

Pre-conditions for forces wishing to apply for an exemption from the DPP Guidance on Conditional Cautions for Hate Crime perpetrators

Pre-Condition

1 - Force agrees to abide by guidance issued to pilot areas and agreed by the MoJ, CPS and the NPCC (covering offence types, level of risk, appropriate conditions, use of RJ and CRs etc.). In Particular, the force should ensure that in all hate crime offences:

1. The offence is not one which is indictable only.
2. The offence does not involve conduct likely to stir up hatred, or intended to stir up hatred, towards other groups.
3. The offender has made a full admission and has not raised the possibility of a defence, for example in the case of assault self-defence.
4. The offender has admitted the 'hate element' of the offence; i.e. that:
 - at the time of committing the offence or immediately before or afterwards s/he demonstrated hostility to the victim based upon their race, religion, sexual orientation, transgender identity or disability and/or
 - the offence was motivated (wholly or partly) by hostility towards persons of a particular race, religion, or sexual orientation, or who are transgender or who have a disability.
5. The offender shows genuine remorse.
6. The offender has no previous hate crime history, or links to any other relevant offending behaviour which indicates that an out of court disposal would be ineffective. (Local records should be checked for any previous out of court disposals.)
7. The offender is not a known member of an extremist organisation.
8. The offender has not committed a serious offence. The starting point for assessing seriousness is to consider the likely penalty if the matter went to court. Where the circumstances of the offence indicate that an immediate custodial sentence or high level community order is the appropriate sentence then an out of court disposal should not be offered.
9. The victim does not appear to be a targeted victim either in terms of protected characteristics (e.g. a disability which makes the victim vulnerable) and/or in terms of repeated incidents (i.e. the evidence suggests this was a one-off, isolated incident).
10. The express wishes of the victim are met by dealing with the matter out of court after the victim has been provided with a full explanation of all options and their consequences. However, the final decision will always rest with the police supervisor or CPS.

This guidance will be reviewed and amended periodically, in the light of experience from forces that adopt this approach.

2 - Risk Assessment and Selection of Cases

Selection criteria for the type of case must ensure that there is no repeated victimisation, the victim should be contacted and a risk assessment completed.

Police forces must have a robust approach to assessing risk and should only use conditional cautions for cases where a risk assessment shows that the risk to the safety of the victim and/or family is not high.

3 - Decision and Screening

The decision and screening of referrals must be made by a supervisor who has the appropriate knowledge / experience, skillset and access to information on perpetrator interventions and other interventions available. The supervising officer should reassure themselves that the initial assessment of risk is correct and that a risk management plan has been put in place if appropriate.

Where the offence is one of violence where the injuries are so serious that the charging standard would be ABH or above then a conditional caution should not be given unless a senior police officer (Inspector or above) believes there are exceptional circumstances.

4 - Condition Types

Forces must offer a range of conditions, with a focus on rehabilitation, education and reparation.

Reparative options could include Restorative Justice with a hate crime trained facilitator which is not on the spot, other options could include a letter of apology to the victim and compensation to repair any harm that has been done.

Rehabilitative options would include a quality assured intervention, which is evidence based and has the ability to be assessed.

For all incidents, forces should also consider the possibility of onward referral/signposting to other services (e.g. drugs, alcohol, mental health).

Conditions could also be restrictive. Conditions should generally not include a punitive financial element as this doesn't address the underlying cause of the offending, unless there is a reason to do so.

Restorative Justice can be considered where both the victim and offender agree to it but should not be on the spot or on the street, and any officer undertaking the RJ process must have received accredited facilitator training (3-5 day training input) and ideally specific training to deal with this type of offence.

5 - Monitoring Compliance

Pre-conditions for HC CC Dispensation - 2021 to 2028

A robust accurate process must be in place to monitor and report on compliance with conditions. Commissioned services should include within the service level agreement a requirement for the service supplier to supply robust and auditable information on compliance to the police.

6 - Data Collection

Police forces will need to be able to provide robust data and monitor reoffending rates for the first year of operation, and ensure there are mechanisms in place after this to monitor effectiveness of interventions and use of hate crime out of court disposals.

7 - Scrutiny Arrangements

An independent Scrutiny Panel with membership to ensure a cross criminal justice view (for example magistrates and CPS) and independent representation from an advisory group, should met regularly to review an agreed percentage of hate crime cases.