Implications for the victim: The victim should be consulted and agreement sought. A restorative approach is normally used for community resolution and effective restorative justice requires the victim's participation.

Implications for the offender: Does not form part of a criminal record but for certain offences may be disclosed as part of an enhanced DBS certificate.

Is it required that the disposal is recorded on the Police National Computer? No.

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