

Limiting the Use of Cautions: Avoiding ‘Cautions Culture’ and Collateral Consequences

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1. INTRODUCTION

IN THE YEARS 2013 and 2014, nearly 400,000 cautions were issued by police across England and Wales, including for serious offences involving children, sexual acts, and weapons.² This article argues that limiting the use of cautions supports the goals of both the Government and other proponents for ‘tough on crime’ policies, as well as would-be defendants and other advocates for pro-defendant policies. In October 2013, then-Minister of Justice Chris Grayling announced plans to reform what he and others believe is a ‘cautions culture’: the over-cautioning of serious and often repeated offences, resulting in what is perceived as nothing more than ‘a slap on the wrist’ for offenders.³ The reforms culminated in the Criminal Justice and Courts Act 2015, which partially limits police’s ability to caution for certain offences.⁴ Meanwhile, some defence lawyers

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² Stefano Ruis, ‘The Hidden Mischief of Police Cautions’ (*The Justice Gap*, 5 September 2014) <<http://thejusticegap.com/2014/09/hidden-mischief-police-cautions/>>; Brooke Perriam, ‘Grayling Promises to End “Cautions Culture”’ (*The Justice Gap*, 4 November 2014) <<http://thejusticegap.com/2014/11/grayling-ends-soft-option-cautions/>>.

³ Perriam (n 2); Tom Wright, ‘Chris Grayling Announces Changes to Police Cautions’ (*The Justice Gap*, 2 October 2013) <<http://thejusticegap.com/2013/10/chris-grayling-announces-changes-police-cautions/>>.

⁴ Criminal Justice and Courts Act 2015, ss. 15–17.

and other defence proponents believe the current caution system is also in need of reform as would-be defendants may not fully understand that a caution carries with it a criminal conviction and various collateral consequences that may affect future employment, character evidence given in future court proceedings, and other aspects of life.

In perhaps a rare occurrence, the goals of advocates both for and against 'tough on crime' policies can be met by limiting the use of cautions. In limiting the use of cautions, the Government can lessen the prevalence of the 'cautions culture' that 'tough on crime' proponents believe encourages recidivism and further offending. Simultaneously, would-be defendants will receive fewer unadjudicated convictions on their criminal histories, thus avoiding the collateral consequences of those convictions in the areas of employment background checks and bad character evidence used against them in future legal matters. Limiting the use of cautions thus furthers the Government's goal to disincentivise further offending while concurrently avoiding the over-penalisation of would-be defendants brought on by the collateral consequences of cautions.

2. DEVELOPMENT OF THE USE OF CAUTIONING

The practice of cautioning began with juveniles in an effort to limit juveniles' exposure to the criminal justice system.⁵ The Children and Young Persons Act 1969 grants the original statutory authority to caution.⁶ By 1981, the Parliamentary All-Party Penal Affairs Group supported the view that youth cautions were an excellent method to address delinquency if the youth is not a persistent delinquent, a police warning in a formal setting would be sufficiently impactful, the family had been alerted, and the youth could be connected with an agency that could assist in alleviating the factors making the youth delinquent.⁷ A 1983 study showed that youth cautions appeared to be achieving their intended result, since juveniles receiving cautions were less likely to re-offend than those who were prosecuted.⁸ Other justifications for cautioning are that it avoids stigmatising juveniles, connects the juvenile's family with social services, and saves police and court resources from being squandered on trivial offences.⁹

Juvenile cautions were, however, granted inconsistently, varying in the type of offences cautioned and the number of cautions given to a single offender.¹⁰ In response to these inconsistencies, the Home Office issued guidelines in 1985 that cautions were to be given only when the seriousness of the offence falls short of the need for prosecution and where there was: '(a) sufficient evidence to prove the

⁵ Ronald Bartie, 'A Deviation from Crime' [1990] 140 NLJ 1494.

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

⁹ Sean Enright, 'Charge or Caution?' [1993] 143 NLJ 446.

¹⁰ *ibid.*

case, (b) the juvenile admitted the offence, and (c) the juvenile's parents had given their agreement to this course of action.¹¹ The Crime and Disorder Act 1998 further required that for a caution to be given, the police must determine that the child has committed an offence, that there is a realistic prospect of conviction, that the offence has been admitted, that the child has no previous convictions, and that it is not in the public interest to prosecute.¹² Neither the consent of the child nor the child's appropriate adult was a condition.¹³ If the child had been previously cautioned in the last two years, a caution could not be given.¹⁴ A two-category system of youth and youth-conditional cautions was then created by The Legal Aid, Sentencing, and Punishment of Offenders Act 2012.¹⁵ Cautions would now be given where the child admits to the offence, the police decide there is sufficient evidence to charge and that the child should not be prosecuted, the caution is given in the presence of an adult, and the implications of the caution are explained.¹⁶ However, consent was not required nor were there safeguards preventing the adult from urging the child to confess.¹⁷ These changes were introduced in response to the case of *R v Durham Constabulary*, where a 14-year-old boy was cautioned for sexual assault, but was not told until a week later about his obligation to register on the Sex Offenders Registry.¹⁸ The House of Lords quashed the appeal, though Baroness Hale did criticise the lack of a consent requirement.¹⁹

Adult cautions were considered only a 'possible course of action' in the 1985 Home Office guidelines and were only considered suitable for elderly or vulnerable adults.²⁰ The Home Office's stance drastically changed by 1990, when their circular announced that adults should not 'be excluded from cautioning by reason only of their age.'²¹ Adult cautions were to be given only when there was 'an admission of guilt' and 'sufficient evidence to prove the charge.'²² The guidelines iterated that in assessing whether a caution should be given, the nature of the offence, the likely penalty resulting from prosecution, and the offender's age, health, attitude, and previous record should all be considered.²³ By the early 1990s, adult cautions were

¹¹ *ibid*; Home Office Circular 14/1985.

¹² Crime and Disorder Act 1998, s. 65(1); Jon Robins, 'Youth Cautions and the Slap on the Wrist' (*The Justice Gap*, 16 November 2012) <<http://thejusticegap.com/2012/11/youth-cautions-and-the-slap-on-the-wrist/>>.

¹³ Robins (n 12).

¹⁴ *ibid*; Crime and Disorder Act, s. 65(2).

¹⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012, ss. 135–138 ['2012 Act']; Ronald Ellis & Stuart Biggs, 'Simple Cautions' [2013] 5 AR 6, 7.

¹⁶ 2012 Act, s. 66ZA(1)–(4); Ellis and Stuart (n 15).

¹⁷ Ellis and Biggs (n 15).

¹⁸ *R v Durham Constabulary* [2005] UK 21.

¹⁹ *ibid* [39].

²⁰ Home Office Circular 14/1985; Ellis and Biggs (n 15).

²¹ Home Office Circular 59/1990; Ellis and Biggs (n 15).

²² *ibid*.

²³ *ibid*.

widely being used and the range of offences quickly expanded to include theft, shoplifting, public order offences, minor assaults, criminal damage, and possession of controlled drugs.²⁴ While cautions for drug possession were originally limited to cannabis, a 1993 Metropolitan police directive expanded cautions to include class-A drugs like cocaine and heroin.²⁵ By 2012, adult cautions were regularly given for child prostitution and pornography, cruelty to or neglect of children, and other indictable-only offences.²⁶

The use of adult cautions was further expanded by the Criminal Justice Act 2003, which created simple and conditional cautions,²⁷ while providing the Crown Prosecution Service with greater discretion in cautioning.²⁸ A conditional caution is given when the offender has made an admission and, having the effects explained to him by an authorised officer, agreed to the caution,²⁹ which carries conditions such as compensation, drug addiction programmes, apologies, or attendance at victim counseling programmes.³⁰ Conditional cautions have also been tested specifically for female sex workers, with the intention to divert women from prison and towards women's centres, which provide advice and educational courses.³¹ More serious offences continued to be prescribed as simple, rather than conditional, cautions, and a 2008 Home Office circular reemphasised that simple cautions are to be used for only low-level offences.³²

These concerns prompted a review of cautioning by Justice Secretary Jack Straw in December 2009.³³ In October 2013, Minister of Justice Chris Grayling announced that cautions for all indictable-only offences would be banned and

²⁴ Enright (n 9) 446.

²⁵ *ibid.*

²⁶ Catherine Baksi, 'Grayling Pledges No More "Slaps on Wrist" for Rapists and Child Sex Offenders' (*Law Society Gazette*, 1 October 2013) <<http://www.lawgazette.co.uk/practice/grayling-pledges-overhaul-of-cautions/5037948.article>>.

²⁷ Criminal Justice Act 2003, ss. 22–23.

²⁸ Criminal Justice Act 2003, s. 23B, as inserted by the Criminal Justice and Immigration Act 2008; Ken Macdonald, 'The New Code for Crown Prosecutors' [2005] 155 *NLJ* 12.

²⁹ Criminal Justice Act 2003, ss. 22(1), 23.

³⁰ 'Crime Brief' (*New Law Journal*, 2 August 2007) <<http://www.newlawjournal.co.uk/nlj/content/crime-brief-17>>; Under s. 22(3) of the Criminal Justice Act 2003, the conditions which may be attached to conditional cautions are those which have one or more of the following objects: (a) facilitating the rehabilitation of the offender; (b) ensuring that the offender makes reparation for the offence, and; (c) punishing the offender.

³¹ 'Conditional Cautions Will Keep Women Out of Prison' (*New Law Journal*, 10 July 2008) <[http://www.newLawjournal.co.uk/nlj/content/conditional-cautions-will-keep-women-out-prison](http://www.newlawjournal.co.uk/nlj/content/conditional-cautions-will-keep-women-out-prison)>.

³² Home Office Circular 16/2008; 'Criminal Litigation' (*New Law Journal*, 25 July 2008) <<http://www.newLawjournal.co.uk/nlj/content/law-digest-192>>.

³³ Catherine Baksi, 'Government to Review Use of Cautions' (*Law Society Gazette*, 14 December 2009) <<http://www.lawgazette.co.uk/news/government-to-review-use-of-cautions/53529.article>>.

offenders may face consequences, such as fines.³⁴ The governmental guidance of Grayling and his successor Michael Gove was made statutory by the Criminal Justice and Courts Act 2015, which mandated that cautions should not be given, save for in exceptional circumstances, if the offence is indictable-only³⁵ or a specific either-way offence³⁶ or if the offender has been cautioned in the past two years.³⁷ The indictable either-way offences specified include offences related to crimes against children, crimes involving weapons, sexual crimes, and class-A drug crimes.³⁸

3. EFFECTS OF CAUTIONING ON WOULD-BE DEFENDANTS

While these various reforms over the years have grown out of a concern for how the rampant use of cautions harms victims and perceived law-abiding citizens, reforms have rarely addressed the effect of cautions on the would-be defendants who receive them. Cautions result in a number of collateral consequences, which would-be defendants often do not fully comprehend, especially if they are juveniles.³⁹ Many cautions are accepted hastily without any legal representation, due to the LASPO 2012 cuts to legal aid and would-be defendants' eagerness to leave the police station.⁴⁰ Cautions can prevent travel abroad, especially to countries with strict immigration policies like the United States.⁴¹ Cautions are also likely to affect sentencing in future prosecutions, though the research is inconclusive because Ministry of Justice sentencing data does not separate prior convictions from prior cautions.⁴² The most serious collateral consequences of cautions are their effects on would-be defendants' employment criminal background checks and bad character evidence in future legal matters. These collateral consequences will be discussed in turn.

³⁴ *ibid*; Perriam (n 2). However, in a statement following Grayling's announcement, Surrey Police Chief Constable Lynne Owens made sure to clarify that 'the use of simple cautions for indictable-only offences represent a fraction of 1% of the total issued. Therefore, the police service would take the view that these are only used in exceptional circumstances currently.'

³⁵ Criminal Justice and Courts Act 2015, s. 17(2) ['2015 Act'].

³⁶ 2015 Act, s. 17(3).

³⁷ 2015 Act, s. 17(4)(b).

³⁸ Anthony Edwards, 'Criminal Law Changes' (*Law Society Gazette*, 15 June 2015) <<http://www.lawgazette.co.uk/law/legal-updates/criminal-law-changes/5049333.article>>; Ministry of Justice Guidance, 'Simple Cautions' (13 April 2013).

³⁹ Ellis & Biggs (n 15); Ruis (n 2).

⁴⁰ Ellis & Biggs (n 15) 9.

⁴¹ Julian V. Roberts & Jose Pina-Sanchez, 'Previous Convictions at Sentencing: Exploring Empirical Trends in the Crown Court' [2014] 8 CLR 575, 582; David Sleight, 'Treat Reforms with Caution' (*Law Society Gazette*, 5 November 2014) <<http://www.lawgazette.co.uk/law/practice-points/treat-reforms-with-caution/5044849.article>>.

⁴² Roberts & Pina-Sanchez (n 41) 582.

4. CAUTIONS AND BACKGROUND CHECKS

Accepting a caution mars a would-be defendant's criminal record with a conviction, which can be discovered during a criminal background check and create grave consequences for the would-be defendant's employment. The argument for including cautions in criminal record checks is that in accepting a caution, an individual admits their guilt and the caution should be treated as if it were a conviction, without any question of evidence having been 'inconclusive.'⁴³ However, not all share this view; in a 2009 lecture, Lord Justice Leveson, President of the Queen's Bench Division, posited that:

In issuing an out of court disposal, the police are essentially acting as prosecutor and judge, outside the environment of an open court. Although these disposals are not convictions, they are kept on record and, at the least serious end, can risk criminalizing people who on a one-off occasion do something out of character, and who feel the quickest thing to do is accept the penalty or caution that is being proposed by the police, even if further analysis might have revealed no offence.⁴⁴

Criminal record checks are required for all work that involves children or vulnerable adults—even unpaid, voluntary work, such as scout leading—and can include work in healthcare, law, and the Civil Service.⁴⁵ Doctors, lawyers, registered financial practitioners, and armed forces personnel who are cautioned may face separate investigation and disciplinary hearings.⁴⁶

In attempts to lessen the severity of these consequences, there have been a number of reforms made to the criminal record check system. Criminal record checks are currently conducted by the Disclosure and Barring Service, which was launched in December 2012 as a merger of the Criminal Records Bureau and the Independent Safeguarding Authority.⁴⁷ Previously, a criminal record check revealed current and spent convictions (including cautions), reprimands, and warnings.⁴⁸ Originally, under the Rehabilitation of Offenders Act 1974, cautions

⁴³ Richard Scorer, 'Blacklisted' [2006] 156 NLJ 125.

⁴⁴ Rachel Rothwell, 'Out of Court Disposals Warning' (*Law Society Gazette*, 9 December 2010) <<http://www.lawgazette.co.uk/news/out-of-court-disposals-warning/58440.article>>.

⁴⁵ Helen Hart, 'Checking Up: Are Criminal Records Bureau Checks Too Onerous? Ask Helen Hart' (*New Law Journal*, 15 February 2008) <<http://www.newlawjournal.co.uk/nlj/content/checking>>; Ellis & Biggs (n 15) 7.

⁴⁶ Ruis (n 2).

⁴⁷ Ellis & Biggs (n 15) 7.

⁴⁸ Hart (n 45).

became spent after the offender did not recidivate after a specified period of time.⁴⁹ This policy was changed in the Criminal Justice and Immigration Act 2008, which spent simple cautions as soon as they were imposed and spent conditional cautions three months after their imposition if conditions were met.⁵⁰ A filtering scheme introduced in May 2013 no longer discloses minor convictions and cautions after six years for adults and after two years for juveniles.⁵¹ The filtering scheme has, however, a number of exclusions for cautions related to listed offences and cautions issued to would-be defendants with previous convictions.⁵² Many people with multiple minor cautions will continue to have cautions disclosed for the rest of their lives.⁵³ It should be noted that obtaining multiple minor cautions, so as to be excluded from the filtering scheme, can derive from something as simple as being overpaid benefits for two consecutive months and receiving one caution for each month.⁵⁴

The courts have also weighed in on the employment consequences of cautions appearing on criminal records. In 2005, the Information Tribunal ruled in *Chief Constable of West Yorkshire, South Yorkshire and North Wales v Information Commissioner* that old records could be retained for 'policing purposes and the administration of justice' but were not to be disclosed for other purposes, such as vetting.⁵⁵ Practically, this did not occur until statutory intervention by the Crimes and Courts Act 2013, though some cautions, for serious sexual and violent offences, will always be disclosed.⁵⁶

Disclosure of cautions in criminal record checks also raises issues concerning Article 8 of the European Convention on Human Rights, as the European Court of Human Rights ruled in *M.M. v The United Kingdom* that cautions are a part of a person's private life.⁵⁷ This case arose out of a Northern Irish caution, which has some procedural differences to English cautions but, nonetheless, raises Article 8

⁴⁹ Rehabilitation of Offenders Act 1974, Schedule 2, s. 3.

⁵⁰ Criminal Justice and Immigration Act 2008, s. 49 & Schedule 10; Anthony Edwards, 'Criminal Law Roundup: More than Just the Usual Suspects' (*Law Society Gazette*, 22 October 2009) <<http://www.lawgazette.co.uk/law/criminal-law-roundup-more-than-just-the-usual-suspects/52791.article>>.

⁵¹ Jamie Grace, 'Old Convictions Never Die, They Just Fade Away: The Permanency of Convictions and Cautions for Criminal Offences in the UK' [2014] 78(2) JCL 121, 131.

⁵² Ruis (n 2).

⁵³ Christopher Stacey, 'Filtering of Cautions and Convictions Doesn't Go Far Enough' (*The Justice Gap*, 21 June 2014) <<http://thejusticegap.com/2014/06/filtering-cautions-convictions-doesnt-go-far-enough>>; 'No Place for Cautions' (*New Law Journal*, 19 June 2014) <<http://www.newlawjournal.co.uk/nlj/content/no-place-cautions>>.

⁵⁴ Stacey (n 53).

⁵⁵ *Chief Constables of West Yorkshire, South Yorkshire and North Wales Police v Information Commissioner* [2005] UKIT DA 05 0010 (12 October 2005), para. 220.

⁵⁶ Anthony Edwards, 'Legislation and Case Law' (*Law Society Gazette*, 30 September 2013) <<http://www.lawgazette.co.uk/law/legal-updates/legislation-and-case-law/5037881.article>>.

⁵⁷ *M.M. v United Kingdom* (App. no. 24029/07) [2012] ECHR 1906.

issues.⁵⁸ English courts examined how disclosure engaged Article 8 in *R. (T) v Chief Constable of Greater Manchester & Others*.⁵⁹ In 2002, T, at the age of 11, admitted to the theft of two bicycles and was given two cautions; in 2010, T applied for a sports studies course, which involved contact with children, thus requiring a criminal background check that revealed his two cautions.⁶⁰ The UK Supreme Court upheld the Court of Appeal ruling that the indiscriminate statutory regime requiring the disclosure of all cautions violated Article 8 on two grounds: that a caution takes place in private, making the caution protected personal information, and that the impairment of employment opportunities affects a person's ability to enjoy private life.⁶¹ The Supreme Court reasoned that the lifelong disclosure of minor cautions was 'disproportionate', 'not necessary in a democratic society', and 'not based on any rational assessment of risk.'⁶² Further support for disclosure reform was seen the day after the Supreme Court's ruling, when a Parliamentarian's Inquiry led by Lord Carlile QC published a wide range of recommendations, including ways that juvenile criminal records should be dealt with.⁶³ Specifically, the inquiry recommended that filtering rules should be extended to offences that resulted in a prison sentence of six months or less and that child offenders should receive lifelong anonymity.⁶⁴

5. BAD CHARACTER EVIDENCE

Cautions also result in unforeseen consequences in the arena of bad character evidence in future legal matters, most often in would-be defendants' future criminal trials. The Court of Appeal has ruled that cautions can be used as evidence of bad character because acceptance of a caution requires an admission of guilt.⁶⁵ District

⁵⁸ *ibid* [159]–[174].

⁵⁹ *R(T) v Chief Constable of Greater Manchester & Others* [2013] EWCA Civ 25; Adam Jackson, 'Case Comment: Criminal Records, Enhanced Criminal Records Certificates and Disclosure of Spent Convictions: Impact of ECHR, Article 8' [2014] 78(6) JCL 463.

⁶⁰ *ibid*; 'Criminal Records—Police Act 1997 ss. 113A and 113B—European Convention on Human Rights Art. 8—Compatibility—Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975—Whether *Ultra Vires*' 7 AR 1; Sam Thomas, 'Case Comment: The Supreme Court Judgment in *R. (on the Application of T) v Chief Constable of Greater Manchester and the Effect on Professional Regulators*' [2015] 2 CLR 149.

⁶¹ *R(T) v Chief Constable of Greater Manchester Police & Others* [2014] UKSC 35; [2014] WLR (D) 271; Catherine Baksi, 'Disclosure of Cautions Breaches Privacy Rights, Supreme Court Rules' (*Law Society Gazette*, 18 June 2014) <<http://www.lawgazette.co.uk/law/disclosure-of-cautions-breaches-privacy-rights-supreme-court-rules/5041734.article>>; Ellis & Biggs (n 15) 8.

⁶² Stacey (n 53).

⁶³ Christopher Stacey, 'Filtering of Cautions and Convictions Doesn't Go Far Enough' (*The Justice Gap*, 21 June 2014) <<http://thejusticegap.com/2014/06/filtering-cautions-convictions-doesnt-go-far-enough>>; 'No Place for Cautions' (*New Law Journal*, 19 June 2014).

⁶⁴ Alan Travis, 'Children with criminal past should be given clean slate at 18, says MPs' (*The Guardian*, 19 June 2014) <<http://www.theguardian.com/law/2014/jun/19/children-criminal-past-clean-slate-18-say-mps>>.

⁶⁵ J. R. Spencer, 'Evidence of Bad Character—Where We Are Today' [2014] 5 AR 5.

Judge Gareth Branston correctly criticises this reliance on a would-be defendant's admission of guilt as justification for using cautions as bad character evidence.⁶⁶ Branston has been very critical of the use of cautions as bad character evidence, principally relying on the Criminal Justice and Immigration Act 2008's amendments to the Rehabilitation of Offenders Act 1974.⁶⁷ The amendments provide that a person given a caution be treated as if they had not committed an offence once the caution is spent, and that no evidence shall be admissible to prove a caution had been given; this seems to be limited to civil matters, however, as there exists an exception for admission of such evidence in criminal proceedings.⁶⁸ Branston argues that cautions are not misconduct, but merely evidence of misconduct, which is hearsay in criminal proceedings within the Criminal Justice Act 2003.⁶⁹ There is a counter-argument, particularly espoused by Professor J. R. Spencer, that cautions constitute an admission exception to hearsay because embedded in a caution is the fact that the defendant has confessed to the offence.⁷⁰ Branston rightly rejects this argument on the grounds that caution admissions strain the meaning of confession in criminal proceedings, that describing a previous caution as a confession is unsupported by authority, and that a confession is only admissible if made by a defendant and deployed by the prosecution or a co-defendant.⁷¹

6. CONCLUSION

Though it might seem paradoxical, limiting the use of cautions via Government reforms might be in the best interests of both the Government and would-be defendants, though not without implications for both. A conceptual trade-off exists between benefits the Government and would-be defendants receive and the resulting implications.

The Government benefits from limiting the use of cautions by furthering its goal of deterring future offences through what it deems to be adequate sentencing and punishment. Almost since the inception of juvenile cautions in 1969, there has been a steady Government effort to reform and limit their use. Despite Government efforts to reign in their use, cautions have continuously increased and expanded in number. The Government and other supporters of 'tough on crime' policies have viewed this continual increase in cautions as evidence that cautions are not an effective deterrent; in their eyes, too many would-be defendants evade adequate punishment and thus continue to offend. Limiting the use of cautions furthers the Government's goal of adequately punishing offenders in order to deter future offences.

⁶⁶ Gareth Branston, 'A Reprehensible Use of Cautions as Bad Character Evidence?' [2015] 8 CLR 594, 596.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ J. R. Spencer, 'Cautions as Character Evidence: A Reply to Judge Branston' [2015] 8 CLR 611.

⁷¹ Branston (n 66) 600–01.

This has implications for the Government, however, as fewer cautions means that the Government must invest the time, money, and resources into prosecuting more offences. The extensive use of cautions has provided an inexpensive alternative to adjudication while still punishing offenders. By limiting the use of cautions, the Government will either need to allot more funds and resources to the Crown Prosecution Service ('CPS') to prosecute these offenders or accept that the CPS will be further constrained in their prosecution decisions. Practically, more offenders may evade punishment if cautions are limited and prosecutorial discretion is constrained by further resource limitations.

As has been discussed at length in this Article, the increased use of cautions over the years has amplified the collateral consequences of cautions, creating grave impacts on employment opportunities, future legal cases, and other matters of life for would-be defendants, who are often under-informed of these consequences. Limiting the use of cautions would protect would-be defendants from these collateral consequences. However, this also has implications for would-be defendants in that it increases their likelihood of becoming actual defendants facing actual prosecution. A defendant who may have only received a caution resulting in collateral consequences before may now face prosecution and an actual sentence. However, seeing as how all would-be defendants are already experiencing some punishment via collateral consequences, more prosecutions would at least result in some acquittals and would allow some defendants to avoid punishment altogether. Removing significant cautioning power from the police and CPS might also force their hands to use their discretion to prosecute only the most worthwhile offences.

In this way, limiting the use of cautions will advance the goals of both the Government and pro-defendant advocates opposed to 'tough on crime' policies and better protect the rights and interests of the very people who face prosecution by the Government.