

THE MAGISTRATES' ASSOCIATION

YOUTH COURTS COMMITTEE

RESPONSE

Youth Conditional Caution Code of Practice for 16 and 17 Year Olds

Thank you for giving the Magistrates' Association the opportunity of commenting on the draft code of practice for Youth Conditional Cautions for 16 & 17 year olds. This appears to be a balanced document which gives a clear indication of what is expected. One point we would like to make is that without the DPPs guidance to the CPS, it is difficult to fully understand how the two will work together.

Introduction

The introduction of the Youth Conditional Caution may lead to savings in the public sector but at what cost? Our reservations are shown below. The workload of the youth courts may be further reduced and youth magistrates need to be convinced that the most effective disposals are given by suitably trained authorised persons to the most appropriate young people.

2. Objective of Youth Conditional Cautioning

2.1 It is "an out-of-court disposal aimed at reducing the number of young offenders taken to court". This begs the question of when it is desirable to avoid taking a young offender to court. It is the usual balance of avoiding unnecessary criminalisation against accepting unacceptable behaviour.

5. Deciding Whether a Youth Conditional Caution Should be Given

5.4 The reasons given by the prosecutor for choosing a caution rather than prosecuting the youth should not just be logged but there should be a system in place requiring the prosecutor to justify the decision to a senior officer. The reasons would be useful reference if, in the future, the young person does not comply with the caution and ends up in court.

5.5 This mentions that only one conditional caution should be administered "unless there are exceptional circumstances". We have found nothing in the Act that allows for this eventuality. However, in any case we would wish to resist this, particularly as the exceptional circumstances are rather vaguely defined. Are they defined by personal, social, legal or community based circumstances?

5.6 We are concerned at this bundling together of offences - if there is a large number of offences then surely the matter should be brought to court. This practice should be resisted, particularly as the allowable conditions are again rather vague allowing the prosecutor the responsibility. Each offence should be considered separately and only combined with others if there is a logical reason and all parties agree (CPS, YOT and the police).

6. Referring Cases to the Prosecutor and Youth Offending Team (YOT)

Timescales - to have a meaningful effect the caution should be administered no later than 7 days after the offence has been committed or the person arrested and charged with an offence.

6.1 We are pleased that the YOTs will have a major role BUT we need to be assured that there will be more resources made available to enable them to carry out these additional tasks to a satisfactory standard. A rushed approach will help no-one especially not the young person.

6.4.3 There may be tension between early administration and proper victim consultation/involvement.

6.8 This mentions charging the youth and then staying the process. Would this not be confusing for the young person?

7. Types of Conditions

We do not like the word "damage" in section 7.1 when referring to reparation.

7.1 & 7.2 Professionals are trained for years to be able to deal with 'Behaviour Modification'. We are content if this is referring to programmes such as substance misuse but YOTs will need to be staffed with appropriate professionals (e.g. psychologists etc) - if a *range of interventions* is to be made available. What are these interventions? (We would like to make the same point about training with regard to 8.2.)

7.3 This mentions payment being paid to an appropriate local charity or community fund. How would this be administered and who would ensure that funds would be going to the right people? Is this a fine or a reparation payment? Who will be collecting and enforcing these payments - will parents be responsible for the payments? We are aware that approximately 50% of adult financial penalties remain unpaid and we also have concerns about ability to pay.

7.5 Conditional cautions should be positive not negative - if the prosecutor is considering conditions to prevent the youth from contacting individuals, visiting certain locations or participating in particular activities then perhaps an ASBO is the answer. We would not want cautions to be used as a quick route to an ASBO!

7.6 Refers to the future behaviour of the youth. If the youth commits further offences then they should be dealt with appropriately. Surely a condition should be telling the youth what they should be doing and not what they should not be doing otherwise we are back to ASBO type conditions. This is again the difficulty with the conditions mentioned in 8.6.2. 7.6 implies that it is acceptable to commit further offences after a specified period!

8. Selection of Appropriate Conditions

8.2 Please see above 7.1 and 7.2 – Staffing must be adequate to allow prosecutors to *apply a problem solving approach*.

8.4 This should specify the time period as mentioned in 8.5.

8.5 Presumably not many either-way offences would be appropriate for a Youth Conditional Caution?

9. Conditions with a Financial Element

Any financial penalty must be discharged within the period of the caution. A minimum weekly payment rate will be set by the person administering the caution.

9.7 Payment of money should be achievable within a year and this is not mentioned.

10. Involvement of Victims

10.1 Who will seek the views of victims? YOTs again? If yes, this raises the issue again of additional resources.

11. Making the Offer of a Conditional Caution

11.2 This again raises the question of how these various disposals are recorded, both locally and nationally. Is it going to be possible to receive one Youth Conditional Caution in Cambridgeshire and another in Cheshire, because the Police National Computer is not set up correctly?

A YOT officer should be present when the authorised person administers the conditional caution. The authorised person allowed to administer the caution should be a minimum grade of Police Sergeant / Senior YOT officer / Senior CPS Prosecutor.

12. Administration of the Youth Conditional Caution

12.4.8 It would be an improvement if the requirement to notify the YOT of a change of address was made in advance of the move.

13. Monitoring and Compliance

The question of prosecution if the conditions are not fulfilled in any way should be strengthened. For example in section 13.8 the last sentence states "It will not usually be appropriate to revise conditions more than once". We think that the word "usually" should be deleted.

16. Recording and Citing Conditional Cautions

16.2 Cautions SHOULD be available to all subsequent court proceedings - even if the young person receives a Caution in one area and appears in a court in another area.

We agree that revision of terms should not take place more than once.

Will there be extra training for those involved in administering conditional cautions? We are, of course, aware of financial restrictions on budgets.

May 2009