

Feature

A cautionary tale



Richard Atkins of Knights Solicitors highlights the dangers of accepting a caution, particularly where the consequences are not explored or considered at the time it is administered and which, subsequently, can have dire consequences for those who hold Firearms and Shotgun Certificates.

HERE IS A TYPICAL SCENARIO: IT IS 2 O'CLOCK in the morning, you have been arrested by the police for possession of a knife and you are sitting in a cell waiting for the duty solicitor to give advice. The police have indicated to your representative that they are willing to caution you for the offence if you are prepared to admit it. It has been years since you have been in trouble and it sounds like a reasonable proposal for all concerned, but...

So what is a caution? To start with a caution is an admission of a criminal offence and it must be recognised as such. The procedure is governed by official guidance from the Home Office,

Consider the ramifications carefully before accepting a caution for an offence.

which governs cautioning. Other types of cautioning such as Conditional Cautioning/Cautioning Plus, Warning Letters and likewise Fixed Penalty Notices are dealt with below. These are all forms of non-court disposals for criminal offences.

Before a "simple" caution can be issued by the police, UK Border Agency or any other uniformed investigative body, the following conditions must be met. Firstly, the offender, and, yes, the correct term is "an offender", has made a clear and reliable admission (either verbally or in writing). Secondly, there must be reliable evidence of the commission of an offence that meets the "evidential sufficiency" test under the Code for Crown Prosecutors. Lastly, the offender has to be aged over 18 as special rules (outside the scope of this article) apply to youth offenders.

Before administering a caution, the police should disclose all relevant evidence to an offender's legal representative to ensure the provision of informed legal advice. A simple caution should be used for low level offending and only in exceptional circumstances should it be used to deal with more serious offences. Sometimes the Crown Prosecution Service (CPS) is consulted and there are plenty of anecdotal stories of cases of cautions being offered by the police and accepted by offenders when the CPS has advised there is insufficient evidence to prosecute.

CONDITIONAL CAUTIONING

These differ from a simple caution in that they are generally reserved for those cases where prosecution should normally follow, but a decision is made by the police or CPS that the offender partakes in some form of restorative justice instead, such as paying compensation for an act of criminal damage or undertaking an anger management course

for an assault. If the condition(s) are not fulfilled then the caution is withdrawn and prosecution will generally follow with the added burden of an offender having to explain why they did not fulfil whatever conditions were imposed.

FIXED PENALTY NOTICES AND NOTICES FOR DISORDER

A Fixed Penalty Notice (FPN) or the variant a Penalty Notice for Disorder (PND) is not a fine or criminal conviction nor can it be cited in court as such unless contested. Those offered a FPN or PND can opt for the matter to be dealt with in court instead of paying, although, if proved, the payment increases and enforcement is undertaken by the Magistrates' Court in the same way as a fine. FPNs are supposed to be for minor offences such as road traffic matters – speeding and byelaw matters. PNDs are supposed to be issued for public order matters eg. drunkenness and low level public order offences, but have been known to be issued for common assault.

Paying the FPN or PND involves neither an official finding nor an acceptance of guilt and discharges all liability to conviction for the offence. When paying FPN or PNDs no admission of guilt is required nor is it advised that any be given.

WARNING LETTERS

Many prosecuting and investigative bodies (including Department for Business, Innovation and Skills and the Environment Agency) operate informal warning letter schemes, which purport to have the effect of cautions, but have no statutory basis. Nevertheless, they will influence any prosecution decision in the future should the offender come to the attention of these bodies.

CONSEQUENCES OF A CAUTION

A caution is a serious matter and it is



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recorded by the police on the Police National Computer (PNC) and may be cited in subsequent court proceedings. Despite what is said, it is a step into the CPS. What is sometimes overlooked is that a caution is offered and accepted for an offence that may not actually have occurred or cannot be proved. It is also worth noting that the Code for Crown Prosecutors cites Hartley Shawcross' famous statement as Attorney General that he hoped that the day would never come when all offences were prosecuted in this country; not every offence is worthy of prosecution.

Certain occupations allow employers to make what is known as an enhanced search of the PNC through the Criminal Investigation Bureau and this includes PNDs. Likewise, certain countries (principally the USA) appear to have the ability to acquire the information and there may be consequences regarding future travel arrangements.

SPENT CAUTIONS

Much is made of the provisions of the Rehabilitation of Offenders Act 1974 (ROA). Recent amendments to the Act mean that cautions become spent at the time when they are given. Conditional cautions will be regarded as spent three months after the date on which they were administered unless the offender is later prosecuted for a breach and convicted of the original offence.

For those prosecuted in the future, cautions may be cited for sentencing purposes. (Even if not referred to in full, a court will have regard to the fact that a person has been through the CPS and they may be used as evidence of what is known as "Bad Character" in a trial to show a person has a propensity to commit crime or be untruthful.)

FIREARMS CERTIFICATES

Cautions, PND, FPN and other warnings may be relevant and impact on Shotgun or Firearms Certificates (FAC), at the time of any initial application for an FAC, renewal, or be used to support the Revocation of an FAC. Having accepted a Caution or PND, the Chief Constable will have regard to the fact that a criminal offence has occurred and that the offender has admitted it.

The legislation requires the Chief Constable to have regard to the character of an FAC holder and there is no require-

ment that every offence that has occurred be prosecuted. The admission of guilt to a caution or other sanction will always call into question the character of the holder of an FAC. The position is not helped by the assertion "it was only a caution"; it is the offence that matters. So recalling the example in this article, possession of a knife, the starting point for sentencing in the Magistrates' Court is a mid-level community punishment order and if there is a second similar offence, or other "violence" related conviction, custody. Now, with the new offence of brandishing a bladed weapon in public, sentencing will almost inevitably be for the Crown Court.

So, what may look, at first blush, like a relatively minor incident now becomes a serious matter and one which will lead to the revocation of an FAC. How many gamekeepers or people working the land carry knives in their pockets? Most in their working day, but what happens when you go out at night and the knife remains in your pocket?

Nor is it easy to try to side-line a caution in any Licencing Appeal for an FAC. Licencing Appeals in the Crown Court are civil proceedings and the evidential standard is on the "balance of probabilities". The failure to take proceedings to overturn the caution will itself be viewed as an admission of the correctness of the caution. Many Crown Court Judges and the Justices sitting with them will be case-hardened and probably take the view that the appellant offender was just lucky not to have been prosecuted.

APPEALING AGAINST CAUTION

If it has been properly administered, it is almost impossible to seek to remove a caution from official records and the damage is done. In many ways it is easier to appeal the conviction of a criminal offence. The only way, generally, to overturn a caution, unless the police concede there was an error, is an application to the High Court, which is expensive, and generally on a point of law unless one can show that the police have acted in bad faith. Rarely, if ever, will the police admit a mistake and agree to withdraw the caution from the PNC.

IN CONCLUSION

For some, the acceptance of a caution may be a good outcome following an arrest. However, for others it can have

FURTHER INFORMATION

KNIGHTS SOLICITORS
Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk

NGO FREE LEGAL HELPLINE
NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.



For those in the South: Matthew Knight and Richard Atkins, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales: Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.

serious adverse consequences. The moral of this story is that a caution should not be accepted lightly or treated as some minor disposal. It should only be accepted after careful consideration and following proper legal advice. For those holding FACs the fact that one is a holder should always be discussed with your lawyer together with any other problems that may arise. Remember, at the stage a caution or other FPN will be offered by the police, the offence may not have been fully investigated and may not be capable of being proved. It can be a hard decision to make and the consequences need to be fully considered.

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