



# Amending the Police, Crime, Sentencing and Courts Bill

## About this briefing

This briefing outlines Revolving Doors' position on the Police, Crime, Sentencing and Courts Bill, in particular relating to Part 6 of the Bill which deals with cautions.

Revolving Doors are submitting these amendments to complement our New Generation Policing project. New Generation Policing is an initiative that supports police and crime commissioners and police services to develop and implement new interventions to stop young adults from being caught in the cycle of crime and crisis. Our partnership aims to divert young adults at the cusp of the revolving door away from the criminal justice system and develop systemic responses to the combination of trauma, poverty and structural inequalities that drive the revolving door.

## Why focus on cautions and young adults?

Our analysis shows us that although young adults only constitute 10% of the population, they receive 31% of all cautions for 'revolving door' pattern offences.<sup>i</sup> People in the revolving door are characterised by repeated low-level, non-violent offences, such as theft and minor drug offences, driven by multiple unmet needs, including mental ill health, problematic substance use, homelessness and domestic abuse. Their health, care and offending related needs go hand in hand with trauma, persistent poverty, long-term unemployment, and social exclusion. It is essential that cautions serve not just as a punitive measure for young adults, but as methods of effectively diverting young adults away from the revolving door of crisis and crime.

Cautions can play a key role in diverting young adults away from the criminal justice system, whether it be a first-time offence or a pattern of repeat offending linked to poverty, trauma, mental health, and substance misuse. When used effectively, cautions with conditions attached can divert young adults into services such as drug and alcohol treatment or anger management services, which can address the drivers of their offending. The use of an out of court disposal can avoid the trauma of arrest, police custody, court procedures and a potential prison sentence, and young adults can be offered a means to turn their lives around.

The National Police Chiefs Council note that 'there is a growing evidence base within policing including force initiatives such as Checkpoint in Durham Constabulary, Turning Point in West Midlands Police and CARA (Conditional Cautioning and Relationship Abuse) in Hampshire Police, that early intervention and diversion can be highly effective in preventing reoffending and increasing victim satisfaction.'<sup>ii</sup>

## The current out of court disposal framework

In most police force areas in England and Wales there are currently six different OOCs available: community resolutions; cannabis/khat warnings; Fixed Penalty Notices; Penalty Notices for Disorder; simple cautions; and conditional cautions. Prior to this Bill's introduction into parliament, cautions had been streamlined into a two-tier framework, with conditional cautions representing the upper tier, and community resolutions representing the lower tier. Police forces then started trialling a two-tier

framework for OOCs, with OOCs will be consolidated into two options: community resolutions (for less serious offending/people with limited offending histories) and conditional cautions (for more serious offending/people with more significant offending histories). Fixed Penalty Notices were retained. Streamlining six different types of cautions into a two-tier framework was to provide 'a simplified framework for the public and practitioners to understand and work from' and to provide 'wider national consistency and scrutiny'.<sup>iii</sup>

The White Paper that precluded the PCSC Bill, *A Smarter Approach to Sentencing*, proposed rolling out this two-tier framework nationally. Whilst we welcome the simplification of out of court disposals, we feel the wording surrounding this two-tier framework within the Bill is potentially confusing, and there are certain points around OOCs and diversion that we feel need clarifying to ensure that young adults are being diverted away from the criminal justice system where possible and not being arbitrarily criminalised.

## **OOCs in the Bill**

The Bill proposes a two-tier framework for OOCs, but in a slightly different way to the two-tier framework that was originally being piloted.

The Centre for Justice Innovation note that 'the upper tier, now named the 'Diversionary Caution', simply renames the current conditional caution. The new 'Community Caution' is the name for the lower tier, and will be an umbrella disposal for outcomes such as penalty notices for disorder and simple cautions.'<sup>iv</sup>

The ability and option to provide community resolutions are crucial for diversion. Community resolutions remain as an informal disposal and therefore do not feature in this Bill.

## **Our concerns and proposed amendments**

### *1. The naming of the diversionary caution*

Renaming the conditional caution, 'the diversionary caution', is confusing. Most diversion schemes tend sit within community resolutions, therefore we submit that the name 'diversionary caution' does not make sense unless it is clearly a means to divert people away from the criminal justice system.

Diversion is commonly used as a term to describe activity moving people away from any contact with the formal justice system, whether that be a prosecution or a statutory out of court disposal. The proposed new disposal is, in essence, similar to the existing conditional caution. There are already a number of forces using a two-tier framework including the conditional caution. We anticipate that this name change will confuse police forces, when the intention is to simplify.

We asked our New Generation Campaigners, who are young adults with experience of the revolving door of crisis and crime, what diversion meant to them:

***"To be able to be guided along another path, to aim to reach another goal. It's a positive change"***

***"Steering someone into the right direction"***

***"Diversion has to be specific to a person's needs – a drug dealer and drug user have different needs, and the circumstances around it might be different"***

Conversely, we asked them what they felt was not diversion:

***"Punishment but calling it diversion"***

***“Punishment shouldn’t be at the forefront”***

***“I don’t trust the police to divert me into a supportive diversion programme”***

It is unclear why what was previously called a conditional caution is being renamed ‘diversionary’ caution without a clear diversion strategy attached to it. The Centre for Justice Innovation say ‘the diversionary caution is, in effect, a conditional caution and it is not clear why they have renamed it. It is potentially confusing.’<sup>v</sup>

When specifically asked about the naming of the diversionary caution, a New Generation Campaigner said:

***“But it doesn’t divert anyone so why are they calling it that? It does the same thing it did before with a new name?”***

The conditions attached to the diversionary caution could include unpaid work, restrictions, financial penalties, and attendance. Without clear clarity within the Bill as to how these conditions would serve to divert young adults away from the criminal justice system, we submit that it does not make sense to call it a diversionary caution. **We are therefore calling for ‘diversionary cautions’ as they are set out in Clause 77-86 to be renamed.**

## *2. Requiring admission of guilt for the community caution*

The new ‘Community Caution’ is the name for the lower tier, and will be an umbrella disposal for outcomes such as penalty notice for disorder and simple cautions. However, it still requires an admission of guilt. The Lammy Review notes that the requirement for admission of guilt can magnify racial disparities in the criminal justice system, stating that: ‘schemes that divert non-violent offenders away from custody should not rely on the traditional requirement for an admission of guilt – that way, more BAME individuals will benefit from the opportunity to turn their lives around. The evidence shows that such schemes can also improve satisfaction for victims, reduce the harm caused by reoffending and cost less in the process.’<sup>vi</sup> Evidence shows that Black and minority ethnic young adults aged 18-25 are less likely to have access to diversion services, are more likely to receive a caution or conviction for a low-level and non-violent offences compared to White young adults and have the highest reconviction rate of any ethnic group.<sup>vii</sup>

We asked our New Generation Campaigners for their views on the requirement for an admission of guilt to receive a community caution. They told us:

***“This sounds like coercion – they’re encouraging you say you’re guilty before you get on to the diversionary scheme”***

***“What if you’re not guilty?”***

***“If you don’t trust the police, then you wouldn’t want to admit guilt”***

***“If you pressure someone to admit guilt then you’re not concerned with addressing their needs”***

We also asked New Generation Campaigners if they felt that having to admit guilt would exacerbate existing racial disparities. They told us:

***“It makes a huge difference if you are black or white. Black people are more likely to be stopped and pulled over, and black people are less likely to admit guilt”***

Racial disparities in the criminal justice system, specifically the overrepresentation of black and brown young men, as well as a lack of trust and positive community relationships between young adults and the police, risks being exacerbated by the requirement of the admission of guilt to receive a community caution and avoid arrest and prosecution. **We are therefore calling for Clause 87(c) ‘the offender admits to having committed the offence’ to be struck from the Bill.**

### 3. Conditions

Both the diversionary caution and the community caution outlined in the Bill require the imposition of conditions on the person receiving the caution. Where conditions can facilitate positive changes for both the perpetrator and the victim, such as restorative justice, attendance of drug and alcohol treatment, and meaningful unpaid work, they can be beneficial. However, often conditions can be arbitrarily punitive and not necessarily effective in reducing reoffending.

The Centre for Justice Innovation note that ‘the Ministry of Justice’s two-tier out of court disposal pilot evaluation highlighted the dangers of up-tariffing within out of court disposals. It showed that, contrary to the principle of de-escalation, people who would have received simple cautions were given conditional cautions instead. Conditional cautions involved people having to complete more interventions than they otherwise would and came with the threat of enforcement in the case of non-compliance.’<sup>viii</sup>

We asked our New Generation Campaigners how they viewed conditions attached to cautions, what they found useful, and what they did not find useful:

***“Rather than condition it could be an ‘intervention’ – something that’s going to be helpful”***

***“If you’re attaching condition to caution, it needs to be something that benefits them”***

***“Unpaid work should be accredited – it should give them accreditation, certificate, helping to upskill them. Unpaid work should be meaningful”***

One campaigner told us of a condition where they were banned from public transport despite relying on it to get to school:

***“I used to have get two buses to school, and then I was banned from public transport. How else was I meant to get to school? I was taken to court for still being on public transport”***

The campaigners discussed useful conditions that could be attached to cautions, including alcohol awareness courses, family counselling sessions, and signposting to services that could help with financial issues and poverty.

There was also discussion that attaching a condition to a ‘diversionary’ caution may give false hope that the condition would be of benefit to the person receiving it.

***“You’re offering something to people and giving them false hope of support – this leads them into confession just so you can jump on that – it means that person won’t ask for help again and leaves them with massive mistrust of the system”***

As diversionary cautions are the upper-tier of OOCs, we accept that they will come with conditions. However, we feel it is necessary that the Bill gives due regard to the condition being something that will benefit the person receiving the caution to desist from low-level offending and ultimately turn their lives around, by imposing conditions that would assist with substance and alcohol misuse if relevant, or have the person take on unpaid work that would result in a qualification or accreditation

that could ultimately lead to the person receiving the caution taking on gainful, meaningful employment. **We are therefore calling for a new clause to be added to Section 88 ‘deciding on the conditions’: NC 88(3)(b) ‘make reasonable efforts, or ensure that reasonable efforts are or have been made, to ensure conditions include interventions to support the offender to desist from offending.’**

These ‘reasonable efforts’ can constitute taking steps to engage young adults with support and diversionary schemes. Our recent evidence review on diverting young adults away from the cycle of crisis and crime looks at schemes in Leicestershire, North Yorkshire, and South Wales and Gwent where people who have received conditional cautions can be referred into services that provide support such as an allocated keyworker, emotional support, and signposting to further services.<sup>ix</sup>

With community cautions being the lower-tier of OOCs, we do not feel that it should be mandatory for conditions to be attached to the caution, especially with the removal of the simple caution. Whilst rehabilitative conditions can be useful for people requiring interventions and treatment for alcohol and substance misuse or behavioural issues, restrictive conditions such as banning people from a certain area or the imposition of fines can be arbitrarily punitive and ultimately lead to reoffending. **We are therefore calling for Clause 77(4) stating ‘diversionary and community cautions must have one or more conditions attached to them’ amended to ‘diversionary and community cautions may have one or more conditions attached to them’.**

#### 4. *Criminal record implications of cautions*

Section 97(1) of the PCSC Bill abolishes all other cautions other than conditional and diversionary cautions. Previously, as per Section 8A of the Rehabilitation of Offenders Act 1974, only conditional cautions were spent after three months, with other cautions being spent immediately. Schedule 10 of the PCSC Bill amends Section 8A subsection (2) (a) (protection afforded to spent cautions) of the Rehabilitation of Offenders Act 1974 to replace ‘conditional cautions’ as being spent three months after the caution was given with **both** diversionary and community cautions as being spent three months after the caution was given. This means that both diversionary and community cautions will show up on a basic DBS check for three months after the caution was given, with no other out of court disposal offering the implication of not being on a person’s record.

The implications of this are that for three months following being given a caution, a person may struggle to access employment, education, and volunteering opportunities – all of which are barriers to people exiting the revolving door of crisis and crime. Requiring people in employment to declare the caution may also risk them losing their job.

Unlock, an independent charity for people who are facing stigma and obstacles because of their criminal record, states: ‘our helpline regularly receives calls from people who have accepted a caution believing it wouldn’t affect them in the future, only to be disappointed when they’ve been refused a job or college/university place due to their caution being disclosed on a criminal record check... The police will often take the view that a caution is merely a ‘slap on the wrist’ and for many people this will certainly be the case with a caution having very little impact on their lives. For some however a caution will have more serious and ongoing consequences.’<sup>x</sup>

We gave our New Generation Campaigners an example of someone applying for a job soon after receiving a community caution for theft, due to shoplifting out of poverty, and being denied a job following a DBS check. Our New Generation Campaigners said that:

***“It’s ruined her employment chances”***

***“They want to reduce reoffending, but they’re promoting it”***

**“This is how things spiral quickly – she’s shoplifting to get necessities then it spirals and will escalate even further”**

**“She’s in a worse situation than she was before, someone was drowning and instead of throwing her a life raft, they added more water in”**

To give people the best chance at avoiding or exiting the criminal justice system and breaking free from a cycle of crisis and crime, especially when a young adult, it is essential that people are given the greatest opportunities possible to be able to access employment, education, and volunteering opportunities. Diversionary and community cautions showing up on a basic DBS check for three months detract from these opportunities.

If the new out of court disposal framework is truly two-tiered, then community cautions should be seen as the lower tier of cautions, and should be spent immediately, as simple cautions were in the previous framework, with only diversionary cautions being spent after three months. **We are therefore calling for Schedule 10(2)(a)(ab) ‘a community caution under that Part of that Act’ to be struck from the Bill.**

### List of amendments

1. ‘Diversionary cautions’ as they are set out in Clause 77-86 to be renamed
2. Clause 87(c) ‘the offender admits to having committed the offence’ to be struck from the Bill.
3. A new clause to be added to Section 88 ‘deciding on the conditions’: NC 88(3)(b) ‘make reasonable efforts, or ensure that reasonable efforts are or have been made, to ensure conditions include interventions to support the offender to desist from offending.’
4. Clause 77(4) stating ‘diversionary and community cautions *must* have one or more conditions attached to them’ amended to ‘diversionary and community cautions *may* have one or more conditions attached to them’.
5. Schedule 10(2)(a)(ab) ‘a community caution under that Part of that Act’ to be struck from the Bill

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<sup>i</sup> <http://www.revolving-doors.org.uk/file/2451/download?token=XT3bl7VL>

<sup>ii</sup> <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>

<sup>iii</sup> <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>

<sup>iv</sup> <https://justiceinnovation.org/articles/unpacking-ministry-justices-new-bill>

<sup>v</sup> <https://justiceinnovation.org/articles/unpacking-ministry-justices-new-bill>

<sup>vi</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>vii</sup> <http://www.revolving-doors.org.uk/file/2601/download?token=-ChRnsJ3>

<sup>viii</sup> <https://justiceinnovation.org/sites/default/files/media/document/2020/Delivering%20a%20smarter%20approach.pdf>

<sup>ix</sup> <http://www.revolving-doors.org.uk/file/2601/download?token=-ChRnsJ3>

<sup>x</sup> <https://hub.unlock.org.uk/knowledgebase/implications-accepting-police-caution/>