

## Avon and Somerset Police and Crime Commissioner

### Report of the Avon and Somerset Out of Court Disposal Scrutiny Panel

Wednesday 6 June 2018

#### Background

##### About the Panel

The Avon and Somerset Out of Court Disposals Scrutiny Panel has been set up to independently scrutinise the use of Out of Court Disposals in response to national recommendations following concerns about their appropriate use. The role of the Panel is to ensure that the use of Out of Court Disposals is appropriate and proportionate, consistent with national and local policy, and consider the victims' wishes where appropriate. The Panel aims to bring transparency to the use of Out of Court Disposals in order to increase understanding and confidence in their use. Findings of the Panel, together with responses to recommendations made, are reported publicly to support this aim.

##### How the Panel Operates

The Panel review and discuss case files as a group and conclude one of four categories:

- Appropriate and consistent with national and local guidelines;
- Appropriate with observations from the Panel;
- Inappropriate use of out of court disposal;
- Panel fails to agree on the appropriateness of the decision made.

Decisions reached by the Panel on each case file are recorded, together with observations and recommendations to inform changes in policy or practice. The Panel also consider performance information regarding levels and use of out of court disposals, and changes to legislation, policy and practice to support them in their role.

Findings from the Out of Court Disposals Scrutiny Panel will be considered by the Avon and Somerset Out of Court Disposal Steering Group. The Steering Group is responsible for operational oversight and development of local policy and practice in relation to Out of Court Disposals.

Further information about the role of the Panel, Membership and reports can be found at the following link: <https://www.avonandsomerset-pcc.gov.uk/Openness/Scrutiny/Out-of-Court-Disposal-Scrutiny-Panel.aspx>

#### Report of the eighteenth meeting: 6 June 2018

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Giles Brown (Magistrate), Lynne Paraskeva (Magistrate), Paul Ashby (YOT), Gemma Knee (CPS), Frances Keel (Victim Support), Nainesh Pandit (SARI), Chief Inspector Mark Runacres (Avon and Somerset Constabulary), Lauren Jones (Avon and Somerset Constabulary), Joanna Coulon (Office of the Avon and Somerset Police and Crime Commissioner)

Apologies: Carla Cooper (YOT), Justine Leyland (YOT), James Legrys (CPS)

The Chair welcomed the following observers to the meeting:

- Detective Sergeant Simon Broad (Avon and Somerset Constabulary)

##### Panel Business

- The Panel welcomed Dr Giles Brown as Magistrate representative, to replace Eric Evans who had stepped down from the Panel pending retirement from the Bench.
- The Panel meeting took place during Volunteers Week, a national week to recognise and celebrate the contribution made by volunteers. JC expressed thanks on behalf of the Police and Crime Commissioner to all members of the Panel for their invaluable contribution to the work of the Panel.
- Terms of Reference have been updated to reflect changes following the introduction of the General Data Protection Regulation (GDPR) and Data Protection Act 2018. A letter had been circulated to all OPCC volunteers, including a link to the privacy notice containing rights in relation to data held. Panel Members completed confidentiality agreements and photo consent forms in accordance with new requirements.

#### Report of the last meeting and actions arising:

- The Chair thanked the Constabulary for their open and honest response to the report of the last meeting.
- Following the last meeting, one case relating to a dog bite had been reviewed by the Force Crime Incident Registrar. The case was found to be appropriately recorded. The response to the review had been circulated to Panel Members.

#### Policy and Performance Overview

- The Panel received an update on work to prepare for the introduction of the new two tier framework for Out of Court Disposals in October 2018.
- Training is currently underway, utilising planned training for Supervisors. Training for Custody / Detainee Investigation Teams will be delivered as part of the custody cycle training. A distance learning package is in development. Work continues to finalise guidance, and a 'decision making app' has been drafted to support officers in decision making.
- A Champions Network has been established, with some 50 volunteers. Events are planned for 11 July and 7 September. Scrutiny Panel members have been invited to attend. Champions will support training and communications including delivering briefings and supporting peers. Champions have supported work to highlight and address issues for consideration including clarifying how to deal with cases that would have previously been dealt with by disposals that will no longer be in use (for example Cannabis Warnings), and to provide reassurance around arrangements for monitoring compliance with Conditional Cautions.
- Recruitment of the new ASCEND workers is expected to commence in the coming weeks.
- Work continues to satisfy pre-conditions for dispensation by the Director of Public Prosecutions for the use of Conditional Cautions in relation to Domestic Abuse and Hate Crime, with the aim to secure dispensation before the DPP leaves her post in the Autumn. It was noted that greater progress has been made in relation to Domestic Abuse given that there is an existing intervention model in place (Project CARA). Consultation and focus groups have been carried out to develop proposals for the new Hate Crime intervention. There will be a key role for the Scrutiny Panel in providing assurance for the new arrangements, which is included among the pre-conditions for dispensation.
- It is proposed to arrange visits to Hampshire and West Midlands (as other forces being granted dispensation for new Conditional Caution arrangements) to observe their Panel arrangements and work together in putting in place oversight of the new OoCD framework.
- DG reported that refresher training for Magistrates now includes input on the police perspective, including in relation to out of court disposals, and the associated benefits.
- HJ presented a performance update:
  - There had been no change in Year to Date performance.
  - The breakdown showing court / out of court disposals showed a slight increase in charges with court at 62% and OoCD at 38%.

- The 24 month tracker showed a slight increase in Community Resolution, with Cautions remaining stable.
- The majority of Hate Crime (theme for scrutiny) cases dealt with out of court are dealt with by Community Resolution. The Panel queried whether conditions are put in place (on a voluntary basis) to address behaviour. It was clarified that Community Resolution disposals would usually involve facilitated communication between the victim and perpetrator to understand the impact.
- The Panel noted an increase in racially aggravated harassment, and questioned whether there had been an increase in community tension following Brexit. It was observed that penalties at court do not always take account of the racial element of the offence, and that out of court disposals may offer an opportunity to address and change future behaviour through referral to appropriate interventions.

## Scrutiny of Case files

### Rationale and file selection

A total of 29 files were made available for scrutiny, selected as follows:

- 26 cases on the theme of hate crime;
- 3 cases of Serious Sexual Offences and Serious Violence Against the Person dealt with Community Resolution (required under the Panel Terms of Reference).

The theme for scrutiny was cases involving Hate Crime. The theme was selected to inform development of the new two-tier framework for out of court disposals, and specifically to shape interventions to enable the use of Conditional Cautions in relation to Hate Crime.

### Panel findings

Of the 29 cases available, 20 were scrutinised. Of the cases reviewed, 4 were considered appropriate, 13 appropriate with observations, and 3 were considered inappropriate. A summary of findings on files scrutinised by the Panel is set out in the table below:

Reference	Disposal	Offence Type	Panel Decision
022/18	Community Resolution	Sexual Assault	Appropriate with Observations
023/18	Community Resolution	Wounding/ Grievous Bodily Harm	Appropriate with Observations
024/18	Community Resolution	Wounding/ Grievous Bodily Harm	Inappropriate*
025/18	Conditional Caution	Assault on a Police Officer (Hate Crime flagged)	Appropriate with Observations
026/18	Simple Caution	Racially Aggravated Common Assault	Inappropriate*
027/19	Community Resolution	Racially Aggravated Common Assault	Appropriate with Observations
028/18	Community Resolution	Racially Aggravated Criminal Damage inc Arson	Appropriate with Observations
029/18	Simple Caution	Causing Intentional Harassment/ Alarm/ Distress	Inappropriate*
030/18	Youth Conditional Caution	Having a Bladed Article on School Premises	Appropriate
031/18	Youth Conditional Caution	Causing Intentional Harassment/ Alarm/ Distress	Appropriate with Observations
032/18	Youth Conditional Caution	Racially Aggravated Intentional Harassment / Alarm / Distress	Appropriate with Observations
033/18	Youth Conditional Caution	Assault on a Police Officer (Hate Crime flagged)	Appropriate with Observations

034/18	Youth Conditional Caution	Threatening / Abusive Words / Behaviour or Disorderly Behaviour Likely to Cause Harassment / Alarm or Distress	Appropriate with Observations
035/18	Community Resolution	Causing Intentional Harassment / Alarm or Distress	Appropriate
036/18	Penalty Notice for Disorder	Racially Aggravated Harassment / Alarm or Distress	Appropriate
037/18	Conditional Caution	Racially or Religiously Aggravated Intentional Harassment / Alarm or Distress	Appropriate
038/18	Simple Caution	Sending Letters with Intent to Cause Distress or Anxiety (Malicious Communications)	Appropriate with Observations
039/18	Community Resolution	Acts Intended to Stir Up Racial Hatred – Use of Words or Behaviour or Written Material	Appropriate with Observations
040/18	Simple Caution	Assault Occasioning Actual Bodily Harm	Appropriate with Observations
041/18	Conditional Caution	Common Assault and Battery	Appropriate with Observations

\*Brief circumstances of the cases considered inappropriate, or upon which the Panel failed to reach a consensus are as follows:

#### 024/18

The Panel considered use of a Community Resolution in a case recorded as wounding with Grievous Bodily Harm as inappropriate on the basis that it too lenient. The Panel based their view on the use of a weapon (glass) in the incident, the pattern of behaviour evident in the offending history and the fact that the outcome did not appear to be in accordance with the victim's wishes. Whilst the Panel viewed the incident as too serious to have been dealt with out of court, the Panel would have like to know more about the offender's mental health before taking the view that the case should have come to court. On the basis of the offending history, including a number of high tariff sentences, it appeared that the offender did have capacity to have gone to court. The Panel had a discussion around police involvement given that the incident had taken place in a supported living residence. The Panel queried recording on the basis that the file made no reference to injuries sustained, in order to make out an offence of Grievous Bodily Harm. The Panel welcomed the fact that the victim in the case had been referred to the AVOICE service for vulnerable victims for support.

#### 026/18

The Panel considered use of a Simple Caution in a case involving a racially aggravated common assault as inappropriate on the basis that it was too lenient. The victim, a mental health nurse, had been punched in the face by a patient and called a racially offensive term. The Panel expressed concern that the record that the racial aggravation aspect of the case did not appear to have been pursued. The file included advice of the consultant psychiatrist, confirming that the offender did have capacity and as such felt that the case should have been dealt with at court. It was noted that Hate Crime support services are seeing an increase in care facilities not wishing to criminalise patients, however this must be balanced with the imperative to protect staff in their place of work.

#### 029/18

The Panel considered use of a Simple Caution in a case in which the offender had shouted homophobic abuse at the victim, in the presence of the victim's daughter, as too lenient. The Panel noted a record of repeated behaviour in similar offences, however acknowledged that there may not have been sufficient evidence in the form of witness statements to take the case to court. The Panel noted that whilst a referral to Lighthouse Victim Care service had been made, there was no contact with the victim. The Panel expressed concern that in this case, and across a number of other cases examined during the course of the meeting, it appeared that the hate crime element of the case was

underplayed or not pursued. The Panel would like to have seen a face to face intervention to understand the impact on the victim and to prevent similar behaviour in the future.

#### Good Practice:

Good practice examples were identified including:

- The Panel identified positive examples of multi-agency working to safeguard vulnerable victims, including with adult social care, housing associations and others.
- The Panel held up as good practice a case involving a Youth Caution for having a bladed article on school premises, demonstrating strong and effective multi-agency working to address the root cause of the incident. The file included the Youth Panel decision document, showing detailed discussion including referral to the Catch 22 knife awareness programme.
- The Panel welcomed inclusion of a Victim Impact Statement in a number of files.
- The Panel found strong examples of complete files including photographic evidence of damage / injury, body worn camera footage where relevant.
- In a case in which a Youth Conditional Caution had been issued for abusive calls to a takeaway, the Panel highlighted good practice with a strong set of conditions including weekly contact.
- The Panel noted positive examples of referral to support for offenders with complex needs, in particular the SHE programme for women offenders and Golden Key for offenders with complex needs.

#### Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- As noted above, the Panel expressed concern that across a number of cases examined during the course of the meeting, the hate crime element of the case appeared to have been underplayed or not pursued.
- Letters of apology were not always included on file, even where reference was made on file to their completion. In one case, it was not clear that the letter had been completed, as the file indicated it was still being chased after the required completion date.
- In a case involving use of a weapon (a shod foot) where the victim was the offender's neighbour, the Panel noted that sentencing guidelines indicated that the case should have gone to court. It was felt that the paperwork appeared to be balanced in favour of the needs of the offender, with limited evidence that the views of the victim had been taken into account. However it was acknowledged that significant effort had been made by the police to work in partnership with the Housing Association to understand the impact and drivers of the offender's behaviour and advice given to date in seeking a long term resolution.
- In a case in which a Special Constable had been kicked whilst restraining the offender to make an arrest for an assault on the offender's mother, the Panel would have liked to see the victim statement made by the mother to seek assurance that appropriate steps were taken with respect to the safety of the victim, particularly in view of the stature and aggression of the offender. In the same case, it was noted that no completion date had been recorded, stating instead 'at a future date', raising issues with compliance.
- In a case in which a victim was assaulted whilst investigating a disturbance outside his home, the Panel would have liked to see both reparation to make good damage caused, as well as a greater rehabilitative element and intervention to understand the impact of the behaviour and prevent similar behaviour in the future. The Panel found the outcome in the case to be unsatisfactory and unlikely to inspire confidence to report any future incidents.
- In a case involving criminal damage to a restaurant window, the Panel noted that compensation arrangements (£150) were insufficient to cover the damage caused (£500). It was acknowledged that payment had been made in a timely fashion, so may have been considered a satisfactory outcome by the victim.

- In one case, it was noted that PNC records still showed 'under investigation' some months after the closure of the case.
- In a case involving verbal harassment of a staff member by a group of youths, the Panel would like to have had sight of the Acceptable Behaviour Contract (ABC) to have assurance that referral to appropriate intervention (such as the Choices and Consequences workshop) had been made. In the same case, it was felt that restorative justice would have been a preferable outcome, however it was acknowledged that a referral had been made and the victim did not wish to engage. The file did not include a decision making log with respect to the Youth Panel.
- In a case in which a Youth Conditional Caution had been issued for abusive calls to a takeaway, it was not clear that conditions had been complied with. In the same case, the Panel would like to have seen a referral to Lighthouse Victim Care given the vulnerability of the victim.
- The Panel felt that restorative justice would have been beneficial in a case involving an assault on a police officer, it was not clear why this approach appeared to have been ruled out.
- The Panel expressed concern at timeliness in a case in which a Youth Conditional Caution had been issued following a large group of youths behaving in an aggressive manner in a store. The incident had taken place in June and was deferred for consideration by Youth Panel in November. The Panel highlighted the risk at the likelihood of escalating risk during the summer holiday period and the need for swift intervention to address the behaviour directly.
- In a number of cases, it was noted that conditions were not sufficiently clear and as such were unenforceable. There is an opportunity for training and guidance on writing clear conditions in moving to the new two-tier OoCD framework.
- In a case in which a Penalty Notice for Disorder had been issued following a racially aggravated public order incident, Panel members queried firstly whether a PND is appropriate for use in relation to racially aggravated cases, and secondly how incidents that are currently dealt with using a PND be dealt with under the new two-tier OoCD framework.
- In a case involving racial abuse on social media, the Panel acknowledged the challenges in policing malicious communications offences and cases involving social media, however in view of the public forum on which the abusive message was posted, the Panel would like to have seen a 'short sharp' intervention to demonstrate the impact. In the same case, the Panel noted confusion over terminology between Community Resolution and Restorative Justice. The move to the new two tier OoCD framework will provide an opportunity to address this longstanding issue.

**Next Meeting: 12 September 2018**

The theme of the next meeting was agreed as sexual offences where both the victim and perpetrator are young people, to include consideration of 'sexting' and malicious communications offences.