

Prison Reform Trust submission
Youth Conditional Caution Code of Practice Consultation
November 2012

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. We welcome the opportunity to respond to this consultation. We have chosen to respond only to those questions on which we have expertise or relevant information to draw on from our research.

Q4. What do you consider the equality issues arising from the way the Code has been drafted to be, and why? Please list any sources of evidence to support your response.

Children with disabilities and impairments:

We welcome the inclusion of paragraph 16.3 in the draft Code, which contextualises the key issues decision-makers should be aware of when considering a Youth Conditional Caution. As this paragraph makes clear, children's capacity to comprehend complex processes and understand and retain information is significantly different to that of adults. It is essential that the authorised person makes this distinction when determining the appropriateness of an order and conditions attached as well as when explaining the process of administering such an order. Particular attention should be paid to the needs of children with learning disabilities, learning difficulties, speech language or communication needs. Given that nearly one in four (23%) young offenders have learning difficulties (an IQ below 70) and more than one quarter (26%) borderline learning difficulties (an IQ between 70-80)¹ it is essential that professionals are aware of the impact such impairments can have, not just on children's capacity to follow complex, and often stressful procedures but also on their thought-processes and behaviour.

For example, research has found that such individuals *"are likely to have difficulty understanding certain words and in understanding and responding to questions; they may have difficulty recalling information and take longer to process information; they may be*

¹ Harrington, R. and Bailey, S. (2005) *Mental health needs and effectiveness of provision for young offenders in custody and in the community* London: YJB

*acquiescent and suggestible, and, under pressure, may try to appease other people”.*² So as to ensure that authorised persons are making decisions with this information at the top of their minds we would suggest moving this paragraph to Section 2 of the Code.

We would recommend the following amendment be made to paragraph 6.1 of the Code: factors the decision maker will take into account when deciding whether to give a youth conditional caution:

- *The age and maturity of the offender, and whether they have a learning disability or difficulty or other known impairment likely to impact on their ability to understand and/or comply a youth conditional caution;*

In addition, we would also welcome the following amendment at paragraph 8.1:

- *Factors such as the young person’s age, maturity and personal circumstances, including any disabilities or impairments they may have and/or whether they are a looked after child, should be taken into account when considering appropriate conditions. Where there are concerns a child may have a disability or impairment which has not been identified or diagnosed, the decision-maker must seek advice before proceeding. Where a child is looked after by the State, the decision-maker should seek the views of the child’s carer to ensure they will be supported to comply with conditions.*

The Prison Reform Trust has long been concerned at the number of looked after children drawn into the criminal justice net, publishing research looking at the links between care, crime and custody.³ Given that looked after children are more than twice as likely to be cautioned or convicted as their peers,⁴ and that evidence suggests some children in care are criminalised for behaviour which would be dealt with differently had it occurred in a family setting,⁵ it is essential that such children are identified at the earliest opportunity. Where a youth conditional caution is deemed an appropriate response to offending by children in care, the decision-maker should ensure they are supported to comply with any conditions attached by the individual or institution acting in loco parentis.

Additional points:

Whilst we appreciate this consultation seeks responses to a series of specific questions, we would like to take this opportunity to raise the following broader points of concern:

² Talbot, J. (2012) *Fair access to justice? Support for vulnerable defendants in the criminal courts* London: PRT

³ Prison Reform Trust (2011) *Care: A stepping stone to custody? The views of children in care on the links between care, offending and custody* London: PRT

⁴ Department for Education (2011) *Outcomes for children looked after by local authorities in England*, as at March 2010

⁵ <http://www.justice.gov.uk/downloads/youth-justice/courts-and-orders/making-it-count-in-court/reducing-the-criminalisation-of-looked-after-children2.pdf>

Financial penalties:

The Prison Reform Trust is concerned that financial penalties are rarely, if ever, an appropriate tool for addressing offending by children. Few children under the age of 18 will have the means to pay a fine themselves, and a purely financial penalty does little to address the reasons behind such offending or anti-social behaviour.

In addition, it appears there is potential for disproportionately onerous conditions to be attached to the youth conditional caution - for example, a child could be made subject to similar conditions twice to satisfy the three objectives of rehabilitation, reparation and punishment – a “*payment to an appropriate local charitable or community fund*” [paragraph 7.3] agreed as part of a reparative condition, for instance at the instigation of a victim, and a financial penalty attached as part of a punitive condition. We welcome paragraph 11.7 which confirms that compensation to be paid to a victim as part of a reparative condition should take priority over a financial penalty condition but would suggest amending paragraph 11.10 so that, where compensation is agreed as part of a reparative condition this precludes the attachment of a further financial penalty.

Paragraph 16.1: Explaining the effect of the conditional caution

For the purposes of the youth conditional caution only, we would suggest amending the draft Code so as to ensure that it can only be given to a child (including 17 year olds, as per the definition of a child set out in UN Convention on the Rights of the Child) in the presence of an Appropriate Adult. This would ensure 17 year olds are not disadvantaged by legal anomalies in the Police and Criminal Evidence Act 1984 and are afforded the same legal protections and access to support as other children.⁶

Paragraph 18: Arrest and detention of young people

We are extremely concerned that the code highlights powers allowing police officers to arrest and detain children who they believe have failed to comply with conditions. The code states that “*detention may be authorised where it is necessary to investigate reasons for any non-compliance*”, yet is clear (at paragraph 17.5) that “*failure to comply with a condition is not an offence in itself*”. We do not accept that detention is an appropriate response to suspected non-compliance nor that it is required to enable investigation into the reasons behind a possible non-compliance.

Given that the safeguards set out in Section 24 of the Police and Criminal Evidence Act do not apply in the case of children suspected of failing to comply with the conditions of a Youth Conditional Caution, we are concerned the Code as currently drafted contains insufficient safeguards to prevent inappropriate detention of children in the police station

⁶ For a fuller discussion of the arguments in favour of amending PACE see the Prison Reform Trust’s submission to the recent review of PACE Code C: <http://bit.ly/YrfBqI>

and would welcome clarification of the limited circumstances in which it is envisaged the power to detain may be used, and on whose authorisation.

Prison Reform Trust
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