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Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Eleventh Sitting

Thursday 10 June 2021

(Morning)

CONTENTS

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Monday 14 June 2021

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The Committee consisted of the following Members:

Chairs: † Sir Charles Walker, Steve McCabe

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
Baillie, Siobhan *(Stroud)* (Con)
Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 10 June 2021

(Morning)

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

11.30 am

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch electronic devices to silent. No food or drink is permitted during sittings of the Committee, except the water provided. I remind Members to observe physical distancing. Members should sit only in the places that are clearly marked, and it is important that they find their seats and leave the room promptly to avoid delays for other Members and staff. Members should wear face coverings in Committee unless they are speaking or medically exempt. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk.

We now resume line-by-line consideration of the Bill. The selection list for today's sitting is available in the Room. I remind Members wishing to press a grouped amendment or new clause to a Division that they should indicate their intention when speaking to their amendment.

Clause 76

Diversionary and community cautions

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 11, in clause 76, page 70, line 38, leave out "diversionary" and insert "conditional".

The Chair: With this it will be convenient to discuss the following amendments:

12, in clause 76, page 71, line 2, leave out "diversionary" and insert "conditional".

13, in clause 76, page 71, line 7, leave out "Diversionary" and insert "Conditional".

14, in clause 76, page 71, line 10, leave out "diversionary" and insert "conditional".

15, in clause 76, page 71, line 16, leave out "diversionary" and insert "conditional".

18, in clause 77, page 71, line 24, leave out "diversionary" and insert "conditional".

19, in clause 77, page 71, line 31, leave out "diversionary" and insert "conditional".

20, in clause 77, page 72, line 3, leave out "diversionary" and insert "conditional".

21, in clause 77, page 72, line 6, leave out "diversionary" and insert "conditional".

22, in clause 77, page 72, line 8, leave out "diversionary" and insert "conditional".

23, in clause 78, page 72, line 11, leave out "diversionary" and insert "conditional".

24, in clause 78, page 72, line 15, leave out "diversionary" and insert "conditional".

25, in clause 78, page 72, line 20, leave out "diversionary" and insert "conditional".

26, in clause 78, page 72, line 34, leave out "diversionary" and insert "conditional".

27, in clause 79, page 72, line 38, leave out "diversionary" and insert "conditional".

28, in clause 79, page 72, line 42, leave out "diversionary" and insert "conditional".

29, in clause 80, page 73, line 36, leave out "diversionary" and insert "conditional".

30, in clause 81, page 74, line 7, leave out "diversionary" and insert "conditional".

31, in clause 81, page 74, line 14, leave out "diversionary" and insert "conditional".

32, in clause 82, page 74, line 25, leave out "diversionary" and insert "conditional".

34, in clause 83, page 74, line 29, leave out "diversionary" and insert "conditional".

35, in clause 83, page 74, line 34, leave out "diversionary" and insert "conditional".

36, in clause 84, page 74, line 39, leave out "diversionary" and insert "conditional".

37, in clause 84, page 75, line 36, leave out "diversionary" and insert "conditional".

38, in clause 84, page 75, line 42, leave out "diversionary" and insert "conditional".

39, in clause 85, page 76, line 23, leave out "diversionary" and insert "conditional".

40, in clause 85, page 76, line 26, leave out "diversionary" and insert "conditional".

41, in clause 85, page 76, line 31, leave out "diversionary" and insert "conditional".

42, in clause 85, page 76, line 34, leave out "diversionary" and insert "conditional".

43, in clause 85, page 76, line 39, leave out "diversionary" and insert "conditional".

44, in clause 85, page 77, line 15, leave out "diversionary" and insert "conditional".

45, in clause 85, page 77, line 18, leave out "diversionary" and insert "conditional".

47, in clause 86, page 77, line 36, leave out "of the".

This amendment is consequential on Amendment 13.

48, in clause 86, page 77, line 41, leave out first "the" and insert "any".

This amendment is consequential on Amendment 13.

Alex Cunningham: It is a pleasure to serve under your chairmanship this morning, Sir Charles. First, I especially thank Unlock, Transform Justice, and the Centre for Justice Innovation for their considerate and constructive scrutiny of the proposals.

The Opposition are generally supportive of the changes to the statutory framework for out-of-court disposals, and we recognise the work that the Government have done to move in that direction. Three forces took part in a year-long pilot of the two-tier framework in 2014, and the Ministry of Justice commissioned an independent evaluation of that pilot, which was published in 2018. Fourteen police forces—a third of all forces in England and Wales—have already adopted the two-tier framework, and the National Police Chiefs' Council has endorsed the two-tier framework through its strategy for charging and out-of-court disposals.

We do appreciate the need to simplify the six-option cautions menu, and we recognise the Government's attempt to streamline the use of out-of-court disposals for police forces. We would like those reforms to go further, however, and I will go on to discuss those areas in speaking to our amendments. We would like much more to be done to incentivise the use of out-of-court disposals in appropriate cases. It is important to note that although the Government hope that the new system will reduce reoffending, current data does not suggest that short-term reoffending rates are likely to go down. The evaluation of the 2014 pilot found no statistically significant difference between the short-term reoffending rates of prisoners who were given out-of-court disposals in two-tier framework areas and those in comparable areas that were not using the new framework.

I understand that the Government also hope that the new system will improve victim satisfaction because more victims will be involved in the process, but it is important to recognise that victim satisfaction with the current out-of-court-disposal framework is already good. In 2019-20, 84% of victims whose offender was issued a caution said that they were satisfied with the police action. That is a similar rate to victims whose offenders were charged, 83% of whom said that they were satisfied with the police.

Although we support the principle of simplification for the purposes of enabling the police to work more effectively, we have to be realistic about the likely impact of that change to the system.

Bambos Charalambous (Enfield, Southgate) (Lab): Does my hon. Friend agree that the greater involvement of victims in the process, particularly for out-of-court disposals, is much better for reaching a satisfactory conclusion for everybody concerned?

Alex Cunningham: I most certainly agree: the more that victims are involved, the easier the process is for them. Talking about victims goes well beyond what we are debating today. The Opposition have published a victims' Bill and hope that one day soon, the Government will finally come up with their victims' Bill to address some of the issues that need to be addressed if life is to be just a little easier for the people who fall victim to criminals in our society.

Although we support the simplification of the cautions system, we have concerns about the removal of the simple caution, which seems to be an extremely effective and non-resource-intensive disposal for police officers to choose to use. Indeed, the simple caution has the lowest rate of reoffending of any sentence or sanction.

The Bar Council has said that it, too, is concerned about the removal of the simple warning:

"The existence of a simple warning, which the Bill proposes to abolish, is useful in many ways, not least because it requires fewer resources from police forces."

The Bar Council went on:

"To insist that cautions are imposed in all cases does not give sufficient flexibility to the judiciary. A national framework that is too rigid is likely to be unworkable in a courtroom."

As the Chair of the Bar Council—Derek Sweeting, QC—said in one of the evidence sessions on the Bill:

"It would be useful to have something that was a more general tool that the police could use, that would not turn up in criminal records later on and so on, and that would give the police the option effectively just to give what is now the simple caution."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Public Bill Committee,* 18 May 2021; c. 87, Q141.]

There is a range of low-level offences for which the simple caution is supremely suitable and in response to which it would not necessarily be appropriate to initiate a more formal engagement with the justice system, so how does the Minister envisage this very low-level offending now being dealt with?

Another area on which we would appreciate further reassurance from the Minister is the funding system. The system being proposed is likely to be significantly more costly than the existing system. The evaluation of the 2014 pilot found that the criminal justice system in pilot areas was estimated to have spent around 70% more on administering out-of-court disposals than the system in non-pilot areas. It concluded that the increased spending was the result of using conditional cautions in place of simple cautions, because conditional cautions require more police time to administer and monitor.

The Government estimate that this change will cost around £109 million over 10 years and think the criminal justice system will incur extra operational costs of around £15.58 million every year. They further estimate that the new cautions system will cost the police around £30.7 million to implement over the first two years.

The actual costs are likely to be even higher than those estimates, because the estimates are based on data from a pilot of the current two-tier framework carried out in 2014, which did not include some of the costly features of the proposed system set out in the Bill, such as proposed restrictions on the use of out-of-court disposals for certain offences. That is a significant cost and, as I noted earlier, it does not necessarily come with the offsetting benefit of reduced reoffending rates.

The impact assessment refers to £1.5 million for a three-year programme aimed at supporting police forces to access local intervention services, identify gaps in available provision and help to prioritise what services are needed that are not currently available.

Bambos Charalambous: Does my hon. Friend agree that it would be better to use some of the money that will be spent on this change for more community policing and more youth services, which would actually make a difference in diverting young people from crime?

Alex Cunningham: I certainly do agree with my hon. Friend, particularly when it comes to youth services. We have seen youth services being devastated over the last 10 or 11 years, and all manner of other services in the community have also gone, all of which could have contributed to reducing crime, better engaging young people and diverting them from crime. Nevertheless, this three-year programme is welcome all the same, and I am glad that the Government are providing some resource to identify and fill support gaps, which can help to keep people out of the criminal justice system all together.

However, as my hon. Friend has suggested, £1.5 million seems a small amount of money indeed when stretched across our 43 police forces, which all serve different and diverse community needs. I would be grateful if the Minister told us more about how his Department sees that £1.5 million being spent and what criteria he will set for its allocation.

[Alex Cunningham]

I am interested to know whether there are any plans to boost funding for these types of programme, especially as they might save the Government significant amounts of money by diverting appropriate low-level cases from prosecution altogether.

I would appreciate further information from the Minister on training officers in this particular area. Adrian Crossley, head of the criminal justice policy unit at the Centre for Social Justice, raised that issue at an evidence session:

"Drawing from the 2014 audit, there are some learnings from the two-tier system, most notably the training of officers so that they can refer people to the intervention that is appropriate and useful, better inter-agency communication, and sufficient time for implementation."—[*Official Report, Police, Crime, Sentencing and Courts Bill Public Bill Committee,* 18 May 2021; c. 45, Q63.]

Will the Minister tell us what resources will be made available to train officers in such a way? Or will that also come out of the £1.5 million?

We know that keeping people out of the formal justice system can have a really positive impact, so the Opposition would like to see growing use of out-of-court disposals, but the matter needs to be dealt with across Government—everything from youth services to the development of support services in the community.

Given the energy and time that the Minister's Department has put into the proposals, I know it recognises the need for greater numbers of out-of-court disposals. However, I have reservations about the fact that the available evidence suggests that the proposals might result in a further decline in the use of out-of-court disposals. In 2019, approximately 192,000 out-of-court disposals were issued in England and Wales. That is the lowest number in a year since 1984 and around 28,000 fewer than in 2018.

The Ministry of Justice evaluation of the 2014 pilot found no change in the volume of out-of-court disposals issued by police forces using the system. It seems that officers in the pilots switched to the disposing of offences with conditional cautions when they would have used a simple caution, so we can assume that police officers will not make significant changes to their use of those disposals as a result of the proposed changes.

Features introduced in the proposals were not in the two-tier framework pilot, which I worry will contribute to an even greater decline in the use of out-of-court disposals. For example, under the new system there will be more restrictions on the use of out-of-court disposals for certain offences, as police officers will need the consent of the Director of Public Prosecutions to issue out-of-court disposals for indictable-only offences. They will also be prohibited from disposing of some cases involving repeat offenders by out-of-court disposal.

While data is not available on how many cautions are issued for indictable-only offences or repeat offenders, we cannot estimate exactly how the changes might affect out-of-court disposal volumes, but we do have data to show that 55% of cautions issued in 2019 were for indictable and either-way offences, which suggests that restricting their use for those offences is likely to have some impact on out-of-court disposal volumes.

I am sure the Minister recognises the value of out-of-court disposals and would not want to see a further serious decline in their use, so it would be good to hear of any plans he has to safeguard against any such decline. Perhaps he has other data that we are not aware of that demonstrates the fact that he would expect the decline to be not only halted, but even reversed. I look forward to hearing his thoughts on that.

I will come to other concerns when I speak to the Opposition amendments with respect to other clauses, but there is one other issue that I want to deal with here and now: the admission of guilt. First, this requirement will place a further administrative burden on police officers by preventing them from administering community cautions on-street, which could restrict their use in otherwise suitable cases. It is important that in simplifying the system for the police's use, we also ensure that the flexibility needed to deal with the range of offending across England and Wales is retained and that we do not cause difficulties for the police by putting in place restrictions that would be unhelpful.

More importantly, many organisations, including EQUAL, have raised concerns about the impact that requiring an admission of guilt will have on disproportionality in our already extremely disproportionate justice system. In the current framework, a person has to make a formal admission of guilt to receive an out-of-court disposal. If someone does not admit guilt, they will be charged and sent to court. Evidence cited in the Lammy review shows that black, Asian and minority ethnic people are more likely to plead not guilty owing to a lack of trust in the criminal justice system among BAME communities, which makes suspects less likely to co-operate with the police.

Bambos Charalambous: On that point, does my hon. Friend agree that more needs to be done to engage with the BAME community to ensure that those discrepancies do not occur in the future?

11.45 am

Alex Cunningham: That is most certainly the case. We have seen a breakdown in those relationships in recent years, but funding for work in that area has also suffered considerably. The real point of this—I do not think we can say it often enough—is that BAME individuals are less likely to admit guilt and receive an out-of-court disposal. They are more likely to face prosecution; if they face prosecution, they are more likely to end up in prison; and if they end up in prison, they could be there for much longer under some of the legislation that the Government are promoting.

During the evidence sessions, that issue was raised by a series of witnesses as an area of concern. Phil Bowen of the Centre for Justice Innovation said that

"we would strongly argue that it should be possible to offer the community caution—the lower tier of the two tiers—to individuals who accept responsibility for their behaviour, rather than requiring a formal admission of guilt. This is an idea that was raised in the Lammy review and has subsequently been raised in the Sewell report. We think it would be better if that lower tier could be offered to people, who are required only to accept responsibility for their actions. As the Lammy review suggests, that may encourage the participation of people from groups who tend to have less trust in the police and the criminal justice system."—[*Official Report, Police Crime Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 44-45, Q63.]

Allan Dorans (Ayr, Carrick and Cumnock) (SNP): Does the hon. Gentleman agree that where the offence is not admitted, it is only right and proper that the matter be referred to a court in the interests of justice?

Alex Cunningham: The hon. Gentleman makes an interesting point. Yes, if the police believe that they need to proceed to court because someone refuses to take responsibility, the case should be moved on. However, the fact remains that if the person admits responsibility rather than making a formal guilty plea at that stage, they could have an out-of-court disposal rather than having to be dragged through the criminal justice system again. The Victims Commissioner told us that this was one reservation she had about the proposed changes to the caution system, saying that

"something needing a bit of looking at is the obligation to admit guilt in order to get an out-of-court disposal. Sometimes something like a deferred prosecution might be something that a person would be readier to accept, and it should be no more of a problem for a victim."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 114, Q180.]

Perhaps the Government might consider out-of-court disposals that do not require a formal admission of guilt, only individuals to accept responsibility. That might encourage the participation of people from groups that tend to have less trust in the criminal justice system, and who might therefore be more reluctant to make a more formal admission of guilt.

Bambos Charalambous: On the issue of deferred prosecutions, there is an excellent organisation in Lambeth called Juvenis that gets referrals from people in agreement with the police, via a panel. Those people are referred to Juvenis for help, and if they keep safe, prosecution does not follow. Is that not a good way to divert people from being criminalised and processed in the criminal justice system?

Alex Cunningham: It most certainly is. The Government should be looking at examples of that best practice and rolling it out across the country, because in the longer term, support for organisations such as that will reduce the number of people who end up in the formal criminal justice system. That will mean fewer people in prison, and the cost to society will be all the lower as a result. The Opposition share the serious concerns that have been raised, and would like to hear the Minister's thoughts on the issue, because I know that tackling inequalities in our justice system and crime outcomes is something he takes very seriously. We would particularly like to hear his thoughts on the possibility of removing the requirement of an admission of guilt from the lower-tier disposal, at the very least.

Let me turn my attention to the amendments standing in my name. These amendments might seem rather cosmetic, but they address an important issue as to how we think about the handling of lower-level offending. Amendments 11 to 15, 18 to 32, and 34 to 45 would change the name of the diversionary caution to the conditional caution, while amendments 47 and 48 are minor consequential amendments that would result from that change. The Opposition are concerned that calling the upper-tier disposal the diversionary caution is potentially and unnecessarily confusing. Diversion is commonly used as a term to describe specific activity moving people away from any contact with the formal justice system altogether, regardless of whether that means diverting them from a prosecution or from a statutory out-of-court disposal. It matters what we call these things, because the diversionary caution is not diversion as the term is currently used across the criminal justice system. A third of police forces are already using the two-tier framework, which includes the conditional caution.

We are concerned that the name change will needlessly confuse police forces, even though the intention is to simplify the framework. It could also cause needless confusion for others who work in, engage with or come into contact with the justice system, but who are not consistently involved with it as police officers are. It is a small change, and I hope the Government can see the sense in it. I would be grateful for the Minister's thoughts on it. If the Government are set on opposing the measure, I would welcome a further explanation as to why "diversionary" was chosen as the name for the upper-tier statutory out-of-court disposal.

The Chair: Do any other Members wish to speak before the Minister rises to his feet? I do not see you all jumping up and down, so I call the Minister.

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): It is a pleasure, as always, to serve under your chairmanship, Sir Charles, and it is a pleasure, as always, to respond to the shadow Minister. Let me start by saying how glad I am to hear that he and the Opposition generally welcome the principles that lie behind the changes in these clauses. We intend to reduce the number of cautions from the current six to the two contemplated in the Bill, following, as he rightly said, the initial pilot with three police forces, which has now expanded to 14 or 15 police forces. The feedback that we received from those police forces is that they find the simpler structure of cautions much easier to follow and much more helpful. Broadly speaking, it sounds as though we are all on the same page—both sides of the House, and the police as well. I am glad that we are starting from a very similar place.

The shadow Minister asked a number of questions about the involvement of victims in the administration of cautions. Of course, victims should be at the heart of the criminal justice system—we all believe very strongly in that. On victims, I draw the Committee's attention to paragraph 6.7 of the victims' code, which says:

"Where the police or the Crown Prosecution Service are considering an out of court disposal you"—

the victim—

"have the Right to be asked for your views and to have these views taken into account when a decision is made."

The police and CPS must make reasonable efforts to obtain the views of victims, and they must communicate with victims on the topic. As the shadow Minister rightly said, it is clear that victims need to be part of this endeavour, and paragraph 6.7 of the victims' code ensures that.

The shadow Minister asked a second series of questions about the fact that both levels of caution—the diversionary caution and the community caution—have a requirement for conditions to be attached. He expressed some concern that that might impose additional bureaucracy on police forces. He also asked about the cost of the whole scheme more generally and mentioned the estimate that the whole of the criminal justice system cost might be in the order of £15 million a year.

On the conditions, it is important that the cautions have some effect. It is important that where someone has committed an offence and admitted guilt—I will come to the point about admission of guilt in a moment—there should be some sort of follow-up action to ensure remedial activity and that an appropriate step is taken. If we simply let someone go with no follow-up step,

[Chris Philp]

it undermines and diminishes the seriousness of the fact that they have committed an offence and admitted to it. It perhaps misses an opportunity to take a step that will reduce reoffending in future. In general, taking steps to stop people reoffending is a good thing. There are some opportunities that we are very keen to embrace via these conditions and sentences passed by the court. For example, if someone has a drug addiction, an alcohol addiction or a mental health problem, we want that to get treated. These cautions are an opportunity to impose a condition—seeking treatment, for example. Of course, in a court setting, there are community sentence treatment requirements, alternative dispute resolutions, mental health treatment requirements and so on. These cautions have an important role to play in ensuring that the underlying causes of offending get addressed.

Bambos Charalambous: Will the Minister give way?

Chris Philp: I will just finish the point, and then I will take the intervention in a moment.

There are opportunities to take a more calibrated approach if police officers or the Crown Prosecution Service think it is appropriate. First, in the code of practice that we will be tabling to accompany these new diversionary and community cautions, there will be significant latitude and quite a lot of flexibility for police officers and the CPS to set appropriate conditions. They could be quite low level. For a low-level offender, where it is not appropriate to impose an onerous condition, or where the police feel it would impose an unreasonable burden on police officers themselves, a much lower, light-touch condition could be applied. That would address the concern that the shadow Minister raised.

There is also the option of a community resolution, which the NPCC says it will retain. There will be the two cautions set out in statute, and there will be the community resolution option too. Although the community resolution comes with conditions, there is not an obligation for them to be followed up, so the administrative burden would not apply.

On the cost point, of course we should be aware that the police are generally receiving a great deal of extra funding as part of the recent police settlements in order to support the police uplift programme—the extra 23,000 police officers. It would be a good use of a bit of that time if it were spent on following up the conditions that have been imposed to try to prevent reoffending. We all agree that reoffending is too high; that is bad for the individual and society as a whole. That is a good use of a bit of the additional police resources.

Alex Cunningham: Will the Minister give way?

Chris Philp: Perhaps I should give way to the hon. Member for Enfield, Southgate first, and then I will give way to the shadow Minister.

Bambos Charalambous: I am grateful to the Minister. On the issue of addressing the root of the offending in the first place, I am chair of the all-party parliamentary group on attention deficit hyperactive disorder, and people with ADHD are disproportionally represented in the prison population. That is partly because of screening—they are not screened early enough and are sometimes not aware that they have ADHD. Has the Minister given any thought to whether some of the conditions could involve screening for people with ADHD if that is one of the roots of the offending?

Chris Philp: That is an extremely good point. That is the sort of issue that we should take up in the code of practice that accompanies the statutory framework. That is exactly the kind of thing that should be picked up. Where someone has a need for treatment of some kind, whether for drugs, mental health—ADHD in that example—or alcohol addiction, we need to try to get the underlying cause of the offending sorted out. That is something that we can and should pick up in the accompanying code of practice, and I am very grateful to the hon. Gentleman for raising it.

Alex Cunningham: The Minister is talking a lot of good sense, and I take issue with very little of what he has to say. I am keen to understand whether he is content that we are seeing lower numbers of out-of-court disposals. He talks about reoffending, which we all want to see reduced, but there is no evidence that this measure will contribute to that. Would he suggest otherwise?

Chris Philp: Clearly recent data, over the past 15 months or so, has been significantly distorted because of the effect of the pandemic on the criminal justice system, policing and everything else, so we need to be careful about post-dating data from February or March 2020.

The reoffending point links to the comments of the hon. Member for Enfield, Southgate. We need to ensure that, in the code of practice, we are guiding police forces and the CPS to the follow-up activities and conditions that are most likely to deliver a reduction in reoffending. The shadow Minister is right that, although the police preferred the new system that we are introducing, there was not evidence of a reduction of reoffending in the pilots areas. We have an opportunity via the code of practice to ensure that the conditions are proposed and designed, like the one that the hon. Member for Enfield, Southgate just proposed, with the purpose of reducing reoffending. This is an opportunity that we should seize, along the lines just suggested.

12 noon

Another question that the shadow Minister asked had to do with the admission of guilt. He made the point well: should we drop the admission of guilt and instead have the person take responsibility? Because these two cautions have a significant effect in law, I think we need a formal admission of guilt, because the consequences of breaching one of them are potentially serious. Let us take, for example, the diversionary caution. First, it is disclosable for a period—only for three months. I know there is a later amendment on this, but for three months, it is disclosable when a criminal record check is done. And a breach of the condition can lead to prosecution. Even at the lower level of community caution, a breach can lead to a fine, which obviously is then enforceable in the normal way. I think that if someone is going to sign up to a caution, which carries with it those potentially serious implications should the condition be breached, it is right that there is a formal admission of guilt.

There is still the option of the community resolution, which I mentioned a few minutes ago. In the community resolution, a formal admission of guilt is not required; there is just the "take responsibility" requirement that the shadow Minister mentioned. It is open to the police or CPS, if they consider it appropriate, to go down the community resolution route, which has only a "take responsibility" requirement. That is appropriate because, as I said, there is no legal consequence if someone breaches the condition attached to a community resolution. By accepting that, the alleged perpetrator is not putting themselves into the criminal justice system, whereas if they accept one of the two statutory cautions, they are potentially putting themselves into the criminal justice system, and therefore I think that a formal admission of guilt is required.

There is none the less an important point, which the hon. Member for Enfield, Southgate made in, I think, an intervention on the shadow Minister. He mentioned the issues with BME suspects being reluctant to engage with cautions because they do not trust the system and therefore opting for formal prosecution. I think there is an issue there to do with—I was going to say "education", but that is patronising. Let me say instead "confidence building"—a better phrase. Clearly, if the alleged perpetrator goes down a prosecution route, it could end up worse for them, because if they get convicted, they could end up with a significantly higher sentence, so we need to work with these communities to explain how the system works and how it might actually serve their interests better to accept the caution, rather than going into a more formal court process, which will take longer and may end up in a significantly higher penalty for them. Of course, the CPS or police may choose to charge them, because they think that the offence may merit it, but we need to ensure that the suspect or the alleged perpetrator properly understands what they are getting themselves into. That is something that I will take up with my hon. Friend the Minister for Crime and Policing.

Allan Dorans: Does the Minister agree that the regulatory framework of diversionary and community cautions will prevent many young people from entering the formal criminal justice system—including having their fingerprints and photographs taken—which could affect their life chances and employment chances in later years for a mistake that they made at a very young age; that these measures will be welcomed by the parents who see their children perhaps having a second opportunity to live a crime-free life; and that this will allow rehabilitation within the family and the community?

Chris Philp: I do agree. Of course, I know that the hon. Gentleman had a long and distinguished career with, I think, the Metropolitan police.

Allan Dorans: It was.

Chris Philp: Therefore the hon. Gentleman's comments are based on that long experience of public service in the police force. It is clearly better if we can get people to stop their offending by way of early intervention such as this, rather than having them end up in a young offenders institution or somewhere similar, which often leads to a pretty bad outcome. We should take this opportunity to stop that pattern of behaviour developing and worsening. That is why these conditions are important—to ensure that that prevention and rehabilitation take place. I fear that otherwise we are missing an opportunity—an opportunity that the shadow Minister is poised to grasp.

Alex Cunningham: I am really interested in what the Minister said about working with ethnic minority and BME communities. We have seen a tremendous cut in services over the last 10 or 11 years, so does he see the potential of legislation such as this to increase even further the need for the Government to think again and invest more in organisations that can help people to understand what the Government are about and how young men in particular—it is young black men who tend to be affected most—can avoid the criminal justice system and move on with their lives?

Chris Philp: Exactly—avoid the criminal justice system by desisting from criminal behaviour.

Obviously, a lot of initiatives are under way, particularly via the funding for serious violence reduction units, which has increased a great deal in the last couple of years. The work of serious violence reduction units with those communities, talking about issues exactly like this, is the right way to do that. I will make sure that my colleague the Minister for Policing is appraised of our discussions this morning—this afternoon, now—so that he can ensure that that is reflected as he works with SVRUs and the police on issues such as this.

Alex Cunningham: I am very grateful to the Minister for giving way, and I am sure that he will excuse me for being parochial about this. In Cleveland, we have the third-highest rate of serious violent crime in the country, but the Cleveland Police force has been passed over in the past when it has come to funding for the initiatives he is talking about. Will he remind the Policing Minister of the particular issues that we face in Cleveland, and perhaps secure us some more funding?

Chris Philp: It sounds like I have been engaged to act as a lobbyist on behalf of Cleveland, but I will pass that on, and while I am at it, I will mention the needs of Croydon, my own borough.

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): And Lincolnshire!

Chris Philp: I will not forget the fine county of Lincolnshire, represented by the Minister for Safeguarding.

Alex Cunningham: Because there is so much crime all over the place!

Chris Philp: Well, I am afraid that in the case of Croydon, there is quite a lot of crime. I will add Cleveland to my communication.

I turn to the large group of amendments starting with amendment 11, which the shadow Minister moved. He proposes replacing the word "diversionary" with the word "conditional". I understand entirely what he is trying to do with that amendment, but unfortunately there are technical and legal reasons why that does not work. Essentially, the reason—as he touched on when moving the amendment—is that the concept of a conditional caution already exists in the current form of statutory out-of-court disposals for adults, which were enshrined in part 3 of the Criminal Justice Act 2003.

[Chris Philp]

We cannot change the name because there would be transitional provisions when the old cautions may still apply, and that may lead to confusion about which type of caution is being referred to, whether that be the old conditional caution, which may still apply in some cases—depending on the time of the offence—or the new conditional caution, which would be called a "conditional caution" if we adopted the amendment. It would lead to confusion about which caution was in force. As the new diversionary caution is different from the old conditional caution, we think that, both for legal reasons and for reasons of general confusion and clarity, the use of a different word—"diversionary", in this case—is the right thing to do.

Amendments 46 and 48 are in the shadow Minister's name but I do not think that he moved them. Should I defer replying to them?

Alex Cunningham: We are not debating them.

Chris Philp: In that case, I will not speak to those now—I will hold back for a subsequent opportunity—and I trust that I have answered the shadow Minister's excellent questions.

Alex Cunningham: I appreciate the Minister's response. As far as the amendment is concerned, I accept that we are perhaps all looking at different levels of confusion within the system. It is just a shame that we have to have any confusion at all. I do not intend to press the amendment to a vote, but I repeat to the Minster what I said before: we need to address disproportionality across the whole justice system. There is no doubt that these particular measures will add to that, and it is important that the Government take measures to ensure that young people—and even older people—coming into the system have a full understanding of what they are getting into as a result of the Government's proposed changes to the law. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 46, in clause 76, page 71, line 7, leave out from "Diversionary" to end of line 8 and insert—

"cautions must have one or more conditions attached to them.

(4A) Community cautions may have one or more conditions attached to them."

This amendment would remove the requirement for community cautions to have conditions attached to them, and instead make such conditions discretionary.

The amendment would remove the necessity to attach conditions to the community caution, which is the lower-tier disposal. The Opposition are concerned that the provision in clause 76 means that both the diversionary and community cautions must have conditions attached to them. We believe it should be possible to offer the community caution to individuals without the imposition of conditions. There are a range of circumstances in which an offence has occurred but in which the police may judge that no conditions should be imposed.

I will reiterate what I said earlier: in simplifying the process to help police forces, we need to ensure that we do not unhelpfully restrict them by removing useful tools. The current framework contains the simple caution, in which no conditions are attached. As I mentioned earlier, the current simple caution is a very effective sanction, with the lowest reoffending rate of any sentence or sanction.

In the Government's evaluation of the two-tier system, the conditional caution was shown to be effective in reducing reoffending, but it was no more effective than the simple caution. We are concerned that if all cautions have to have conditions imposed on them it may unhelpfully limit the police's ability to effectively dispose of offending. The effect, at least in the adult regime, is that only conditional cautions are available. Conditional cautions are more expensive to administer and monitor than disposals with no conditions attached. There is a relatively in-depth process of paperwork to set and monitor conditions and to ensure compliance.

This is an issue that police forces are concerned about too. In an evidence session, Phil Bowen of the Centre for Justice Innovation said that

"in consultation events that we have already held with a number of police forces, they strongly suggested that they wanted to retain the flexibility to issue the community caution—the lower tier—without conditions. In the existing framework, they are able to issue a simple caution that does not involve conditions. Police forces want that flexibility, and the new framework proposed by the Government does not allow that in the lower tier."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 44, Q63.]

Does the Minister think it is necessary to always have the additional stringent burden of necessary conditions on the lower-tier disposal, in spite of the fact that the police would welcome flexibility in this area?

Another issue of serious concern for the Opposition was raised in the evidence sessions by Sam Doohan from Unlock. On the additional administrative and time burden placed on the lower-tier disposal, he said:

"As a result, forces will be much more hesitant to use a caution. Whereas in the past, they might have been quite content to give a simple caution and send someone on their way with a formal warning or reprimand, now the force in question will have to take on the burden of monitoring, compliance and potentially re-arresting someone if they breach conditions. They will be forced either to go above the caution and see more cases through to prosecution, even though it would not necessarily be in the public interest to do so, or not to take action at all.

As we know with the criminal justice system as a whole, when we start having these slightly weighted decisions about who falls into what tier of disposal, those who are from disadvantaged backgrounds, along the lines of race and religion, almost universally fall into the harsher end, and those who are not do not. We are creating a system that incentivises busy working police officers to say, 'Actually, I am going to make this the CPS's problem, not mine, and I have the choice of who to do it to.' Is that going to lead to good criminal justice outcomes? We think it may not. We do not know yet—I stress that—because it has not been studied, but it does have the characteristics of a system that will not have the desired outcomes."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 104, Q164.]

I have already raised some of the serious issues of disproportionality that may come from the proposed system, but I would welcome reassurances from the Minister that his Department plans to monitor, and safeguard against, any such unintended perverse outcomes. Far more of our concerns will be allayed if the Government agree to retain a level of flexibility in the lower-tier disposal. We are not asking for there to be no conditions attached to the community caution; the amendment would still allow for police to attach conditions in appropriate cases, but it would provide an important

safeguard against further disproportionality in the criminal justice system and allow police forces to retain the flexibility they need to properly serve their community needs, which we believe they are best placed to know about.

The Chair: Right, who would like to speak? Are there any colleagues catching my eye or touching their face masks to indicate that they wish to speak? No. It is the Minister, smiling, who wants to speak.

12.15 pm

Chris Philp: Smiling as always, Sir Charles. I thank the shadow Minister for his speech. I made a number of the points that I would make in response in my comments a few minutes ago, so I do not want to re-elaborate on them at too much length, lest I wear thin the patience of colleagues. I will just reiterate briefly the two or three key points in response to the shadow Minister.

First, the Government think that having some level of conditions is an inherently good thing because it means there is a mechanism by which follow-up can take place, and it provides an opportunity for rehabilitation. Secondly, in the code of practice, which we have discussed already, there will be considerable latitude over how the conditions are calibrated. It could therefore be possible to have quite light-touch conditions. What we will take away is that, in the code of practice that gets drafted, and subsequently tabled and approved by Parliament, there is a wide range of conditions, including some at the lower end that are not unduly onerous on the police to monitor and follow up. Thirdly, the community resolution is still an option available to the police, and although it has conditions, it does not require follow-up.

A combination of those three considerations makes the approach being taken the right one. The key point is that the code of practice is very important. We will no doubt debate it when it gets tabled and voted on in a Delegated Legislation Committee. I hear the shadow Minister's point, and the code of practice will reflect that.

On the final point, about disproportionality, which the shadow Minister and the hon. Member for Enfield, Southgate raised, we will certainly be mindful of disproportionality considerations. As the hon. Member for—help me out—

The Chair: Ayr, Carrick and Cumnock.

Chris Philp: Ayr, Carrick and Cumnock—

The Chair: There we go. Mr Dorans, are you happy with that description of your constituency?

Allan Dorans: Yes, Sir.

The Chair: Excellent.

Chris Philp: As the hon. Gentleman said in his intervention, this is an opportunity to divert people from a path towards more serious crime and into a regular life. That is important for everyone, including some of these communities, which get themselves into more trouble than we would like. That point is well made.

Alex Cunningham: I am grateful for the Minister's response. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 8, in clause 76, page 71, line 21, at end insert—

"(8) The Secretary of State must, within the period of 12 months beginning with the day on which this Act is passed, and every 12 months thereafter, lay before Parliament a report on the use of cautions in accordance with this Part."

I will not keep the Committee long on this simple amendment, which would compel the Secretary of State to report annually to Parliament on the use of cautions, as established under this clause. As I said earlier, in 2019 only about 192,000 out-of-court disposals were issued in England and Wales, which is the lowest number in a year since 1984. I bear in mind what the Minister said but, of course, those figures refer to 2019, not the time covered by the pandemic.

The use of out-of-court disposals has been in decline since 2008, after it peaked at 670,000 disposals in 2007. Their use has fallen nearly three quarters since then. In 2008, community resolutions were introduced, and they remain the only type of out-of-court disposal that has been used at a similar rate in each of the past five years. That has happened while recorded crime has increased by more than 1 million offences, from about 4.3 million in 2010 to about 6 million last year. I mentioned earlier that we have concerns that the new restrictions on using out-of-court disposals for certain offences are likely to have some impact on out-of-court disposal volumes, driving down their use further. I again ask the Minister to clarify whether he thinks there will be more or fewer out-of-court disposals in the future.

It is all the more important that we monitor the new system to ensure that the use of out-of-court disposals does not continue to decline significantly. Although I appreciate that there has been a pilot and evaluation done of a two-tier framework, this is the one that is already in use. There has not been such an assessment of this new proposed two-tier framework. I have already mentioned the reservations that we have about attaching conditions to all cautions and the potential impact that that will have on disproportionality. Again, these changes need to be monitored to ensure that they do not have unwanted, perverse consequences. We are all keen to see the use of effective out-of-court disposals increase, not decrease. They can allow police to deal quickly and proportionately with low-level, often first-time offending and help to keep people out of the formal criminal justice system, which in many cases is preferable for their communities and for the Government in the long run.

An annual report to Parliament would allow for the necessary scrutiny of the new system and help to stem the decline in the use of out-of-court disposals. I hope that the Minister agrees that that would be a useful exercise. It will be good to hear more generally from him about Government plans to monitor and scrutinise the new system.

Chris Philp: On the review of how out-of-court disposals are used and are going, they are, as the shadow Minister said, already recorded by all forces in England and Wales and reported to the Home Office and the MOJ for statistical purposes. The figures appear in criminal justice statistics, published quarterly, which include performance data tables for each individual police force, as well as trends in use—figures from which the shadow Minister was likely quoting a few minutes ago.

[Chris Philp]

There is therefore already complete transparency on the numbers, which enable Parliament, the Opposition and the Departments—the Ministry of Justice and the Home Office—to look at them, take action, call parliamentary debates and so on. Those figures are all in the public domain.

In addition to that, however, all police forces are already required to have an out-of-court disposal scrutiny panel, led by an independent chairperson. Those panels are extremely important in holding the police to account and ensuring that disposals are being used appropriately, to provide assurances that difficult decisions are being made properly and to provide effective feedback to police officers and their forces.

Already, therefore, we have two levels of scrutiny: the data being reported, aggregated by police force and reported nationally to the Home Office and the MOJ, so we can debate it in Parliament; and, for each individual force area, a scrutiny panel. In addition, a standard review of legislation takes place after a Bill receives Royal Assent. I suggest to the Committee that those three mechanisms between them are sufficient.

The shadow Minister, however, is right to point to the figures. We in Parliament should be vigilant about them. If we, the Opposition or any Member of Parliament are concerned about how those quarterly figures look, there are a lot of ways to express those concerns in Parliament—by way of a Westminster Hall debate, an Opposition day debate or any of the usual mechanisms. I suggest that the existing mechanisms are adequate. I invite everyone in Government and in Parliament to use them.

Alex Cunningham: On this occasion, we are in a different place. I appreciate what the Minister said about the various methods through which information is available and about the opportunities to debate the issues, but I cannot understand why the Government are reluctant to have a formal report on the new system. We have discussed at some length the considerable reduction in the number of cautions used over the past 10 or 15 years. That decline is continuing. There is no evidence that the new system will result in any increase in the use of the cautions. For that matter, it is important for us to hold the Government particularly to account, so I will press for a vote on the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 7.

Division No. 13]

AYES

Charalambous, Bambos	Cunningham, Alex

NOES

Anderson, Lee	Levy, Ian
Atkins, Victoria	Philp, Chris
Clarkson, Chris	
Goodwill, rh Mr Robert	Pursglove, Tom

Question accordingly negatived.

Clause 76 ordered to stand part of the Bill.

Clause 77

GIVING A DIVERSIONARY CAUTION

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 78 to 85 stand part.

Chris Philp: Clauses 77 to 85 essentially provide for the statutory basis on which the diversionary caution—the higher of the two new cautions—will be introduced. We have already discussed at some length the principles that underpin the diversionary caution, and clauses 77 to 85 simply provide for the details necessary to facilitate their introduction. Given that we have already had a fairly extensive discussion on the principles, I will go through the clauses relatively quickly.

Clause 77 specifies the criteria for giving a diversionary caution, as introduced in clause 76, which we have just agreed. An authorised person may give a diversionary caution to a person over 18 years of age, subject to the specified conditions being met. The clause specifies key safeguards whereby an authorised person or prosecuting agency can authorise the use of this caution. They must establish that there is sufficient evidence to charge, that the recipient admits the offence and that the recipient signs and accepts the caution, along with understanding the effect of non-compliance. Those requirements mirror the provisions in the Criminal Justice Act 2003 that apply to existing conditional cautions. The requirements are important safeguards, given the consequences that can flow from the breach of a condition attached to a diversionary caution, as we have discussed.

Clause 78 establishes the types of conditions that may be attached to a diversionary caution. We will expand on that in the code of practice that we discussed. The provision is similar to the existing conditional caution. Again, as we have already discussed, it requires reasonable efforts to be made to ensure that the victim's views are sought before the conditions are set out. We have talked about the importance of taking victims' views into account.

Clause 79 provides for the rehabilitation and reparation conditions that may be attached to a diversionary caution. Further to the point made by the hon. Member for Ayr, Carrick and Cumnock, we talked about the importance of rehabilitation as well as reparation. The clause specifies the sort of activities that may be undertaken.

Clause 80 introduces a financial penalty condition. Clause 81 deals particularly with conditions that might attach when the offender is a foreign national. Clause 82 introduces a method whereby an authorised person or prosecution authority may, with the offender's consent—should that be necessary subsequently—vary the conditions attached to a diversionary caution.

Clause 83 deals with the effect of failure to comply with a condition attached to a diversionary caution. As I said earlier, criminal proceedings can be instituted against the offender for the index offence in the event of any breach. That is why a formal admission of guilt is so important.

Clause 84 grants a constable power to arrest the offender without a warrant where the constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any

condition attached to a diversionary caution. Clause 85 clarifies how the Police and Criminal Evidence Act 1984 will be applied in the event that an offender is arrested under clause 84 if a breach has occurred.

The clauses essentially implement the principles that we discussed when we considered clause 76 a few moments ago.

12.30 pm

Alex Cunningham: The new diversionary caution that these clauses introduce is extremely similar to the existing conditional caution. The same authorised persons would be able to issue them, issuing officers would have to meet the same requirements before applying them, and the range of conditions that could be attached would be extremely similar. They will still be used only in cases where officers have sufficient evidence and offenders admit guilt—we still have a problem with that—and the consequence of breaching conditions would be the same, in that the offender would be arrested and prosecuted for the initial offence.

However, there are two differences that would be helpful for the Committee to consider. The first is the range of offences for which the diversionary caution can be given. I raised this as a point of concern earlier when discussing whether we might see a further decline in the use of out-of-court disposals in appropriate cases as a result of clause 77, which sets out the restrictions on giving diversionary cautions for indictable-only offences. I will not repeat our concerns, but now that we are looking at the specific clauses, I would be grateful for some further information from the Minister.

Clause 77(3)(a) allows a diversionary caution to be given to an offender for an indictable-only offence

"in exceptional circumstances relating to the person or the offence".

It would be helpful if the Minister could provide some illustrative examples of what such an exceptional case might be. The restriction for indictable-only offences existed only for the simple caution before, but it did not apply to conditional cautions. Has the Minister made any assessment of what impact the change might have with regards to up-tariffing for disposals given at this level of offending?

The second key difference is a change in the maximum amount that an offender can be fined through a financial penalty condition. For the current conditional caution, fine levels are set by the Secretary of State but cannot be above £250, and this limit is set in primary legislation. However, the Bill will not provide a limit for diversionary caution fines, and the value of any such fine will be set using rules from future secondary legislation made under the powers in the Bill. Although I appreciate that the secondary legislation would require parliamentary approval by a yes/no vote, and so Parliament could reject the fine limit, it would not be able to amend the proposals for the fine value.

Bambos Charalambous: The issue of fines disproportionately affects younger people, who may not have much money. That also needs to be taken into consideration when assessing the level of the fines.

Alex Cunningham: The summary that my hon. Friend offers is certainly to the point. Young people could find themselves unable to meet a fine and end up in court or with further fines as a result—poverty heaped upon poverty in that situation.

It would be helpful at this stage to hear any more information that the Minister has about what level the Government may intend to set the fines at. Perhaps he could just tell us what the motivation is behind changing the limit.

The Chair: I am sure it is the Minister's intention to be helpful. Does he want to respond to the shadow Minister in winding up this part of the debate?

Chris Philp: I have already made the points that I wanted to make, but I will respond to one or two of the shadow Minister's questions.

Indictable-only offences are by definition extremely serious. They are the most serious offences, so there would be an expectation of proper prosecution in such cases.

The shadow Minister asked what the exceptional circumstances might comprise. I cannot give him speculative examples, but the meaning of the term "exceptional circumstances" is well understood in law, and it is a very high bar. It is not a test that would be met readily or easily.

On the fact that the limit on the fine may be specified by a statutory instrument, there is a desire to retain a certain measure of flexibility. I understand the shadow Minister's concern that the fine may end up escalating to an unreasonably high level, but as he acknowledged in his questions, it is subject to a vote in Parliament. If Parliament feels that the level of fine is inappropriately high, it is open to Parliament to simply vote it down. Then the Government would have to think again and come back to the House with a fine at a more reasonable level. On that basis, I recommend that the clauses stand part of the Bill.

Question put and agreed to.

Clause 77 accordingly ordered to stand part of the Bill.

Clauses 78 to 85 ordered to stand part of the Bill.

Clause 86

Giving a community caution

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 87 to 93 stand part.

Chris Philp: Rather like the previous group of clauses, which implemented the diversionary cautions, clauses 86 to 93 lay out the details of the proposed scheme for community cautions, implementing the principles that we have already debated pursuant to clause 76. As I did a few minutes ago, I will go through each clause quickly.

Clause 86 specifies the criteria for giving a community caution. It must be given by an authorised person to someone over the age of 18. The clause specifies the key safeguards whereby an authorised person or prosecuting authority can authorise the use of the caution: establishing sufficient evidence to charge, and an admission of guilt from the offender, who signs and accepts the caution and understands the effect of non-compliance. That mirrors precisely the provisions of clause 77, which we discussed a few minutes ago.

[Chris Philp]

Clause 87 establishes the type of conditions that can be attached, specifying that they should be rehabilitative or reparative—that is very important for the reasons that we have already discussed. It requires that reasonable efforts are made to ascertain victims' views.

Clause 88 introduces the permissible rehabilitation and reparation conditions, which must have the objective of facilitating rehabilitation in those cases. The clause provides that such conditions may be restricted in some cases and contain unpaid work conditions or attendance conditions.

Clause 89—again, mirroring the previous group—introduces the financial penalty condition. Clause 90 provides the framework for registering and enforcing financial penalties as part of this regime.

Clause 91 provides a framework for court proceedings arising from the enforcement of the financial penalty, essentially to ensure that it gets paid if someone does not pay it. Clause 92 introduces a method for an authorised person or prosecuting authority to vary the conditions, which, again, mirrors the previous group of clauses.

Clause 93 deals with the effect of community cautions where criminal proceedings may not be instituted against the offender for the offence. In particular, if the offender fails to comply with the condition under community caution without a reasonable excuse, the condition may be rescinded and a financial penalty order may be imposed instead, so the consequence of breach here is financial penalty rather than prosecution.

I hope that gives the Committee adequate oversight of the effect of clauses 86 to 93.

Alex Cunningham: Although we were on relatively familiar ground with the new diversionary cautions, the community cautions, on which clauses 86 to 93 set out the detail, are very different from the lower-tier out-of-court disposals currently in use. In fact, they are much more similar to the existing conditional cautions that the diversionary cautions are already designed to replace. There are lots of cautions here—cautions and cautions and cautions.

I spoke earlier about our concerns about the necessity of attaching conditions to the community cautions, so I will not tread the same ground again, but that is an important point. We very much support the simplification of the out-of-court disposal system and the introduction of the two-tier framework, but why are the Government introducing two tiers that are so similar? We should be able to get rid of the confusion of the current system of six out-of-court disposals without so severely restricting the choices of police officers who deal with such a wide range of low-level offending for which a range of penalties may be appropriate.

I understand that the community caution is intended to replace the community resolution. There are two major differences between the two. A community caution will be formally administered by the police, like other cautions, so it will appear on an offender's criminal record in the same way that other cautions do. There will be a clear statutory rule about the conditions that can be attached to it. That is quite a jump from the community resolution. Community resolutions are voluntary agreements between the police and an accused person. They do not appear on an offender's criminal record, and the actions agreed to are not legally enforceable.

Bambos Charalambous: Again, on the impact on the black and minority ethnic community, I wonder what thoughts my hon. Friend has on the fact that this would appear on their record if they were to be served a community caution.

Alex Cunningham: My colleague is right to raise the issue of disproportionality in the system. Anything that increases that is not good for us as a country and is certainly not good for the young people involved. It is important that the Government bear that in mind as they bring the measure forward. More importantly, as I said, the Government can get into a situation where they recognise that communities—ethnic minority communities, call them what we will—need to have an understanding of the changes that the Government are proposing, so that we do not find more young people, young black men in particular, with criminal records when that is not necessary.

Secondly, the community cautions will now involve financial penalties. Officers will be able to attach a fine to a community caution as a punitive condition. Failure to meet any of the conditions, including a financial penalty condition, could result in a police-issued fine. Again, that would be quite a departure from the community resolution. Offenders might be asked to pay damages to their victims as part of a resolution, but community resolutions are not used to fine individuals.

Will the Minister tell me, therefore, whether the intention is to replace the community resolution entirely with community cautions? I ask, because Transform Justice has rightly called for some clarity in this area:

> "The status of community resolutions under the proposed legislation is not clear. Clause 96 'Abolition of other cautions and out-of-court disposals' states that 'No caution other than a diversionary or community caution may be given to a person aged 18 or over who admits to having committed an offence'. We are unsure what this means for community resolutions, although we understand the intention is that they will remain available to police if they wish to use them.
>
> Given the value of community resolutions, as an out of court disposal that does not require a formal admission of guilt, the legislation and accompanying regulation should make clear in Clause 96 that use of community resolutions will not be prohibited under the new framework."

I have already discussed our concerns about the need for a formal admission of guilt for the community caution and the potential that has to deepen disproportionality in our criminal justice system. My hon. Friend the Member for Enfield, Southgate just raised that issue. We all know that there are benefits to having a light-touch disposal to deal with low-level offending in some cases where appropriate. Keeping people out of the formal justice system at this level can help keep them out of it for good and so I wonder whether the Minister thinks that we might be losing a helpful method of disposal here. Finally, how does he anticipate that the low-level offences that benefited from community resolutions before will now be handled?

Chris Philp: I thank the shadow Minister for his speech and his questions. For clarity, in answer to his principal question, the community resolution will still be available to use. It will not be removed by the Bill. As he said, community resolutions have conditions attached to them, but they do not require the admission of guilt—

they simply require someone to take responsibility—and, should the conditions not be adhered to, there is in essence no consequence to follow that.

That low-level entry provision will therefore still exist and be available to police officers to use. Because that will still exist, it is appropriate to pitch the community cautions—the ones we are debating—somewhere in between the community resolution, which will remain, and the diversionary caution that we just debated. That is why it is pitched where it is.

There are three principal differences between the diversionary caution and the community caution. The first is on disclosure. We will talk about this when we consider an amendment later, but the community caution is not disclosable in a criminal record check and so on from the moment that the condition ceases, whereas for the diversionary caution a spending period goes beyond that.

The second difference is that, as the shadow Minister said, the consequence of breaching the community caution is the imposition of a fine, whereas for the diversionary caution it can lead to substantive prosecution. Thirdly, the range of offences is somewhat different.

I hope that reassures the shadow Minister that the community resolution will remain—it is not being abolished—and therefore we have a sensible hierarchy of provisions available for the police to choose from. I hope that provides him with the reassurance that he was asking for.

Question put and agreed to.

Clause 86 accordingly ordered to stand part of the Bill.

Clauses 87 to 93 ordered to stand part of the Bill.

Clause 94

CODE OF PRACTICE

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 95 and 96 stand part.

Chris Philp: The clauses in this group apply to both types of caution and provide an overarching framework in which the new cautions will sit. Each clause has a particular function, and I will address them in turn.

Clause 94 introduces a general code of practice and requires the Secretary of State to prepare it—we have talked about that already. It specifies the kind of matters that such a code will include, such as the circumstances within the clauses, the procedure, the conditions that may be imposed and the period of time. We talked about that earlier. It is very important that we get that right for the rehabilitative purposes that we have discussed and to cover issues such as the one that the hon. Member for Enfield, Southgate mentioned. That includes who may give the cautions, the manner in which they may be given, the places where they will be given, how the financial penalty should be paid, how we monitor compliance, the circumstances in which a power of arrest may arise, and so on. I should add that the code cannot be published or amended without the prior consent of the Attorney General. We need this clause to ensure the code can exist.

Clause 95 enables the Secretary of State to make regulations placing restrictions on the multiple use of diversionary and community cautions. They should have reference to the number of times a particular individual has received cautions previously. The regulations made under this clause will be laid in draft form before Parliament for scrutiny and will be subject to an approval resolution of both Houses. That provides a key safeguard and ensures that the out-of-court disposal framework is being used as intended and is not being used inappropriately—for example, where there is repeat offending that should be handled through more serious means, such as prosecution.

Clause 96 abolishes the previous caution regime, as the shadow Minister said, but does not abolish community resolutions. That obviously follows the widespread consultation that we had previously and lays the groundwork for the new system that we debated in the previous two groups.

Question put and agreed to.

Clause 94 accordingly ordered to stand part of the Bill.

Clauses 95 and 96 ordered to stand part of the Bill.

Clause 97

CONSEQUENTIAL AMENDMENTS RELATING TO PART 6

Question proposed, That the clause stand part of the Bill.

Chris Philp: Clause 97 introduces schedule 10, which makes various consequential amendments to existing legislation to ensure the proper operation of the new two-tier system, which we have just discussed, and the removal of the existing out-of-court disposals. Clause 97 and schedule 10 make those technical changes.

Question put and agreed to.

Clause 97 accordingly ordered to stand part of the Bill.

Schedule 10

CAUTIONS: CONSEQUENTIAL AMENDMENTS

Alex Cunningham: I beg to move amendment 117, page 228, line 15, in schedule 10, leave out sub-paragraphs (2) and (3) and insert—

'(2) In paragraph 1(1)—

(a) for "—" substitute "at the time the caution is given.", and

(b) omit sub-sub-paragraphs (a) and (b)."

This amendment would remove the spending period for cautions.

We have discussed a number of important matters over the course of the morning, all of which impact on the lives of young people and older people. They have all been extremely important issues, but for me this amendment is particularly important, because it would make life a lot easier for a lot of people, and probably contribute more than some of the other things that we have discussed to keeping them out of the criminal justice system.

Amendment 117 would remove the spending period for cautions. It would revise the text of the Rehabilitation of Offenders Act 1974 to the following:

"For the purposes of this Schedule a caution shall be regarded as a spent caution at the time the caution is given."

Currently the upper-tier disposal of a conditional caution has a spending period that is the earlier of three months or the completion of the caution, and the Bill will

[Alex Cunningham]

maintain that spending period for the diversionary caution. We believe that the spending period associated with diversionary cautions should be removed so that those who receive one are not forced to disclose this record to potential employers. The effect of the spending period attached to cautions is to increase the barriers to employment for those who are diverted from court.

Given the Government's commitment to reform of rehabilitation periods elsewhere in the Bill—at part 11—we believe that this is a good opportunity to continue the direction of travel that the Government are on, make another positive change in this area and remove the rehabilitation period for cautions as well. The Government may believe that a three-month spending period is required for a diversionary caution in order to support public protection. However, there is strong evidence, of which I am sure the Minister is aware, that employment is one of the most important factors, if not the most important, in enabling people to cease offending. Research has also found that employers discriminate against people with criminal records and that many do not differentiate between a caution and a conviction.

A three-month rehabilitation period is short enough to have little impact on public protection, but its existence requires people in employment to declare the caution and so risk losing their job. It acts as a barrier to those seeking work, education, insurance and volunteering opportunities. It is also important to remember that criminal record disclosure in itself is not really a public protection measure: the general public cannot check a person's record or require them to disclose it. In any event, under present guidance, if the police or CPS believe that someone is a legitimate risk to others, they would never meet the public interest test for caution instead of charge.

Bambos Charalambous: On the issue of accepting a caution, if people think that it might lead to this being on the criminal record, they might be less inclined to accept a caution and might therefore take their chances by going to court. Does my hon. Friend think that it would potentially lead to more cases going to court if this matter stayed on the criminal record?

Alex Cunningham: Indeed. My hon. Friend is correct in saying that it could lead to greater congestion in the courts system, but the most important thing in all this is that it removes the person's opportunity to move on with their life in an appropriate way. If they are able to have a caution and they do not have to tell their employer that they have had their knuckles rapped in such a way, they will be able to continue in employment, whereas otherwise they may well lose their job.

In some cases, cautions are appropriate for individuals who pose a low level of risk, but only when combined with other supervision measures. In such cases, that often means the sex offenders register. But in these cases, it is the sex offenders register—or other supervision measure—that acts as the public protection measure, not the spending period attached to the caution.

The spending period also introduces unnecessary confusion for those given cautions. The rehabilitation period will be the same as for the conditional caution, so it will be the earlier of three months or when the diversionary caution ceases to have effect. This is quite a perplexing element of the current system, because those who receive conditional cautions often do not understand the disclosure regime and have no way of knowing whether their conditions are judged as completed before three months. Officers often do not explain disclosure related to cautions comprehensively and offenders do not know that there is a link between meeting conditions and their becoming spent. The situation is so confusing that some third sector organisations that support offenders universally tell them that the spending period is three months from caution, because this is the only way for them to be certain that the caution is completely spent and, therefore, that the offender will not unintentionally fall foul of the disclosure process.

We think it would be preferable to have a "cautions are spent when given" standard. Otherwise, we will end up with a situation in which the criminal justice system is giving out more of the new cautions than prison sentences, but Parliament will have given the cautions a more complex disclosure regime. Perhaps the Government think that a spending period is necessary because of the seriousness of the diversionary caution, but we must remember that rehabilitation periods are not part of the punitive aspect of a disposal, and the knock-on effect on someone's life from having to disclose should not be used as a punishment. Under current guidance, magistrates and judges are specifically precluded from considering disclosure periods when giving sentences, and they must always give the correct disposal, regardless of the criminal record impact.

With all that said, I would welcome the Minister's thoughts on the need for the spending period for the diversionary caution and other cautions outside the adult regime. We believe that introducing a spending period for the diversionary caution will hamper people's efforts to gain employment, while doing little for public protection. That is true for the spending period for all cautions. The Government are doing good work in reforming the criminal records disclosure regime and, by extension, helping people to stay out of the offending cycle and rebuild their lives. The amendment has been tabled with the same intention, and I sincerely hope that the Government can support it.

The Chair: Can I just look a Whip in the eye? We are making good progress, and it is nearly 1 o'clock. Some of us—perhaps even myself—would like to have lunch. We do not want to cut the Minister off in full flow, so perhaps it is now time for a break.

Tom Pursglove (Corby) (Con): Given your generosity, Sir Charles, I would be delighted to move that the Committee do now adjourn.

Ordered, That the debate be now adjourned.—*(Tom Pursglove.)*

12.57 pm

Adjourned till this day at Two o'clock.