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Ethics and Values:

Justice Outcomes

Version 2.4

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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: <http://www.app.college.police.uk/>

1. Introduction to Justice Outcomes

When we talk about 'justice outcomes', we mean the range of disciplinary options that are available to the Criminal Justice System (CJS). These are often also referred to as 'disposals'. By having multiple disposal options available, the component agencies of the CJS are able to ensure that offences are dealt with in the most appropriate way, taking into account the:

- nature of the offence
- needs of the victim(s)
- offender.

Justice outcomes can be broadly divided into two types:

- **The formal justice system:** an accused person is charged, attends the relevant court and is either acquitted or sentenced accordingly. There is a range of sentencing options available to the various courts including orders, attendance requirements, fines, discharges and custodial sentences
- **Out-of-court disposals:** these are a range of disposals designed to provide an alternative outcome to the formal justice system which are available to help the police (and certain accredited individuals) deal with offenders and secure an effective justice outcome.

1.1 Out-of-Court Disposals

Out-of-court disposals allow the police to deal quickly and proportionately with low-level, often first-time offending which does not merit prosecution at court. The advantages of out-of-court disposals include:

- officers can spend more time on frontline duties and tackling serious crime
- victims can receive reparation and a prompt resolution
- offenders can be directed into rehabilitative or educational services, tackling the causes of offending behaviour and reducing the risk of re-offending
- youth out-of-court disposals enable assessment and intervention, preventing further offending

- offenders can be punished by financial penalties or (for youth conditional cautions only) unpaid work.

Only a court has the suitable powers to deal appropriately with serious offending behaviour, so a charge should always be considered for more serious offences. However, it is important that you use and understand out-of-court disposals appropriately.

The Crime and Disorder Act 1998 provides a statutory framework for youth offenders to be dealt with in a different way to adult offenders, which includes the out-of-court disposal options of a youth caution or youth conditional caution (YCC).

1.1.1 Restorative Justice

Restorative justice is a technique which can be used out of court and in conjunction with an out-of-court disposal. It is the process of bringing together those harmed by crime or conflict with those responsible for the harm, to find a positive way forward.

In criminal justice, restorative processes give victims the chance to:

- Tell offenders the real impact of their crime
- Get answers to their questions
- Get an apology.

Restorative justice holds offenders to account for what they have done, helping them to understand the real impact, take responsibility, and make amends.

There are three levels of restorative justice:

Level 1: Instant or on-street disposal where police officers or PCSOs resolve conflicts in the course of their duties. Level 1 enables officers to deal with minor crimes and incidents quickly and proportionately, and provides an alternative to a formal criminal justice process.

Level 2: A level 2 conference takes place if a level 1 resolution cannot be undertaken immediately, or when matters are more serious or persistent with a clear impact on the community. More participants are usually involved, and longer-term solutions are sought.

Level 3: At level 3, the offenders dealt with are mostly post-sentence, and may be imprisoned. Cases may be complex and sensitive, involving prolific offenders or those deemed at risk of continued offending. Level 3 could be undertaken pre-sentence, but only in conjunction with any other relevant agency involved, such as the Probation Service or the CPS.

1.1.2 The Out-Of-Court Disposals Framework

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) neighbourhood justice outcomes framework presents an overview of neighbourhood justice outcomes available in a useful quick reference tool: this diagram is also available on the APP website.

Disposal option	Offence type	Evidential standard	Admission of guilt required?	Agreement with agencies required?	Offender's explicit consent required?	Victim consent required?	Reparation/ restorative justice available?	Forms part of a criminal record?
Community resolution	may be lower-level crime or incident	reasonable suspicion, may deal with non-criminal matters	✓ acceptance of responsibility	✗	✓	✓ may proceed without but must have supervisor's agreement and record rationale	✓	✗ may be disclosed on enhanced CRB check
Cannabis warning	first offence of cannabis possession for personal use	reasonable suspicion	✓	✗	✓ compliant with procedure	✗	✗	✗ may be disclosed on enhanced CRB check
PND	29 penalty offences	reasonable suspicion	✗	✗	✓ compliant, must receive notice	✓ for theft or damage if value exceeds threshold	✗	✗ may be disclosed on enhanced CRB check
Adult or youth caution	any offence (refer to gravity matrix)	realistic prospect of conviction	✓	✓ CPS if indictable only inform YOT ✗ summary and triable either way	✓	✗	✗	✓
Youth conditional caution	any offence (refer to gravity matrix)	realistic prospect of conviction	✓	✓ YOT for assessment and agree conditions ✓ CPS if indictable only	✓	✗	✓	✓
Adult conditional caution	selected offences in DPP guidance	realistic prospect of conviction	✓	✓ CPS	✓	✗	✓	✓

We will now look at each of the out-of-court disposals options represented in this matrix in greater detail.

1.1.3 Community Resolutions

Community resolutions, which can include elements of restorative justice, can be used for adults or youths and are a non-statutory disposal. They are a proportionate way of dealing with offenders for lower-level crime, such as low-level criminal damage, low-value theft, minor assaults (without injury) and anti-social behaviour, and can be offered when:

- the offender admits an offence
- the victim agrees that they do not want more formal action taken.

Community resolution can reduce the risk reoffending by helping offenders face up to the impact of their behaviour and take responsibility for making good any harm caused.

Resolutions can include the offender:

- being given advice about their behaviour
- apologising or sending a letter of apology to the victim
- making some form of reparation, i.e. repairing or paying for any damage.

When making a decision about administering a community resolution, you should consider whether:

- it is in the public interest to offer a community resolution as opposed to arrest
- a crime or incident has clearly occurred, and there is reasonable suspicion that the offender is responsible
- the offender has admitted to committing the offence - this is a requirement for a community resolution to be legally valid
- the offender has explicitly consent to accepting the community resolution - this is a requirement for a community resolution to be legally valid
- the offender is capable of understanding the community resolution process
- the offender does not have a relevant offending history. If they have, you should refer the decision to your supervisor and record the reasons for your decision

- the victim(s) have been consulted and have agreed. Community resolutions may proceed without victim consent, but your supervisor must agree to the decision and your rationale should be recorded
- there are implications of a community resolution - whilst community resolutions do not form part of a criminal record, it may be disclosed in an enhanced Disclosure and Barring Service (DBS) check.

Once a community resolution is administered, you should:

- confirm that the offender admits the offence
- explain the process to the offender, including how they will rectify the harm caused
- explain the implications of receiving a community resolution to the offender
- ensure the community resolution is recorded appropriately. A crime report must be completed where the offence relates to a notifiable crime. The offence must be recorded in accordance with the National Crime Recording Standard (NCRS) and Home Office Counting Rules (HOCR) for crime, and a positive outcome shown.

1.1.4 Cannabis Warnings

A Cannabis Warning cannot be issued by PCSOs, but a PCSO can issue a Penalty Notice for Disorder (PND) for possession of cannabis.

The ACPO Guidance on Cannabis Possession for Personal Use (revised Intervention Framework 28 January 2009) outlines the procedures when the police find a person in possession of a small amount of cannabis. There is a three-stage escalation procedure for cannabis possession under which an offender will:

1. Receive a cannabis warning for a first possession offence
2. A PND for a second offence
3. Be arrested for a third offence.

A cannabis warning applies to adults possessing cannabis for personal use only. The warning cannot be given to a person under 18 years of age. It is an informal, verbal warning given by a police officer to an offender, either on the street or in a police station.

Note: cannabis warnings issued after 26 January 2009 must be taken into account when deciding a level of intervention. You should consider warnings issued before this date as part of any previous offending history.

When deciding whether to administer a cannabis warning, you should consider whether:

- the amount of cannabis in the offender's possession is consistent with personal use
- you have reasonable suspicion that an offence of cannabis possession has been committed and there is sufficient evidence for a realistic prospect of conviction
- the offender has made a clear and reliable admission to all elements of the offence
- the offender is aged 18 years or over, with no evidence of dealing or possession with intent to supply. They must not be smoking cannabis in the company or vicinity of young or vulnerable people.

Whilst the offender is not required to explicitly consent to accepting the cannabis warning, they should not have raised a defence to the offence, must be able to understand what is happening, be compliant with the warning procedure, possess a verifiable name and address and have no previous record of a cannabis warning, PND, or drugs convictions.

The cannabis must be confiscated and a record of the cannabis warning made on local systems. Cannabis warnings can be placed before a court for use as evidence of bad character, and may also be disclosed as part of an enhanced DBS check, if deemed relevant.

Once you have given a cannabis warning, you should:

- confirm that the offender admits the offence
- explain the process to the offender, highlighting that they can only receive one cannabis warning so any further offending will likely result in a PND or arrest
- explain that a cannabis warning does not form part of a criminal record, but a record will be made on local systems
- ensure the cannabis warning is recorded appropriately as a notifiable crime in accordance with the NCRS and HOCR for crime. The crime should be recorded as 'detected by way of cannabis warning', in accordance with local policy.

1.1.5 Issuing a PND for Cannabis Possession

PNDs cannot be issued for offences relating to any drug other than cannabis or cannabis derivatives. When issuing PNDs for cannabis possession, you should use your judgement and experience to assess whether the amount of drug possessed by the offender appears reasonable for personal use. The process of escalation should not apply if you have reasonable grounds to suspect possession with the intent to supply; in that case, arrest is always appropriate.

It is expected that an offender will have received a cannabis warning before being issued with a PND. However, there may be particular operational circumstances or aggravating factors where it is decided that although a previous cannabis warning has not been issued, a PND is the more appropriate means of disposal. When deciding whether to administer a PND for cannabis possession, you should consider whether:

- the offender has previously received a cannabis warning or PND for cannabis possession. If they have already been issued with a cannabis warning, they cannot receive another and should be issued a PND for possession. However, if the offender has previously received a PND for cannabis possession then another cannot be issued and the only option is to arrest. You may use operational discretion to decide that, although the offender has never received a cannabis warning, due to the circumstances you should immediately escalate to the issue of a PND or arrest
- the offender is a non-vulnerable adult
- the offender admits the offence - if not, you may only issue a PND if you have sufficient evidence that the offence has been committed.

Cannabis possession is a recordable offence and details of PNDs issued for the offence should be logged on the Police National Computer (PNC). When considering whether it is appropriate to issue a PND for an offence, you will need to check the PNC to establish whether a previous PND has been issued.

A designated PCSO can also issue a PND for possession of cannabis.

Seizing evidence

If you decide to issue a PND, you should seize the cannabis as evidence of the offence; it should not be disposed of at the scene. You should follow your police force's Standard Operating Procedures and deal with any cannabis found in line with those guidelines. If a

recipient of a PND elects to have the matter heard at court, the drug will be treated as evidence in the normal way.

Cannabis possession by a person under 18 years of age

PNDs may only be used for dealing with adult offenders caught in possession of cannabis and its derivatives, for personal use. Possession of cannabis by offenders under 18 years old should be dealt with under Section 66ZA of the Crime and Disorder Act 1998 which deals with youth cautions and states that a constable may give a child or young person a youth caution if:

- there is sufficient evidence to charge them with an offence
- the person admits that they committed the offence; and
- the constable does not consider that they should be prosecuted or given a youth conditional caution in respect of the offence.

As youth offenders will continue to be dealt with through the Crime and Disorder Act 1998 legislation, they should be dealt with at the police station. In practice, this means that you should arrest persons aged 17 years or under who are in possession of cannabis for personal use.

A youth caution given to a person under the age of 17 must be given in the presence of an appropriate adult.

Aggravating factors that would prohibit the issuing of a PND for cannabis possession

- **Public place or view:** smoking cannabis in a public place or view undermines the illegal status of possession of a controlled drug. Examples include at a football match, on public transport, in a park, in the street, in or near a public house, club etc.
- **Locally identified policing problem:** there may be circumstances which are causing a local policing problem or community concern, such as the fear of anti-social behaviour associated with the use of cannabis, e.g. a disorder 'hotspot' that generates frequent calls for service to deal with anti-social behaviour
- **Protecting young people:** where possession of cannabis by others may create a particular risk to young people e.g. where a person is in possession of cannabis inside or in the vicinity of premises frequented by young people, such as schools, youth clubs or play areas

- **Repeat or persistent offenders:** the illegal status of cannabis would be undermined if a person, known locally to continually commit offences with disregard for the law, were to be issued a cannabis warning or PND
- **Impact on the offender:** other considerations could include:
 - What impact a decision to issue a Cannabis Warning or PND may have on the offender?
 - Does the person understand the seriousness of the offence?
 - Will this person benefit from this course of action?
 - Will this person take heed of a cannabis warning or PND?
 - Is there evidence of previous convictions or offending behaviour?

1.1.6 Penalty Notices for Disorder (PND)

Under the Criminal Justice and Police Act 2001, the PND scheme provides the police and certain accredited individuals with a swift, out-of-court disposal to deal with low level, anti-social and nuisance suspected offending for adult offenders.

PNDs can be given by:

- constables (including special constables)
- PCSOs (for certain offences)
- Trading Standards Officers (for certain offences)
- accredited persons (for certain offences).

A PND may be given either on the spot or at a police station to people aged 18 or over. When issuing a PND, a police officer does not have to be in uniform, but a PCSO must.

When a PND may be issued

PNDs can be issued for 29 specified penalty offences, including:

- being drunk and disorderly in a public place
- retail theft under £100
- behaviour likely to cause fear, alarm or distress

- criminal damage (up to a value of £300) and cannabis possession.

The list of offences is kept under review, and further PND offences may be added in the future so it is important to always be aware which offences are currently listed, and check with your police force policy. Ensure you obtain a full list of the PND offences you have the power to issue from your force. For the full list of offences that can be dealt with by PND, you should refer to the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002. This lists the offences that attract a fine of £60 or £90 and can be found at: <http://www.justice.gov.uk>.

There is additional specific guidance for retail theft, criminal damage and possession of cannabis.

It is also only appropriate to issue a PND for an offence if it is at the lower end of the spectrum in terms of seriousness.

Example

A PND may be appropriate where fireworks are thrown in such a way as to cause annoyance and nuisance, e.g. by causing excessive noise outside a person's home. However, a PND is not appropriate where this constitutes part of a pattern of intimidation, or there was intention to cause harm.

PNDs are not suitable if:

- there has been any injury to any person or any realistic threat or risk of injury
- there has been substantial financial or material loss to private property of an individual
- a penalty offence is committed in association with another offence, including a penalty offence
- the offence involves domestic abuse
- the offence is football related
- the offence has been committed jointly with a person below the age of 18 years
- the provisions of the Protection from Harassment Act 1997 might apply
- the person is unable to understand English. In such cases, the use of a translator should be considered

- you have reason to believe that the person is impaired by the influence of drugs or alcohol. In this case you should consider the appropriateness of exercising powers under section 24 of the Police and Criminal Evidence Act 1984
- you are unable to verify the person's identity and place of residence
- it is known that the person has previous convictions for disorder offences or where it is known that the person has been given a PND in the recent past, or has been given a simple or conditional caution for such offences. You should use your discretion
- the person is subject to:
 - a custodial sentence, including Home Detention Curfew, or a suspended sentence order
 - a community penalty other than a fine, including an anti-social behaviour order
- you believe that there is a considerable risk that the person will not pay the penalty.

A person given a PND has 21 days to either pay a financial penalty or request to be tried. If they fail to do either of these options, a fine of one and a half times the penalty amount is registered in a Magistrates' Court for enforcement. By paying the penalty within the arranged time, the recipient discharges any liability to be convicted of the penalty offence.

When deciding whether to administer a PND, you should consider whether:

- the offence is one of the 29 penalty offences, where the offence is not too serious
- you have reasonable suspicion that a penalty offence has been committed and sufficient evidence to support a successful prosecution
- the offender is aged 18 years or over, has a verifiable address, is able to understand what is happening, and is compliant. You must have sufficient evidence as to the suspect's age, identity and place of residence. A fingerprint may be taken (on the street or in custody) with consent to support identification. It is advisable to record a full description of the person on the penalty notice to assist with any later identification issues. Their offending history should be assessed to ensure that a PND is an appropriate disposal
- you are satisfied that the person's offending behaviour has ceased - if necessary you should take steps to ensure this

- the victim(s)' views have been sought and recorded, as a PND disposal removes the possibility of the criminal court awarding a compensation order in their favour. However, the victim will retain the right to seek redress through civil litigation, and giving a PND to a person could save the victim from having to attend court to give evidence (provided that the person does not request to be tried for the offence). The victim should be made aware of this.

It is not necessary for the offender to admit guilt, and accepting a PND is not an admission of guilt. Explicit offender consent is not required, but a PND should be issued to, and received by, the offender. A PND does not form part of an individual's criminal record, but where a recordable offence has been committed, an entry may be made on the PNC which may be disclosed as part of an enhanced DBS check. For this reason, the implications for the offender should also be considered.

Once you have given a PND, you should:

- explain the PND process to the offender, including methods of penalty payment or requesting a court hearing, and the consequences if they do not complete these actions within 21 days
- explain to the offender that a PND:
 - does not form part of a criminal record but a crime record will be created
 - will show as an outcome on the PNC and may be disclosed as part of an enhanced DBS check
 - may be cited as evidence of bad character in subsequent criminal proceedings and could be relied on as evidence at court in civil proceedings
- ensure the PND is recorded appropriately. Where a notifiable crime has been committed you must complete a crime report, and the offence must be recorded in accordance with the NCRS and HOCR for crime.

Additional guidance for issuing a PND for retail theft or criminal damage

Note: PCSOs cannot be designated with the power to issue PNDs for some offences such as retail theft.

Concerns over inappropriate issue of PNDs resulted in a number of changes regarding the issuing of PNDs for retail theft and criminal damage and, in particular, regarding repeat offenders and those with substance misuse problems.

PNDs should not be issued for either retail theft or criminal damage where it is known that an offender is a substance user. Such people will be more appropriately dealt with by a court or by way of a conditional caution which can direct them to suitable substance treatment. Officers may wish to consider that they have the power to drug test an individual once they have been charged with committing one of the specified trigger offences, or where an inspector suspects that the offence is drug related.

Retail theft

- PND disposal may be used only for offences of 'theft from a shop' as defined under the National Crime Recording Standards
- PND disposal will only be appropriate where the value of the stolen goods does not exceed £100
- It is expected that in most cases of retail theft suitable for PND disposal, the property will have been recovered and remain fit for sale. However a PND may still be appropriate in exceptional cases where it is not possible to recover property for example, where items have been consumed such as drink or food
- Only one PND should ever be issued to an individual for retail theft. Before issuing a PND, you should check whether a previous one has been issued for this offence
- Retail theft is a recordable offence; details of PNDs issued for this offence must be recorded on the PNC within 24 hours. You will therefore need to check the PNC to establish whether a previous PND has been issued
- PND disposal is not appropriate for shop workers who steal from their employers. Such behaviour is a breach of trust and needs to be dealt with by other means such as prosecution.

Criminal damage

- PND disposal may only be used for criminal damage up to a value of £300.

Completing the PND form

PND forms differ between police forces. When issuing a penalty notice, you should complete all the relevant fields. The time the alleged offence was committed should be inserted, not the time the PND was issued.

You should ask offenders to sign the notice in the appropriate field, acknowledging receipt of the notice. However, there is no power to require a signature and offenders are under no

obligation to sign. If an offender refuses to sign, you should indicate this in the signature field.

In all PNDs, there will be a section to give to the suspect which will include full details of the action that they should take on receipt of the penalty notice. You must retain the remaining parts of the PND and submit them according to your police force procedure.

If a person fails or refuses to give sufficient details to enable the issue of a fixed penalty notice, that person may be detained or arrested.

Where you use a form MG11 (cont) or there are additional statements already obtained from witnesses, you must ensure that these are securely attached to the penalty notice prior to submission to the central ticket office.

Where you issue a PND, make a corresponding entry in your pocket notebook. There is no requirement to duplicate all the evidence contained on the PND, and providing the notice is completed whilst the incident remains fresh in your mind, only brief details (including the PND serial number) are required.

Following the caution, any evidence must be recorded directly on to the officer's notes section of the PND. If you run out of space, your continuation statement should be recorded in your pocket note book or separate MG11.

Issuing PNDs in custody

All current forms of disposal remain available (youth caution under section 66ZA and youth conditional caution under 66A of the Crime and Disorder Act 1998) and the option to issue a PND or deal with a case in any other way will be at your discretion.

Where offenders appear to be vulnerable and in need of intervention, PNDs should not be used. You should use the existing forms of disposal to ensure that intervention takes place where it is appropriate.

Where a PND is issued in relation to a 'recordable offence', it is your responsibility as the issuing officer to ensure that a unique reference number is obtained and recorded in the appropriate place on the PND. Where the PND is issued from within custody, the number will automatically be generated when the custody record is created.

PNDs that are completed but not issued

Where a completed or part-completed PND is subsequently not issued for any reason (e.g. offender refuses to accept), it must be clearly marked 'VOID' and forwarded, through your

first line supervisor, to the Central Ticket Office (CTO). Where the 'VOID' PND is required for a prosecution file then a photocopy will be forwarded to the CTO.

1.1.7 A Penalty Notice with an Education Option (PND-E)

In areas where schemes are running, officers may give a PND with an education option (PND-E). This provides recipients with the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing a short educational course designed to address the implications of their behaviour (for example, the health and social implications). The education course is an alternative to paying the penalty amount in full or requesting to be tried.

Section 2A of the Criminal Justice and Police Act 2001 contains provisions that permit a chief officer of police to establish a PND educational course scheme in relation to one or more penalty offences, if they wish (it is not mandatory to set up an educational course scheme). It also permits constables to give a person a penalty notice with an education option where appropriate.

If a person takes the opportunity to discharge their liability to be convicted of the penalty offence through a PND-E, a record of the PND-E will remain on PentiP (National database for Fixed Penalty Notices) and the PNC (if given for a recordable offence) as with a 'standard' PND. A person can, alternatively, opt to pay the penalty amount in full or request to be tried as is the case with a 'standard' PND. A person does not have the right to demand a PND-E - equally no person should be forced to accept one.

Aims of an educational course scheme

The aims of an educational course scheme are to:

- change the person's behaviour and reduce the likelihood of committing the penalty offence through an educational course - for example, highlighting the social and health implications of their behaviour. Section 2A(3) of the Criminal Justice and Police Act 2001 makes it clear that the purpose of an educational course must be to reduce the likelihood of those who take the course committing the penalty offence, or penalty offences, to which the course relates
- provide chief officers of police with an additional tool to tackle offending in their local area

- increase compliance with penalty notices and reduce enforcement costs by providing a person with an additional means of discharging their liability to be convicted of the penalty offence.

When it is appropriate to issue a PND-E

A PND-E may only be given if:

- you have reason to believe that a person aged 18 or over has committed a penalty offence
- it would be appropriate to give a penalty notice
- an approved educational course is available in the chief officer's area regarding the penalty offence committed.

As is the case with a 'standard' PND, it will not be appropriate to give a PND-E to a person who has alcohol or substance misuse problems. Such cases should be referred to appropriate support programmes.

A PND-E will probably not be given on the spot because you may need to conduct additional background checks to ensure that a person is eligible to attend a course. These may involve determining whether there are any behavioural issues, such as anger management problems or a history of violence that may make attendance at a course inappropriate.

1.1.8 Youth Caution

Youth cautions are a formal warning used when it is not in the public interest to prosecute an offender aged 10 to 17.

Youth cautions may be offered when:

- the young offender admits an offence
- there is sufficient evidence for a realistic prospect of conviction but it is not in the public interest to prosecute.

Unlike adult simple cautions the young person does not 'consent' to the youth caution. The police or CPS will decide the appropriate disposal.

If a young person is given a youth caution, the local Youth Offending Team (YOT) must be notified for their records and so they can assess the young person if appropriate. Following a second, or any subsequent, youth caution the young person must be assessed by the YOT.

The YOT have a duty to assess the young person and put in place a rehabilitation programme unless deemed inappropriate.

When issuing a youth caution, you should consider whether:

- it is in the public interest to offer a caution instead of prosecution, based on the circumstances of the offence (including any aggravating factors)
- you have sufficient evidence to meet the standard for a realistic prospect of conviction
- the offender has admitted the offence and there is sufficient evidence for a realistic prospect of conviction (remember, however, that a youth caution can only be given if it is not in the public interest to prosecute)
- the offender is between 10 and 17 years of age, inclusive. You should also consider any previous offending history and willingness to engage with interventions at the decision-making stage
- the views of the victim have been considered when determining how serious the offence is (although the final decision to use the youth caution remains with the police).

Note: the ACPO youth gravity matrix should be used to determine the seriousness of the offence and assist consistent decision making.

Youth cautions form part of a criminal record, and may be disclosed in future criminal proceedings. Whilst a young person would not normally have to disclose a youth caution to a prospective employer, the youth caution may form part of an enhanced DBS check.

If an offender receives a youth caution for an offence that, if dealt with at court, would have resulted in them being included on the sex offenders register then they will still be subject to the same registration requirements. In some circumstances, they may also be prevented from working with children and vulnerable adults. If the conditions are not complied with or the offender withdraws from the caution, the offender may be prosecuted for the original offence.

Youth cautions do not have to be specifically accepted by the offender if they are determined to be the most appropriate disposal for the offence committed.

After giving a youth caution, you should:

- arrange for an appropriate adult to be present if the offender is aged 17 years or under. If this is the case, all the following points must take place in the presence of an appropriate adult who must also be given copies of any written information given to the offender

- explain the process to the offender, including their right to legal advice, the requirements of the conditions, how compliance will be verified, and the consequences of not complying with the conditions
- explain the implications of receiving a youth caution, including the criminal record consequences
- confirm that the offender admits the offence and is compliant - they should sign a form to indicate this
- ensure the youth caution is recorded appropriately and a crime report is completed in accordance with the NCRS and the HOCA for crime.

If the offender complies with the conditions of the caution, no further action is required, unless voluntary conditions have been agreed. These can be complied with, but there is no sanction if this is not the case.

1.1.9 Adult Simple Caution

Simple cautions are available for any offence, but are primarily intended for low level and mainly first time offending when specified public interest and eligibility criteria are met. Only in exceptional circumstances should it be used to deal with more serious offences. The aims of the simple caution are to:

- offer a proportionate response to low level offending where the offender has admitted the offence
- deliver swift, simple and effective justice that carries a deterrent effect
- record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks
- reduce the likelihood of re-offending.

Simple cautions should not be given for indictable only offences, unless a senior police officer of superintendent rank or above believes there are exceptional circumstances and the CPS agrees.

Simple cautions should not be given for certain specified either way offences unless a senior police officer believes there are exceptional circumstances. The specified either way offences are:

- Possession of a bladed article, offensive weapon or firearm in public; including threatening with a bladed article or offensive weapon in a public place or a school
- Child prostitution and pornography, cruelty to a child, indecent photographs of children
- Supplying Class A drugs.

Simple cautions cannot be offered to an offender who has:

- not admitted that they are guilty of the offence
- raised a defence
- not agreed to accept the caution. Offenders retain the right to decline the offer of a simple caution, even where guilt has been admitted, and face being prosecuted.

Simple cautions can only be given if you are satisfied that there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted. Similarly, cautions should not be given if it is in the public interest for the offender to be brought before the court.

Simple cautions form part of an offender's criminal record and may be used in future proceedings and in certain circumstances, may be made available to an employer as part of a criminal record check. Offenders must be made aware of this before agreeing to accept a simple caution.

There is no right of appeal against the administration of a simple caution once it has been accepted by the offender and administered by the police. However, it may be challenged by way of a formal complaint to the police force that administered it and by a judicial review.

Decision making process for non-specified either way offence and summary only offences

The more serious the offence, the less likely it is that a simple caution will be appropriate. The seriousness of the offence and the range of penalties likely to be considered must be carefully considered in every case, taking into account the Magistrates' Court Sentencing Guidelines.

Any aggravating circumstances, including the methodology employed by the offender (for example, any breach of trust or advantage taken of the vulnerable or young) may all increase the seriousness of the offence to the point where the case should proceed to court. You should use the National Decision Model and the College of Policing Gravity Factors Matrix to assist you in reaching this decision.

1.1.10 Youth Conditional Caution (YCC)

YCCs are a caution with conditions attached. The conditions that can be attached must be rehabilitative, reparative or punitive. Rehabilitative conditions can include attendance at the local YOT or at a specific treatment course, and reparative conditions can include apologising to the victim, paying compensation and making good any damage. Punitive conditions can include unpaid work or a financial penalty. Conditions must always be appropriate, proportionate and achievable. Restorative justice processes and initiatives may be used to help inform decisions as to the conditions to be attached to a conditional caution.

Note: the ACPO youth gravity matrix should be used to determine the seriousness of the offence and assist consistent decision making.

When deciding whether to give a youth conditional caution, you should consider whether:

- the offence is one of those set out in CPS (2013) The Director's Guidance On Youth Conditional Cautions. YCCs can only be offered for these offences
- you have sufficient evidence to meet the standard for a realistic prospect of conviction
- the offender has not denied the offence
- the offender has explicitly accepted the conditional caution and the conditions attached
- the offender is between 10 and 17 years of age, inclusive. Any previous offending history and willingness to engage with interventions should also be considered at the decision-making stage. You must refer the youth to the YOT for assessment
- the victim has been consulted and their views sought. However, victims do not have the right to insist that a particular disposal option is pursued. If appropriate, a victim can be awarded compensation or reparation.

If the offender fails to comply with the conditions attached to a YCC, it can result in them being prosecuted for the original offence. A YCC forms part of a criminal record, but is spent as soon as the conditions are complied with. However, it may form part of an enhanced DBS check if appropriate.

After giving a YCC, you should:

- arrange to have an appropriate adult present if the offender is aged 16 years or under, or is 17 years of age and considered vulnerable and there is any doubt about their capacity or ability to understand any aspect of the process. If this is the case, all the following

points must take place in the presence of the appropriate adult, who must also be given copies of any written information given to the offender

- explain the process to the recipient, including their right to legal advice, the requirements of the conditions, how their compliance will be verified, and the consequences of not complying with the conditions
- explain the implications of receiving a YCC, including the significance of an admission, criminal record consequences, and any other implications (e.g. for working with children and vulnerable people, and whether the offence requires inclusion on the sex offenders register)
- confirm the offender's admission and willingness to comply - they should sign a form indicating this
- ensure the YCC is recorded appropriately according to the NCRS and the HOCR for crime (if appropriate) and that a crime report is completed.

If the offender complies with the conditions of the caution, no further action is required.

1.1.11 Adult Conditional Cautions

An adult conditional caution provides an opportunity to:

- respond proportionally to low level offending
- allow offenders to make swift reparation to victims and communities
- divert offenders into rehabilitative services at an early opportunity, reducing the risk of re-offending
- punish an offender by means of a financial penalty.

Foreign offender conditions can be given, whether on their own or in addition to the above conditions. The additional foreign offender conditions may be in relation to bringing about the departure of the relevant foreign offender from the United Kingdom and/or ensuring that the foreign offender does not return to the United Kingdom for a period of time.

Conditions

Failing to comply with the conditions attached to a conditional caution will result in criminal proceedings for the original offence and in the caution being cancelled. The conditions that can be attached to a conditional caution must have one or more of the following objectives:

- Rehabilitation - conditions which help to modify the behaviour of the offender, serve to reduce the likelihood of re-offending or help to reintegrate the offender into society
- Reparation - conditions which serve to repair the damage done either directly or indirectly by the offender
- Punishment - conditions which punish or penalise the offender for their unlawful conduct.

Note:

At present there is only one punitive condition available - the payment of a financial penalty.

Restorative justice processes and initiatives may be used to help inform decisions as to the conditions to be attached to a conditional caution.

When deciding whether to administer an adult conditional caution, you should consider whether:

- the offence is set out in CPS (2013) The Director's Guidance on Charging 5th Edition. Adult conditional cautions are not generally suitable if the offender would be likely to receive a substantial community order or imprisonment if prosecuted
- you have sufficient evidence for a realistic prospect of conviction
- it is in the public interest for the offender to comply with suitable conditions rather than being prosecuted
- the offender has not denied the offence
- the offender is likely to accept the caution and explicitly consent to the conditions
- the offender must be 18 years or over and willing to comply with the conditions. You should assess any previous offending and only dispense a conditional caution if you consider it appropriate to modify their offending behaviour or make reparation for harm caused
- the victim has been consulted and their views sought. However, victims do not have the right to insist upon a particular disposal option. Victims can be awarded compensation or reparation if appropriate.

A conditional caution forms part of a criminal record and may be disclosed in future proceedings or to an employer as part of a DBS check if the offender applies to work with children and vulnerable adults.

After giving an adult conditional caution, you should:

- explain the process to the offender, including their right to legal advice, the requirements of the conditions and how their compliance will be verified, as well as the consequences of not complying
- explain the implications of receiving a conditional caution, including the significance of the admission of guilt and criminal record implications
- confirm the offender's admission and willingness to comply with the conditions - they should sign a form to this effect
- ensure the conditional caution is recorded appropriately, and where appropriate, that a crime report is completed, in accordance with the NCRS and the HOCR for crime.

If the offender complies with the conditions of the caution, no further action is required.

Additional guidance on adult conditional cautions

For additional guidance on adult conditional guidance refer to: Ministry of Justice (2013) Code of Practice for Adult Conditional Cautions available at - <http://www.justice.gov.uk>

1.2 Sentencing Options

In determining the appropriate sentence for an accused person who has pleaded guilty, or been found guilty after a trial, the judge or magistrates must take account of a number of factors:

- The facts of the offence(s)
- The circumstances of the offender
- If pleading guilty, at what point the guilty plea was entered.

This will include details of the accused's previous convictions. In the Crown Court, the circumstances of the earlier offending are sometimes presented to the court.

In more serious cases, the court may call for a pre-sentence report to be prepared by the National Probation Service (NPS). This report will contain information about the character, personality and social and domestic background of the defendant.

The report will also contain an assessment of the impact of the offence upon the victim and the risk of the defendant re-offending.

If the offence is one which may attract a community sentence the report will also contain a recommendation as to the type of community sentence that would be most suitable.

1.2.1 Other Offences Taken into Consideration

In addition to the offence(s) to which the accused has pleaded guilty or been found guilty, they may wish to admit other similar offences. The court for the purpose of sentence takes these offences into account although the defendant is not normally convicted of them and no separate penalty is imposed. These offences are sometimes referred to as TICs.

1.2.2 Court Orders and Requirements

For offences where an out-of-court disposal is not appropriate, the offender would be charged and proceed through the formal justice system in the usual way.

Orders and requirements are formal instruments available to all courts which are often used to address low-level, first-time offences (usually heard in the Magistrates' court) or can be used in tandem with a sentence, for example fines and/or forfeiture of property.

Section 177 of the Criminal Justice Act 2003 deals with community orders and the requirements that can be imposed on offenders; some of the requirements are subject to restrictions.

Section 1 of the Criminal Justice and Immigration Act 2008 deals with youth offenders, but many of the disposal options are the same for both groups. However, those that apply to youth offenders are detailed below in the 'Youth Rehabilitation Order (YRO)' section.

1.2.3 Community Orders: Adults

Where a person aged 18 or over is convicted of an offence, the court that convicts them may make an order (referred to as a "community order") imposing any one or more of the following requirements:

An unpaid work requirement:	Unpaid work is done on projects set up by the probation service in consultation with those passing sentence and the local community. These can include environmental projects such as clearing canals, removing graffiti, painting and decorating community facilities, and working in homes for the elderly. No
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	offender can be required to do more than 300 hours of unpaid work or less than 40.
An activity requirement	This may include such tasks as receiving help with employment or group work on social problems. Reparative activities are a particular aim of this requirement.
A foreign travel prohibition requirement	The offender must not travel to any country or territory outside the British Islands. Details specified in the order would include specified days when travel was prohibited and any exceptions to the order.
A prohibited activity requirement	The offender must not participate in activities specified in the order. The order would also specify the day(s) or period during which the offender was prohibited from the activity.
A curfew requirement	The offender must remain at a specified place for specified period(s) of time (but not less than two hours or more than 12 hours in any one day).
An exclusion requirement	For a specified period (of no more than two years) the offender is prohibited from entering a place specified in the order.
A residence requirement	The offender must reside at a place specified in the order for a specified period.
A mental health treatment requirement	During a period or periods specified in the order, the offender must submit to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both, for different periods) with a view to the improvement of the offender's mental condition.
A drug rehabilitation requirement	During a specified period of at least six months, the offender must: a. "submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with

	a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and b. for the purpose of ascertaining whether he/she has any drug in his/her body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the responsible officer or by the person specified as the person by or under whose direction the treatment is to be provided”.
An alcohol treatment requirement	During a period specified in the order, the offender must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of their dependency on alcohol. The period for which the offender receives treatment must be for at least six months.
A supervision requirement	During the relevant period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the officer.
An attendance centre requirement	Where the offender is aged under 25, the order may require that they must attend at a specified attendance centre for a specified number of hours.

Under s.117(3) of the Act, if the court makes a community order which includes a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (unless electronic monitoring is not available in the local area or if someone else whose consent is required e.g. a landlord withholds that consent). The court may also decide electronic monitoring is inappropriate in the case.

Electronic monitoring may also be imposed by the court for any of the community orders mentioned above.

1.2.4 Youth Rehabilitation Order (YRO)

In addition to the 'menu' of options above, young people can also be required to participate in the following activities by way of disposal.

You should note that these new options are available for people under the age of 18 who are convicted of an offence on or after 30 November 2009.

Local Authority Residence Requirement	The young person must reside in suitable accommodation provided by or on behalf of the local authority specified in the order for up to six months. The order may also stipulate that the young person is not to reside with a person specified in the order.
A programme requirement	The offender must participate in an accredited programme. Details specified in the order would include the particular programme, place, and number of days.
Unpaid Work Requirement	This is only available for young people aged 16 and 17 years at the time of their conviction. When a YRO with an Unpaid Work Requirement is made, the number of hours which the young person is required to work must be specified in the order. The number of hours must be more than 40 and less than 240 and the work should be completed within 12 months.
Education Requirement	A young person of compulsory school age is required to comply with approved education arrangements.
Intensive Fostering	A court can only sentence a young person to a YRO with Intensive Fostering (for up to 12 months) when: • The court is dealing with the young person for an offence which is punishable with imprisonment • The court is of the opinion that the offence, or combination of offences, was so serious that but for an intensive fostering, a custodial sentence would be appropriate

	• If the young person was less than 15 years old at the time of conviction, the court must be of the opinion that they are a persistent offender • Further, the court must be satisfied that the behaviour which constituted the offence was due, to a significant extent; to the living arrangements of the young person and that the imposition of a fostering requirement would assist in that young person's rehabilitation.
Residence Requirement	The young person is required to reside with a specified person e.g. a grandparent (that person's consent must be obtained) or at a specified place (known as a 'place of Residence Requirement') for the specified period.

A place of residence requirement may only be included in a YRO if the young person is 16 or over at the time of conviction. The legal parental responsibility for that young person would not change.

1.2.5 Fines

For any offence other than one for which the sentence is fixed by law, the court may impose fines. The level of the fine set should reflect the seriousness of the offence and the financial circumstances of the offender. It is unusual for a fine to be imposed for the more serious offences, unless the fine is imposed in conjunction with another penalty.

The court will usually allow offenders time to pay a fine in instalments. A failure to pay a fine may ultimately result in the offender being sent to prison. The court may order the parent or guardian of a person under the age of 18 years, to pay the young offender's fine.

1.2.6 Forfeiture of Property

Under the power given by Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, courts can order a convicted person to forfeit property used for the purposes of crime.

Further information is available on the legislation.gov.uk website.

1.2.7 Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) exists to allow proceeds of crime to be taken from offenders and there are investigatory powers which can be exercised by constables (and in some cases by others). Consequently, when investigating crime you will need to consider whether the evidence suggests someone has profited from their crime. If so, you should seek advice on whether POCA can be used.

1.2.8 Discharges

There are two kinds of discharge:

1. **Conditional discharge:** Although this does not involve the imposition of any punishment, the offender remains liable to be punished for the offence if they are convicted of a further offence within the period of the conditional discharge. The maximum period of such a discharge is three years.
2. **Absolute discharge:** An absolute discharge is ordered where the court decides that it is inappropriate to inflict any punishment and imposes no restrictions on the offender's future conduct.

1.2.9 Retrial for Serious Offences

Part 10 of the Criminal Justice Act 2003 permits a retrial of someone who has been acquitted of certain qualifying (serious) offences to take place if there is new, compelling evidence against the person which was not available at the time of the original court case.

Qualifying offences are numerous but include murder, manslaughter, rape, and serious sexual and drug related offences. Examples of new evidence would include a witness who did not appear at the original trial, or results of DNA tests which were not available. Evidence is compelling if it is reliable, substantial and highly probative.

Consent from the Director of Public Prosecutions (DPP) must be obtained to reinvestigate the qualifying offence, by an officer of commander rank or above in the Metropolitan and City Police forces, or an assistant chief constable or above in other forces.

Furthermore, once all the evidence has been collated the DPP must give his/her authority in writing to the Court of Appeal to have the original acquittal quashed and a retrial ordered.

1.2.10 Custodial Sentence Types

Life sentence: a sentence which is wholly indeterminate. The Parole Board may grant release on licence once minimum period imposed to meet the requirements of retribution and deterrence has been served. If released, licence continues indefinitely and offenders are liable to recall. Life sentence prisoners are released under the terms of the Crime (Sentences) Act 1997.

Mandatory life sentence: the adult sentence for murder.

Discretionary life sentence: adult sentence for serious offences other than murder (e.g. manslaughter, arson, rape, causing an explosion).

Custody for life: mandatory sentence for offenders convicted of murder aged over 18 and up to the day before their 21st birthday at the time of the offence and sentenced whilst still aged 20. Also a discretionary sentence for those in this age group convicted of other offences for which a maximum sentence of life imprisonment can be passed on an adult.

Detention for life: equivalent to a discretionary life sentence for offenders aged 10 and above but under 18; convicted of offences other than murder, for which a life sentence may be passed on an adult.

Detention during Her Majesty's pleasure: the only sentence available to the courts for a person convicted of murder who was aged over 10 but less than 18 at the time of the offence.

A sentence of life imprisonment is mandatory for all persons convicted of murder. Life imprisonment is also available as the maximum penalty which the court may impose for certain indictable only offences, for example robbery, rape, wounding with intent.

A life sentence does not necessarily mean that an offender will spend the rest of their life in prison.

Although there is no automatic entitlement to release, the offender may be considered for release on licence. Where the life sentence passed was mandatory (i.e. the offender was convicted of murder), the offender's release may only be authorised by the Home Secretary who receives a recommendation from the Parole Board and consults with the Lord Chief Justice. There is also a minimum sentence that has to be served, depending on the age of the offender and the specific circumstances of the murder(s).

Where the court passes a sentence of life imprisonment for an offence other than murder (this is referred to as a discretionary life sentence) it is able to specify a term after which the offender should be eligible for release.

When this term has been served, the offender will be entitled to require the Home Secretary to refer the case to the Parole Board. The Parole Board has the power to direct the Home Secretary to release the prisoner on licence if satisfied that the prisoner's confinement is no longer necessary for the protection of the public.

Where a person is convicted of murder and is under 18 at date of offence, irrespective of age when convicted, detention is automatic (Section 90: Powers of Criminal Courts (Sentencing) Act 2000) with a minimum term of 12 years (Criminal Justice Act 2003 Schedule 21 - Para 7).

1.2.11 Custody - Adults

The court can only pass a sentence of imprisonment on an adult if it considers the offence to be so serious that only a custodial sentence can be justified, or where the offence is a violent or sexual offence, only a custodial sentence would protect the public from serious harm.

The maximum term of imprisonment available to the court will be determined by the Act of Parliament which decided what constituted the offence committed.

Examples:

- Rape: life imprisonment
- Robbery: life imprisonment
- Domestic burglary: 14 years' imprisonment
- Theft: seven years' imprisonment
- Assault occasioning actual bodily harm: seven years' imprisonment
- Affray: three years' imprisonment.

The maximum sentence of imprisonment that a Magistrates' Court may impose is one of six months for any one offence and 12 months in total. A Magistrates' Court can only pass sentence of 12 months where it is imposing consecutive sentences for two or more offences which are triable either way. Where the court imposes prison sentences for a number of

offences, it must determine whether the sentences should be served concurrently (i.e. at the same time) or consecutively (i.e. one after the other).

1.2.12 Custody - Young Offenders

Since the introduction of the Criminal Justice and Immigration Act 2008, custodial sentencing powers in respect of young offenders can be summarised as follows:

A youth court may impose a detention and training order. This is the only form of custodial sentence that this court can impose on offenders aged from 12 to 17 years. It can run from between 4 and 24 months.

The Crown Court may impose three types of custodial sentence:

- A detention and training order (as before).
- A sentence of detention upon juveniles aged 10 to 17 convicted on indictment of manslaughter or other grave crimes (primarily offences punishable with imprisonment for 14 years or more); or young persons convicted of certain other specified offences.
- A sentence of detention at Her Majesty's pleasure as a mandatory sentence for murder or any other offence the sentence for which is fixed by law as life imprisonment.

1.2.13 Suspended Sentences

A suspended sentence of imprisonment or in the case of a person aged between 18 and 21, detention in a young offender institution, can only be passed in relation to an offender aged 18 or over. The sentence may be suspended for a minimum period of six months and a maximum period of two years.

Where a sentence is suspended, the offender does not serve any part of the custodial sentence unless they commit a further offence during the period of suspension. The court may then order them to serve all or part of the suspended sentence in addition to any further penalty it imposes for the new offence. The court can also impose a fine or make a compensation order when passing a suspended sentence.

1.3 Revision Questions

- What is meant by a justice outcome?
- What is the purpose of restorative justice?
- What are the different types of out-of-court-disposals?
- Which types of offence could be appropriately dealt with using out-of-court disposals?
- How old must someone be in order to receive a Youth Conditional Caution?
- When is the presence of an appropriate adult required whilst administering a caution?
- As part of a community order, what requirements could be imposed on an adult convicted of an offence?
- What types of activities might a young person be required to participate in as part of a Youth Rehabilitation Order?
- What are the six types of custodial sentence outlined in these notes?
- What is the maximum amount of time for which a sentence may be suspended?

2. Key Legislation

- Part 3 of the Criminal Justice Act 2003
- Sections 1-11 of the Criminal Justice and Police Act 2001
- Section 37A of the Police and Criminal Evidence Act 1984
- Sections 66A - H and 66ZA - 66ZB of the Crime and Disorder Act 1998
- Sections 132 - 138 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

3. E-learning

In addition to this book the following e-learning is available via the College of Policing Managed Learning Environment (MLE):

- Out of Court Disposals.

The e-learning provides basic information on out of court disposals processes for both adults and young people that support the 'Neighbourhood Justice' approach to dealing with low level crime and should be completed prior to reading these notes.

The MLE is regularly updated with new learning programmes and materials.