

# Suggestions for Reform to the Simple Cautioning Procedure

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*This article examines the simple police cautioning disposal and argues that at present the theory and practice of the procedure do not coincide, resulting in unfairness, dissatisfaction and grounds for potential challenge. It is suggested that the process should be amended so that a police caution can be offered, with appropriate safeguards in place, prior to an admission being made.*

## Introduction

Over three million people have been cautioned by the police since 2001, more than 205,000 of them in the 12 months to September 2012.<sup>1</sup> Whilst this disposal was doubtless fair, efficient and cost effective in the vast majority of cases, the authors are concerned with those situations where this may not have been the position. For professionals and regulated industry workers, a caution can end a career. For others the effects can be significant and, even with the new six year filter for many cautions provided by the Disclosure and Barring Service (DBS), long-lasting.<sup>2</sup>

In theory, even before a caution can be considered, there must be a clear and reliable confession. In practice, indications are often given before an interview that in the event of an admission, a caution is likely to be offered. That such discussions occur suggest that the parties involved appreciate an essential element of the cautioning process which the law neither recognises nor endorses—conflict of theory with practice. It is our contention that certainty, transparency and fairness would be improved by the introduction of a procedure similar to that approved in *Goodyear*.<sup>3</sup>

As with all inducement situations, there is always the danger of undue influence or improper pressure—particularly where, as will usually be the case if a caution is likely to be considered, a suspect has no previous experience of being in custody.

<sup>1</sup> Ministry of Justice, *Criminal Justice Statistics Quarterly Update to September 2012* (February 21, 2013), available at: <https://www.gov.uk/government/publications/criminal-justice-statistics--2> [Accessed September 26, 2013].

<sup>2</sup> The rules were changed on the May 29, 2013 following on from the decision in *T v Chief Constable of Greater Manchester Police* [2013] EWCA Civ 25; [2013] 1 W.L.R. 2515. The case is currently being appealed by the Government to the Supreme Court with a hearing date set for December 2013 and so the rules concerning disclosure may undergo further changes.

<sup>3</sup> *Goodyear* [2005] EWCA Crim 888.; [2006] 1 Cr. App. R. (S.) 6 (p.23).