



Wales Safer Communities Network response to: Ministry of Justice Diversionary and Community Cautions: Draft Code of Practice

Closed 13 October 2023

Response submitted via the online survey.

Questions:

1. Are you an 'authorised person' representing a prosecution agency that issues OOCs?

No

If yes, please specify the agency you represent and how the new framework will impact you.

Not applicable

2. Do you agree or disagree that the Code of Practice strikes the right balance between providing a clear framework for decisions and individual case flexibility? (please explain your answer)

Neither

The Code of Practice does appear to provide the right balance of a clear framework and case flexibility; however it was felt that there was a lack of information or detail when it came to frequent offenders and how they may need to be treated, or the process for fines especially when unpaid and how would interact with the court systems. There appeared to be no links formed with other areas of concern which may have crossover such as Offensive Weapons, Modern Slavery and Safeguarding (especially where a child or vulnerable adult is involved either as a victim or perpetrator).

3. Do you agree or disagree that the guidance on the relationship between the Community Resolution, Community Caution and Diversionary Caution, and their respective use is clear in the Code of Practice? (please explain your answer)

Agree

At the workshop that the Wales Safer Communities Network ran it was shared that the respective use for the Community Resolution, Community Caution and Diversionary Caution was clear to those in attendance. However, they also voiced concern at the lack of information around restorative justice and how it could link in and not just as an assessment for suitability being a condition of one of the Cautions, it was seen as a fourth method within the Out of Court options.

4. Do you agree or disagree that there is an appropriate level of emphasis in the Code of Practice on a) victim involvement? b) victim satisfaction?

(please explain your answer)

a) Disagree

The opinion of the workshop members was that whilst the involvement of victims in the initial decision making was fairly clear, there did not appear to be anything in relation to keeping the victim informed whether a successful outcome or not. If a Diversionsary Caution fails, then the victim may be required to provide evidence in Court but there was nothing about informing the victim of this potential change or once a decision is made. There is an opportunity for the Cautions to be amended in discussion with the perpetrator, but this did not appear to be the case with the victim, and that once they agreed they were then dismissed from the process.

There may also be something that needs to be included around engagement when one or more of the victims is under the age of 18 and how they may be engaged in the process alongside an advocate or responsible adult.

b) Disagree

As mentioned in the answer to part a, at the workshop it was felt that once the decision was made by the victim to go down the Out of Court Disposal route that they were no longer part of the process. That they were not informed if there was a successful completion of the conditions or if there were any changes or failure. There was also concern raised around the potential for compensation not being paid and the limited options this then leaves the victim were not clearly laid out, especially when a Community Caution will be used.

5. For Community Cautions (lower tier), the Police, Crime, Sentencing and Courts Act 2022 specifies that they may be issued for any offence other than an excluded offence (defined as an indictable-only offence, or an either-way or summary only offence prescribed in regulations). We have proposed retaining the excluded offences that limit the use of existing Simple Cautions. Do you agree or disagree with this approach?

Agree

Please specify your proposed additions, removals, or amendments to the excluded offences for Community Cautions and reasons for suggesting these.

We agree with the current list but think that there are two additional categories missing, both of which we have mentioned previously in this response. The first is carrying or handling of Offensive Weapons, such as knives and blades, but may also include items such as fireworks (where firearm legislation doesn't apply) which are used as either a weapon or threatened to be used as a weapon. The second is modern slavery and exploitation which we do not think would be appropriate for consideration by the police for an out of court disposal solution.

6. We have proposed an amended financial penalty structure for the new cautions. What is your view on this structure? (Please explain your answer)

Members who took part in the workshop were not sure of how efficient the use of financial penalties was and how it enabled any learning that would lead to changes in future behaviour.

7. In regard to the repeat use of cautions, would you make any amendments to the proposed specifications detailed in the Code of Practice?

Yes

If yes, please specify what changes you would make and why.

We think that there should be a limit to the number of repeat cautions that can be issued, or risk them being seen as a light piece of paper or something to brag about as was seen with ASBOs. The suggestion from the workshop was that whilst there may be different causes and different conditions due to changes in circumstances it should not be an option for an individual to collect multiple cautions for similar behaviours.

8. In accordance with Part 5 of the Code of Practice, the decision to issue a caution should be countersigned by an Officer not below the rank of Sergeant (or Police staff supervisor equivalent). Do you agree or disagree that this rank of seniority to issue a caution is appropriate?

Agree

This was seen as an appropriate rank to countersign, and for the more senior authority to be required for if a Diversionsary Caution was being considered for an excluded offence.

9. Some Police Forces have centralised OOC teams, which employ Police staff (rather than Police Officers). To reflect this, the Code of Practice uses the term 'Police staff equivalents'. In your view, is this term clear and workable?

Yes

If you selected no, please explain your answer, and suggest how this could be improved.

Though we have said yes, we think consideration should be given to the recording of any training or experience which allows them to be 'equivalents' in this way.

10. The Code of Practice sets out a requirement for compensation payments to be achievable.

a) Do you agree or disagree that this requirement is sufficient? (please explain your answer)

Agree

The requirement as laid out in the Code of Practice appears to be sufficient for the application as a possible condition within a Caution.

b) Do you agree or disagree that setting an upper limit for compensation payments would be preferable? (please explain your answer)

Neither

The opinion of those who attended the workshop was that there was limited chance that an offender would pay compensation, and especially if the amount was higher than what they could be fined for non-compliance with the condition.

11. Do you agree or disagree that the distinction between the cautions admission requirement and the full code test (of the Code for Crown Prosecutors) is made clear in the Code of Practice?

Neither

Please provide any suggestions to make this distinction clearer.

The admission of guilt as part of the Cautions appears to be clear in the guidance and how it can be used in court if a Diversionary Caution fails and prosecution proceeds. Where the guidance may fall down is that even with the admission of guilt in the Caution that the full code test has to be carried out and a decision can be made not to proceed with the case. It was not clear how the victim would be kept informed or how that would fit with holding offenders to account and encouraging and enabling behaviour change to prevent future instances and offences.

12. Do you agree or disagree that the requirement for and method of reporting the use of cautions should be mandated more strongly in the Code of Practice? (please explain your answer)

Agree

The use of cautions should form part of the regular reporting and scrutiny by the PCCs and the Police and Crime Panels, and it may be appropriate for them to be part of the scrutiny of cases under the Community Scrutiny Panel's (Framework for which is currently being consulted on by the Home Office). The use of the Community Scrutiny Panel's may be especially important if there are certain demographics where Cautions are being used more frequently, especially given the proposal is that they will have a role in scrutinising decisions on stop and search.

13. When offering, explaining, and administering a caution, are there other accessibility considerations that the Code of Practice should include other than those already stipulated? (Please explain your answer)

Yes, the need for more detail around speech and language considerations including different languages including British Sign Language or Makaton, and how to manage when an offender may not understand the conditions due to language or other communication barriers including dyslexia or cognitive or memory loss conditions.

14. From an operational perspective, are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects?

Yes

If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to accommodate operational practicalities.

Please see our response to previous question in regard to adult victims, multiple offences, accessibility, and excluded offences. In addition, we think that from an operational perspective it would be helpful to include detail for if a victim is under the age of 18 and how their views along with a parent or guardian should be taken into consideration and if and how advocacy can be used on behalf of the child or young person.

15. Do you agree or disagree that the following annexes in the Code of Practice are clear and helpful:

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| • Annex A: Disposals comparison | Agree |
| • Annex B: Principles for Domestic Abuse Diversionary cautions | Agree |
| • Annex C: Excluded offences | Agree |
| • Annex D – Example conditions | Agree |

If you disagree, please specify how the annex(es) could be made more helpful.

Not applicable

16. Are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects for individuals with protected characteristics?

Yes

If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to address these concerns or adverse effects.

As previously mentioned, it was felt that the following were not clearly covered in the Code of Practice:

- Disability: How to manage when a victim or offender has communication (speech and language) or cognitive or memory issues that may impact on their ability to engage effectively in the process.
- Welsh language: The option for the Welsh language to be used in Wales as part of the Welsh language legislation is not mentioned within the code.
- Socio-economic: is a characteristic within Welsh legislation and therefore should be taken into consideration. In the instance of the Code of Practice this could be linked to those who are socio-economically deprived having less opportunity to be able to pay compensation and fines which may need to be taken into consideration and could lead to a disproportionate being put into the criminal justice system rather than managed through the Out of Court Disposal process.
- Gender: If the reason for the Caution is due to hate or harassment then as per all the information about Violence Against Women and Girls (aside from Domestic Abuse which is covered in an Annex) and therefore the risk of more victims being female may need to be considered and how to ensure the Caution route is not being taken due to coercion and fear/pressure.
- Age: As mentioned previously there is little to no information in the Code of Practice for if the victim is under the age of 18.

17. In your view, are there any parts of the Code of Practice (not already covered in previous questions) that need greater clarification?

No

If so, please specify which part of the Code of Practice requires greater clarification and why.

We have provided information in the other questions.

18. What other comments, if any, do you have that have not been covered in the previous questions throughout the document?

The workshop participants were on the whole positive about the implementation of Diversionsary and Community Cautions. However, there was an additional challenge identified regarding the training that will be provided. There is a need for training to be high quality and to ensure there is consistency across organisations and between ranks and police staff who will be involved in the process. If the training is not appropriate, then there is a risk for conditions to either be too lenient or setting people up to fail. As such this is an area our members felt needed consideration to ensure consistency and transparency across England and Wales.

There could also be a need for information and knowledge sharing of good quality evidence-based diversionsary support that offenders may be able to access as part of any conditions (for example Women's Pathfinder and Checkpoint) to have less possible reliance on punitive responses (such as fines). These options may differ for those in Wales to England and between force areas.

About you

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