

	<p align="center"><b>RSD Internal Guidance</b></p>	<p align="center">RIG-2013-02</p>		
<p align="center"><b>ORR policy and guidance on issuing simple cautions</b></p>				
<p><b>Date of issue/ last review</b></p>	<p>July 2017</p>		<p><b>Date of next review</b></p>	<p>July 2019</p>
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<p align="center"><b>RIG type</b></p>		<p>Policy_____ <input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p>	
<td data-bbox="979 757 1406 808"> <p>Information_____ <input type="checkbox"/></p> </td> <td data-bbox="1409 757 1495 808"> <p><input type="checkbox"/></p> </td>		<p>Information_____ <input type="checkbox"/></p>	<p><input type="checkbox"/></p>	
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<p><b>Target audience</b></p>	<p>RSD_____ <input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p>	<p>Policy_____ <input type="checkbox"/></p>	<p><input type="checkbox"/></p>
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<p><b><u>Keywords</u></b></p>	<p>Out-of-court disposals; Simple Caution; Public interest; Enforcement</p>			
<p><b><u>Summary</u></b></p>	<p>This RIG sets out practical guidance for inspectors when considering the issue of a simple caution, in the exceptional circumstances set down in the ORRs enforcement policy statement.</p>			
<p><b><u>Original consultation</u></b></p>	<p>RSD DMM; Legal</p>			
<p><b><u>Subsequent consultation</u></b> (reviews only)</p>	<p>Helen Ayers, 2017</p>			

**Detail**

**INTRODUCTION**

This RGD provides details of ORR's policy on using Simple Cautions for out-of-court disposals of breaches of health and safety legislation in England and Wales, and gives guidance on when it might be appropriate to use it.

Inspectors may not use or recommend a Simple Caution in Scotland.

Guidance can be found at Annex A of this RGD and in the Ministry of Justice guidance.

**Action**

Inspectors should familiarise themselves with this guidance and note that it will only be appropriate in a very limited set of circumstances. Advice can be obtained from the Regulatory Management Team or Legal Services.

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### ORR's policy on issuing Simple Cautions in England and Wales

#### Purpose

This document explains ORR's policy on using Simple Cautions for out-of-court disposals of breaches of health and safety legislation in England and Wales, and gives guidance on when it might be appropriate to use it. Inspectors may not use or recommend a Simple Caution in Scotland.

Our policy complies with the guidance issued by the Ministry of Justice and the Code for Crown Prosecutors.

Note: a Simple Caution should not be confused with a caution that is administered under the Police and Criminal Evidence Act during recorded interviews.

#### ORR POLICY

**ORR will use Simple Cautioning as a procedure for dealing with certain offenders in exceptional circumstances where a prosecution might otherwise be taken.**

**A Simple Caution will only be used:**

- **in compliance with the Ministry of Justice guidance document and the Code for Crown Prosecutors;**
- **when a prosecution could properly be brought;**
- **if the offender has no previous history of similar breaches; and**
- **the independent case approval officer is satisfied that the criteria for a Simple Caution are met.**

#### Guidance

1. A Simple Caution (previously known as a formal caution) is a course of action available to us when there is sufficient evidence to provide a realistic prospect of a conviction for a criminal offence and it is in the public interest to caution the offender rather than commence a prosecution. Such an out-of court-disposal may be an appropriate response to the offender and/or the seriousness and consequences of re-offending.
2. The aims of the caution are:
  - a. to deliver swift, simple and effective justice that carries a deterrent effect;
  - b. to divert offenders, where appropriate, from appearing in the criminal courts; and
  - c. reduce the likelihood of re-offending.
3. A Simple Caution should be used for low-level offending only and is not appropriate for repeat offenders. It is a formal disposal which falls short of prosecution.
4. The MoJ guidance requires that the following conditions are met before a Simple Caution may be administered;

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- a. the offender has made a clear and reliable admission (verbally or in writing);
- b. there is sufficient evidence to present a realistic prospect of conviction;
- c. it is in the public interest to offer a Simple Caution; and
- d. the offender is 18 years old or more at the time the caution is to be administered.

### The ORR context

1. Breaches of health and safety legislation will not normally be considered low-level offending because of the potential high consequence of non-compliance, and cautions should therefore only be considered in exceptional circumstances.
2. Additionally, the major railways dutyholders may be repeat offenders, which also rules out a Simple Caution. As a general rule, it is not appropriate to caution more than once unless the new offence is trivial, is of a very different nature than the previous offence, or there has been sufficient lapse of time since the first caution to suggest that it had some effect.
3. The most likely circumstances in which a Simple Caution would be an appropriate course of action would be where a small contractor or an individual worker is identified during the course of an investigation as having committed an offence.

### Operational guidance

4. A caution can only be issued when we have investigated the circumstances of an offence and have sufficient evidence to provide a realistic prospect of conviction. **It is not, therefore, a shortcut to delivering an enforcement outcome.**
5. The offender must make a clear and reliable admission of guilt during the investigation: it is not appropriate to wait until the Simple Caution is being administered to obtain this evidence. The admission could be made verbally or in writing. If verbal, and outside of a tape recorded interview, the words used should be noted in the inspector's notebook and the offender should be invited to sign the notebook to confirm the accuracy of the note.
6. It is important that at no stage should the offender be promised a caution or given the promise that they will not be prosecuted should they admit the offence in order to be eligible for a Simple Caution. Any subsequent prosecution could be held to be an abuse of process.
7. One way that an admission can be obtained is during a PACE interview. Prior to the interview, an offender's solicitor might ask if the offence could be dealt with by way of a Simple Caution. If a Simple Caution is being considered by the investigator then they can indicate that the offence is cautionable, but inspectors

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should be careful to make no comment as to the likelihood or otherwise of a caution being offered.

8. It is important to make clear to the offender the following information when offering them the Simple Caution that:
  - a. The significance of an admission of guilt, namely that they would be admitting to a criminal offence and it will form part of their criminal record;
  - b. Information regarding the Simple Caution will be retained for future use and may be disclosed in future criminal proceedings. Further, that some future employers or contractors could request details of any convictions and cautions;
  - c. Should new evidence come to light, after administering the Simple Caution, suggesting that a more serious offence was actually committed then a prosecution may still be brought against them;
  - d. In cases involving a victim/injured party, then civil action or a private prosecution can still be brought against them; and
  - e. Some countries require foreign nationals to obtain entry visa and may require applicants to declare any Simple Cautions.
9. The details of a Simple Caution would not normally be posted on our website as they are automatically considered to be spent under the Rehabilitation of Offenders Act 1974. However, they may be made publicly available on request.
10. There is no right of appeal against the administration of a Simple Caution. However, it may be challenged by way of a formal complaint to the ORR and by a Judicial Review. If the Simple Caution is set aside for any reason then the case should be reviewed again to consider if another Simple Caution or other outcome is appropriate.

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### Factors to Consider

11. In all instances where there is a victim or injured person involved, their views about the offence and the proposed method of disposal should be considered. This in itself cannot be the deciding factor: the inspector must make the decision taking into account all the circumstances of the case.
12. For an individual offender, factors such as their age and maturity (either elderly or young,) state of health, their level of culpability, or the higher culpability of any other parties.
13. If the offender is a director involved in the management of a company also being prosecuted, then consideration should be had as to whether or not it is appropriate for them to be disqualified. A Simple Caution is not a sanction which automatically invites consideration for disqualification.
14. For corporate offenders, it is important to consider whether the caution is likely to be effective in changing behaviour, as well as whether the other conditions required for a caution are met. Each situation should be assessed on a case-by-case basis by the investigating inspector taking into account the circumstances of the offence and the offender. Relevant factors to consider for a corporate offender could include its size and composition, health and safety record (including any improvement notices), age of the company and turnover.
15. Other factors to consider are:
  - a. the harm caused, including the degree of intention or the foreseeability of any resultant harm;
  - b. any significant aggravating features;
  - c. any significant mitigating features;
  - d. the overall justice of the case and whether the circumstances require it to be dealt with in the open court; and
  - e. the range of sentences appropriate to the circumstances of the case.

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### Process

16. A full investigation should be carried out and the INV1 completed as for a prosecution. The inspector should make a recommendation for a Simple Caution, giving the reasons.
17. The approval officer should apply the evidential test and if satisfied, then consider the public interest test.
18. If the approval officer does not agree that a caution is appropriate in this case, then prosecution proceedings should be commenced.
19. If the approval officer agrees that a Simple Caution is appropriate, then the INV1 should be annotated as ***prosecution not approved subject to acceptance of a caution***. The reasons should be stated.
20. The caution should normally be served in person but may also be served by hand, or recorded delivery post. The recipient should be invited to have a legal representative present whilst the caution is offered.
21. If the offender is an individual, they should receive the caution, alternatively, a nominated appropriately responsible individual may receive it on their behalf. In the case of a company, the individual should be authorised by the Board of Directors to accept service.
22. Standard formats for a Simple Caution and a covering letter can be obtained from the Regulatory Management Team or Legal.
23. The offender, or their responsible representative, is asked to sign both copies of the caution, retain one and return the other to ORR within 14 days.
24. The original signed caution should be scanned as a PDF for saving into Mosaic and also copied to DSU for information of the Chief Inspector. The hard copy should then be sent to the Regulatory Management Team for filing.