

8 Applications to Expunge Police Cautions

Introduction

8.01

This chapter addresses applications to expunge police cautions – ie applications to remove a caution from a person’s criminal record, where it was offered or administered unlawfully or where, exceptionally, its impact on the recipient’s private life is disproportionate. The chapter covers the basis for making an application, the procedure to be followed, and what to do if an application to expunge is refused.

8.02

Many people misunderstand the status of a police caution. They accept a caution thinking it is a ‘slap on the wrist’ which will have no future implications, but this is often not the case, and the presence of a caution on a person’s record can have serious implications for that person’s future life chances.

8.03

‘Simple’ cautions are a non-statutory disposal which become ‘spent’ under the Rehabilitation of Offenders Act 1974¹ as soon as they are administered. This means that, ordinarily, the recipient of a simple caution will not be required to disclose it when asked about their criminal record, but there are some circumstances – for example, when applying for certain jobs or visas – in which the fact of a caution will be disclosed as part of a criminal record check². When someone finds themselves in that situation, a simple caution they accepted years earlier may have real ramifications for their prospects of gaining certain employment or travelling to certain countries. The same is true of conditional cautions, administered under the Criminal Justice Act 2003, Part 3, which become spent three months after the caution was given, but which may nevertheless have to be disclosed in specified circumstances and are therefore capable of having a detrimental impact long after they have been given.

1 Rehabilitation of Offenders Act 1974, Sch 2, para 1.

2 See Chapter 5.

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8.04

In certain circumstances it is possible to apply to have the caution removed, or ‘expunged’, from a person’s record because of the way in which the caution was administered or because it has a disproportionate impact on the recipient’s life.

8.05

The power to expunge a caution is vested in the chief officer of the police force that issued the caution. The National Police Chiefs’ Council (NPCC) has an established application process for the deletion of criminal records, which includes applications for the expungement of cautions. All applications under the NPCC procedure must be submitted centrally to the ACRO Criminal Records Office, the body tasked with coordinating all applications for deletion of records from the Police National Computer (PNC). ACRO will check the application to ensure that it is in the correct format and accompanied by the correct supporting documents. If the application is in order, ACRO will forward it to the police force that issued the caution, so that it can make the decision on expungement. Once the decision has been made, the police force will communicate it to ACRO who will then pass it on to the applicant or the applicant’s legal representative. Applications must be on the prescribed form³ and should ideally be accompanied by a detailed letter of representations⁴ and supporting evidence.⁵

Is there a basis for the caution to be expunged?

8.06

Certain preconditions have to be met before the police can lawfully make an offer to a suspect to dispose of the case by way of a caution. Those preconditions are listed in the Ministry of Justice guidance document, ‘Simple Cautions for Adult Offenders’⁶ (which applies to all cases after 13 April 2015). If the conditions have not been satisfied but a caution has nevertheless been given, there may be grounds for making a complaint against the police force and/or making a specific application for the caution to be expunged on the basis that it is unlawful, because a breach of relevant guidance renders a decision unlawful.⁷ For conditional cautions, the relevant guidance is the Revised Code of Practice for Conditional Cautions (issued under the Criminal Justice Act

3 Available from the ACRO website, https://www.acro.police.uk/Early_Deletion_of_Biometric_Information.aspx.

4 See Appendix K and Appendix O for the relevant form and a sample letter respectively.

5 For example, anything obtained following a Subject Access Request: see Chapter 3.

6 Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf In force from April 2015; see paras 9–13.

7 *R (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, at para 26.

2003, s 25)⁸ – but a conditional caution must also have complied with the statutory requirements in the Criminal Justice Act 2003, ss 22–23. If it does not, it will be unlawful: for an example of a case in which the High Court considered a conditional caution to be unlawful for failure to comply with the Criminal Justice Act 2003, s 23 see *R (on the application of Owusu-Yianoma) v Chief Constable of Leicestershire*.⁹

The necessary preconditions for a lawful simple caution¹⁰

8.07

In summary, the preconditions are that:

- the suspect must make a ‘clear and reliable’ admission to the offence;
- there must be sufficient evidence to provide a realistic prospect of conviction;
- it must be in the public interest for the case to be disposed of by way of a caution rather than a prosecution;
- the suspect must agree to accept the caution.

8.08

In order for a simple caution to be given, the suspect must make a ‘clear and reliable’ admission to the offence. If they admit they carried out criminal conduct, but at the same time raise a defence, that does not constitute an admission and a caution should not be offered. If an admission is equivocal, or obtained in circumstances that render it unreliable, or if it is made but then recanted from, it will not be appropriate for a caution to be offered. Although the admission does not need to be made in the context of a formal interview, the method for obtaining and recording the admission must be compliant with the Police and Criminal Evidence Act 1984 (PACE) and its Codes of Practice. That means that the admission must *either* be made in response to questions asked in a formal interview conducted and recorded in accordance with the PACE Codes *or* it may be an unsolicited admission made without inducement or invitation to comment at any time outside the context of an interview of which a written record is made and the offender invited to sign, *or* it is made in a formal written statement under caution. Anything less than an unequivocal admission of guilt made in one of those circumstances will be an insufficient basis for a caution to be offered.

8 Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228971/9789999098144.pdf.

9 [2017] EWHC 576 (Admin).

10 To avoid repetition, and because they are more common, the remainder of this chapter focuses on the guidance and conditions relevant to simple cautions. Similar considerations apply in relation to conditional cautions, by reference to the Code of Practice and provisions of the Criminal Justice Act 2003.

8.09

Second, a simple caution may only be given if the decision-maker is satisfied that there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted. At the same time, the decision-maker must not offer a caution if the public interest requires a prosecution. A caution should only be given where it is in the public interest to do so. While that may mean that in some cases a caution should not be offered because it is in the public interest for there to be a prosecution, in other cases a caution should not be offered because, despite an admission, no further action should be taken. That may arise when factors such as ill-health, including mental illness, and the overall context of the offending, mean it is not in the public interest for a caution to be given.¹¹ Determining the appropriate response to the alleged offending will normally involve the police considering the Gravity Factors Matrix,¹² a guidance document that categorises offending and specifies the action that would normally be expected in relation to each category. A deviation from the response stipulated by the Gravity Factors Matrix may provide a basis on which to challenge any resulting caution.

8.10

Crucially, a simple caution is a consensual disposal and so the suspect must agree to accept it. Even if they admit the offence, they always retain the right to refuse a caution. Refusing a caution will often mean that the suspect is charged and prosecuted for the offence but it is possible that a decision is instead taken not to prosecute. In *Caetano v Commissioner of Police of the Metropolis*,¹³ albeit under now-superseded but broadly equivalent guidance, the court found that a prosecution does not necessarily or inevitably follow if a caution is refused, and in the circumstances of that case the only reasonable outcome would have been for no further action to have been taken.

8.11

The police officer administering a simple caution must explain to the recipient the implications of accepting a caution, and the officer administering the caution must be satisfied that the suspect understands and gives informed consent. The need for the spelling out of the consequences of a caution was explained by the Divisional Court in *R (on the application of Stratton) v Chief Constable of Thames Valley Police*.¹⁴ In particular:

- unlike a conviction (either by plea before a court or after a trial), a simple caution is not imposed by a court or in circumstances where the seriousness of the consequences would be apparent. When a caution is administered,

11 *Caetano v Commissioner of Police of the Metropolis* [2013] EWHC 375 (Admin), at para 44.

12 Available at [https://docmanager.pnld.co.uk/content/Gravity%20Matrix%20-%20Adults%20\(Final%20Master%20V1%20Feb%202019\).pdf](https://docmanager.pnld.co.uk/content/Gravity%20Matrix%20-%20Adults%20(Final%20Master%20V1%20Feb%202019).pdf).

13 [2013] EWHC 375 (Admin), at para 40.

14 [2013] EWHC 1561 (Admin), at para 49.

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