



<u>Policy Title</u>	Cautioning Adult Offenders
	Simple Caution - Home Office Circular 30/2005
<u>CCMT Sponsor</u>	ACC Specialist Operations
<u>Department/Area</u>	Criminal Justice
<u>Section/Sector</u>	Headquarters

1.0 Rationale

1.1 **HOC 30/2005 replaces HOC 18/1994 on the cautioning of adult offenders, which is hereby cancelled.**

1.2 Simple caution

This policy aims to encourage consistency in the use of cautioning for adult offenders in line with current legislation and Home Office guidance. The accurate use of and recording of cautions can contribute to improved public confidence in the criminal justice system and also contributes towards reducing the likelihood of re-offending.

2.0 Intention

2.1 The intention of this policy is to:

- Provide updated guidance on the use of Simple Cautions
- Clarify how the Charging Scheme has affected this disposal.
- Give a clear outline of the practical process of administering a simple caution
- Ensure the accurate recording of this disposal.

3.0 General Principles

3.1 A Simple Caution (previously known as a formal caution is now renamed to distinguish it from a Conditional Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low level offences where the public interest can be met by a Simple Caution. The administration of a Simple Caution for a recordable offence (requires CID1) is treated as a sanction detection and an offence brought to justice (OBTJ) providing the Home Office Counting Rules for crime detection criteria are met. General Rules Detections Section H.

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- 3.2 With the introduction of the statutory charging scheme, decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging (the Director's Guidance).
- 3.3 **The police retain the authority to issue a Simple Caution in all cases other than those indictable only offences which meet the Threshold Test, as outlined in the Director's Guidance** (these must be referred to the Crown Prosecution Service).
- 3.4 Police can take early advice from the CPS at any point in an investigation on disposal options as appropriate. The Director's Guidance states that "an investigating officer may wish to consult with a Crown Prosecutor in respect of any case where it is proposed to deal with an offender by way of a [Simple or Conditional] caution, reprimand or final warning."
- 3.5 Simple Cautions are a non-statutory disposal and the opportunity exists for police to exercise discretion in deciding to use them. Therefore it is not possible to set out definitive rules on the circumstances in which Simple Cautions are appropriate (for example that first time offenders should always be cautioned or particular offences should always result in a Simple Caution only). The questions to consider in each case are;
- whether a Simple Caution is appropriate to the offence and the offender;
 - whether a Simple Caution is likely to be effective in the circumstances.
- 3.6 The aims of the simple caution are:
- To deal quickly and simply with less serious offences;
 - To divert offenders where appropriate from appearing in the criminal courts; and
 - To reduce the likelihood of re-offending.

4.0 Simple Cautioning Process

Criteria for a Simple Caution

- 4.1.1 In considering whether a Simple Caution is appropriate, a police officer must consider the following facts:
- Is there sufficient evidence of the suspect's guilt to meet the Threshold Test. The Threshold test is '*a requirement of an overall assessment there is at least a reasonable suspicion against the person of having committed the offence*'. As detailed in the Director's Guidance the evidential decision in each case will require consideration for a number of factors including: the evidence available at the time and the likelihood and nature of further evidence being obtained.
 - Is the offence indictable only (and the available evidence meets the Threshold Test)? If the answer is 'yes', this disposal option must be referred to a Crown Prosecutor.

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- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? An admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to provide a realistic prospect of conviction. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation. A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered).
- Do the public interest factors support the use of a Simple Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors, which is a public document and is available on the CPS website: www.cps.gov.uk and as Appendix A to this document.
- Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the disposal;

4.1.2 If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution. A simple flow chart can be found at Appendix B.

Aggravating or Mitigating Factors

4.2 Gravity Factors

4.2.1 A Gravity Factors Matrix has been provided to assist Custody Sergeants in their decision making process. Custody Sergeants should use the Matrix (which is available on the Criminal Justice Website) to determine the seriousness of the offence and to decide on an appropriate means of disposal. As the matrix makes clear, the questions to be asked in determining the seriousness of the offence are:

- Are there any aggravating factors involved?
- Are there any mitigating factors involved?

4.2.2 If the answer to either question is yes, then the seriousness of the case will either increase or decrease by one level. The seriousness of an offence is initially determined on a scale between 1 and 4 (with 1 being the least serious). This can only increase or decrease by one level, regardless of the number of aggravating/mitigating factors. This is because the highest severity available is level 4, so additional factors cannot be added on indiscriminately. If there is one of each (aggravating and mitigating), they simply cancel each other out.

4.2.3 Once a decision is reached, the decision and the decision-making process (including mitigating and aggravating factors considered etc.) must be clearly recorded within the custody record (PAC41d decision page for CCHS/detention log for NSPIS).

4.3 Recording the admission

4.3.1 In order for there to be an adequate record of an independent admission of the offence, the details of the admission could be recorded by any of the following methods (which must be PACE compliant):

- a tape recorded interview;
- a record of the admission in the officer's notebook and signed by the suspect as an accurate record. This could cover any statement made by the suspect on arrest, or whilst in the police station after being cautioned;
- a contemporaneous interview under caution could be conducted in the absence of the suspect making a voluntary statement of admission, or for clarification where the statement does not meet the required evidential standard. The notes should be fully documented.

4.4 The Victim

4.4.1 Before any of these disposals can be applied, it is important to try to establish:

- the views of the victim about the offence;
- the nature and extent of any harm or loss, and its significance, relative to the victim's circumstances;
- whether the offender has made any form of reparation or paid compensation (although this would not be appropriate in some cases, such as offences of violence). Police officers should not become involved in negotiating or awarding reparation or compensation.

4.4.2 If a situation arises where a victim is prepared to make a full statement, which could be used to support a prosecution, and this is considered to be the most appropriate course of action, officers should refer to guidance on prosecutions. However if a caution is being considered as a more appropriate disposal, the reasons for this should be explained to the victim and the consequences of the caution outlined.

4.4.3 The fact that a victim declines to support a prosecution (NCRS Rule D4) should not preclude the consideration of a Simple Caution.

4.4.4 Where there is a decision not to proceed with a prosecution but the case is still suitable for a Simple Caution, the victim may be asked if they will affirm their support for a Simple Caution as a suitable method of disposal. In these cases the victim could be asked to give a statement confirming the facts of the offence and stating in their own words that they are not prepared to support a prosecution through the courts, but would be satisfied if the matter was dealt with by way of a Simple Caution.

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- 4.4.5 In some cases where a Simple Caution might be appropriate because of an admission, prosecution may still be required to protect the victim from further attention from the offender, and/or because the offence is too serious. The CPS operates a pro-active policy on certain types of offence, which encourages prosecutors to proceed with cases, even where the complainant does not support the prosecution.
- 4.4.6 In all circumstances where the views of victims are sought, care should be taken to ensure they are aware that although their views will be taken into account, they will not necessarily be conclusive to the outcome, as the final decision is at the discretion of the police and/or the CPS.
- 4.4.7 The victim must always be kept informed of the final outcome of the case and informed that the case has been detected.

4.5 Other Considerations

4.5.1 *Does the suspect have any other cautions for similar offences?*

Both national (PNC) and any locally held records (CIS/Process) must be checked before a Simple Caution is given, to ensure that the suspect's criminal record is known and up-to-date and to avoid inappropriate use of a Simple Caution. CIS holds records of all cautions for criminal offences and non-recordable traffic offences if the person already exists on CIS (24hr access). ACJ Process holds a record of all cautions (available 08.00-17.00hrs Monday to Friday).

- 4.5.2 If the suspect has previously received a caution, then a further Simple Caution should not normally be considered. However, if there has been a sufficient lapse of time to suggest that a previous caution has had a significant deterrent effect (two years or more) then a Simple Caution can be administered.
- 4.5.3 A Simple Caution can also still be administered if the subsequent offence is trivial or unrelated, or as part of a mixed disposal (as explained in paragraph 5.1.2).
- 4.5.4 If the suspect has previously received a Reprimand or Final Warning, a period of two years should also be allowed to elapse before administering a Simple Caution.
- 4.5.5 ***Has the suspect been made aware of the significance of a Simple Caution?***

If a Simple Caution is being considered, then the full implications must be explained to the suspect (see paragraph 4.8). Under no circumstances should suspects be pressed, or induced in any way to admit offences in order to receive a Simple Caution as an alternative to being charged. The suspect needs to be made aware the crime will be shown as detected against their name.

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4.5.6 *Has the suspect given informed consent to being cautioned?*

If the suspect does not consent, then police may choose to continue with a prosecution. Officers must avoid any suggestion that accepting a Simple Caution is an "easy option". Similarly, every effort must be made to avoid any suggestion of the suspect being coerced into accepting a Simple Caution.

4.5.7 A Simple Caution should not be viewed as an appropriate method of disposing of offences by serving prisoners. It may be appropriate to carry out interviews in prison in exceptional circumstances (e.g. where an offender admits responsibility for a previously recorded crime where forensic or other substantial evidence exists which links the offender to that crime) or to gather intelligence. Officers should refer to the [Post Sentence Interview Protocol](#) which is available on the intranet Policy and Procedures site.

4.5.8 Officers should give careful consideration before deciding to take no further action (NFA) or deciding 'detected no proceedings' in a case which might otherwise meet the requirements of a Caution. Taking no action or giving an informal warning or DNP is not recorded or shown as an offence brought to justice and can have a negative impact on efforts being made to raise confidence in the criminal justice system for both victims and the general public.

4.5.9 Where a decision is made to caution an offender, where CPS have previously indicated it is 'not in the public interest' then this needs to be recorded on the custody log and ultimately on the notes field of CEDAR.

4.6 Making the Decision

4.6.1 When considering the suitability of an offence for disposal by Simple Caution, the decision should be referred to the Custody Sergeant for approval. This officer must be unrelated to the investigation of the offence.

4.6.2 When the Custody Sergeant has reached a decision in favour of issuing a Simple Caution, they should record this within the custody record decision form or detention log, to say that they have approved this as the appropriate method of disposal (see para 4.2.3). The decision maker needs to show they have considered the offenders previous convictions and caution history together with potential aggravating factors. The history of the disposal decision must be fully documented. Where unusual decisions have been taken full documentation of the justification for reaching the decision to caution, as opposed to prosecution, should also be recorded in the notes field of CEDAR.

4.7 Administering a Simple Caution

4.7.1 After the Simple Caution has been approved, it should be administered by someone who is suitably trained in restorative justice. This should not delay a person's release from custody where a suitable person is not immediately available. In these circumstances an officer of Inspector rank or above may determine an appropriate person to deliver the Simple Caution. In making this decision the Inspector must be satisfied that the person administering the caution is aware of paragraphs 4.5 and 4.8 and is capable of explaining the

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issues. Wherever possible a caution will be delivered there and then in custody rather than bail.

- Wherever possible, Simple Cautions should be administered at the police station. In exceptional circumstances, they could be administered at another suitable place, for example at the home of an elderly or vulnerable offender in the presence of a friend, relative or other appropriate adult.
- The suspect should not be pressed to make an instant decision on whether to accept the Simple Caution. They should be allowed to consider the matter, and if need be, take independent advice. In order to facilitate this, a suspect may be required to attend at a later date to enable the Simple Caution to be administered. Caution clinics/surgeries are held on some BCUs as a means of streamlining and ensuring adequate supervision of the cautioning process.
- Once the Simple Caution has been administered, the offender should sign a form accepting the terms of the caution and should be given a copy of a caution acceptance pro-forma to take away. The pro-forma should include the offender's personal details and should outline the details of the offence. It should also include information on the consequences of accepting a caution, as below. The form must explain that the offender's details can be passed to the victim, should they wish to pursue civil proceedings. The offender should sign to say that the terms of the Simple Caution are agreed, and the person administering the Simple Caution should also sign. A copy of this form, (CTS 10) is attached to this policy at "Appendix C."

4.8 Consequences of receiving a Simple Caution

- 4.8.1 A Simple Caution is not a form of sentence (which only a court can impose), nor is it a criminal conviction. It is, however an admission of guilt. A Simple Caution forms part of an offender's criminal record and may influence how they are dealt with, should they come to the notice of the police again. Simple Cautions given for recordable offences are entered on the Police National Computer, where they are held in line with ACPO General Rules for Criminal Record Weeding on Police Systems. These Rules are under review, and will be replaced by Retention Guidelines later in 2005. The fact of the Simple Caution may also be cited in court in any subsequent court proceedings and can be quoted on a Standard or Enhanced Disclosure issued by the Criminal Records Bureau and thus can be made known to a prospective employer. Fingerprints and other identification data can also be held on databases to which the PNC has links. Therefore the significance of the admission of guilt in agreeing to accept a Simple Caution must be fully and clearly explained to the offender.
- 4.8.2 This is particularly important where the offence is listed in Schedule 3 to the **Sexual Offences Act 2003**. Accepting a Simple Caution in relation to such an offence will result in the offender becoming a "relevant offender" for the purposes of the notification and registration requirements of Part 2 of the Act. In common terms, the offender will be put on the 'sex offenders register'. It is especially important that an offender is informed of the consequences of accepting a Simple Caution before accepting such a disposal for a sexual

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offence that makes them subject to these requirements. If the offender is not informed of this, they may, at a later date, have a case for having the Simple Caution removed. See paragraph 8.2.

- 4.8.3 Notifiable occupations are currently set out in Annex A of Home Office Circular 45/1986, which is available at <http://www.circulars.homeoffice.gov.uk>. Where a Simple Caution is issued to someone employed in a notifiable occupation, this should be disclosed by the police to their employer in accordance with the guidelines set out in that circular. This will be undertaken by Administration of Criminal Justice (ACJ). It is imperative that completion of this form CID 11a details fully the occupation and employer details to effect notification.

4.9 Recording the Caution

- 4.9.1 The accurate recording of all Simple Cautions is essential in order to avoid multiple cautioning and to ensure consistency. Simple Cautions for recordable offences must be recorded on PNC. A further record is made on the ACJ 'Process' system and CIS (see 4.5.1) and where appropriate shown as a disposal against recorded crime on CEDAR by CIMUs.
- 4.9.2 Simple Cautions will be entered on the Police National Computer (PNC) by Phoenix Bureau if they have been given for a recordable offence. Under the current ACPO Rules, Simple Cautions should be removed from the PNC after 5 years, provided there are no convictions on the record and no further Simple or Conditional Cautions have been given, except where the caution is accompanied by an "offends against vulnerable person" information marker. Under the new Retention Guidelines such records will be kept for longer periods of time. Non-police users of PNC will have their access to the data restricted after a specific period of time. The time period will be determined by the nature of the offence rather than the vulnerability of the victim.

4.10 Decisions by the Crown Prosecution Service

- 4.10.1 The instructions set out above apply to the police decision making process. Crown Prosecutors may be asked for advice on the suitability of using a Simple Caution disposal at any time (see paragraph 3.4).and will make the decision on whether an offence is suitable for a Simple Caution when examining indictable only cases.
- 4.10.2 Because of their inherent seriousness, indictable only cases which have met the Threshold Test are unlikely to be suitable for a Simple Caution. However in cases where it is not in the public interest to proceed with a prosecution, prosecutors should consider whether the case is suitable for a Simple Caution disposal before deciding to take no further action against the offender.
- 4.10.3 The Director's Guidance provides that where the decision of the CPS is that a person should be cautioned (whether Simple or Conditional Caution) this is mandatory and binding upon the police. If however it subsequently proves not to be possible to give the caution (for example, because the offender fails to attend or withdraws consent), the matter will be referred back the Crown

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Prosecutor, to determine whether the person is instead to be charged with the offence.

- 4.10.4 The prosecutor should record their decision whether to charge, caution (Simple or Conditional), NFA or otherwise on the rear of the MG3 form, including the appropriate monitoring sub-code indicating the reason for the decision.

5.0 Background Considerations

5.1.1 Group and multiple offences

The experience and circumstances of offenders involved in group offences can vary greatly, as can their degree of involvement. Consistency and equity are important considerations in the decision of how to deal with a case but each offender should be considered separately and different disposals may be justified. Where multiple related offences are considered, the decision to issue a Simple Caution or prosecute should be based on the most serious of those offences. Where more than one offence is cautioned officers should list each offence and use additional forms as necessary. It is important that these offences are recorded correctly as cautions and not listed on TIC schedules for counting rules.

5.1.2 Mixed disposals

It is possible to use mixed disposals where an offender has committed multiple but unrelated offences as part of the same incident. Depending on the nature of the offence, other disposal options are also available, for example a formal warning for cannabis possession or a Fixed Penalty Notice for a penalty offence. For example, a person is arrested for being drunk and disorderly, and when searched in custody has in their pocket a large set of car keys that they may use to get into cars and steal from them. If the person admits that their intention was to steal from cars, they could be charged with 'going equipped to steal' and or could be issued with a Simple Caution for that offence if appropriate, and a Penalty Notice for the Drunk and Disorderly offence. The presence of a previous Simple Caution on the offender's record may not necessarily be seen as a deterrent to administering a further Simple Caution in this type of situation, provided it is not for a similar offence.

Any decision on issuing a Simple Caution as an element of a mixed disposal should be considered with regard to the Director's Guidance. As with all other charging decisions, once the case is passed to the CPS then the decision on disposals for all offences rests with the CPS.

5.1.3 Victim Personal Statement Scheme

The Victim Personal Statement scheme (VPS) was introduced in October 2001. All victims of crime should be offered an opportunity by the police to make a Victim Personal Statement, in which they can tell criminal justice agencies about any support they might need and how the crime has affected them (for example physical, emotional or financial effects). If the victim has chosen to make such a statement, this can be used to capture additional

information to inform the decision.

5.1.5 Civil Proceedings

If a Simple Caution has been given and the victim requests the offender's name and address in order to institute civil proceedings, the information must be disclosed. Under the 1998 Data Protection Act, personal data is exempt from the non-disclosure provisions where the disclosure is required for the purpose of, or in connection with, any legal proceedings or future legal proceedings. This includes circumstances where the data is required in order to obtain legal advice.

6.0 **Particular Offence Types**

Special care and consideration should be given to victims of offences of personal violence. Since the introduction of the National Crime Recording Standard (NCRS) in 2002, when a victim claims a crime has been committed the crime is recorded without the need for corroborating evidence. This has led to increased recording of these types of offences. There are 3 categories of offences of personal violence, each with different characteristics.

6.1.1 Violence Against the Person (VAP)

Generally, where an offence of personal violence is not accompanied by any aggravating factors and where the victim does not support a prosecution, the offence may be suitable for disposal by Simple Caution, providing all other criteria are met. A proactive approach to dealing with this type of offence could avoid overuse of the NFA disposal where the victim declines to support a prosecution through the courts. The positive action outlined above in paragraphs 4.5 would be an appropriate method of dealing with these types of cases.

6.1.2 Domestic Violence

ACPO Guidance on Investigating Domestic Violence was published in 2004 by the National Centre for Policing Excellence and should form the basis for investigation of these offences. The recently revised CPS Policy on Prosecuting Cases of Domestic Violence should also be considered. Both of these documents advocate positive action in cases of domestic violence to ensure the safety and protection of victims and children while allowing the Criminal Justice System to hold the offender to account. The ACPO Guidance stresses that an effective and proactive investigation should be completed in all cases where a domestic violence incident is reported. The CPS Policy also stresses the need for a proactive approach to the prosecution of cases of domestic violence. The drive is for consistency from investigation through to charge.

Taking forward a prosecution does not depend solely on the victim's wishes. The evidential and public interest tests need to be considered

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and it may be that although the victim does not support the prosecution, it can still go ahead.

6.1.3 Harassment (racial or other)

The National Centre for Policing Excellence is producing a set of investigative standards for harassment.

The two considerations for Simple Cautioning in harassment cases are:

- (i) that administering a Simple Caution will render all conduct on which the caution is based inadmissible as evidence towards a course of conduct should this continue subsequently; and
- (ii) that since a restraining order may only be issued by the court, the only way in which a victim would be protected against future conduct would be by seeking an anti-harassment injunction from a civil court (which has the same effect as a restraining order and provides a power of arrest in the event of any breach). In cases of aggravated harassment, a prosecution should be pursued.

For these reasons, the views of the victim should be fully considered and a Simple Caution should only be administered where the police are confident that the harassment will **not** continue subsequently.

7.0 Ensuring Accurate Recording and Returns to the Home Office

7.1 Following the admission, offender detail checks and decision to caution, prepare a 'caution' file.

File contents

- Crime Report (CID1, CID13, CID190)
- CID11a/b/c/
- Supplementary Crime Report (CID2/2A, CID14) (green copy to CIMU, yellow copy to stay on file)
- MG11
- CTS10
- Interview Tape (Send to ACJ to file)
- Any other available evidence of admissions as at paragraph 4.3.1.

7.2 If the offender is cautioned in custody send the papers to ACJ. If the offender is to be bailed for a restorative justice intervention and caution send to your area Restorative Justice Unit.

7.3 Updating PNC

Adult simple cautions delivered in custody using CCHS or NSPIS will be automatically notified to Phoenix Bureau through printmaster, this will ensure the caution is recorded on PNC for recordable offences within 24 hours to

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meet PNC compliance targets (CID11a still needs to be sent to Phoenix Bureau).

- 7.4 Adult simple cautions delivered outside the custody environment must be notified to Phoenix Bureau the same day as the caution is delivered or at the latest the following morning. This is to be done by faxing the caution certificate CTS 10 to Phoenix Bureau on 700 6466. Likewise this will ensure the caution is recorded on PNC within 24 hours.

7.5 Recording the Sanctioned Detection

Delivery of the simple caution needs to be recorded on CEDAR to show the sanctioned detection (reportable offences). Send the green copy of the CID2/2A to your CIMU. (Where officer reported crime is in place local arrangements will be followed).

7.6 Securing the Offence Brought to Justice

Following the delivery of the Simple Caution the case papers will be sent to your local Administration of Criminal Justice (ACJ) for the simple caution to be recorded on Process. ACJ staff will record the caution on Process showing every offence and every offender cautioned, thus ensuring all possible offences brought to justice are recorded. ACJ will also check PNC and CEDAR to ensure they too have been updated.

HQ Business Information will extract data from Process monthly to ensure the Home Office return is completed.

Twice yearly HQ Business Information with HQ Criminal Justice will audit CEDAR and Process data to ensure all possible sanctioned detections and offences brought to justice are secured.

- 7.7 Persons receiving a Simple Caution will be photographed, fingerprinted and have DNA taken (unless shown on PNC as 'profiled' or 'confirmed').

8.0 Legal Implications or Receiving a Simple Caution

8.1 The Rehabilitation of Offenders Act 1974

Simple Cautions are not covered under the Rehabilitation of Offenders Act and therefore, never become spent. This means that the Act does not allow an individual to lawfully conceal a Simple Caution if asked specifically if they have received any cautions, for example by prospective employers. However a person will not be required to admit the existence of previous Simple Cautions if asked whether they have any criminal convictions. Amendments to the Rehabilitation of Offenders Act have been subject to consultation and the Act is currently being reviewed. However Simple Cautions will appear on a Data Protection Act subject access disclosure. This process is used by many employers to "Vet" their staff. This will continue to be the process until basic disclosure is introduced by the Criminal Records Bureau.

8.2 Sex Offenders

A decision to issue a Simple Caution in cases involving sexual offences and those where the offender is known or believed to be at risk should not be taken without consulting other relevant agencies. A Simple Caution received on or after 1 May 2004 for a relevant sexual offence makes the offender subject to the notification requirements of the Sexual Offences Act 2003 for 2 years from the date of the Simple Caution. For further information on the notification requirements see *Guidance on Part 2 of the Sexual Offences Act 2003*. This is available at:

<http://www.homeoffice.gov.uk/justice/sentencing/sexualoffencesbill/guidance.html>

9.0 Challenges & Representations

9.1 This policy is owned by the Head of Criminal Justice Department.

Challenges and Representations to this policy should be addressed to:

Head of Criminal Justice Department
Thames Valley Police Headquarters
Kidlington
Oxon OX5 2NX

10.0 Communication

10.1 Links to Police National Legal Database/Other Policies

Link to PNLD PACE Codes of Practice

Link to Custody Standard Operating Procedures

Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act, Second Edition.

Criminal Justice Act 2003

Crime and Disorder Act 1998

Home Office Circular 47/2003 & 45/1986

Data Protection Act 1998

NCRS

Sexual Offences Act 2003

Rehabilitation of Offenders Act 1974

10.2 Communication Strategy

Intranet Policy and Procedures site

Force Weekly Orders.

Via BCU Inspectors.

10.3 Target audience

All staff working for Thames Valley Police.

11.0 Compliance and Certification

11.1 Human Rights Certification

Legal Basis

Police and Criminal Evidence Act 1984

Human Rights Act 1998

(i) Human Rights Articles Engaged

Article 6 ECHR – Human Rights Act 1998

11.2 Race Equality Impact Assessment

A Race Equality Impact Assessment has been completed. This policy has been rated as MEDIUM.

11.3 Diversity (Human Resources)

In the application of this policy, the Force will not discriminate against any persons regardless of their gender, sexual orientation, race or ethnic origin, religion, age or disability.

11.4 Data Protection

Personal data held in connection with this policy will be processed in accordance with the provisions of the Data Protection Act 1998. In particular see paragraph 5.1.4.

11.5 Freedom of Information Act

This policy is available to the public and can be included in the Thames Valley Police Freedom of Information Publication Scheme.

11.6 Protective Markings

This document has been reviewed using Government Protective Marking criteria and does not require a protective mark.

11.7 Health and Safety at Work

There are no specific risk assessments in respect of this policy. The safety of all visitors in the custody environment is covered by the Force Custody SOP and Policy.

11.0 Monitoring and Review

11.1 Links to Best Value/PPAF/Force Priorities

This policy has links to the Best Value Reviews of Custody, Crime Investigation and Criminal Justice.

Under the Police Performance Assessment Framework, each of the Statutory Performance Indicators are supported by the existence of this policy.

This policy supports two of our strategic objectives:

- To provide an effective and timely response focussed on the needs of the citizen.
- To equip our frontline staff to deliver on our objectives.

11.2 Review Process

This policy will be reviewed every two years.

The review will take account of the following criteria:

- changes in legislation
- human rights challenges in domestic and Human Rights Courts
- changes in Home Office guidance
- representations by non-Governmental organisations
- representations by individuals.

APPENDICES

Appendix A

Extract from The Code for Crown Prosecutors

5.8 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for an against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

- 5.9` The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
- a** a conviction is likely to result in a significant sentence;
 - b** a conviction is likely to result in a confiscation or any other order;
 - c** a weapon was used or violence was threatened during the commission of the offence;
 - d** the offence was committed against a person serving the public (for example a police or prison officer, or a nurse);
 - e** the defendant was in a position of authority or trust;
 - f** the evidence shows that the defendant was a ringleader or an organiser of the offence;
 - g** there is evidence that the offence was premeditated;
 - h** there is evidence that the offence was carried out by a group;
 - i** the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
 - j** the offence was committed in the presence of, or in close proximity to, a child;
 - k** the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

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- l** there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- m** the defendant's previous convictions or cautions are relevant to the present offence;
- n** the defendant is alleged to have committed the offence while under an order of the court;
- o** there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- p** the offence, although not serious in itself, is widespread in the area where it was committed; or
- q** a prosecution would have a significant positive impact on maintaining community confidence.

Some common public interest factors against prosecution

5.10 A prosecution is less likely to be needed if:

- a** the court is likely to impose a nominal penalty;
- b** the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- c** the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- d** the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- e** there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation.
- f** a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- g** the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home

NOT PROTECTIVELY MARKED

Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

- h** the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- i** details may be made public that could harm sources of information, international relations or national security.

5.11 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

