

Conditional cautions: An evidence review

Summary

The Government is legislating to introduce a new ‘two tier’ out of court disposal (OCD) framework, in which the new diversionary caution is substantially a like-for-like replacement for the existing conditional caution. We have produced a review and synthesis of the available research on the use of the conditional caution, in order to inform the implementation of the new diversionary caution by all police forces in 2023.

We found:

- **The conditional caution has not been used extensively since its introduction in 2004:** Uptake of the conditional caution was initially hindered by legislation which required the Crown Prosecution Service (CPS) to approve its use. Even when this changed, forces report that there remains a low uptake, alongside a steady downward trend in the overall use of out of court disposals since 2008 (available OCD data suggests 642,872 were given in 2008 compared to 151,848 in 2021).
- **The evidence on the impact of conditional cautions on outcomes is very limited and tentative:** Possibly due to their limited use, we found no evaluations which examined whether conditional cautions reduce re-offending, either when compared to offenders given other out of court disposals or offenders who were prosecuted. We found two RCTs on analogous disposals. These recorded only tentative evidence for a reduction in reoffending. There is some very limited evidence that victim satisfaction may increase when conditional cautions are used, but only where there is clear communication to and involvement of the victim.
- **Wider research indicates that it is likely that where early interventions are used as genuine alternatives to court prosecution, they can improve outcomes:** Wider research on early interventions (including those that are police-led) offers strong evidence internationally, and moderate evidence from the UK, that when early interventions de-escalate contact with the criminal justice system, they are likely to reduce reoffending.
- **However, wider research also indicates that up-tariffing can increase re-offending:** When interventions entail greater involvement in the justice system than would have otherwise been the case, such as disposals which require completion of conditions when there would have been no conditions beforehand, this evidence also suggests it can actually increase re-offending.

Despite their limited use, there are some implementation lessons from conditional cautions which are likely to apply to efforts to implement the diversionary caution: These lessons include the need for training, clear process mapping, clear eligibility criteria and the need for operations to be reviewed regularly to improve uptake and compliance.

Given the limited evidence base we found, the second briefing in this series will be looking at how conditional cautions are currently being used, and what lessons can be identified which could be of wider interest to police implementing their replacement, the diversionary caution.

Background and purpose of this briefing

Out of court disposals

Out of court disposals have been used in England and Wales for decades. The current six tier framework of out of court disposals has evolved over time and includes community resolutions, penalty notices for disorder, khat warnings, cannabis warnings, simple cautions and conditional cautions (the subject of this briefing). In general, conditional cautions have been seen as the top tier of that six tier framework, reserved for the most serious offences for which an out of court disposal would be considered.

Reform of out of court disposals

There has been long standing desire to reform the current out of court disposal framework. In 2014, a joint government and police review in 2014 indicated the current framework required substantial reform.¹ The key needs raised by respondents included:

- A simpler, more streamlined processes to aid implementation. The current framework was felt to be too complex which hindered service delivery;
- A more purposeful approach to managing offending behaviour which focuses on punishment, reparation and rehabilitation.
- An increased focus on reparation to victims. In light of that view, respondents highlighted that conditional cautions in particular could be used more as they offered a clear way to expand the use of reparative interventions and restorative justice.

As a result of this consultation, a tier two framework was proposed, supported by the National Police Chiefs Council strategy for 2017 to 2021². In 2020, the Government published a Sentencing White Paper, which included a commitment to legislate to introduce a two tier system. The subsequent Policing, Crime, Sentencing and Courts Bill (currently before Parliament) will introduce only two types of statutory out of court disposal in order to simplify the framework— a diversionary caution and community caution³. It is likely that police forces will also continue to be able to use non-statutory disposals such as the community resolution.

The new diversionary caution replaces the conditional caution but is, in essence, very similar. Like the conditional caution, it is a statutory caution upon which rehabilitative, reparative or punitive conditions must be attached. These conditions have to be completed within an agreed timeframe⁶. If they don't comply, the offender may be prosecuted for the original offence.

Purpose of this briefing

This briefing is the first of a two-part briefing series on the use of conditional cautions in England and Wales, developed in anticipation of the implementation of the new two tier out of court disposal framework by all police forces in 2023. These briefings are designed to provide useful summaries for practitioners of the evidence and practice base for conditional cautions to date, in order to support for the successful implementation of the new disposal.

This briefing provides an overview of the origin of the current conditional caution used in England and Wales, its operational history and a synthesis of the available research evidence on its use. The second briefing will be informed by current uses of the conditional caution and will explore practical in its use. This work fits within our broader work on early interventions in the criminal justice system, including diversion and out of court disposals.

The use of conditional cautions

The purpose of conditional cautions

Conditional cautions were introduced for adults in the Criminal Justice Act 2003, and came into force in July 2004. They were intended to provide quick, effective and proportionate sanctions for low-risk offending, which also take into account the needs of the victim⁴. In general, conditional cautions have been seen as the top tier of the existing six tier framework, reserved for the most serious offences for which an out of court disposal would be considered.

Where there is sufficient evidence to charge an offender, but where an authorised person (usually a police officer) decides that a conditional caution is appropriate (in line with the existing Code of Practice), criminal proceedings for that offence are halted while the offender is given an opportunity to comply with the conditions. Where the conditions are complied with, the prosecution is not normally commenced. However, where the offender fails to comply without a reasonable excuse, criminal proceedings may be commenced for the original offence. In this case the conditional caution will cease to have effect.

Eligibility criteria

Conditional cautions can only be given when the offence has been admitted and the offender agrees to comply with the conditions.⁵ This type of disposal is aimed mostly at addressing lower level summary offences, where it is not in the public interest to prosecute. A range of offences are excluded including all indictable only offences⁶. Domestic abuse offences and hate crime are not routinely considered. However in rare cases they may be deemed appropriate and require specific protocol to be followed⁷.

Although conditional cautions can be issued to the same offender multiple times, guidance suggests that this should be avoided if there is a pattern of offending behaviours.⁸

Types of conditions

The conditions that can be attached to a caution are designed to be either rehabilitative, reparative and/or include a financial penalty. The available adult guidance provides examples for practitioners on the type of conditions that can be set⁹;

- **Rehabilitative conditions:** These conditions focus on improving emotional well-being, health and social functioning and tackling the root causes and triggers leading to offending behaviour. They can include substance misuse interventions, anger management courses and debt management support.
- **Reparative conditions:** Reparation focuses on making good any damage or loss incurred to the victim. This could include for example, repairing property damaged during the offence.
- **Punitive conditions:** A punitive condition requires the offender to pay a financial penalty.

These conditions need to be completed within an agreed timescale.

The operational use of the conditional caution

Uptake of this disposal was hindered on its initial roll out, when legislation stated that the CPS was required to approve the cautions, resulting in a more complex implementation process¹⁰. Although this policy has changed and the police can now independently use conditional cautions, there remains a low uptake. There has been a steady downward trend in the overall use of out of court disposals since 2008, however specific disaggregated data on the use of conditional cautions remains unavailable¹¹. According to the available data, in the year ending 2017, 92,925 cautions were given, representing 38% of all disposals¹². However, it is not clear what proportion of these were conditional cautions.

Despite the effort devoted to providing practitioners with clear guidance, practitioners have faced difficulties in implementing conditional cautions and there have been mixed views regarding their use. Concerns highlighted have included a lack of procedural consistency between force areas, poor data recording and a lack of practitioner knowledge in this area.¹³ A thematic inspection highlighted that many police officers had poor knowledge of the guidance on each type of disposal, which had led to inconsistencies in their use between local areas.¹⁴ Patchy data recording on out of court disposals also made it difficult to identify patterns and trends on the use of the particular disposals.

The evidence base on conditional cautions

Methodology

We carried out a rapid literature review to synthesise the available evidence in this area. Our main review question was What are the impacts of conditional cautions on the following outcomes: (i) *reducing reoffending in adults*; (ii) *improving victim satisfaction* (iii) *improving health outcomes (in particular substance misuse)*; and (iv) *criminal justice processes and costs*. We were also interested whether the evidence suggested that conditional cautions were 'beneficial' for particular groups of offenders.

Alongside identifying evidence about the impact of conditional cautions, we were interested in whether the literature identified any practical lessons for the implementation of the conditional caution. We were especially interested in this question, given the relatively limited use of the conditional caution since its introduction in 2004 and the forthcoming implementation of the diversionary caution in 2023.

A range of journals and grey literature was searched and articles over 20 years old were excluded. Our search terms included the following terms in combination with our outcomes of interest: 'adult conditional caution', 'adult disposal', 'prosecutor led diversion', 'reparative conditions' and 'rehabilitative conditions'.

Impact on outcomes

Reducing reoffending

Our search found no evaluations to our knowledge, which specifically examined whether conditional cautions in England and Wales reduced re-offending, either when compared to offenders given other out of court disposals or offenders who were prosecuted.

However, our search did find a small number of relevant evaluations on similar approaches. There are two relevant randomised control trials of two police-led projects in England and Wales, wherein offenders were assigned to an out of court disposal with conditions attached as the treatment arm or to court prosecution as the control arm. These were evaluations of Operation Turning Point, a project run in the West Midlands Police between 2011 to 2013,¹⁵ and of Checkpoint, a similar scheme operated by Durham Constabulary.¹⁶ Both these studies are relevant as, while they did not examine the impact of conditional cautions specifically, they did look at the impact of the use of an out of court disposal with conditions attached, in which non-compliance would have resulted in prosecution, which is similar to how conditional cautions work.

The Turning Point evaluation found the project "produced a reduction on the prevalence and frequency of offending but not at a level of significance sufficient to be confident that it was not a chance finding."¹⁷ The Checkpoint evaluation found similar initial evidence for a reduction in reoffending in the treatment group, in terms of prevalence and risk of reoffending, however further statistical testing found this result was also possibly due to chance. The eligibility criteria for the scheme was different to a typical conditional caution, with the acceptance of 'moderate risk' offenders. The trial also suffered from a significant loss in the treatment arm, negatively affecting the findings.¹⁸

In addition, we found an evaluation which examined the impact of a two tier out of court disposal framework on re-offending. The evaluation compared a number of police forces using the six out of court disposals to a number of forces using a simplified framework of two out of court disposals— in this case,

community resolutions and conditional cautions. The evaluation looked at whether the re-offending rates of all the offenders who passed through these two different frameworks contrasted and found there was no significant difference in reoffending rates of offenders passing through these two charging frameworks.¹⁹ Again, this evaluation did not isolate the particular impact of the conditional caution on re-offending rates.

Finally, our search identified an evaluation for implementation of the Cambridgeshire and Peterborough conditional caution scheme. Findings suggested that 84% of offenders within this scheme were successfully diverted from prosecution, reducing the costs associated with further processing and achieving better support for offenders.²⁰ The evaluation found tentative evidence that their scheme may be less effective for those with theft offences and/or three or more convictions. Analysis suggested that offenders with these profiles had a lower compliance rate than those without theft offences and less than three previous convictions.²¹

Victim satisfaction

Our search found one study which mentioned whether conditional cautions in England and Wales improved victim satisfaction. However, this study was not an outcome evaluation and did not compare victim satisfaction rates between those involved in conditional cautioning and those involved in other disposals. However, this study by HMIC and HMCPS, published in 2011, reported that a small number of victims (10 out of 11) reported that they were satisfied or extremely satisfied on the outcome of conditional cautions.

Although limited in by sample size and experimental design, a helpful outcome was the suggestion that a key factor in victim satisfaction was consultation with victims before decision making and keeping them updated during the process²². This was echoed by Turning Point findings, where victims expressed a need for effective and sensitive communication during the process²³. Victims interviewed as part of a Ministry of Justice OOCDC pilot evaluation reported that clear communication from agencies was important, as well as the option of involvement in the process of setting conditions²⁴.

Impact on substance misuse

Our search found no evaluations which focus specifically on the impact of conditional cautions on substance misuse.

Criminal justice processes and costs

We found very little evidence specifically on the impact of conditional cautions on criminal justice processes and cost savings. From our search only findings from Operation Turning Point highlighted the costs involved in processing conditional cautions. Turning Point findings suggested that processing conditional cautions were 45% less compared to court prosecution²⁵.

Specific groups

Evidence and reviews such as the Corston Report (2007) have suggested that, due to the different needs of women, the use of out of court disposals for non-violent women offenders²⁶ which divert them away from prosecution are beneficial. This is due to a range of reasons; including reducing the impact on childcare commitments and finding more supportive ways to address vulnerabilities, such as coercive relationships which may have contributed to offending behaviour²⁷. Our search found that a female-focused conditional caution with a rehabilitative condition was introduced in 2008 (called the women specific caution or WSC). An evaluation of the women specific caution could not provide conclusive results regarding its effectiveness, but tentatively suggested that, for those who accepted support as part of the WSC, there were associated social, mental health and reduced substance use benefits.²⁸

Wider research

While the evidence on conditional cautions is limited, there are a number of studies that speak to some of our research questions in the context of non-prosecution disposals (informal diversion and statutory out of court disposals) more generally. Our previous work in this area, includes an evidence summary, published in 2019, titled *'Pre-court diversion for adults: an evidence briefing.'* In brief, this review found that, where early interventions de-escalate contact with the criminal justice system, there is strong evidence internationally, and moderate evidence from the UK, that pre-court diversion reduces reoffending. Moreover, we found that there is moderate evidence that pre-court diversion reduces the costs to the criminal justice system and promising evidence on the impact of pre-court diversion on victim satisfaction.

We also found wider evidence on what works to reduce reoffending that suggested that pre-court diversion may be particularly applicable for specific groups of individuals, most notably vulnerable women, young adults, and individuals with substance misuse and mental health illnesses, although there is little specific UK evidence that isolated the impact of pre-court diversion on these groups.

We also found, however, that this type of early intervention could potentially backfire. We found evidence, for example, that some schemes led to net-widening, a term that describes the complex process whereby individuals are drawn further into the criminal justice system than they otherwise would have been. We also found evidence that some early interventions could be implemented in such a way where they led to 'overdosing,' giving people overly intensive interventions which offenders may struggle to complete. Lastly, by using and enforcing conditions too stringently, we highlighted evidence that this 'net-tightening' could lead to similar backfire effects.

Implementation lessons

From the limited literature we found, we have been able to identify a small number of implementation lessons. However, given the limited use of conditional cautions, and the paucity of evaluations of their impact, these lessons should be treated with caution.

Effective involvement of and communication with victims

A number of studies we identified suggested that a key factor in maximising the satisfaction of victims involved in cases in which offenders are given a conditional caution is consultation with victims before the caution is given and keeping them updated during the process.²⁹ For example, a study on Operation Turning Point found victims expressed a need for effective and sensitive communication during the process³⁰. Victims interviewed as part of a Ministry of Justice OOCDC pilot evaluation reported that clear communication from agencies was important, as well as the option of involvement in the process of setting conditions³¹. Evidence suggests that victim satisfaction may improve when consistent, informed and sensitive communication takes place between the victim and professionals.

Offender eligibility

Evidence suggests that implementing effective screening tools when considering OOCDCs may prove useful to screen out inappropriate cases for conditional cautions such for high risk offenders. Embedding screening tools in practice may also help improve consistency in approaches across forces.

Condition setting and monitoring

Neyroud has highlighted that having a more standardised approach to the process of condition setting and monitoring may also reduce inconsistency between officers and force areas. The use of discretion may result in inappropriate conditions being set, ultimately reducing the effectiveness of the use of cautions³². Using a reflective approach to understand why conditions are set and strong management oversight may lead to more robust ways of working.

The need for training

The evidence reviewed suggested that regular joint agency training is potentially beneficial in providing guidance in good practice for all criminal justice professionals. Among the particular training focuses mentioned, particularly highlighted was the importance of training in effective decision making processes and eligibility criteria, which may impact the effectiveness of conditional cautions³³.

Data recording

Data recording which disaggregates conditional cautioning data from combined OOC data sets is essential to monitor effectiveness and inform further research³⁴. This would provide a clearer picture of the specific use of conditional cautions and highlight patterns and trends, further informing service priorities.

Process reviews

Lessons from the early implementation of conditional cautions in the 2000s suggested that regularly reviewing administration processes could be helpful in increasing the use and effectiveness of conditional cautions. This may reduce the requirement for bail and the perceived administrative police burden.³⁵

Lack of evaluations

As we have found, others have noted that the evidence base specifically on the effectiveness of adult conditional cautions is limited, due to a lack of high quality evaluations on the topic. A number of reasons have been suggested for why this is. First, in respect of RCTs, administering randomisation in criminal justice settings can be difficult due to the ethical challenges, financial and logistical burden.³⁶ Wiesbech and Neyroud (2011) highlight that cultural shift is needed to embrace scientific enquiry within the criminal justice arena, as there is often organisational and systemic resistance to these experimental methods³⁷. The introduction of the new framework provides a useful opportunity for future evaluations which should not be wasted.

Endotes

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