



Youth Caution and Youth Conditional Cautioning Procedure

This procedure is part of North Yorkshire Police policy to which all Chief Constable personnel and the functions provided by the Deputy Mayor for Policing as part of the York & North Yorkshire Combined Authority are required to adhere.

Procedure Statement

North Yorkshire Criminal Justice Area is approved by the Director of Public Prosecutions to utilise Youth Cautions and Youth Conditional Cautions in appropriate cases. North Yorkshire Police (NYP) will implement the Caution & Conditional Cautioning scheme in accordance with the 'Directors Guidance'.

Youth Cautions (YC) and Conditional Cautions (YCC) are a statutory disposal created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The threshold is similar to that for which would previously have been used for reprimands and final warnings.

YC can be issued by the Police whenever there is sufficient evidence to charge a child or young person who admits an offence where prosecution would not be in the public interest.

YCC are a disposal intended to divert from court those lower level cases that would normally be in the public interest to prosecute, but where a Police Sergeant or a Crown Prosecutor feels that a more effective outcome could be achieved for the victim, offender or both by the imposition of conditions as part of a caution.

The Police and Youth Justice Teams (and the CPS where relevant) should work closely together for YC and YCC for the Out of Court Disposal system to be effective.

When considering a YC, second YC or YCC the child or young person must be assessed by the YJS and the case heard before the YOP (unless indictable offence). It will be necessary to grant police bail or RUI allow YJS to assess the case and recommend appropriate conditions. In all cases bail should be carefully considered in line with bail and RUI policy and procedure.

YC and YCC do not follow a system of escalation so should not be discounted if the young person has previous convictions or pre-court disposals.

Care must be taken to guard against 'inappropriate repeat cautioning' and a strong focus on public protection must be maintained.

Procedures:

Youth Justice Procedure

Other Documents:

Child Gravity Matrix

Youth Justice Gravity Factor Assessment

Code of Practice for Youth Conditional Cautions

The DPP Guidance on Youth Conditional Cautioning

Out of Court Disposals Protocol NYP/YJS

Conditional Caution Process Flowchart

Process

Determining whether a Youth Caution (YC) is an appropriate disposal

A YC may be given for any offence (refer to NPCC Youth Gravity Matrix) when the young person admits their guilt and has not raised a defence. They must be 10-17 years old. There must be sufficient evidence for a realistic prospect of conviction, and it must be in the public interest to offer a YC instead of prosecution. It may be more suitable to deal with the matter informally rather than criminalise the youth especially where they have no previous disposals.

Youth Cautions and Youth Conditional Cautions represent the first formal responses to young people who offend and can be cited in criminal proceedings. Unlike the previous disposals, the YC does not have a fixed limit on the number that can be administered, and they can be used if a young person has been convicted where proportionate. They are intended for low level offences; any indictable only offence must be referred to a Prosecutor if a YCC is being considered and only in exceptional circumstances will this be an appropriate disposal.

All Police decisions to issue a YC for summary and either-way offences, must be made by the Chair of the Youth Outcome Panel. This enables both Police and YJS information to be considered in partnership to ensure a corporate and consistent approach to decision making. Whilst ensuring the best outcome for the victim and suspect. This will support the unnecessary criminalisation of young people.

Youth conditional cautions are available for any offence, except an offence of hate crime or domestic violence that has a gravity score of 4, but a youth conditional caution can only be given for an indictable only offence on the authority of the CPS. The police may issue a youth conditional caution for any either way or summary offence, except an offence of hate crime or domestic violence with a gravity score of 4, without reference to the CPS.

There is no statutory restriction on the number of youth cautions that a youth can receive, and a youth may receive a youth caution even if he or she has previous convictions, reprimands, warnings, youth cautions and youth conditional cautions.

When considering a second or subsequent YC, there must be exceptional circumstances. The interventions attached to the second YC are voluntary and there is no separate penalty for failing to comply with them, however failing to comply with this intervention may be cited in any future criminal proceedings.

Determining whether a Youth Conditional Caution (YCC) is an appropriate disposal

A YC may be given for any offence (refer to NPCC Youth Gravity Matrix) when the child or young person admits their guilt and has not raised a defence. They must be 10-17 years old. There must be sufficient evidence for a realistic prospect of conviction, and it must be in the public interest to offer a YCC instead of prosecution. It may be more suitable to deal with the matter informally rather than criminalise the youth especially where they have no previous disposals.

Youth Cautions and Youth Conditional Cautions represent the first formal responses to young people who offend and can be cited in criminal proceedings. Although there are clear similarities between a Community Resolution Disposal (CRD) and a Conditional Caution, the CRD should not be the default disposal routinely and especially where a young person has previously received informal disposals.

A YCC is a formal out of court disposal intended to divert from court those lower level cases that it would normally be in the public interest to prosecute and allows offenders to be cautioned with conditions attached. If they fail to comply with the conditions they may be prosecuted for the original offence. The conditions may be reparative or rehabilitative, aimed at repairing the harm to the victim or wider community, or changing the young person's behaviour. Restrictive conditions may also be used, but only alongside reparative or rehabilitative conditions.

The DPP guidance is that a YCC can be given for any offence triable summarily or either way. Reference should be made to the NPCC Youth Gravity matrix. An Indictable only offence must be referred to a Prosecutor if a YCC is being considered and only in exceptional circumstances will this be an appropriate disposal.

Youth conditional cautions are available for any offence, except an offence of hate crime or domestic violence that has a gravity core of 4, but a youth conditional caution can only be given for an indictable only offence on the authority of the CPS. The police may issue a youth conditional caution for any either way or summary offence, except an offence of hate crime or domestic violence with a gravity score of 4, without reference to the CPS.

Section 48 and Schedule 9 Criminal Justice and Immigration Act 2008 amend section 65 Crime and Disorder Act 1998 and insert sections 66A to H Crime and Disorder Act 1998 with

the effect that a youth conditional caution can be given to a youth provided that the following conditions are satisfied:

- The authorised person has evidence that the youth has committed an offence;
- The prosecutor is satisfied that there is sufficient evidence to charge the youth with the offence and that a youth conditional caution should be given in respect of the offence;
- The youth admits the offence to an authorised person;
- The authorised person has explained the effect of the YCC to the youth and has warned him or her that failure to comply with any of the conditions may result in a prosecution. If the youth is 16 or under this must be done in the presence of an appropriate adult;
- The youth signs a document that contains details of the offence, an admission that he committed the offence, consent to the YCC and the conditions attached to the caution.

The Youth Conditional Caution is no longer restricted to youths with no previous convictions and there is no statutory restriction on the number of youth conditional cautions that a youth can receive. However, the **Director's Guidance on Youth Conditional Cautioning (2nd Edition)** explains that a record of previous offending does not automatically rule out the possibility of a youth conditional caution especially where there have been no similar offences during the last two years or where it appears that the youth conditional caution is likely to change the pattern of offending behaviour and prevent reoffending. However, where a youth has been given two youth conditional cautions and continues to offend, a further youth conditional caution is unlikely to be effective in preventing offending and should not be offered as an alternative to prosecution.

Once a youth has been correctly charged it is likely to be only in exceptional circumstances that a youth caution or youth conditional caution will be given. When a case has proceeded to court and the prosecutor deems a youth caution or youth conditional caution can be justified, the matter should be adjourned for consideration of that disposal.

Conditional Cautions provide an opportunity:

- to offer a proportionate response to low level offending
- for offenders to make swift reparation to victims and communities
- for offenders to be diverted at an early opportunity into rehabilitative services thereby reducing the likelihood of re-offending, and
- to punish the young person by means of a financial penalty

Where several related similar offences are admitted, they may be grouped and dealt with by a single set of conditions. Breach of any of the conditions would make the offender liable to prosecution for all the original offences.

The NYP Youth Decision Making Gravity Form assists in the final case disposal and permits consideration of a YCC, even in cases where previous convictions exist, especially where those convictions are for dissimilar offences.

However, if an offender has failed to complete a previous YCC, or has recently been convicted of a similar offence, a YCC may not be considered appropriate unless exceptionally it is believed that the conditions might be effective in breaking the pattern of offending.

A YCC is not a conviction, but it is a statutory disposal and may be cited in any subsequent court proceedings.

Extent of the YCC scheme in North Yorkshire

The conditions that can be attached to a YCC must have one or more of the following objectives:

- **Rehabilitation** – conditions which help to modify the behaviour of the young person, serve to reduce the likelihood of re-offending or help to reintegrate the young person into society.
- **Reparation** – conditions which serve to repair the damage done either directly or indirectly by the young person.
- **Punishment** – unpaid work (applicable to offenders aged 16/17 years only) or financial penalty conditions which punish or penalise the young person for their unlawful conduct.

The conditions attached to a YCC must always be:

- proportionate to the offence
- appropriate
- clear
- practicable
- achievable
- verifiable

Administration of Youth Cautions and Youth Conditional Cautions

All YC and YCC in North Yorkshire should be administered by a Police Inspector in uniform. The police officer seconded to YJS may also issue a YC or YCC as they have that specialist role and are likely to have knowledge of the suspect and the case. Where this is not possible it should be administered by a Sergeant in uniform. It may be preferable to deliver the YC or YCC prior to the bail date, thus removing the necessity to re-attend custody. It is good practice to have a member of YJS present when a YCC is delivered as they can explain the role of the YJS to the child or young person and their parents/carers or appropriate adult.

Young people who were 17 when the offence was committed, but turn 18 at the time of delivery, and who are eligible for a YC /YCC, should be given an Adult Simple Caution or an Adult Conditional Caution provided they consent to this. A Youth YC or YCC CANNOT be issued once someone turns 18 years old.

The young person is not required to explicitly consent to accepting the YC but they, and their parents/carers or appropriate adults, should be given information about all the options for dealing with the offence so they can make an informed decision before the young offender is asked whether they admit the offence.

Young people and their parents/carers or other appropriate adults should have access to full information about the implications of accepting a caution or conditional caution so they can make an informed decision on accepting the disposal and formally admitting guilt. Such information will include the following:

- the matter will be recorded on PNC
- that it can be cited in criminal proceedings
- in some cases, can be made available to employers
- if the offence is listed under the Sex Offenders Act 1997, that a caution or conditional caution will also require them to register with the police for inclusion in the sex offender's register
- if the young person does not make an admission, they cannot be cautioned or conditional cautioned
- a decision on the appropriate disposal will be taken in accordance with the Directors Guidance on Charging in partnership with the CPS where required
- implications of Criminal Record Bureau (CRB) disclosure checks

The YC and YCC may be administered in a police station or any other suitable location consistent with achieving the appropriate impact on the young person.

Biometrics

In cases where offenders have not been arrested but are interviewed as a Voluntary Attendee (VA) then consideration must be given to the taking of biometrics (fingerprints/DNA) if a YC or YCC is to be delivered.

This will require an Inspectors authority. This is in line with Section 61 (6) of PACE.

An Inspector can only authorise the taking of biometric samples where the:

- offence in question is a recordable offence, and
- the person has been convicted, or has received a conditional or simple caution, and
- An Inspector is satisfied that taking the fingerprints and DNA sample is necessary to assist in the prevention or detection of crime. There must be some basis to support this view (i.e. suspect may be involved in other similar outstanding offence but insufficient evidence to arrest/interview, or there are reasonable grounds to believe that future offending may occur).

Where deemed appropriate it will be the investigating officer's responsibility to obtain an Inspector's authority to take the samples in these circumstances. The authority may initially be verbally given but subsequently should be confirmed in writing in their PNB and recorded

on the VA record. Consideration should be given to the suspect, offence, likelihood of reoffending, any intelligence or other relevant circumstances in deciding whether to take these samples.

Where a decision is taken not to take biometric samples then this should be documented on the VA record and in addition an entry placed on the Occurrence Enquiry Log (OEL).

Anyone **arrested** for a recordable offence will routinely have their biometrics taken in custody.

Non-compliance with a Youth Conditional Caution

A power of arrest for failing to comply with the conditions of a Conditional Caution is provided by Section 24A, Criminal Justice Act, 2003.

The purpose of the power of arrest is to enable police officers to effectively investigate the circumstances of any failure to comply and any arrest must satisfy the necessity criteria.

If an offender, subject to conditions under a YCC, fails to comply with any of the conditions imposed, the Officer in the case (OIC) will consider whether criminal proceedings are to be instigated against the person.

When a notification of failure to comply from YJS is received, the OIC will assess the nature of the failure to comply and commission enquiries into the failure as deemed appropriate.

Each breach will be treated on its own merits and once enquiries into the breach have been completed, the OIC will give consideration to the following:

- Was there a reasonable excuse for failing to comply with the conditions?
- Is the extent of any part compliance sufficient to regard the YCC as complete?

In considering a breach case, the OIC will have the following options:

- cancel the YCC and prosecute the original offence
- extend the completion date to allow the condition(s) to be fulfilled
- revise the condition(s). A new MG14 should then be completed and the offender asked to sign to agree the new conditions. Failure to sign may result in prosecution for the original offence
- take no further action, if the Officer believes part completion is sufficient to regard the caution as complete
- the OIC should ensure that the YJS are aware of any intention to extend, accept part completion or prosecute for a breach case

Where it is decided to prosecute the original offence, the OIC will ensure that an appropriate GAP/NGAP file is submitted to the Prosecution Team in the normal manner.

Responsibilities

Role of the Officer in the Case (OIC)

It is the responsibility of the OIC to:

- email Form 145 PENY to YJS within 24 hours as per Youth Disposals Framework Flowchart, this enables the YJS to commence voluntary intervention and support.
- inform the victim that a YC / YCC is being considered and obtain the views of the victim
- a Victim Personal Statement (VPS) should be included where appropriate (the value of which should not be underestimated) and will assist the Chair of the Youth outcome Panel
- Complete a referral to the Youth outcome Panel which must include the following:
 - Consent form (signed to by YP and AA to allow YJS to access their records with other services)
 - MG5 (detailing the admission in interview and any remorse shown)
 - MG11s (which could be used in RJ intervention with the YP)
 - Gravity Matrix form (this should be completed by the Supervisor managing the investigation in line with the gravity matrix guidance on scoring. The supervisor should endorse)
 - Supporting evidence – Photographs, CCTV or BWV footage or other evidence that could assist the Panel in their decision making.
 - MG19 form will need completing for victims who request compensation
- YOT will undertake an assessment within 14 calendar days (which will include contacting the young person and the victim) and provide a recommendations report to the Youth Outcome Panel for the Chair to make a decision. Ensure that when YJS return the outcome from the YOP, the OIC reviews the outcome decided and any conditions imposed. Where the Police wish to alter the suggested conditions of an outcome, then the YJS should be consulted. CPS may need to be consulted at this point if it is an Indictable only offence.
- Where an arrest or VA record exists on Niche for the offence, the Custody Officer or VA Trained Officer will select the appropriate disposal on the relevant record and then generate a Form MG14 for a YCC (to include the agreed conditions) or a YC Form
- ensure that where no Niche custody or VA record exists and the young person is not attending a Custody area for disposal, ensure MG14 or YC form is created
- arrange for a uniformed Police Inspector (or the seconded YJS police officer) to administer the YC or YCC and serve the appropriate forms on the offender. Where this is not possible, to be delivered by a uniformed Sergeant
- ensure that an electronic copy of the Youth Caution or Youth Conditional Caution is sent to the YJS within 24 hours
- ensure Police bail or RUI is cancelled where appropriate to avoid unnecessary circulations for failing to answer bail

- ensure the arrest /VA record is updated accordingly and updates the case status on NICHE via an OEL entry.
- where the young person has signed the YC or YCC outside of the Niche process the signed MG14 or Caution Form must be scanned onto the Niche occurrence. In this situation it is essential that the arrest/VA record and OEL entry are updated to confirm delivering of the YC or YCC. This will ensure that PNC is updated accordingly
- monitor the progress of any conditions and ensure that the victim is kept up to date. Niche should be updated accordingly
- file submission – YCC files should be submitted to the Prosecution team and YC files should be submitted in line with local policy.

Role of Supervision

It is the responsibility of Supervision to ensure the following:

- All decisions for a Youth Caution or Youth Conditional are referred to Youth Outcome Panel for an outcome decision, where applicable or CPS where it is indictable offence.
- The evidential and public interest test is met
- The suspect has made a full admission, and this is admissible in evidence
- The suspect is eligible for an out of court disposal
- The supervisor completes a Gravity Matrix, making an assessment of the case against the Gravity Matrix guidance and provide a rationale for the recommended outcome.
- All evidence and material have been produced for a referral to the Youth Outcome Panel for a decision is to the required standard
- When required they must ensure a VPS has been included.
- Where relevant ensure that the custody/VA record is fully updated and where applicable cancel any future bail dates.

Role of the Youth Justice Team (YJS)

Initial Referral:

The YJS will commence voluntary intervention with the aim of early intervention and prevention upon receiving notification of the young person becoming involved in criminal

Referral to Youth Outcome Panel:

Officers should be encouraged to speak with the YJS Seconded Police Constable within the YJS as they may be able to offer their expertise at an early point in any decision-making process.

On receipt of the referral the YJS seconded Police Constable will review the referral and complete a report for the Youth Outcome Panel.

The YJS will allocate a Youth Justice Worker to engage with the child and make an assessment of risk of harm and reoffending and provide a recommendation of outcome to the panel.

The YJS Victim Liaison Officer will be allocated to make contact with the victim to explain the YJS role and the YJS assessment findings and gather the victim's views for the panel.

Panel decision:

A YJS service manager to present the case to the Youth outcome Panel, sharing the Police and YJS report findings.

The YJS will inform the OIC by report of the outcome of the Youth Outcome Panel. The report will include the decision made by the panel on outcome and any conditions imposed as part of the outcome.

The YJS will notify the OIC of successful completion of any conditions as they occur or at 16 weeks, whichever is the sooner. Notification will be to:

- the OIC by secure email
- PNC records at PNCRecords@northyorkshire.pnn.police.uk

Where there is non-compliance with any conditions, the YJS will collate the information and report to the OIC for consideration of further action.

Role of the Conditional Cautioning Administrator

The role of the Conditional Cautioning Administrator is performed by Dedicated Decision Makers in the Prosecution Team, however, is delegated to YJS in the case of non-financial conditions.

The Conditional Cautioning Administrator role is pivotal in coordinating the scheme by:

- keeping accurate records and tracking the progress of Conditional Cautions
- updating PNC
- notifying and coordinating conditions with other agencies i.e. HMCTS Central Finance Unit
- directing or undertaking further investigative work in breach cases
- quality control for the scheme
- acting as a point of knowledge for enquiries, internal and external
- advising the Crime Management Unit (CMU) when there has been a breach of a conditional caution to ensure the investigation is reopened.

Role of the Crown Prosecutor

For Indictable only offences only a Crown Prosecutor may decide whether a YCC can be administered to an offender and what conditions are appropriate. In cases of breach or non-compliance with the authority decided by CPS, the case must be referred back to them for a decision on whether to prosecute the original offence. Wherever possible, the case should be referred to the lawyer who made the original cautioning decision.

Crown Prosecutors will make Conditional Cautioning decisions in accordance with the Code for Crown Prosecutors, applying both the evidential and public interest tests, as laid out in the five key requirements.

Role of Her Majesty's Courts and Tribunal Service (HMCTS)

HMCTS Central Finance Unit will undertake the end-to-end process of receiving and paying out monies in compensation cases.

Notification to HMCTS of a compensation condition or a fine will be undertaken by the North Yorkshire Conditional Cautioning Administrator. The YOT will monitor compliance. The HMCTS will advise the YOT once the payment is complete.

Role of PNC

Accurate recording of YCC on PNC is an essential part of the process. The PNC Department have separate national guidance on data input for Youth Conditional Caution cases.

Information that a YCC has been administered will be captured direct by PNC using existing search processes. Subsequent notification to PNC that the different stages, including finalisation of a YCC, have been reached will be undertaken by the YOT via email to PNC Records.