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## The Police Caution as a Diversionary Mechanism. An Analysis of the Garda Síochána Adult Caution Scheme

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**The police caution as a diversionary mechanism.  
An analysis of the Garda Síochána Adult Caution Scheme.**

A thesis submitted to the Dublin Institute of Technology in part fulfilment of the requirements for award of Master (M.A.) in Criminology.

by

**Mr. Graham Tolan**

23<sup>rd</sup> September, 2011

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## **Declaration**

I hereby declare that the material which is submitted in this thesis towards the award of Masters (M.A.) in Criminology is entirely my own work and has not been submitted for any academic assessment other than part fulfilment of the award named above.

**Signature of Candidate:** \_\_\_\_\_

**Date:** 23<sup>rd</sup> September, 2011

**Word Count:** 14,433

## **Abstract**

The Garda Síochána Adult Caution Scheme was established in 2006. It is among a range of alternate methods which have been introduced in recent years that are designed to divert adults away from the criminal justice system. The scheme provides a mechanism by which individuals receive a formal police caution in lieu of prosecution before the courts. It is only available to certain persons against whom there is evidence of the commission of a scheduled criminal offence and where the prosecution of such an offence is not in the public interest (An Garda Síochána, 2006:2009). This thesis examines the scheme over a five year period since its inception in 2006 to 2010. A quantitative research methodological approach was selected for this study. Data from over 670,246 incidents was obtained from the Central Statistics Office. An analysis of the data provided a profile of the recipients of the scheme and the type of offences that are most commonly disposed of by way of an adult caution. The research also explored the post caution offending behaviour of the participants and the consistency of application of the scheme across the various Garda geographical regions. Recommendations arising from this research include additional qualitative research by way of interview of the recipients of a caution and the expansion of the scheme to cover additional offences.

## **Acknowledgement**

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## **Chapter 1 - Introduction**

### **1.1 A Formal Police Caution for Adults**

*Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment*

...

(United Nations, 1990:119)

Historically, society has dealt with the criminal behaviour of its citizens by the imposition of a variety of forms of sanctions. Often used penalties such as transportation, force labour or corporal punishment are no longer acceptable. There is a move away from retribution and punitiveness toward rehabilitation and diversion. The use of an adult police caution can be seen as a more humanistic approach which diverts people away from the criminal justice system at the pre-court stage (Department of Justice, Equality and Law Reform, 2010).

### **1.2 Aims and Objectives**

The aim of this thesis is to carry out an analysis of the Garda Síochána Adult Caution Scheme. The study seeks to develop a profile of the recipients of the scheme and the type of offences that are most commonly disposed of by way of an adult caution. Furthermore, it aims to enquire into the use of the scheme across the various different Garda geographical regions and to examine the offending behaviour of participants over a twelve month period after a caution had been administered.

Having carried out a literature review it is evident that there is a dearth of literature on the Garda Síochána Adult Caution Scheme. This thesis attempts to address this anomaly and to provide empirical evidence, which will raise awareness and assist An Garda Síochána in directing future policy decisions.

### **1.3 Research Question & Methodology**

The subject matter that guides this thesis is;

The police caution as a diversionary mechanism.  
An analysis of the Garda Síochána Adult Caution Scheme.

The focus of the study is to carry out an analysis of the Garda Síochána Adult Caution Scheme over a five year period from its inception in 2006 to 2010. This was achieved by carrying out a literature review and a quantitative analysis of statistics in relation to incidents that were dealt with by way of an adult caution during the aforementioned period. The literature review drew on information about the English adult caution system and more recently in relation to the developments in an Irish context. Data for the research was obtained directly from the Central Statistics Office (CSO). The service provided by the CSO was prompt and efficient. In total, information in relation to 670,246 incidents was received and analysed.

### **1.4 Organisation of the Dissertation**

This thesis is set out in six chapters. The first chapter provides an introduction to the subject matter. It sets out the purpose of the research, identifying its aims, objectives and the methodology used to gather the data. The layout of the dissertation is also outlined. Chapter two provides an overview of the available literature in relation to formal police cautions for adults, with particular reference to the establishment and development of the Garda Síochána Adult Caution Scheme. The benefits and hazards to be derived from disposing of cases by way of a police caution and the human rights implications are also discussed. The chapter concludes by discussing the potential developments that may take place in this area. Chapter three provides a description, explanation and justification of the methodology utilised to carry out the research for this thesis. The type of data gathered and the method of analysis are described, followed by consideration of ethical and other methodological factors. The chapter concludes with a discussion of the research limitations. Chapter four outlines and presents the findings of the research. Chapter five offers a discussion on the findings. Chapter six draws together elements of the literature review and research findings and offers an assessment of how the research question has been addressed. Finally, a number of recommendations are proposed.

## Chapter 2 - Literature Review

### 2.1 Introduction

This chapter provides an overview of the available literature pertinent to this subject. The evolution of the Adult Caution Scheme in Ireland is delineated. The rationale for using an adult caution as a means of diverting individuals away from the criminal justice system is then discussed. Consideration will also be given to the human rights aspect of having cases finalised away from the public accessible court room and in the absence of legal advice. The possibility that the introduction of a new scheme such as this may actually bring more people into the criminal justice system will also be examined. Finally, consideration will be given as to how the scheme could be expanded and developed to include reparation for the victims.

### 2.2 Historical Overview

[A Formal Police Caution] *Less formalism, less ritual, more speed, more efficiency, fewer lawyers ... the classical mixture for recipes of progress ... each measure of which leaves further behind some of the more barbaric relics of our past.*

(Pratt, 1986:213 cited in Francis, Davies, and Jupp, 1997:53)

The above extract clearly captures the essence of a somewhat radical, yet more humanistic approach to dealing with offenders. As an alternative to prosecution, a formal police caution is a means of diverting individuals away from the criminal justice system at the pre-court stage.

The use of a caution by the police has been in existence since the establishment of police forces as we know them today (Ditchfield, 1976). However, the introduction of a structured diversionary system whereby an offender receives the benefit of a formal police caution in lieu of prosecution before the courts was not introduced in England until the 1950s. This initiative was greeted with widespread support and was indicative of a shift in the penal policy away from punishment toward diversion and rehabilitation (Pratt, 1986).

### **2.3 The Irish Context**

From an Irish perspective, the concept of cautioning individuals as a means of diverting them from the criminal justice system is not a new phenomenon. A diversion programme for children has been operating in this jurisdiction since 1963 and was put on a statutory footing in 2001 with the introduction of the Children's Act (Department of Justice, Equality and Law Reform, 2011). In 2009, a total of 23,952 cases were referred to the juvenile diversion programme with 76% of cases dealt with by caution. Referrals are received in respect of a wide spectrum of incidents with alcohol related offences (18%), theft (17%) and road traffic offences (13%) accounting for the main categories. More serious offences such as robbery, assault and sexual assault are also considered on a case by case basis. Significantly, in accordance with the Children's Act 2001 cautions can now be accompanied by certain conditions such as an apology through a restorative caution, replacement or compensation for stolen goods or agreement about future behaviour (Garda Síochána, 2010).

The 'wheels of justice' moved more slowly in respect of cautions for adults. Despite a formal cautioning system for adults coming into force in England in the 1950s, it wasn't until 2006 that the Garda Síochána Adult Caution Scheme finally came into operation in this jurisdiction.

The first intimation of a change of policy came in The Law Reform Commission Report on Sentencing (1996:6), which advocated a 'just deserts' principle, stating that 'the sentence to be imposed must be proportionate to the seriousness of the offending behaviour'. The next significant development came in 1999 when The Report of the Public Prosecutions System Study Group (1999: para 5.8.6) highlighted the benefits to be gained through 'deflecting the offender from a path of crime and reducing the pressure on the prosecution and courts system'.

On 1st February 2006 the Adult Caution Scheme was finally introduced in Ireland. The scheme is an alternative to the prosecution of certain persons against whom there is evidence of the commission of a scheduled criminal offence and where the prosecution of such an offence is not in the public interest (An Garda Síochána,

2006). The formal police caution is among a range of alternate methods which have been introduced in recent years that are designed to move away from incarcerating offenders to dealing with them in the community. Other measures include – notification requirement for sex offenders, Restriction on Movement Orders, Electronic Monitoring, Behavioural Warnings, Behavioural Orders and Civil Orders. The benefits of these non-custodial sanctions include a reduction in cost compared with imprisonment (Department of Justice, Equality and Law Reform, 2010). The British Home Office (2010:28) indicates that a significant saving can be made by utilising a police caution in lieu of a prosecution. On average it costs between £400 and £1,400 to prosecute a case before the British courts compared with a cost of between £300 and £450 for a simple or conditional caution.

Significantly, unlike the Irish Juvenile Diversion Programme, which is open to a myriad of offences and the English Adult Caution Scheme, which is open to any offence once it is in the public's interest (British Home Office, 2007), the Garda Síochána Adult Caution Scheme is confined to the offences listed in the schedule which are generally of a minor nature and are listed hereafter. Initially, the Irish scheme catered for fourteen different offences. While the offence of possession of cannabis resin was included in the original schedule it was subsequently excluded from the scheme. In response to a Dáil question posed by Ciaran Cuffe (2006), Michael McDowell, the then Minister for Justice Equality and Law Reform, stated that the offence of possession of a controlled drug had been withdrawn prior to the implementation of the scheme pending further consultation between An Garda Síochána, the Director of Public Prosecutions and the Department of Justice, Equality and Law Reform. Following a review in 2009 the scheme was extended to cater for a total of twenty offences (An Garda Síochána, 2006:2009). Possession of a controlled drug remains outside the ambit of the scheme.

## Adult Caution Scheme – Schedule of Offences<sup>1</sup>

### **Criminal Damage Act, 1991**

- Section 2: Damaging Property (value > €1,000)
- Section 3: Threat to damage property

### **Criminal Justice (Public Order) Act, 1984**

- Section 4: Intoxication in a public place
- Section 5: Disorderly conduct in a public place
- Section 6: Threatening, abusive or insulting behaviour in a public place
- Section 8: Failure to comply with a direction of a Garda
- Section 9: Willful obstruction
- Section 11: Entering a building etc. with intent to commit an offence
- Section 22: Surrender and seizure of intoxicating liquor

### **Criminal Justice (Theft and Fraud Offences) Act, 2001**

- Section 4: Theft where the value of the property concerned is > €1,000
- \*Section 8: Making off without payment (value of the payment is > €1,000)
- \*Section 17: Handling stolen property (value of the property is > €1,000)
- \*Section 18: Possession of stolen property (value > €1,000)

### **Dublin Police Act, 1842**

- \*Sec 14(12): Nuisances in Public thoroughfares

### **Intoxicating Liquor Act, 1927**

- \*Section 17: Persons on licensed premises during prohibited hours

### **Intoxicating Liquor Act, 2003**

- Section 6: Offences by a drunken person
- Section 8: Disorderly conduct

### **Licensing Act, 1872**

- \*Section 12: Public drunkenness

### **Non Fatal Offences against the Person Act, 1997**

- Section 2: Assault [Assaults on a member of An Garda Síochána shall be forwarded to the Director of Public Prosecution]

### **Summary Jurisdiction (Ireland) Amendment Act, 1871**

- \*Section 8: Offensive or riotous conduct in a theatre or other place of public amusement

### **Misuse of Drugs act 1977 - 1984**

- Section 3: Possession of a controlled substance, namely cannabis resin.

(An Garda Síochána, 2006:2009)

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<sup>1</sup> \* Denotes the additional offences added to the schedule in 2009.



The Irish Constitution guarantees that every citizen shall be equal in the eyes of the law. Therefore, there is an onus on the State to ensure that people are not discriminated against and that every citizen is dealt with in the same manner. Francis, Davies & Jupp (1997) highlighted the inconsistent levels of application of the police caution system in England and Wales and indicated that the Royal Commission on Criminal Justice (1993) advocated that in order to improve consistency across police forces that police cautioning should be regulated by legislation. They also warned that directives and legislation would not solve the problem alone, that consideration needed to be given to the broader organisational and occupational context of policing. Evidence of this issue can be found in the Criminal Statistics, England and Wales, 2002, which illustrate that cautioning rates varied from 54% in Dyfed-Powys to a mere 9% in Leicestershire. Campbell (1997) agrees with this point arguing that variation in the application of the police caution is dependant on factors including crime patterns, social context, current legislation and the mind-set of the community toward policing.

The Irish authorities have followed the directive model, with An Garda Síochána, in consultation with the Office of the Director of Public Prosecutions, issuing instructions which clearly set out the circumstances and offences, as described previously, in which a person may receive the benefit of an adult caution.

#### **2.4 Rationale for Cautioning**

Through punishment, society demonstrates the type of behaviour that is or is not acceptable. A system of sanctions dictates the gravity of certain types of behaviour, thereby dissuading individuals from acting in an illegal manner. Lappi-Seppala (2004:18) concurs with this point arguing that ‘The effective functioning of the criminal law is not necessarily conditioned by severe punishments, but by legitimacy and perceived fairness’. As there is a scale of offences covering the most minor indiscretions to the most serious, there should also be a similar scale of sanctions and punishment. The decision of the courts should be reserved for the most severe offences and diversionary programmes utilised for the more minor indiscretions (Davies, Croall & Tyrer, 2009). The police caution also provides a formal mechanism

to cater for minor offences that may have previously been dealt with inadequately and escaped any official sanction (British Home Office, 2010).

O'Malley (2006) notes, that in an Irish context, there has been a significant increase in the number of people sentenced to longer periods of imprisonment for serious crimes such as murder, sex and drug related offences. This has led to an increase in the number of persons in prison, which only serves to exacerbate the need to keep people who commit minor indiscretions out of the criminal justice system and ultimately out of prison. However, the politicisation of criminal sanctions has all too often led to a quick fix solution with a symbolic message that only serves to encourage harsher prison sentences that ultimately leads to prison expansionism (Kilcommins, 2004: Bottoms, Gelsthorpe, & Rex, 2001). This fact is illustrated by the Garda Public Attitudes Survey (2008) which found that 79% of the respondents believed that offenders were treated too leniently. Yet on the other hand, the public's appetite for incarceration is not absolute. Tougher policies can be popular with the electorate, but there is also a realisation that imprisonment is not the only answer. This sentiment was highlighted in the report by the Department of Justice, Equality and Law Reform (2010:6) when it stated

*The majority of submissions [to the Department of Justice, Equality and Law Reform's White Paper on Crime Consultation Process Discussion Document No. 2, Criminal Sanctions] supported the principle of penal moderation, greater use of non-custodial sanctions, reinforced by early intervention and prevention methods. ... Some submissions favoured a range of alternative sanctions such as adult cautioning ...*

## **2.5 'Labelling'**

The old adage that someone who has spent time in jail has 'served his time' or the individual who has paid a fine has 'paid his debt to society' is not entirely true. Not only does the convicted offender have to suffer during his incarceration or bear the financial burden of a court fine, but long after he has repaid his 'debt to society' he must still shoulder the added burden of a criminal record. This encumbrance has far reaching consequences which can come back to 'haunt' a person in later life as he or she applies for a job, seeks insurance or tries to obtain various licences including a PSV licence, drivers licence, firearms licence or a gaming licence.

In Ireland, a criminal conviction never lapses nor does the requirement to disclose it. One could argue that this is particularly unfair as a conviction is a record of past behaviour but is by no means an accurate barometer of current or future conduct (British Home Office, 2008: Law Reform Commission, 2007). This point is reiterated by Von Hirsch, Ashworth & Roberts (2009) when they argue that the court process and subsequent imprisonment can have an ‘open-ended stigmatic shaming’ effect on individuals. Furthermore, the public prosecution of an individual in court can also be viewed as a ‘status degradation ceremony’ which only serves to provide the person with a new identity, that of an offender. The labelling theorists Becker 1963; Lemert 1967; Tannerbaum 1938 also emphasised the importance of avoiding a prosecution and conviction arguing that they can be a ‘stepping stone’ in the development of a criminal persona (Garfinkel, 1956:420 as cited by Barrick, 2007:8).

Therefore, Francis, Davies & Jupp (1997) argue that individuals, who by virtue of a caution circumvent a court appearance and the possibility of a conviction and imprisonment, avoid the negative labelling and stigmatising effect. Disappointingly, much is made of the benefits to be derived from avoiding the stigma of being ‘labelled’ a criminal, however, no substantive research has been carried out to date of the offenders attitude to the police caution scheme as an alternative to prosecution before the courts (Albrecht, Mayerhufer and de Gruyter, 1995).

## **2.6 Who should receive the benefit of a police caution?**

The question as to who exactly should be cautioned has received considerable debate. As previously stated, the Garda Síochána Adult Caution scheme caters for certain persons against whom there is evidence of the commission of a scheduled criminal offence and where the prosecution of such an offence is not in the public interest. The caution is aimed at first time offenders, with the permission of the Director of Public Prosecutions required before an individual can benefit from a second or subsequent caution (Garda Síochána, 2006:2009). Similarly, Leigh (2007) notes that the Home Office Circular (England), (1994) advocated that individuals should only benefit from one police caution. However, in England a second caution can be administered if the offence is of a trivial nature or there has been a sufficient lapse in time since the first

caution was administered (two years in the case of a simple caution or five years in the case of a conditional caution or conviction) (British Home Office, 2010).

## **2.7 The ‘rights’ of the accused and of the victim**

There can be little doubt that the criminal justice system continues to be in a state of constant flux. We are witnessing an era of an increased awareness of the victim, with a move toward a more victim centric approach. However, it could be argued that the police caution initiative could be viewed as a move in the opposite direction, with offenders dealt with ‘behind closed doors’ and the victim being deprived of their day in court (Saunders, 1988). Furthermore, the possibility of the victim receiving compensation is also negated by the current format of the Garda Síochána Adult Caution Scheme which does not cater for reparation. As it stands the scheme only allows the offender to be cautioned or warned about his/her behaviour. Whereas, following the introduction of the Criminal Justice Act, 2003 in England there was a significant change in this ethos with the police empowered to attach certain conditions to the caution. The conditional caution as it is known, allows the police to prosecute the offender for the original offence if he/she fails to abide by agreed conditions. This development was aimed at addressing the needs of the offender through rehabilitation and that of the victim through reparation. Despite being met with a certain amount of criticism, the ability to impose financial sanction is no more than is already in existence through another medium in the form of on-the-spot fines (Brownlee, 2007). The Department of Justice, Equality and Law Reform (2009:20) identified the potential for a similar development in Ireland when it reported:

*The Commission reiterates that there is potential to apply restorative justice as a diversionary measure at pre-court stage as an option under the Garda Síochána Adult Caution Scheme and recommends that this should be progressed by An Garda Síochána.*

Separately, the Irish Constitution enshrines the right of every individual to have their case dealt with before a court of law (Bunreacht na hÉireann, 1937). This is a principle which is echoed under Article 6 of the European Convention on Human Rights which guarantees that everyone has a right to a fair and public hearing by an independent and impartial tribunal (European Convention on Human Rights, 1953). However, a State is entitled to provide a mechanism whereby a person is permitted to

waive his right to have his case dealt with by a court (R. v United Kingdom, 2007).

This point is also endorsed by the United Nations (1990:118) which dictates that:

*Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.*

It is this rationale that is used to circumvent the courts and to justify the disposal of cases by way of an adult caution.

The informed consent of the recipient of the caution is an important safeguard which aims to guarantee the rights of the accused. The British Home Office (2008) has emphasised that an offender must give his informed consent, as details of the caution will appear on any subsequent requests under the Data Protection Act and may also be disclosed for employment vetting purposes. This point is in line with the United Nations recommendation that:

*Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.*

(United Nations, 1990:119)

The Irish scheme also requires that offenders give their informed consent to be dealt with by caution (An Garda Síochána, 2006). However, unlike the English system the current Garda policy dictates that details of a caution are not disclosable to third parties through vetting requests (Garda Vetting Office, 2011 see appendix I).

In general, individuals who come in contact with the criminal justice system have a right of access to legal advice. Access to a solicitor or lawyer is seen as one of the main safeguards of a person's rights. However, Saunders (1988 in Campbell 1997) expresses concern about the access to legal advice of some recipients of a caution. As cautioning does not necessarily have to follow an arrest, some individuals can be cautioned following an incident in which they may not have been arrested and therefore did not benefit from the added safeguard of access to a solicitor that comes with an arrest. The accused may then accept a caution in the absence of legal advice without fully understanding the process or its implications.

## **2.8 Net-Widening & Penal Escalation**

There is a distinct danger that non-custodial sanctions can have a total opposite effect than was intended. A phenomenon known as ‘net widening’ describes how additional people, who may have previously been dealt with informally, are brought into the criminal justice system as a new formal method of dealing with their behaviour has been introduced (Department of Justice, Equality and Law Reform, 2010). There are numerous examples of occurrences of this nature including as Ditchfield (1976) notes, the establishment of a juvenile bureau in 1969 in England as a means of diverting juveniles away from the courts which led to more juvenile offenders being brought into the system than before. O’Malley (2006:425) concurs with this sentiment when he states that ‘new options tend to widen the net of social control’.

However, Campbell (1997) is sceptical about some analysts’ contention that cautioning can have a ‘net-widening’ effect arguing that the proposition that the increased use of the practice has merely replaced other systems such as informal on-the-street warnings is without empirical evidence.

Another phenomenon, which is referred to as ‘penal escalation’, is associated with repeat offenders. It describes a situation when a court may take into consideration the fact that a person has previously been dealt with in a non-custodial manner and has failed to take the opportunity afforded to him. Therefore the court feels obliged to impose a harsher sentence which can include a custodial sentence for a relatively minor offence (Roberts, 2005).

## **2.9 Chapter Summary**

The introduction of the Adult Caution Scheme in Ireland in 2006 as a means of diverting individuals away from the criminal justice system can be seen in line with the international ethos of reducing the number of persons in prison. The scheme which provides an alternative to prosecution for minor offences permits criminal cases to be brought to a conclusion without the necessity of the first time offender having to endure the negative effect of a conviction in court. However, sceptics fear that the introduction of a new scheme such as this could lead to ‘net-widening’ which

can bring more people, who may have been previously dealt with informally, into the justice system.

~o~

## **Chapter 3 - Methodology**

### **3.1 Introduction**

The introduction of the Garda Síochána Adult Caution Scheme in 2006 was a significant diversionary development in the Irish criminal justice system. Surprisingly, there has been a dearth of evaluative research into the diversionary effectiveness of the scheme. This is not an anomaly that is unique to Ireland with Campbell (1997) noting that the lack of statistics in England in this field is due in part to the inadequate recording systems of many police forces. This chapter will address the issue of the research carried out for this study. In particular, a justification and outline of the research methodology utilised will be delineated. The type of data gathered and the method of analysis will be described, followed by consideration of ethical and other methodological factors.

### **3.2 Research Aim, Objectives and Research Question**

Having worked as a member of An Garda Síochána for seventeen years, the author chose to research the use of the police caution as a means of diverting adults away from the criminal justice system. This subject was of particular interest to the author as he is acutely aware of the importance of the use of diversion in the criminal justice system. Bachman and Schutt (2008) indicate that great care should be taken in selecting a topic of research, as it is not only an academic undertaking, but often is of great personal interest to the author.

The aim of the study is to explore the use of the Adult Caution Scheme in Ireland. The specific objectives will be:

- to analyse the frequency of use of the scheme, including the geographical spread and the offences that are most commonly dealt with by caution,
- to provide a detailed statistical profile of the recipients of the scheme,
- to examine the offending outcomes of individuals who received a caution over a twelve month period from the date they committed the initial offence.



Based on the aim and objectives of the study, the following is the research subject matter that guides the study:

The police caution as a diversionary mechanism.  
An analysis of the Garda Síochána Adult Caution Scheme.

### **3.3 Research Purpose**

Academic research in the criminal justice arena has explored a myriad of issues including the examination of policy, procedures and innovative approaches to tackling the issue of crime. Various different forms of research have been utilised to ‘establish a baseline with which future changes will be compared’ (Maxfield and Babbie, 2001:18). The purpose of this study is to create a greater understanding of the Garda Síochána Adult Caution Scheme. Noaks and Wincup (2004:33) comment ‘One study alone is unlikely to change policy but a coherent and cumulative body of knowledge on a criminological issue might have an impact’. That said, given the dearth of research in the area, it is hoped that the study will inform policy development in this area by providing an evidence-based account of current practice.

As previously mentioned, the Garda Síochána Adult Caution Scheme was first introduced in 2006. A publicly available evaluation of the scheme has not taken place to date. As the scheme is now entering its sixth year the author contends that a sufficient period of time has now elapsed which will enable a thorough and productive appraisal of the scheme. The Home Office (2010:2) emphasises the importance of reviewing alternative methods to prosecution when it declared,

*It is vital the public has confidence that these disposals [includes adult cautions] are being used appropriately and proportionately; that they are effective; that there is consistency in their use across England and Wales and that the system is understood by the public and its operation is transparent.*

### **3.4 Research Approach**

An in-depth analysis of crime statistics was selected as the preferred methodological approach for this study. In 2006, responsibility for the compilation of crime statistic

reports was transferred from An Garda Síochána to the ‘dedicated and independent’ Central Statistics Office (CSO). The data supplied by An Garda Síochána to the CSO is derived from the Garda ‘Pulse’ computer system<sup>2</sup> and the Fixed Charge Penalty System. The information is then used by the CSO to produce annual crime statistics reports. The reports are freely available to members of the public (CSO, 2008). Details of the data sourced and analysed will be outlined later in the chapter but beforehand the rationale for choosing the methodological approach is outlined below.

### **3.5 Rationale for the Methodological Approach**

Consideration was given to employing a number of different methods of research. The analysis of statistical data was favoured over other quantitative or qualitative methods such as interviews or surveys for the following reasons. Firstly, when carrying out research it is important to be cognisant of the effect that the research might have on other individuals. The enquiry must not cause the respondent to endure any psychological distress. Individuals should not be put in a position where they are coerced into answering embarrassing questions or to divulging information that may have psychological, legal or ethical implications. Unlike medical questionnaires which serve the individual who answers them, the questions posed by the criminal justice researcher may be of significance to the community at large, but have little or no relevance to the individual respondents (Maxfield and Babbie, 2001). Secondly, the author was conscious of his position as a member of An Garda Síochána which may have led some respondents to feel obliged to cooperate with a survey or interview. This concern is in line with Sengupta (1995) argument that the police have the capability to exercise coercive power over members of the public to achieve compliance in any given situation. Furthermore, a statistical analysis also has the added benefit of capturing information from a much larger domain. In this instance over 670,246 records were scrutinised. Finally, the findings from a statistical analysis can prove to be more reliable than the collection of subjective opinions of individuals gained by way of formal or informal interview (Jupp, 1989).

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<sup>2</sup> The Garda ‘Pulse’ computer system, which is an acronym for Police Using Leading Systems Effectively, is a computerised database which is used to record crime (An Garda Síochána, 2011).

Data which has been collected by others is referred to as secondary data, and is commonly used as a criminological research method of gathering information. The benefits of secondary data often include little or no cost, ease of accessibility, rapid response and the high standards which are regularly employed by other agencies that far surpass the expertise of many researchers (Maxfield and Babbie, 2001). However, Jupp (1989) indicates that quantitative data such as official crime statistics are collected by governments for a number of reasons including the examination of crime patterns and trends, for measurement of police effectiveness, comparison with other social issues such as unemployment etc, and are used to guide future policy decisions. The difficulty from a research point of view is that the criteria used to gather the information in the first place rarely coincides with the parameters of the new research. A practical example of how this issue affected this study is discussed in section 3.8, as is the method that was employed to overcome this obstacle.

### **3.6 Data Collection and Analysis**

As previously outlined, the CSO held the source of data required for this study. While general crime reports are available to the public from the CSO, specific requests for detailed information about adult cautions must be made in writing to the CSO.

The request to the CSO was confined to information specific to the offences that are included in the adult caution scheme. As referred to above and as illustrated in section 3.8, the criteria used for the collection of the data does not 'fit' the information that is sought in respect of the Adult Caution Scheme. The author used his 'insider knowledge' to design the request for data so as to capture as much accurate information as possible. Key variables such as age, gender, offence types, detection status, timeframe and Garda regions were identified and specified in the request. See appendix II for further information.

As one of the purposes of the study was to provide a profile of the recipients of the Adult Caution Scheme, a question was constructed to generate a profile by age, gender and Garda region of the persons who have benefited from an adult caution

from the date of establishment of the scheme to the present day. The frequency of the different type of offences for which cautions were administered was also scrutinised.

Previous research highlights differences in the use of diversionary schemes across geographical locations. To explore this issue, the author sought information on the uptake and application of the scheme by each Garda geographical region. The data was examined on a yearly and Garda geographical regional basis to determine if the scheme has been adapted unilaterally.

The current guidelines dictate that any person who has a criminal conviction is ineligible to receive an adult caution and that ordinarily individuals can also only receive adult caution on one occasion. However, the prohibition in both instances can be waved with the permission of the Director of Public Prosecutions (An Garda Síochána, 2006:2009). The frequency of occurrence of this anomaly and its geographical spread across the Garda regions was sought from the CSO. However, the CSO does not capture this information from An Garda Síochána. Therefore it was not possible to explore this avenue of research.

Finally, an important dimension of the study was to provide follow up on the outcome of the Adult Caution Scheme and to this end, information was sought on the post-caution criminal behaviour of those who had received a caution. The years 2006 – 2009 inclusive were selected and an examination of the offender's criminal behaviour for a period of twelve months from the date he/she had committed the offence for which they had been cautioned was carried out. The aim of this part of the study was to examine if the cautioned offender came to the attention of the Gardaí for a subsequent offence.

In total, information in relation to 670,246 offences was received from the CSO. The data files were manually collated, formatted and electronically transferred to excel spreadsheets. Pictorial representations and descriptive statistics of the data were generated and illustrated via charts and graphs. The findings were then subject to comparison and analysis.

### **3.7 Access & Ethical Issues**

As previously mentioned information on crime is extracted from the 'Pulse' computer system by the Garda authorities and supplied to the CSO. The CSO then processes the data and is responsible for the compilation of crime statistic reports.

As a member of An Garda Síochána, the author has access to the Garda 'Pulse' computer system and therefore has direct access to crime information. However, organisational regulations and the Data Protection Act preclude the use of data for other purposes other than which it was captured (An Garda Síochána, 2011). The Garda Pulse computer system was designed to record, and assist in the prevention and detection of crime. It was not designed as a research tool for individual members of the Gardaí and therefore Gardaí undertaking research must follow the same protocol as members of the general public and apply in writing to the CSO for data requests. To ensure that the information obtained from the CSO was in no way affected by his position as a member of An Garda Síochána the author used his personal contact details and eliminated any reference to being a member of An Garda Síochána in correspondence with the CSO.

The Garda regulations also dictate that permission to carry out research in instances such as this is subject to approval by the Garda authorities. Approval was sought and granted by the Garda Research Unit and the Assistant Commissioner of the Eastern Region (See appendix III).

Significantly, the information received from the CSO does not include any personal details about the recipients of a caution. Therefore, the subjects' anonymity is guaranteed.

Finally, a sample of the CSO request was scrutinised by the Garda Statistics Office, Garda HQ. The endorsement of the request's parameters by the Garda Statistics Office assured that the optimum amount of information would be obtained from the CSO.

### 3.8 Research Limitations: Overcoming Methodological Obstacles

Jupp (1989) notes that while permission of the ‘Gatekeeper’ is of paramount importance it is not the ‘final hurdle’, as the collection of data can still be fraught with difficulty. ‘Gatekeepers’ of information may not share the same interests or view points as the would-be researcher. Barriers can be erected to slow or prevent access to information. The relationship between the researcher, gatekeepers and subjects of the study can have an effect on what is studied and the inevitable outcome of such enquiry. Once permission to access the information has been secured, the researcher’s difficulties do not necessarily come to an end. All too often the secondary data is not congruent to the research parameters. The information sought by the researcher is regularly stored in a different format or not at all. In this instance, the CSO captures crime information under sixteen separate headings, which are then divided into a total of one hundred and fifty three sub-headings (CSO, 2008). This study centres on only twenty offences which come under the ambit of the Adult Caution Scheme. As Jupp (1989) notes the ‘fit’ between the information available and the information sought is not always an exact match. This dilemma is illustrated in Table 1, which illustrates that the offence type is not necessarily an exact ‘match’ with the CSO category.

**Table 1 ~ Crime Classification versus CSO Crime Categories**

<b>Crime Classification</b>	<b>CSO Category</b>
<b>Criminal Damage Act, 1991</b>	
Section 2: Damaging Property (value of the property damaged is > €1,000)	= Criminal Damage
Section 3: Threat to damage property	= Criminal Damage
<b>Criminal Justice (Public Order) Act, 1984</b>	
Section 4: Intoxication in a public place	= Drunkenness
Section 5: Disorderly conduct in a public place	= Public Order
Section 6: Threatening, abusive or insulting behaviour in a public place	= Public Order
Section 8: Failure to comply with a direction of a Garda	= Public Order
Section 9: Willful obstruction	= Public Order

Section 11: Entering a building etc. with intent to commit an offence	= Trespass
Section 22: Surrender and seizure of intoxicating liquor	= Public Order
<b>Criminal Justice (Theft and Fraud Offences) Act, 2001</b>	
Section 4: Theft where the value of the property concerned is > €1,000	= Theft
Section 8: Making off without payment (value of the payment is > €1,000)	= Theft
Section 17: Handling stolen property (value of the property is > €1,000)	= Handling Stolen Property
Section 18: Possession of stolen property (value of the property is > €1,000)	= Handling Stolen Property
<b>Dublin Police Act, 1842</b>	
Sec 14(12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District only)	Not Captured
<b>Intoxicating Liquor Act, 1927</b>	
Section 17: Persons on licensed premises during prohibited hours	= Liquor Licensing
<b>Intoxicating Liquor Act, 2003</b>	
Section 6: Offences by a drunken person	= Liquor Licensing
Section 8: Disorderly conduct	= Liquor Licensing
<b>Licensing Act, 1872</b>	
Section 12: Public drunkenness	= Liquor Licensing
<b>Non Fatal Offences against the Person Act, 1997</b>	
Section 2: Assault	= Assault
<b>Summary Jurisdiction (Ireland) Amendment Act, 1871</b>	
Section 8: Offensive or riotous conduct in a theatre or other place of public amusement	Not Captured

(An Garda Síochána, 2006: CSO, 2008)

Bachman and Schutt (2008) highlight the importance of having a good understanding of the primary source of data. The author was in a position to use his 'insider knowledge' to frame the format of the request to the CSO to capture the information required for this study. Furthermore, some jurisdictions have to deal with multiple police forces that through their own idiosyncratic procedures have various different methods of recording and storing information. This can ultimately affect the quality of the data (Bachman and Schutt, 2008). However, as the Republic of Ireland has only one policing organisation this is not an issue which affects this study.

As with all computer records there is the potential for human error. The CSO (2008) notes that it receives information from An Garda Síochána relating to each offence and that the 'detection status'<sup>3</sup> of each incident dictates how the incident is then categorised. The detection status must be manually updated to 'Adult Caution'. Therefore, the reliability of the data is subject to the assumption that it was correctly updated in the first instance. The British Home Office (2010) indicates that the majority of police forces have quality assurance initiatives in place beyond the normal line management supervision. They provide an independent review of decision making process and examine the quality of the computer records, which provides valuable feedback to the police on the ground and guarantees the integrity of the system.

### **3.9 Chapter Summary**

In conclusion, there has been a lack of evaluative research into the Adult Caution Scheme which was first introduced in Ireland in 2006. An analysis of the CSO crime statistics was favoured as the most appropriate way of eliciting information about the effectiveness of the scheme. The author used his 'insider knowledge' to frame questions to the CSO, so as to achieve the best possible 'fit' between the offences eligible under the Adult Caution Scheme and the criteria used by CSO to record crime. The issue of privileged access was also addressed by removing any reference

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<sup>3</sup> The Garda Pulse computer system captures details of various different types of incidents and crime. The criminal incidents are updated depending on the outcome / status of the case. There are ten different categories under 'detection status', examples of which include the following; in cases where a decision is made not to prosecute the offender, the 'detection status' on the record is updated to read 'no prosecution'; in cases where an individual is dealt with by 'adult caution' the detection status is updated accordingly.



in the CSO request to the fact that the author was a member of An Garda Síochána. The high quality 'secondary data' was easily accessed and provided a rich source of information.

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## Chapter 4 - Findings

### 4.1 Introduction

This chapter presents the main findings from the research of the crime statistics as supplied by the Central Statistics Office. The research parameters span five years from 2006 to 2010 examining 670,246 individual criminal offences. The incidence of use of the Adult Caution Scheme is explored, as is the age and gender of the recipients of the scheme. Furthermore, the frequency of which the various different offence types are dealt with by way of an adult caution is examined. The consistent application of the scheme across the six Garda geographical regions is also scrutinised. Finally, the post-caution behaviour of the recipients of an adult caution is analysed.

The Central Statistics Office provided a swift response returning the required data within three weeks of the request. Disappointingly, it was not possible to discern the nationality of the persons who had benefited from the scheme or the number of persons who had benefited from more than one caution.

### 4.2 Frequency of application of the Adult Caution Scheme

The research found that the number of adult cautions administered has risen each year from 2006 to 2010. In total, 38,350 adults received a caution during the aforementioned period. The mean percentage of offences dealt with by way of an adult caution during this time was 5.8%. The lowest number of cautions issued was 3,865 in 2006<sup>4</sup> and the highest 9,308 was recorded in 2010. Significantly, while there has been a 2% decrease in the number of eligible incidents<sup>5</sup> from 2006 to 2010 there has been a 241% increase in the number of cautions in the corresponding period. Following an initial surge, the percentage of eligible incidents dealt with by way of an adult caution continued on an upward trajectory maxing at 7.3% in 2010. The number

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<sup>4</sup> The Adult Caution Scheme was introduced in February 2006 therefore the total number of cautions in 2006 is for an eleven month period.

<sup>5</sup> Only includes the number of incidents in each of the crime categories that are eligible to be dealt with by way of an adult caution. Please refer to paragraph 3.8 for a full list of the eligible incidents.

of cautions administered has levelled off somewhat with 9,222 in 2009 and 9,308 recorded in 2010.

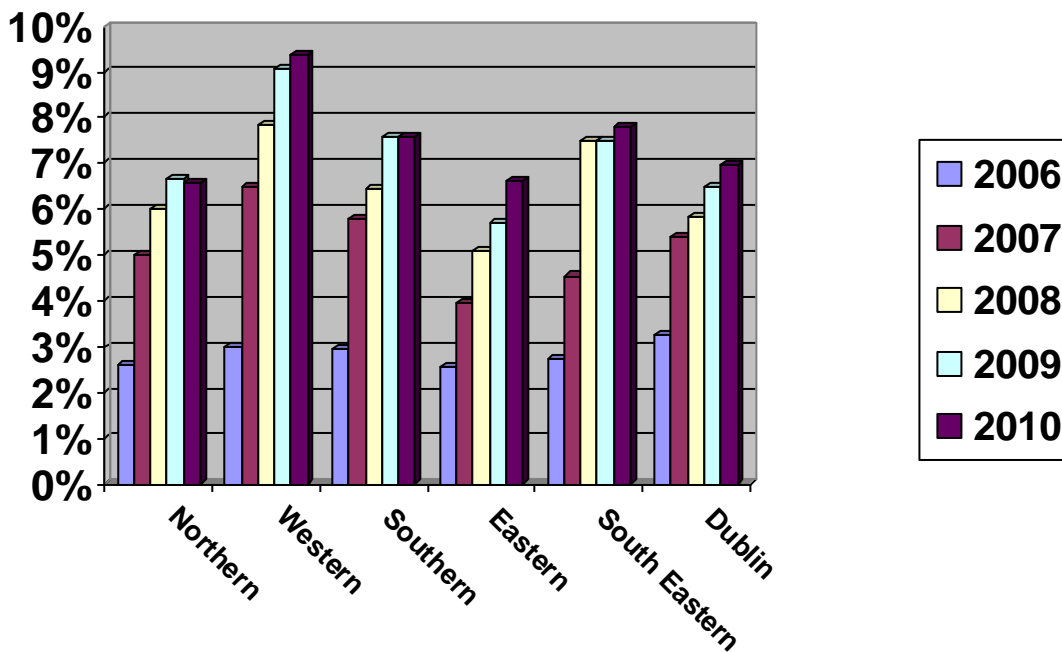
**Table 2 ~ Incidents dealt with by way of an Adult Cautions, 2006 - 2010**

Year	2006	2007	2008	2009	2010
<b>Total number of incidents</b>	129,985	134,595	140,052	131,921	126,789
<b>Number of adult cautions</b>	3,865	7,124	8,831	9,222	9,308
<b>Percentage of incidents dealt with by adult caution</b>	3.0%	5.3%	6.3%	6.9%	7.3%

### 4.3 Geographical Spread

From 2006 to 2010 there has been a predominately upward trend in the percentage of cases dealt with by way of an adult caution across all Garda regions. The only region to experience a reduction year on year is the Northern Region, which witnessed a negligible drop from 6.7% in 2009 to 6.6% in 2010.

**Figure 1 ~ Percentage of incidents dealt with by way of an adult caution per Garda geographical region, 2006 – 2010**



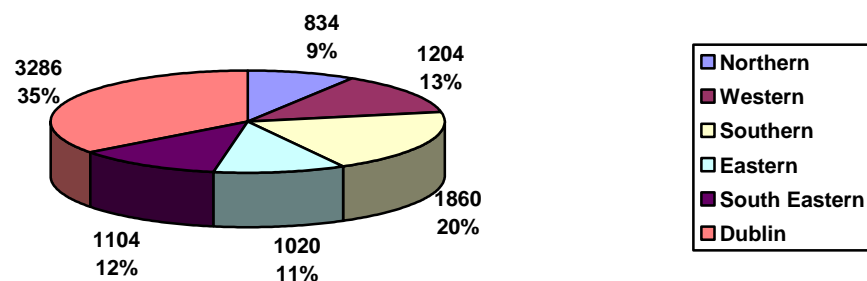
Davies & Jupp (1997) identified the anomaly of the inconsistent application of the police caution system across the various police forces in England. Table 3 indicates that it is evident from this research that in 2010 the Western Region at 9.4%, recorded the highest percentage of incidents dealt with by caution and the Northern Region at 6.6% recorded the lowest. The mean percentage of incidents dealt with by way of adult caution across all Garda regions during 2010 was 7.3%.

**Table 3 ~ Incidents dealt with by way of an adult caution per Garda geographical region, 2010**

Region	Northern	Western	Southern	Eastern	South Eastern	Dublin
<b>Number of Incidents</b>	12,679	12,836	24,566	15,395	14,198	47,115
<b>Number of Adult Cautions</b>	834	1,204	1,860	1,020	1,104	3,286
<b>% of incidents dealt with by Adult Caution</b>	6.6%	9.4%	7.6%	6.6%	7.8%	7.0%

A total of 9,308 cautions were administered in 2010. Dublin, the main population hub, recorded 3,286, which accounted for 35% of cautions during that period. The Northern region recorded the lowest number of cautions at 834, accounting for 9% of the total. The mean number of cautions administered during 2010 per Garda region was 1,551.

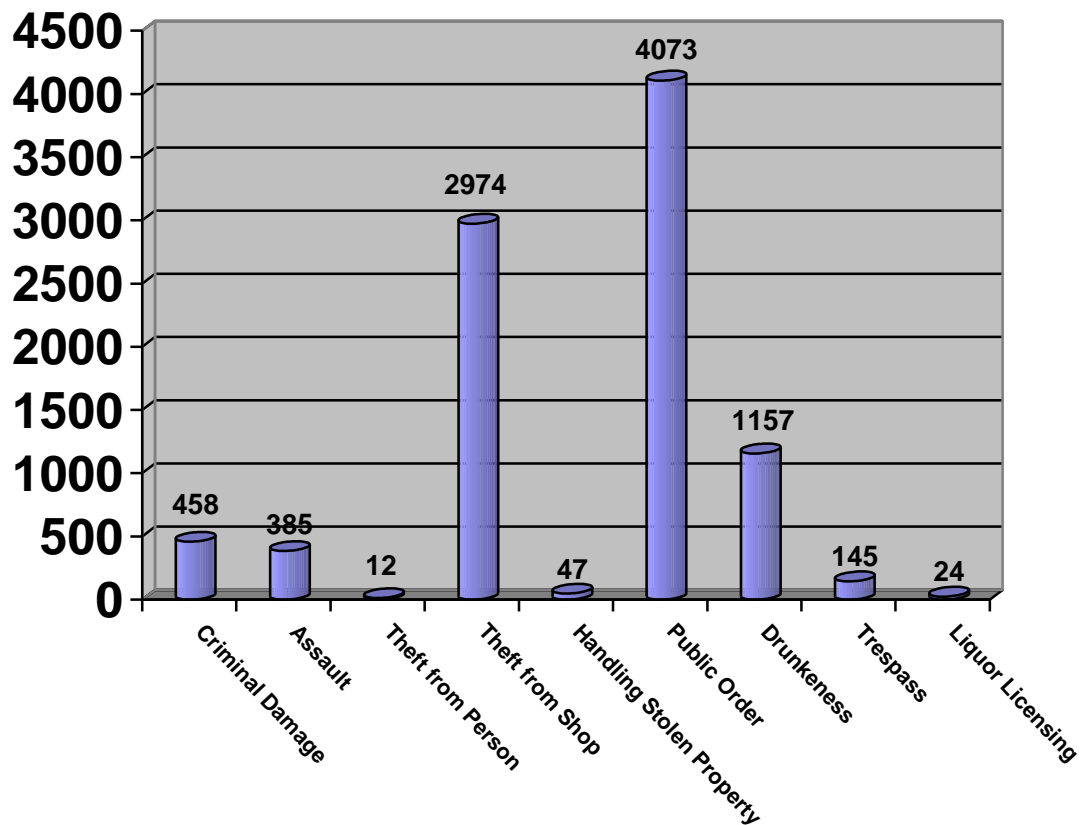
**Figure 2 ~ Number of cautions administered per Garda region, 2010**



#### 4.4 Offence Profile

The Adult Caution Scheme caters for a total of twenty separate offences. As discussed in Chapter 3.8, statistics in relation to the offences included in the scheme are only available in the nine categories as illustrated below. Of the 9,308 adult cautions administered during 2010, public order offences (44%) and theft from a shop (32%) account for three-quarters of the number of cautions. In contrast, as can be seen from Figure 2 the lowest number of cautions is in respect of theft from the person offence with only twelve persons (0.1%) cautioned during this period.

Figure 3 ~ Number of adult cautions per offence type, 2010



The number of adult cautions as a percentage of the total number of offences in each crime category is set out in Table 4. Significantly, a total of 14% (2,974) of cases of theft from a shop, 11% (4,106) of public order and 12% (1,157) of drunkenness offences are diverted from the court system and dealt with by way of an adult caution. Conversely, only 12 individuals were cautioned for theft from the person during the same period, which accounts for 0.4% of the 2,869 incidents in this category.

**Table 4 ~ The percentage of each offence type dealt with by adult caution, 2010**

<b>Offence Type</b>	<b>Total offences</b>	<b>Dealt with by Adult Caution</b>	<b>% cases dealt with by Adult Caution</b>
<b>Criminal Damage</b>	36,553	458	1.2%
<b>Assault</b>	11,077	385	4%
<b>Theft from Person</b>	2,869	12	0.4%
<b>Theft from Shop</b>	20,899	2,974	14%
<b>Handling</b>	1,541	47	3%
<b>Public Order</b>	37,812	4,106	11%
<b>Drunkenness</b>	9,426	1,157	12%
<b>Trespass</b>	3,781	145	4%
<b>Liquor Licensing</b>	2,038	24	1%

#### **4.5 Offender Profile**

An analysis of the gender profile of the persons who have received an adult caution indicates that from 2006 to 2010 a total of 41,021 individuals have benefited from an adult caution with 73% being male and 27% female. In 2010, 71% of those cautioned were male and 29% were female.

**Figure 4 ~ Gender profile of the persons who received an adult caution, 2006 - 2010**

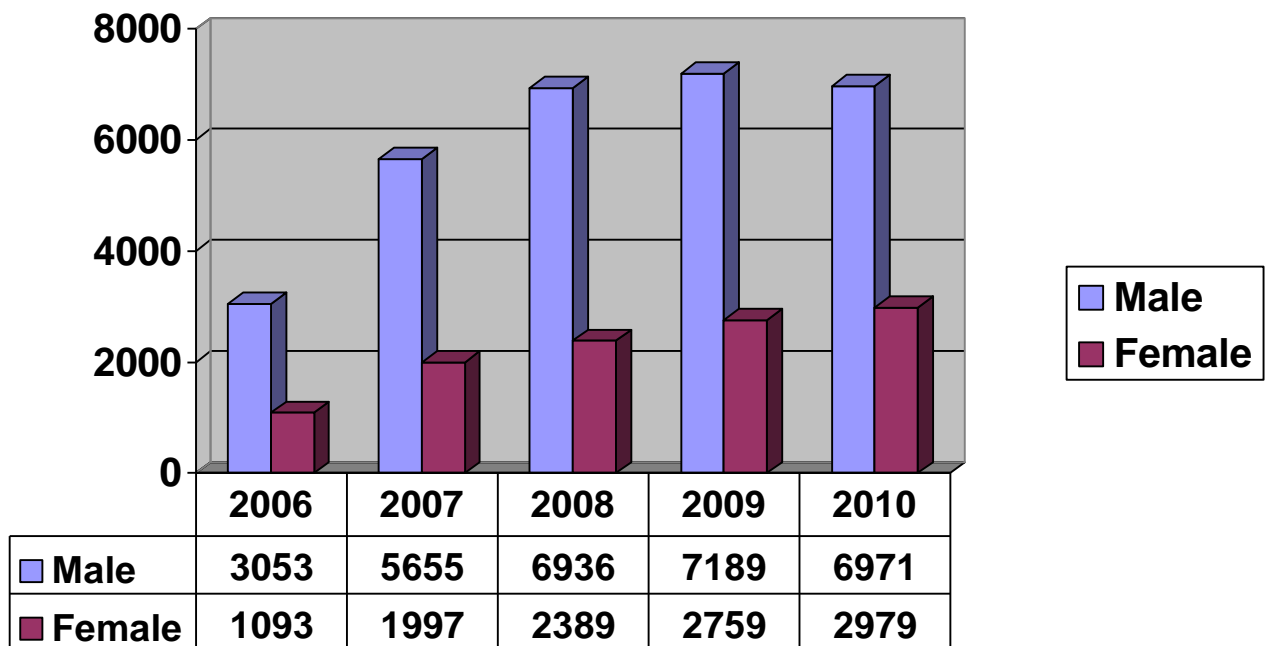
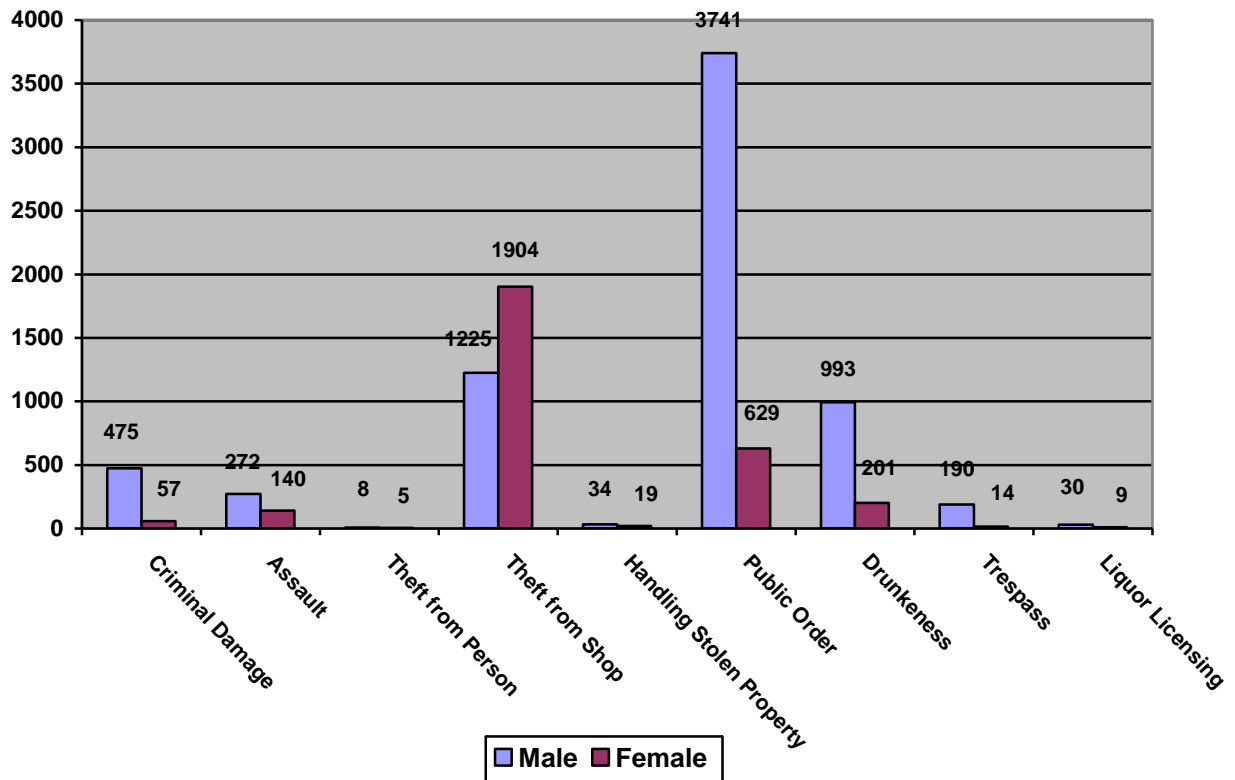


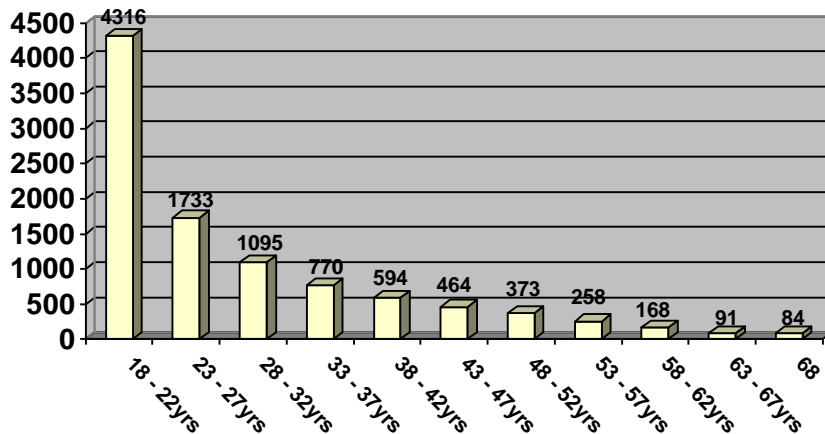
Figure 5 illustrates the range of offences for which male and female offenders were cautioned. The number of male offenders cautioned far exceeds the number of females cautioned across all crime categories, with the exception of theft from a shop, which witnesses significantly more females (1,904) cautioned than males (1,225).

**Figure 5 ~ Gender profile of the recipients of an adult caution, per offence type, 2010**



The age groups of the recipients of an adult caution during 2010 are illustrated at Figure 6. The age group 18 – 22 years is the most prevalent with 4,316 people cautioned, which accounts for 46% of the total number of persons cautioned in 2010. As the age of the groups increase there is a downward trajectory in the number of cautions administered, with those over 38 years old only accounting for 22% of cautions during this period.

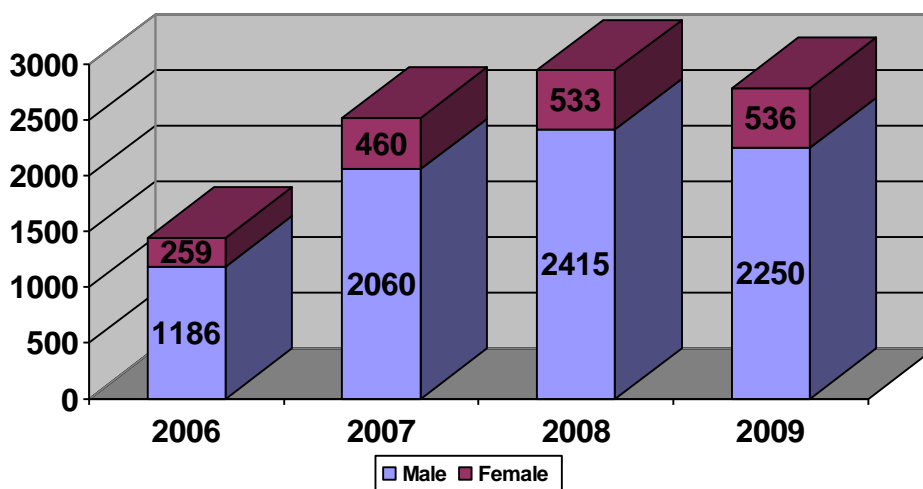
Figure 6 ~ Age profile of the persons who received an adult caution, 2010



#### 4.6 Post Caution Criminal Behaviour

One of the main aims of the study was to examine the post caution criminal behaviour of the recipients of an adult caution. The data was scrutinised to see how many offenders who had received an adult caution subsequently came to the unfavourable attention of the Gardaí in a twelve month period after they had been cautioned. Over the four year period from 2006 to 2009 inclusive, a total of 29,042 individuals received an adult caution, of whom 9,699 (33%) came to the attention of the Gardaí in a twelve month period after they committed the initial offence for which they were cautioned.

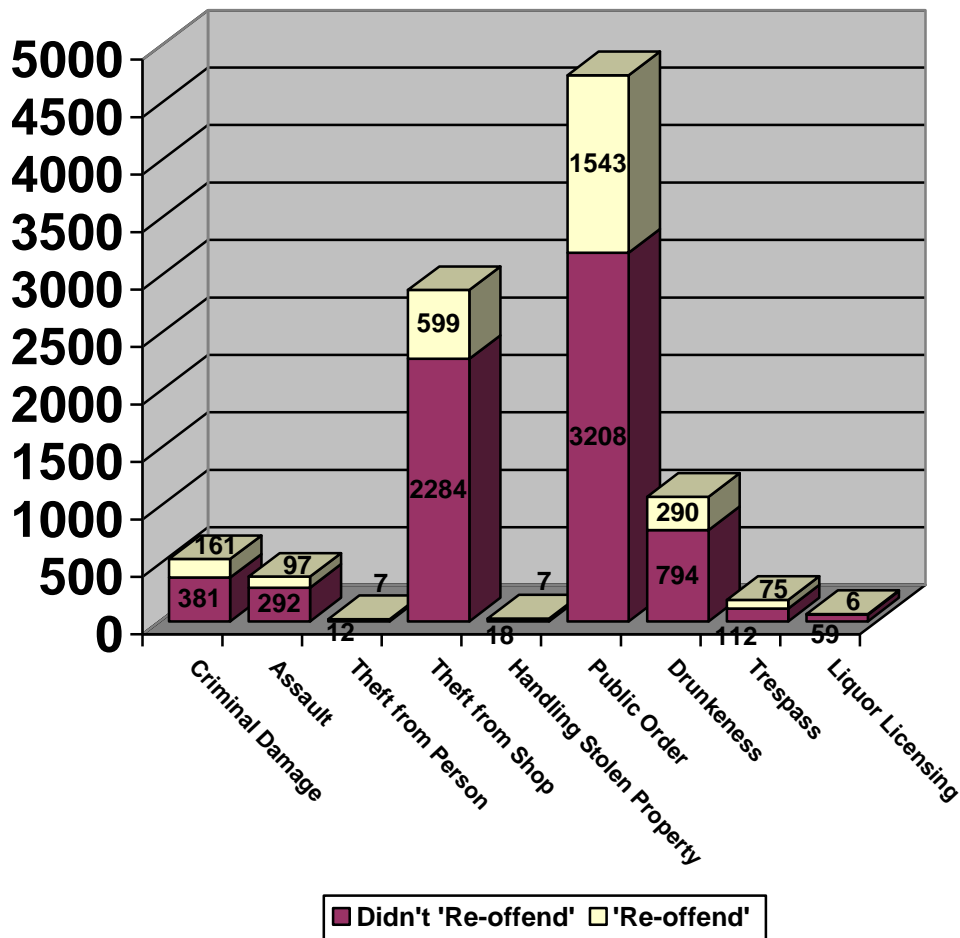
Figure 7 ~ The number of persons who received an adult caution and who were subsequently recorded as a suspected offender in a separate crime in a twelve month period after they had committed the initial offence for which they were cautioned 2006-2009.





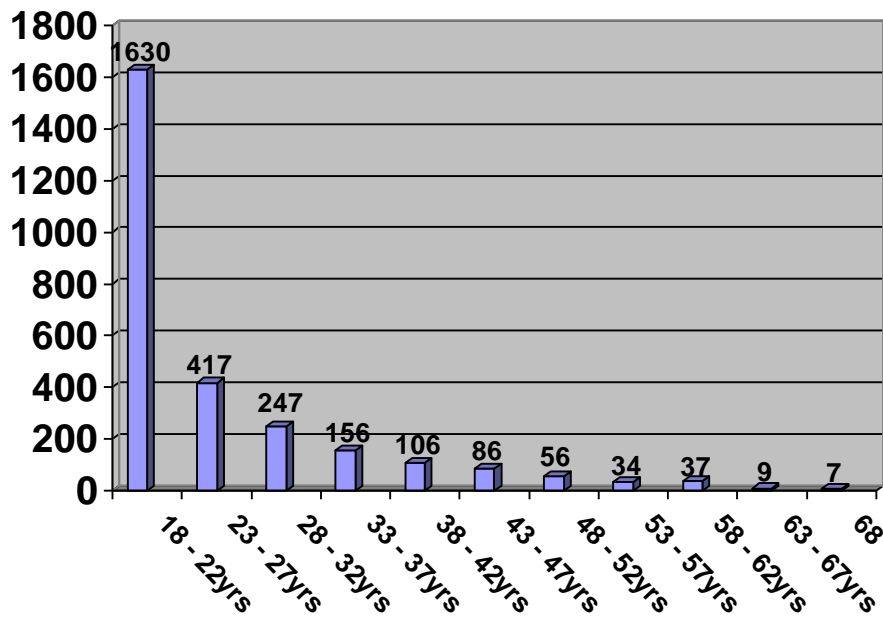
In Figure 8, each offence category is analysed to establish the number of people who were cautioned during 2009 and subsequently came to the attention of the Gardaí in a twelve month period after the initial offence was committed. The mean 're-offending' rate across all crime categories during 2009 was 28%. The offence of trespass has the highest 're-offending' rate at 67%, whereas liquor licensing records the lowest at 10%.

**Figure 8 ~ The initial offence type of the recipients of a caution (during 2009), who subsequently came to the attention of the Gardaí in a twelve month period after the initial offence was committed.**



An analysis of the data for 2009 indicates that the age group 18 - 22 years old accounts for 55% of all the persons who were cautioned and subsequently came to the attention of the Gardaí in a twelve month period after they had committed the initial offence for which they were cautioned. The research highlights that the older the individual the less likely that he/she will come to the attention of the Gardaí after receiving a caution.

**Figure 9 ~ Age profile of the persons who received an adult caution (2009) and subsequently came to the attention of the Gardaí during a period of twelve months after the date of the offence for which they received the initial caution.**



#### 4.7 Chapter Summary

This research has shown since its inception the Adult Caution Scheme has grown steadily and settled at a level where in 2010 it accounted for the disposal of 7.3% of eligible cases. The research also highlights that there is a significant disparity in the frequency that the caution is implemented across the different offence types. This point is highlighted by the fact that during 2010 over 4,073 cautions were issued in respect of public order offences accounting for the disposal of 44% of all cautions during this period. An analysis of the gender profile of the people who were cautioned indicates that 71% were male and 29% were female. Individuals of all ages over 18 years old have benefited from an adult caution. In particular, the group aged between 18 – 22 accounts for 46% of all the cautions issued in 2010. The research also highlighted that over the four year period from 2006 – 2009, 33% of the people who were cautioned subsequently came to the attention of the Gardaí as a ‘suspected offender’ in a twelve month period after the date of the offence for which they had been cautioned. The research has shown that the scheme is consistently applied across all six Garda geographical regions. On average each region disposed of 7.3% of eligible cases by way of caution in 2010.

## **Chapter 5 - Discussion of Findings**

### **5.1 Introduction**

Chapter five presents a discussion on the findings of the research carried out for this thesis. A comparison is made between the findings and the information gathered through the literature review.

### **5.2 Gender and Age**

Given the dearth of information in relation to the Adult Caution Scheme, one of the aims of this study was to build a profile of the recipients of the scheme. The findings clearly indicate that the individuals who have benefited from the scheme are predominately male (73%). While this figure appears to be excessively high, it could be argued that it is yet another example of the 'chivalry theory' at work whereby female offenders are less likely to be arrested and brought into the formal criminal justice system. However, in truth, women commit less crime than men and are therefore less likely to face penal sanctions (Britton, 2011). The dominance of male offenders in this instance is in line with the role played by males in the Irish criminal justice system, which is exemplified by the fact that 87% of the 13,758 individuals committed to prison in Ireland in 2010 were male (Irish Prison Service, 2010).

This research found that 46% of the recipients of a caution were aged between 18 – 22 years old. The high concentration of recipients of a caution in this age group followed by a downward trajectory thereafter, correlates with Shapland and Bottom's (2011:276) assertion that there is an age crime relationship, with an individual's propensity to commit crime reducing as their age increases. Marvell and Moody (1991) warn of the danger of focusing on the age crime thesis in isolation, as research has shown that population shifts don't necessarily correlate with increases or decreases in crime and that other social and criminological factors need to be considered.

### **5.3 Recidivism**

The importance of keeping individuals out of the criminal justice system is emphasised by Bottoms and Shapland (2011:272) when they indicate how difficult it is to break the habit of offending, which requires ‘significant change in routine activities, and different patterns of socialisation and friendship’. When the recidivist nature of the recipients of a caution is examined, the findings highlight that 33% of those cautioned from 2006 – 2009 went on to come to the attention of the Gardaí in a twelve month period after they had committed the initial offence. This figure appears to be particularly high when compared with England and Wales, where only 19% of adults who received a caution went on to re-offend in the following twelve months (Home Office, 2010:25). However, Zaplin (2008) advises caution when using recidivism rates as a barometer of the success or failure of any programme, as invariably some incidents are not reported or individuals who re-offend are not apprehended and therefore statistics may not be a true reflection of the programme. This point is illustrated by the Crime and Victimization Quarterly Household Survey (2010) which indicates that 45% of assaults and 37% of thefts were not reported to Gardaí that year. That said, the fact this research found that 67% of individuals cautioned from 2006 to 2009 did not come to the attention of the Gardaí in a twelve month period after the initial offence is worthy of note. Particularly, when one considers the ‘extraordinarily high’ rate of recidivism rate among offenders who are committed to prison for non violent crime, with 90% of inmates having spent time in prison previously (O’Mahony, 2000:19).

### **5.4 Frequency of use of the Adult Caution Scheme & Geographical Spread**

In its present format the Irish scheme is limited to twenty minor offences and generally individuals may only benefit from one caution; whereas, the Garda Síochána Juvenile Diversion Programme is open to practically every offence with each case viewed on its own merits. Similarly, the English/Welsh adult caution system is open to virtually any offence with decisions guided by a ‘Gravity Factor Matrix’ which assists the police in weighing up all the aspects of the incident before deciding to prosecute or to use an out of court disposal (Home Office, 2010:14).

In 2009, following a public outcry that cautions were being inappropriately and excessively used, Mr. Jack Straw, the then British Justice Secretary, ordered a review of the police cautions across England and Wales (British Broadcasting Corporation, 2009). The public disquiet was vindicated when the findings from the review indicated that a significant number of serious cases were being disposed of by way of caution. The review found that in 2008, in England and Wales, despite the fact that police cautions were intended, but not restricted to less serious offences, 36 (2%) rape cases, 783 (9%) sexual assault offences and 103 (5%) assault causing grievous bodily harm offences were dealt with by way of a caution. Significantly, the findings from this research into the Garda Síochána Adult Caution Scheme have confirmed that the issue of serious incidents being disposed of by way of caution has not arisen as the scheme is limited to the twenty minor offences contained in the schedule. However, overwhelming evidence was found that in its current format the scheme is severely restricted with two offences, public order and theft from a shop, accounting for three-quarters of the cautions administered in 2010. The author believes that this finding strengthens the argument to extend the scheme to include specific additional offences rather than the introduction of an open ended scheme which allows all crimes, including both minor and serious, to be considered.

The Home Office (2010) highlighted the inconsistent use of adult cautions across the various different police forces in England and Wales, with West Yorkshire police disposing of 28% of cases by way of ‘out-of-court’ means<sup>6</sup>, as opposed to London which witnessed 49% of all cases being disposed of in this manner. The findings of this study have refuted this anomaly, highlighting that following an initial increase, which could be reasonably expected with the introduction of any new system, the number of individuals cautioned has levelled off nationally at 7.3% of eligible incidents (2010). The Irish scheme, with a low of 6.6% recorded in both the Northern and Eastern regions and a high of 9.4% recorded in the Western region, illustrates that there is a uniform uptake of the scheme across the six Garda regions. The marginal fluctuation is consistent with and can be explained by Campbell’s (1997) assertion that social context and every day policing demands can impinge on the application of cautioning schemes from region to region.

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<sup>6</sup> ‘Out-of-court’ disposal of cases includes adult cautions, penalty notices for disorder and fixed penalty notices.

The Home Office (2010) also identified that performance targets in England and Wales had created pressure to increase the number of cautions which led to its overuse. This research indicates that there has been a moderate increase in the number of cautions year on year from 2006 to 2010. It is the author's contention that in the absence of any official directive in relation to targets and in view of the fact that the total number of cautions has levelled off at just over nine thousand, the scheme has settled at a 'natural' level and is not affected by outside forces such as the need to achieve organisational goals or objectives. Owens (2010) warns that setting targets can have a positive effect in that it focuses efforts to protecting citizens, but can also have a negative effect in that citizens can be subject to arbitrary attention by police officers trying to achieve organisational goals.

## **5.5 Net-Widening**

The research findings are somewhat at variance with Ditchfield's (1976) hypothesis that the introduction of a new mechanism can result in 'net-widening'. While the number of eligible offences rose after the introduction of the Adult Caution Scheme, when the figures are examined over a five year period from 2006 to 2010, it is evident that the total number of offences actually fell by 2% from 129,985 to 126,789. If Ditchfield's proposition was to hold true, one could reasonably expect that the total number of offences should have risen by a figure in the region of 38,350 in line with the number of people dealt with by caution during this period. However, it is difficult to comment on the total of number of offences in isolation. Cognisance must be taken of the fact that offence rates may be fluctuating independently of diversionary programmes, thereby minimising or exaggerating the effect the mechanism has in bringing in or excluding individuals from the justice system. Furthermore, Davies et al (2009) argue that the success of community based schemes can be measured in the number of persons diverted from prison. If this argument was to hold true it might reasonably be expected that the introduction of the Adult Caution Scheme should have coincided with a reduction in the number of persons sent to prison. However, an analysis of the number of persons committed to prison from 2006 to 2010 indicates that there was a 41% increase in committals during this period from 12,157 to 15,425 (Irish Prison Service, 2011). Therefore, one could argue that the Adult Caution Scheme works in addition to, rather than replacing existing penal options. In any

event, there are mixed views about the net-widening phenomenon with detractors arguing that the inclusion of additional individuals in the formal criminal justice system has a negative 'labelling' effect and others who advocate the early identification and application of services to those who are at risk (Albrecht and Mayerhofer, 1995).

## **5.6 Research Limitations and Anomalies**

Disappointingly, the CSO was not able to provide any data in relation to the nationality of the individuals who had benefited from an adult caution or the number of persons who have received more than one caution. This information could have examined the application of the scheme through ethnicity and the potential to expand the scheme to allow offenders to receive the benefit of a second adult caution for a subsequent offence.

The CSO has provided data in relation to two separate entities, firstly incidents and secondly in relation to individual people. It might be reasonable to expect that if there were 9,308 incidents dealt with by an adult caution during 2010 (ref Table 2 page 34) then one would expect to find the same number of persons cautioned during this period. However, when the total number of individuals cautioned during 2010 is examined it is evident that the data indicates that the figure is 9,950 (ref Figure 4 page 37). This anomaly, which can be found when comparing the number of incidents with the number of individuals, is due to the different criteria used by the CSO to record crime incidents compared with personal details. While the CSO were not in a position to elaborate any further on this point, the author speculates that this inconsistency may be as a result of a number of individuals being cautioned in respect of the same incident and that this has led to the disparity in the figures.

## **5.7 Conclusion**

There can be little doubt that the Adult Caution Scheme has a significant role to play in diverting people away from the courts and relieving pressure on the criminal justice system. The findings of this research dispel any fear that the scheme is being inappropriately or overly used. However, it does highlight the need to develop the

scheme to include additional offences. The question of allowing individuals to receive a second or subsequent caution also deserves further consideration. If the success of the scheme is judged on the number of people who don't re-offend after receiving an adult caution, a rate of 67% over the period 2006 -2009 adds significant weight to the expansionist argument.



## Chapter 6 - Conclusion and Recommendations

The following recommendations are drawn from the research findings.

The author recommends that the Adult Caution Scheme should be developed in line with the restorative justice model. This development, which is already evident in the Irish Juvenile Diversion Programme and the English conditional caution, would allow the imposition of conditions, the payment of compensation and a more victim centric approach.

Campbell (1997) identified the inadequate crime recording capabilities of the English and Welsh police as a major impediment in accurately assessing the adult caution system. Similarly, as previously discussed, the Garda Pulse system does not capture information under each of the offence types included in the schedule of offences under the scheme. While the data from the CSO provided a firm basis for this research, if precise information in relation to each offence was available a more comprehensive examination of the scheme could take place. The author recommends that Pulse be updated to capture information in relation to each individual offence contained in the schedule.

This research offers a valuable insight into the Garda Síochána Adult Caution Scheme. The next logical step would be to build on this knowledge by carrying out quantitative research in the form of interviews with the recipients of a caution and the victims of the crimes to establish their views of the adult caution as a diversionary mechanism. The information garnered through this additional research would lead to a greater understanding of the strengths and weaknesses of the scheme.

This study sought to carry out an analysis of the Garda Síochána Adult Caution Scheme. The research undertaken has highlighted the significant contribution that the scheme makes in diverting people away from the criminal justice system. The

information gathered provided an insight into the functioning of the scheme and drew attention to its strengths and weaknesses. The scheme has proven to be a resounding success with 38,350 cautions administered in its first five years. The fact that 67% of the recipients of a caution from 2006 – 2009 did not come to the attention of the Gardaí in a twelve month period after they had committed the initial offence is a strong indication of the schemes diversionary attributes and advances the expansionist argument.

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## Appendices

## **Appendix I - Letter from the Garda Vetting Unit**

## Appendix II - Request sent to the Central Statistics Office

**Subject:** Request for Statistics

To whom it may concern

Graham Tolan is my name and I am currently undertaking an MA in Criminology at the DIT Mountjoy Square. I am carrying out research into the area of diversion and in particular the Garda Síochána Adult Caution Scheme.

I would like to apply for information in respect of the questions posed below. I have spoken with Sgt Gavin Scott at the Statistics Office at Garda Headquarters, he has provided assistance in relation to the formulation of the questions hereunder.

I would appreciate if you could acknowledge receipt of this email and indicate an estimated date that I might expect a reply.

Should you wish to discuss any aspect of this request I can be contacted on xxx.

Regards,

Graham Tolan

Q1. The number of persons by age group (18 – 22, 23 – 27, 28 – 32, 33 – 37, 38 – 42, 43 – 47, 48 – 52, 53 – 57, + 57) and by Gender (Male Female and Unknown) recorded with an Adult Caution as the Detection Status on the person details in the offences types of ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) for each of the years 2006 to 2010 inclusive, by each of the Six Garda Regions.

Q2. The total number of Offence Types recorded in each year for the following ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) for each of the years 2006 to 2010 inclusive by each of the Six Garda Regions.

Q3. The total number of persons with Adult Caution recorded as the Detection Status on the person details in the offence types of ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order

Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) for each of the years 2006 to 2010 by each of the Six Garda Regions.

Is it possible to determine a nationality profile of the persons who have benefited from an adult caution during the year 1/1/10 to 31/12/10.

Q4. The number of persons by age group (18 – 22, 23 – 27, 28 – 32, 33 – 37, 38 – 42, 43 – 47, 48 – 52, 53 – 57, + 57) and by Gender (Male Female and Unknown) with Adult Caution recorded as the Detection Status on the person details in the offence types of ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) from 1/1/09 to 31/12/09 and were subsequently recorded as a suspected offender on another incident in a twelve month period after the date of the offence.

Q5. The total number of persons with Adult Caution recorded as the Detection Status on the person details in the offence types of ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) who had previous to the date of the offence had a conviction recorded against them.

Q6. The total number of persons with Adult Caution recorded as the Detection Status on the person details on two or more occasions in the offence types of ( Criminal damage >1000 - code 12, Criminal damage Arson >1000 - code 1211, Criminal damage not arson >1000 - code 1212, Criminal damage litter >1000 - code 1221, Public Order Public Order - code 13, Public Order Disorderly conduct - code 131, Public Order Trespass in yard / curtilage - code 132, Assault Assault Minor - code 035, Theft >1000 - code 08, Theft Person >1000 - code 0821, Theft Shop >1000 - code 0822, Theft > 1000 Handling / Possession of Stolen Property - code 084, Liquor Licensing - code 133 ) for each of the years 2006 to 2010 inclusive by each of the Six Garda Regions.

## **Appendix III - Permission to carry out research**

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