

**Release's response to the Ministry Of Justice's Consultation: Diversionary and Community Cautions, Draft Code of Practice, Part 6 of the Police, Crime, Sentencing and Courts Act 2022**

[Release](#) is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

As an organisation working on the frontline of drugs policy, we have a number of concerns arising from the Draft Code of Practice (CoP) in relation to gaps in its proposed application and the impact that it will have on individuals and groups that have been disproportionality and unfairly impacted by previous iterations of Out of Court Disposals ("OOCs") and the criminal justice system as a whole.

**Response to substantive questions**

1. Are you an 'authorised person' representing a prosecution agency that issues OOCs?

**No**

2. Do you agree or disagree that the Code of Practice strikes the right balance between providing a clear framework for decisions and individual case flexibility?

**Strongly Disagree - Release has a number of concerns about the Code of Practice (CoP) and its application, which are set out in response to Question 18 below.**

3. Do you agree or disagree that the guidance on the relationship between the Community Resolution, Community Caution and Diversionary Caution, and their respective use is clear in the Code of Practice?

**Strongly Disagree - Release has a number of concerns about the CoP's guidance on the relationship between the new cautions and Community Resolutions. These are set out in response to Question 18 below, and include the target offences of the new cautions (a i)), the need for additional guidance on choosing mandatory conditions (a ii), Net-widening of contact with the criminal legal system (a iii)), Safeguards around admission (a iv)) and excluded offences (a)v)) and the lack of guidance on the potential impact upon those who already face systemic disadvantage and are subject to prejudicial enforcement in the criminal legal system (see b) Group issues)**

4. Do you agree or disagree that there is an appropriate level of emphasis in the Code of Practice on a) victim involvement? b) victim satisfaction?

**Strongly disagree - See Question 18 below. Release has concerns in relation to the emphasis on victim involvement in the context of drug possession offences and Anti-social behaviour allegations (see a) General issues) and how certain groups will face harsher punishment due to discrimination from individuals purporting to be victims (see b) Group issues).**

5. For Community Cautions (lower tier), the Police, Crime, Sentencing and Courts Act 2022 specifies that they may be issued for any offence other than an excluded offence (defined as an indictable-only offence, or an either-way or summary only offence prescribed in regulations). We have proposed retaining the excluded offences that limit the use of existing Simple Cautions.

**Strongly disagree - see Question 18 below (a) i) Excluded offences)**

6. We have proposed an amended financial penalty structure for the new cautions. What is your view on this structure?

(Please explain your answer)

**See Question 18 below. Release has serious concerns about the financial penalty structure and its failure to give guidance on mitigating its impact on people living in areas of deprivation or living in poverty (see b)iii) People living in areas of deprivation)**

7. In regard to the repeat use of cautions, would you make any amendments to the proposed specifications detailed in the Code of Practice?

**Yes - See Question 18 below. Release has serious concerns about the target offending of repeat cautions including drug possession and anti-social behaviour (see a) i) Target offending), the need for additional guidance on choosing mandatory conditions (see a) ii)) the net-widening effect of repeat cautions (see a) iii) Net-widening), excluded offences (see a) v)) and the and the lack of guidance on the potential impact upon those who already face systemic disadvantage and are subject to prejudicial enforcement in the criminal legal system (see b) Group issues).**

8. In accordance with Part 5 of the Code of Practice, the decision to issue a caution should be countersigned by an Officer not below the rank of Sergeant (or Police staff supervisor equivalent). Do you agree or disagree that this rank of seniority to issue a caution is appropriate?

**Neither**

9. Some Police Forces have centralised OOC teams, which employ Police staff (rather than Police Officers). To reflect this, the Code of Practice uses the term 'Police staff equivalents'. In your view, is this term clear and workable?

**No - the guidance does not adequately expand on what roles these staff fulfil and how they operate within the OOC framework.**

10. The Code of Practice sets out a requirement for compensation payments to be achievable.  
a) Do you agree or disagree that this requirement is sufficient?

**Strongly Disagree – See Question 18 below. Release has serious concerns about the lack of guidance within the code in relation to people living in areas of deprivation or living in poverty (see b) iii)).**

b) Do you agree or disagree that setting an upper limit for compensation payments would be preferable?

**Neither - see Question 18 below. Release has serious concerns about the lack of guidance within the code in relation to people living in areas of deprivation or living in poverty (see b) iii))**

11. Do you agree or disagree that the distinction between the cautions admission requirement and the full code test (of the Code for Crown Prosecutors) is made clear in the Code of Practice?

**Neither - it is not clear what this question is asking.**

12. Do you agree or disagree that the requirement for and method of reporting the use of cautions should be mandated more strongly in the Code of Practice?

**Strongly agree - the Code contains very little detail on the requirement for and method of reporting the use of cautions.**

13. When offering, explaining, and administering a caution, are there other accessibility considerations that the Code of Practice should include other than those already stipulated?

(Please explain your answer)

**Yes - See Question 18 below. Release has a number of serious concerns in relation to the process of offering, explaining and administering cautions, particularly in relation to the lack of guidance about the scope to negotiate a lower caution or community resolution and the admission of offences (see a) iv) admission of an offence), particularly as it relates to black and racialised communities (see b) i)).**

14. From an operational perspective, are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects?

**Yes - Release has serious concerns about the potential adverse effects of the Code in its current form. These are addressed throughout Question 18.**

If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to accommodate operational practicalities.

**These are addressed throughout Question 18.**

15. Do you agree or disagree that the following annexes in the Code of Practice are clear and helpful: Annex A: Disposals comparison; Annex B: Principles for Domestic Abuse Diversionary cautions; Annex C: Excluded offences; and Annex D – Example conditions.

**Neither**

16. Are there any gaps or aspects in the Code of Practice that cause concern or may have adverse effects for individuals with protected characteristics? If yes, please explain your response and specify suggestions for additions, removals, or amendments to the Code of Practice to address these concerns or adverse effects.

**Yes - see below at Question 18. Release has serious concerns about the potential adverse effects of the lack of guidance on the potential impact upon those who already face systemic disadvantage and are subject to prejudicial enforcement in the criminal legal system (see b) Group issues).**

17. In your view, are there any parts of the Code of Practice (not already covered in previous questions) that need greater clarification? If so, please specify which part of the Code of Practice requires greater clarification and why.

**Yes - Please see Question 18 below.**

18. What other comments, if any, do you have that have not been covered in the previous questions throughout the document?

a) **General issues**

i) **Target offending**

*Drug possession*

The CoP states that Diversionary and Community Cautions can “offer effective outcomes for lower-level and first-time offences...[including] personal drugs offences or instances of antisocial behaviour”.

In relation to simple possession offences, it is not clear what aim or purpose the new cautions seek to achieve that a Community Resolution, or indeed no formal enforcement action, are otherwise incapable of achieving. For instance, the consultation document refers throughout to a focus on victims of crime and reparative or rehabilitative processes. However, it is not clear who qualifies as a victim in relation to possession offences and what harm requires repair, nor indeed what behaviour these OOCs seek to rehabilitate and how.

Drugs are used across our society, by people of all races and social classes. However, the impacts of criminalisation and enforcement are focused onto Black and racialised groups, and people living in poverty. Evidence [from across the world by leading academics](#) has shown that punitive policing approaches can undermine health and increase risks for individuals. Criminalisation and punishment of drug possession offences [does not deter use](#), a point that has been confirmed by the [Home Office](#). However, [criminalisation can have a negative impact on health, social and economic outcomes for individuals, and fuels stigma and marginalisation](#).

A [Home Office Evaluation of the 2010 Drug Strategy](#) found that despite spending £1.6 billion a year on drug law enforcement, interdiction had little impact on the availability of drugs but it had a number of “unintended consequences” including increased violence associated with the market, increased overdose due to varying purity and an increase in drug purchasing. All the emerging evidence - by contrast - points towards the efficacy of public health led interventions, free from coercion and punitive sanctions.

Drug use is widely stigmatised in our society, despite the growing discourse around the world in relation to dependency as a public health issue and moves globally to decriminalise people who use drugs in recognition that [decriminalisation is an enabler for accessing health services](#). The consultation places a premium on the view of victims, allowing them to comment on the

appropriateness of a community resolution and whether they would support a prosecution in the event of non-compliance, effectively delegating public interest considerations to members of the public.

In relation to drug possession offences, there is no immediately discernible victim. If a person purports to be one, which is unlikely in most cases of possession, this positioning is very likely to be rooted in their negative view on drug use. Release is concerned that there is a clear risk that these individuals will generally favour cautions over community resolutions, and Diversionary Cautions over Community Cautions. Simply put, there is a risk that the most severe response will be preferred as the first response based upon individual subjective perceptions of drug use.

Similarly, it is inappropriate to use Restorative justice for drug possession offences. The policing of drugs is an arbitrary process that disproportionately captures poor and racialised communities. To subject those individuals to a process where they are held “*personally accountable to both the victim and local community for the harm they have caused*” creates a fiction whereby an individual is held accountable for a phenomenon that has persisted, and will continue to persist, notwithstanding successive failed efforts in enforcement and punishment.

Release is a proponent for the decriminalisation of drugs possession. We largely adopt the position of the United Nations Chief Executives Board for Coordination, which undertook in 2019 “[\[t\]o promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use, and to promote the principle of proportionality, to address prison overcrowding and overincarceration by people accused of drug crimes, to support implementation of effective criminal justice responses that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings and ensure timely access to legal aid and the right to a fair trial, and to support practical measures to prohibit arbitrary arrest and detention](#)”. Release would strongly urge enforcing authorities to follow this approach and engage in the least restrictive interference possible in all cases of drug possession.

### *Antisocial Behaviour*

Release fundamentally disagrees with the use of ‘anti-social behaviour’ as a framework for understanding, and responding to, issues of community safety. This concept is racialised and classed, with its responses falling most heavily on marginalised communities, including homeless people, people that use substances, people with mental health issues, and people of colour.

Release opposes the expansion of anti-social behaviour powers, which effectively criminalise poverty through the explicit targeting of homeless people and rough sleepers, criminalise young people who are simply accessing public space and remove the vital structures people rely upon to have the best chance at living fulfilling lives.

Release is concerned about the emphasis upon victim involvement in deciding the appropriate sanction in the context of antisocial behaviour. Allegations of antisocial behaviour often occur in the context of a two-sided dispute, typically between neighbours. Within the context of housing, Release has repeatedly found that its clients are silent in the face of allegations due to themselves being victimised, or fearing stigmatisation and punishment for drug use. We have come across countless examples in our casework of baseless individual allegations of antisocial behaviour which are then used as grounds for, among other things, eviction. Our clients are often themselves the victim of threatening, abusive and often violent conduct but are too afraid to report it due to the fear of being punished for past or present drug use. The result is that individuals are unfairly affronted by a one-sided version of a two-sided dispute with serious consequences.

Release would urge the removal of antisocial behaviour from the remit of the new cautions framework. Antisocial behaviour is not itself a criminal offence, but captures a wide range of behaviour enforced, for example, by civil courts and housing providers. The code is silent on what is meant by antisocial behaviour for its purposes and how it seeks to use a criminal sanction in relation to non-criminal conduct lawfully. There is a real risk that cautions in relation to antisocial behaviour will be applied unfairly, arbitrarily and without establishing the context in which allegations are being made.

**ii) The need for additional guidance on choosing mandatory conditions**

The new framework relies heavily upon its aims of rehabilitation and reparation within the OOC system. Without any guidance on the effectiveness, or indeed ineffectiveness, of individual conditions to the circumstances of an individual accused person, it is wholly unclear how Decision Makers are to impose conditions to any objective standard. The risk is that Decision Makers will impose conditions that they may *think* will be effective, but will not be, and thereby sidestep the possibility that a Community Resolution may be the more appropriate OOC.

Release therefore calls for clear guidance on the effectiveness, and indeed appropriateness, of conditions. For example, a person that has been assessed by the Department of Work and Pensions as having limited capability for work and work-related activity should not be eligible for an unpaid work condition. Similarly, in the context of drug use and possession, the pattern of a person's use, and indeed whether they feel able to engage with drug or alcohol services,



should be considered prior to imposing an attendance condition. Conversely, where a person is engaging in drug or alcohol treatment, it would be clearly inappropriate to impose a restrictive condition preventing them from being in the local area, even if that area is where they have been found in possession of drugs.

In relation to drug use and possession offences, the consultation document seeks to justify the attachment of conditions requiring individuals to “*engage with the underlying factors behind their substance misuse*”, including drug or alcohol treatment as a potential condition within Community and Diversionary cautions. However, at Annex A, Diversionary Cautions, despite their name, cannot have diversion attached as a condition. It would appear that diversion as a condition is reserved only in relation to Community Resolutions. While Release does not consider that diversion is appropriate in all circumstances, it should be made available as a possible condition within the new cautions. It should be made clear whether drug diversion courses will be available as a condition within Community or Diversionary Cautions, albeit we reiterate our position that diversion is not a proportionate or necessary response in the vast majority of cases and can place an unnecessary strain on services.

The CoP considers circumstances and a process for Decision Makers where a Diversionary Caution may be substituted for a Community Caution, or Community Resolution, where the suspected offender indicates that they would only be prepared to accept either of the latter two disposals. While Release welcomes the possibility of Decision Makers reconsidering their preferred OOC, this approach places the onus on the accused to assert his or herself with prior knowledge of the OOC system. If there are circumstances where a suspected offender can receive a less restrictive OOC, including Community Resolutions, the duty should be on Decision Makers to explain this possibility to allow the accused to avail themselves of it.

### **iii) Net-widening**

An ‘authorised person’ is defined as: *(a) a constable, (b) an investigating officer, or (c) a person authorised by a prosecution authority for purposes relating to cautions of that kind.* This is in accordance with section 98(7) of the Police, Crime, Sentencing and Court Act 2022. According to the new guidelines, Diversionary and Community Cautions are to be issued by police and the CPS.

The new cautions framework effectively introduces a way for the police to widen their net and provide more ready access to prompt sanctions outside of the due process of the courts. Release is concerned that both Community and Diversionary Cautions will increase overall police contact, including the risk of significant increases in police stop and search. It is worth noting that [drugs searches account for 65%](#) of all stop and searches. In light of the prejudicial application of existing police powers, there is a real risk that Black and racialised communities

will be subjected to diversionary cautions without prior consideration of less severe measures. This is reflected in the wider criminal justice system, where Black offenders are more likely to face harsher sentencing than their white counterparts. For example, [Black people are convicted for cannabis possession at nearly 12 times the rate of white people.](#)

Release recommends that Police prioritise the use of simple warnings and Community Resolutions in the first instances to seek to minimise formal police contact for minor offences and free up resources for more serious matters.

**iv) Admission of an offence**

The CoP states that an authorised person should ensure that a suspected offender has the opportunity to receive free and independent legal advice, potentially over the telephone, prior to a Diversionary or Community caution being administered. Release's position is that this is insufficient and the individuals should be entitled to free and independent legal advice, in person and with an advisor they trust. This is particularly important for [Black and minoritised communities who face worse outcomes in the criminal justice system, for example by refusing to enter early guilty plea and consequently reduced sentences, due to their trust in the criminal justice system being significantly eroded.](#)

In addition, the CoP does not give an acceptable degree of guidance on admission and mental state or capacity. While Release welcomes the necessity for safeguards to be in place to prevent vulnerable adults from being asked to make an admission, very clear guidance is required. This is particularly important considering that legal representatives may not even meet the accused in person prior to an admission being made.

**v) Excluded offences**

The code sets out a number of indictable only and either way offences which are excluded offences not open to Community Cautions. Accused persons under this restriction will be unable to avail themselves of the substitution of Diversionary Cautions for a Community Caution. Possession with intent to supply, or supply, of Class A drugs, are included in Annex C as Specified Excluded Offences.

Section 98(6)(b) of the Police, Crime Sentencing and Courts Act 2022 states that offences triable either way which are to be treated as excluded offences must be "*prescribed in regulations*". Section 120(4)(a) states that the Secretary of State is to pass regulations in relation to excluded offences under Section 98(6)(b). Release has been unable to locate which secondary legislation or regulations, if any, currently classify possession with intent to supply,

or supply, of Class A drugs as an excluded offence and it is unclear whether such regulations will be enacted before or after the code has been finalised.

If it is the case that the regulations are yet to be enacted, Release would urge the removal of possession with intent to supply, or supply, of Class A drugs as excluded offences.

These offences cover a vast range of potential behaviour, including the social supply of a Class A drug between friends in a social setting. The circumstances in these situations is often that a group of individuals pool together money to purchase Class A drugs for a specific occasion and share them at that occasion, with one person typically being in physical possession of the source supply. The offence can also cover the simple exchange of one dose of a drug from one person to another. This pattern of behaviour is more akin to possession than it is to commercial dealing.

There are also commonly circumstances where those who are dependant on class A substances will supply to others to sustain their dependency.

Clearly, the policy objectives that apply to commercial dealing are not applicable to social supply situations or those seeking to sustain their dependence, but under the Code these vastly different scenarios will be treated the same way. Release is concerned about the clear risk that individuals, particularly young people, who are subject to sanction following an instance of social supply, will be subjected to a harsher penalty in the form of a Diversionary Caution with no clear policy objective. Release is additionally concerned that those supplying Class A substances to sustain their dependency will be similarly treated, undermining the treatment of dependency as a public health issue and diversion schemes.

Removal of possession with intent to supply, or supply of, Class A drugs, as an excluded offence will allow Decision Makers to properly consider a social supply situation and remove the arbitrary limit on discretion that would exist under the Code as it currently stands.

**b) Group issues**

**i) Black and racialised communities**

Release is concerned about the potential socio-economic impact of community and diversionary cautions, particularly the disproportionate impact on Black and marginalised communities. The Code of Practice states that, although cautions are not the equivalent to a criminal conviction, there will be circumstances in which they are disclosed as part of a DBS check. Diversionary cautions would show on a basic check for 3 months and for up to 6 years in standard or enhanced checks where the person is looking to do a sensitive job or activity.

Community cautions are spent immediately and would be disclosed for up to 6 years in standard or enhanced checks where the person is looking to do a sensitive job or activity.

The presence of a criminal record already has a significant and disproportionate impact on racially minoritised communities. For example, [Liberty](#) has shown that the burden on having a criminal record cause significant hinderance to an individual's future educational and employment opportunities. It is highly likely that Black and racialised communities will continue to be disproportionately subjected to on the ground police contact and there is nothing in the Code to suggest the new Cautions framework will be an exception. This raises particular concerns for young people, as early contact with the criminal justice system can lead to limited opportunities to secure employment, education or social mobility.

The over-representation of young Black people in the criminal justice system is already a significant problem in the UK. Nowhere is this more evident than the police's practice of stop and search, which is a significant driver in pushing Black and other people who experience racial oppression into the criminal justice system. The application of stop and search is undoubtedly applied in a racist manner. Recent Home office data suggests that Black people are stopped up to [7.7 times more than white people](#). Yet, the 'find' rates (the rate at which drugs are found in a stop and search) are lower for Black people than their white counterparts. Release found that the ['find rate' for drug searches was 33% for white population and 26% for the Black population](#). The over-representation of Black and ethnic minority people reverberates throughout the UK court system. [Release also found](#) that approximately a fifth (17 to 20 per cent) of Black defendants were prosecuted for drug possession offences per year from 2010 to 2017 compared with approximately one-tenth of white defendants (8 to 11 per cent). There is nothing to suggest that the new system of cautions will be somehow exempt from these trends but there is a lack of guidance on the issue in the code.

Both Community and Diversionary Cautions require the offender to submit an 'admission of guilt'. [There is a significant issue of trust between the police and the Black community, due to Black and racialised communities being over-policed](#). The Baroness Casey Review found that ["people from Black and mixed ethnic groups have lower trust and confidence in the Met, scoring 10 to 20% lower than average on trust and 5 to 10% lower on confidence"](#).

Similarly, the [2017 Lammy Review](#), found a distinct lack of trust between Black and minoritised communities and the police, explaining for example that the reason that so many BAME defendants plead not guilty, forgoing the opportunity to reduce sentences by up to a third, is that they see the system in terms of 'them and us'. The Code itself considers the potential for individuals to refuse an admission of trust out of a disbelief in receiving a less

severe penalty. There is a real risk that the mistrust Black and racialised communities have of the police will lead to a higher rate of refusal within those communities

## ii) Young people

The new framework applies only to persons aged 18 and over where the Police, Crown Prosecutors or other prosecution authorities are considering disposing of an offence by way of a Diversionary Caution or a Community Caution. The exclusion of those under 18 in this Code of Practice leaves limited guidance on how out-of-court disposals (OOCs) will be applied to young people. In particular, there is the risk that young people will receive a more punitive sanction due to the fact that they are treated differently to adults for the same offence.

The proposed Code of Guidance does not address the discrepancy between OOCs for young people and adults. For example, it is unclear which OOC under the proposed scheme would be applied to someone who may have received a Youth Conditional Caution (YCC) were they under-18. It is conceivable that a young person may be subject to a harsher penalty than an adult for the same offence. For example, the YCC carries a harsher penalty than the Community Caution, as the former carries with it the possibility of prosecution for failure to comply with imposed conditions, and a criminal record that is not immediately spent. There is a risk that young people will be further disadvantaged and disproportionately impacted without further guidance and close monitoring of the implementation of this guidance as it applies to young people and adults.

It is well reported that law enforcement with respect to drugs already has a disproportionate impact on young people. For example, [between 2021 and 2022, 3246 people were given a sentence, of which 14% were people under the age of 18](#). For young people, prosecution and a criminal record can have a devastating impact on life outcomes, including in educational attainment and accessing employment in a wide range of professions and roles.

Therefore, it is imperative that there is further guidance to address and prevent any disproportionately negative and punitive outcomes for young people. In particular, Release would advocate for guidance on maturity to be given to all decision makers, to be considered prior to receiving a new caution. It is well evidenced that those aged 18 to 25 may be less mature than adults over the age of 25. [The MoJ's own research](#) has confirmed this and the [Howard League for Penal Reform](#) have highlighted the need for a different approach when dealing with young adults considering their lack of maturity. As such, we would advocate that this is recognised within the guidelines and is reflected in the conditions for repeat cautions.

**iii) People living in poverty or areas of deprivation**

*Financial penalties*

Research undertaken by [Release](#) has demonstrated that the highest levels of stop search occur in areas of deprivation as defined by the Index of Multiple Deprivation. When we intersect the experience of deprivation with structural racism, the impact of this new Framework will have a detrimental and damaging impact on racialised communities. The consequence is that frontline policing, particularly in relation to drugs possession, becomes a two-tier system criminalising those who are racially profiled, poor, or using drugs in a public place, while more affluent, sheltered and typically white offenders are able to avoid sanctions - for this group drug use and possession is effectively decriminalised

The financial penalties, including fixed fines, compensation and payments toward training courses will have a greater impact on those without means. Public interest is a matter of executive discretion. Release has serious concerns in relation to the lack of guidance on the assessment of the financial circumstances of individuals subject to OOCs and that those subjected to financial penalties are not able to make payments by instalment. Without such guidance, financial sanctions will be imposed on those living in poverty or areas of deprivation, effectively imposing a condition the individual is unable to comply with and simply delaying their prosecution. This is not negated by the capped amounts set out in the CoP, which are considerable sums to those with limited means.

Requiring a payment of a “fixed amount” and prosecution for non-payment, these automatic penalties fail to consider the impact this may have on individuals reliant on welfare benefits. It has been acknowledged elsewhere, for example by the [Sentencing Guidelines](#), that where an offender is in receipt of a low income this may trigger eligibility for means related assessments. The new framework fails to explain how an individual reliant on benefits would be able to pay automatic fines, *and* court fines.

Release also has concerns about the proposal that individuals pay for training courses and this requires re-evaluation. Requiring individuals to pay for courses designed to rehabilitate where they do not have the means to pay creates an inequity within the system.

The impact of financial on those with low means can be extensive, including missed rent or bill payments, going without food or basic necessities, or affording childcare.

### *Criminal Records*

The new Framework will prolong the impact on the employment opportunities of the people it captures. The link between criminal records and poverty is [well documented](#). A legitimate question which the new Framework failed to consider is how to address the impact of criminal records on poverty. The nature of a criminal record also undermines the CoP's focus on rehabilitation. Without further guidance on poverty and the impact of cautions, the CoP will have a detrimental impact on racialised, marginalised, deprived, and poor communities.

#### **iv) People who use drugs**

The new system, abolishes previous OOCs including Cannabis and Khat warnings, which were introduced to provide a specific framework to police officers for common, low-level possession offences. [The use of Cannabis and Khat warnings has declined in recent years while the use of community resolutions has driven the increase in OOCs. However, the caution rate for drugs offences is the highest of all offences at 20%.](#) However, the [prevalence of cannabis use fell significantly between 2001 and 2010](#) when cannabis warnings were most-widely used. 27.3 per cent of young people aged between 16 and 24 years old reported use of cannabis in the year ending 2002. Reported use then fell year on year until 2009, when 18.6 per cent disclosed use of the substance within the preceding year. It was during this period that cannabis was downgraded and reclassified to a Class C drug, and that cannabis warnings were introduced.

While Release welcomes the decline in drug-related prosecutions in the last year, there is no specific guidance in the Code that considers the best approach to cannabis possession or the possession of other commonly found controlled drugs. The enforcement of cannabis possession offences dominate the criminal justice system and are an entry point into that system for many. Because of the relative success of historic attempts to take a “bespoke” approach to cannabis enforcement, police forces must be encouraged to take no formal action or increase the use of Community Resolutions for possession where possible to avoid unnecessarily increasing the severity of outcomes for individuals.

The code also lacks guidance on how police are expected to treat an individual's drug use, instead preferring to hold all instances of drug possession under the same umbrella. While Release supports decriminalisation of drug possession which is outside of the ambit of the Act, the issue is that there is no “one size fits all” approach to enforcement either. An individual found in possession of cannabis, and in many circumstances other drugs, is unlikely to gain anything from diversion, and less likely to benefit from enforced treatment.

Similarly, it is simply immoral to criminally sanction an individual who is dependant on a substance where that person is already in treatment, or forcing them into treatment against their wishes which is unlikely to have any meaningful impact upon their use. The Code is also unclear on whether it is conceivable that a person dependant on a substance might be expected to agree not to commit further similar offences within a specified period. This approach risks pushing individuals into riskier patterns of use, and less safe places, creating both a risk to health and life.

Additionally, Release is concerned that the CoP itself considers the use of repeat cautions even where the use of conditions have failed to achieve desistance, but does not allow for the repeat use of Community Resolution where a person has a “relevant offending history”, or has committed a similar offence within the preceding 12 months unless exceptional circumstances can be shown. Release would advocate specific guidance on how drug use related to dependency should be treated as an “exceptional circumstance” to prevent those individuals from being subjected to increasingly harsh punishments in relation to behaviour inextricably linked to their health.

Release recommends that police forces take the least restrictive approach in relation to drugs enforcement. Considering the prior success of cannabis warnings, there is evidence to suggest that this approach would be the most productive in terms of reducing use. Further, and to protect public health, where an individual habitually uses drugs or is dependent, cautions should not be used as a means of enforcing treatment. Drug treatment is often itself insufficient, failing to address issues intimately tied to a person’s use such as housing, debt, and access to welfare support. Treatment also demands a relationship of trust between the patient and their provider. Using treatment as a punishment will do nothing to help individuals or help create meaningful change but will instead undermine approaches that can help individuals with their drug use should they seek out and consent to that help being provided to them.

**v) So-called Foreign National Offenders (FNOs)**

The Draft Code of Practice sets out that it intends to deal ‘swiftly and proportionately’ with ‘lower-level and first-time offences’. However, the proposed conditions that automatically apply to OOCs given to so-called Foreign National Offenders (FNOs) are disproportionately harsh and extreme. If a FNO accepted a OOC for a minor offence, they may face enforced removal from the UK and a long-term ban on their right to enter, and this could take up to 16 weeks to take place, even though the offences themselves are accepted to be minor in nature. This is in stark contrast to the ethos of the draft CoP being swift and proportionate.



The forced application of removal conditions to every FNO OOC (with limited exceptions on human rights grounds) are arbitrary and excessively harsh. Whilst the intention is that conditions applied to OOCs for UK citizens will be flexible and rehabilitative in nature, those that are automatically applied to FNOs are rigid and do not further any reparative aims.

The biggest concern about the conditions for FNOs is the impact that forced removal will have on foreign nationals who have lived in the UK since childhood. There is no room in the draft CoP for consideration of people's individual circumstances or the seriousness of the . This could result in a person who has lived in the UK since they were a child being removed from the UK and banned from entering for low-level drug possession offences. The differential treatment of FNOs and the consequences are well-documented.

Additionally, there is very little public information about the current rate of enforced removal. [Home Office statistics](#) only state the number of FNOs who have been removed from the UK but provide no further detail of offences that resulted in the removal. This leaves a substantial gap in the understanding of the circumstances around enforced removal.

The rigid approach to FNOs is directly contrary to the proposed purpose of OOCs, and disproportionately punishes individuals solely on the basis of their nationality, while allowing no discretion in cases related to FNOs.

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