



IHBC GUIDANCE NOTES

Short Guidance Note Regarding Cautions in England and Wales

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This is one of a series of occasional Guidance Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

1. This short guidance note aims to clarify uncertainty about the current status of simple cautions or formal warnings in relation to potential listed building offences in England and Wales.
2. When it is evident that unauthorised work to a listed building may have taken place, one of the options open to the local authority is to issue a warning to the suspect. There may be uncertainty with potential listed building offences about the potential deterrent value (if publicised) and may not be appropriate in some circumstances.
3. It should be noted that formal cautions should only be used where the tests set out in the decision to prosecute are met. Cautions are not an appropriate tool in cases where evidential reasons would prevent a case from proceeding to court. Cautions form an admission of guilt and should therefore only be used where the defendant has admitted guilt, or states being prepared to do so.
4. The use of a caution has always been a non-statutory procedure [1] and the principles set out in 2006 in DCLG best practice guidance on prosecutions remain sound. [2] Cautions continue to be available as has been the case in the past.

5. The power to administer a caution is limited to the police and has no statutory basis, being a discretionary procedure based on successive Home Office guidance. The key point about a simple caution is that it may be disclosed in court and can be taken into account in sentencing for any future offence for which the recipient of the caution is subsequently prosecuted.

[\[3\]](#)

6. A local authority can warn someone as to their future conduct but this is not a simple caution and cannot and does not have the same effect as one administered by the police, nor does it have the same effect in relation to sentencing for future offences. There is currently no national database of such warnings.

7. Although the Home Office Circular 30/2005 [\[4\]](#) dealing with the use and practical administration of simple cautions [\[5\]](#) has been cancelled - some of its general principles might be worth outlining for conservation professionals when considering what action to take.

8. If a local authority officer follows the rules relating to simple cautions that person must be satisfied that there is enough evidence to prosecute; the defendant would have to be prepared to admit guilt; there would need to be an evaluation of whether there were any mitigating factors; and the officer would have to be satisfied that, notwithstanding an admission, it is not in the public interest to prosecute.

9. Local authorities have discretion whether to prosecute listed building offences in any particular case, or issue a warning to an offender, and while there may be circumstances in which prosecution is not appropriate, the following questions need to be carefully considered:

- Did the officer have sufficient delegated authority to take the decision not to prosecute? [\[6\]](#)
- What were the officer's reasons for concluding that it was not in the public interest to prosecute?
- Was the officer aware that the 'caution' had no legal effect at all and was simply an admonition saying in effect 'don't do it again'?

10. For listed building offences a properly documented record should be made of an admission that an offence may have been committed with the details recorded by, for example, a PACE compliant tape recorded interview.

11. It is unlikely but not unknown for suspects to have received other reprimands for earlier similar offences elsewhere. Accordingly any other national or locally held records [\[7\]](#)[\[8\]](#) may need to be checked before a warning is given as this may determine if more formal proceedings should otherwise be instituted. If the suspect has previously received a relatively recent warning a further formal warning may not be appropriate. It would be necessary to decide whether the lapse of time had been sufficient to suggest whether or not a previous warning has had any deterrent effect.

12. The full implications of a warning should be explained to the suspect in writing once approved by the local authority. It should be administered by a suitably trained person within the authority being one to whom delegated powers have been granted (usually someone from the local authority's legal service).

13. Local Planning Authorities should note that while Section 17 of the Criminal Justice and Courts Act 2015 merely restricts the circumstances in which a police constable can issue a caution – none of which are relevant to listed buildings – the Act is silent on the use of cautions by prosecuting authorities other than constables. The new guidance from the Ministry of Justice [9] explains how the police can use cautions but is silent as to their use by others - therefore it is considered that cautions remain a potentially useful tool for minor planning and heritage offences.

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Acknowledgments

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Endnotes

[1]

[http://webarchive.nationalarchives.gov.uk/20130125102358/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/.](http://webarchive.nationalarchives.gov.uk/20130125102358/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/)

[2] Best Practice Guidance on Listed Building Prosecutions, Department of Communities and Local Government, December 2006. This guidance has been formally withdrawn but the material it contains remains relevant to good heritage management.

[3] An example might include equipment installed by a contractor for which listed building consent was needed but where the installation contract made explicit that another party would obtain the necessary consent although the installer had undertaken the unauthorised work and would be likely to do similar such work in future.

[4] Replacing earlier guidance from 1994.

[5] For cases involving first time, low-level offences.

[6] In many local authorities this would need to be a decision made – or at least confirmed – by elected members.

[7] It has been the practice of some local authorities to co-ordinate

information regarding crime across local authority boundaries under S.115 Disclosure of Information of the Crime & Disorder Act 1998.

[8] The IHBC's National Database of Listed Building Prosecutions may help provide some context for other offences elsewhere.

[9] <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>.