

# Caution to the wind

A caution may sound like a friendly warning, but in reality accepting one amounts to an admission of guilt and can have unintended consequences, says **David Rhodes**

**EXERCISE GREAT CAUTION** before you accept a caution. That is the message to be taken from *R (Aso Mohammed) v Chief Constable of West Midlands* [2010] EWHC 1228 (Admin). Be under no illusions, a police caution is an admission of guilt and can have serious consequences.

The claimant, AM, was a young Kurdish man aged 24. In September 2009, he went to a local park with his girlfriend, E, a male friend and E's five-year-old son, M. While playing in the park, M removed his clothes. The claimant was observed taking photographs of the naked M by a member of the public who was concerned by this activity and summoned a police officer.

The claimant, his friend and E were arrested upon suspicion of making indecent photographs of a child and taken to the police station, where they were held for several hours. AM was interviewed under caution with the assistance of a solicitor and an interpreter. He was later released on bail, subject to stringent conditions including daily reporting at a police station and a prohibition of unsupervised contact with any person under the age of 16. AM's friend and girlfriend were also released but not before the local authority had been notified. E's son M was taken into care.

AM remained on bail for around three months before the police notified a secretary at the defence solicitor's office that they would be prepared to offer him a caution. The police officer explained that one of the consequences of accepting the caution was that he would be required to register as a sex offender. The secretary left a voice message on AM's mobile phone conveying the substance of what she had been told. The claimant duly answered his bail the following day. There was no solicitor or interpreter present. A caution was duly administered.

## Unlawful use

The claimant applied for judicial review to

quash the decision to administer a caution as unlawful. He also sought a declaration that his rights under article 6 (fair trial) and article 8 (private and family life) had been violated, and also damages in the sum of £500, pursuant to section 8 of the Human Rights Act 1998. The Administrative Court (Wyn Williams J) had no hesitation in quashing the decision to administer the caution as unlawful.

The preconditions for administering a simple caution to an adult offender are set out in the Home Office Circular 016/2008. They essentially rehearse the Crown Prosecution Service's Code for Crown Prosecutors' 'full code test' – i.e. that there must be sufficient evidence to found a realistic prospect of a conviction and it must be in the public interest to prosecute.

Ultimately, the defendant police authority conceded that, in the circumstances of AM's case, administering caution simply should not have happened. There was not sufficient evidence to found a realistic prospect of conviction. He would never have been charged with that offence.

The High Court also had no hesitation in awarding damages. Not only was the administration of the caution unlawful, it had serious consequences. First, the defendant had been subject to stringent conditions, including daily reporting at the police station, for three months (during which time, one presumes, a thorough investigation as to whether there was sufficient evidence to charge had been undertaken). Second, the caution carried with it the obligation to sign on the sex offenders register and all the very serious implications which that entailed. Third, and perhaps most importantly, the defendant police authority knew that administering a caution would have significant consequences for AM's private and family life. The police knew that, as a result of the arrest, E's son M had been taken into care. The caution

would, inevitably, be taken into account by the local authority in making a decision about M's future.

## More than a slap on the wrists

This case serves as a cautionary tale. The police are under pressure to meet bureaucratic targets of 'clear-up' rates. For them, a caution serves the same purpose as a conviction in the 'case solved' ledger – without the need and cost of any investigation work and the risk of a trial. Of course, in the right case, a caution can be a sensible and timely diversion from a formal prosecution. But beware.

The common public perception, no doubt encouraged by the police officer who administers the caution, is that a caution is really just a slap on the wrists, a 'mind how you go' warning. It is not. A caution amounts to an admission of guilt. It is not a conviction, but it is recorded on a person's criminal record – albeit in a separate section. It may have to be disclosed to an employer. It can be used against a person should they come before the courts in future.

Yet, one can well imagine the dilemma faced by a person arrested and taken to the police station for the first time – cautions tend only to be offered to people with little or no criminal record – when offered the option of a caution. Of course, the officer who administers the caution is obliged to inform the person of all the implications, and can only offer a caution where there is a clear and reliable admission of guilt. But note, in AM's case, this was done without a solicitor or an interpreter present. Nevertheless, one can imagine that a person is also left with the impression that if he signs on the dotted line that will be the end of the matter. And yet, as we see here, the consequences can be immense.

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