

**Out of Court Disposals Scrutiny Panel**

**Domestic Abuse Conditional Cautions**

**and Shop Theft cases**

December 2023

# Out of Court Disposals Scrutiny Panel: December 2023

The OoCD Scrutiny Panel carries out independent scrutiny of the use of Out of Court Disposals to bring transparency to the use of Out of Court Disposals, drive improvement and increase understanding and confidence in their use.

The meeting focused on two themes: **Domestic Abuse Conditional Cautions** and **cases involving Shop Theft**.

## About the Panel

The Panel includes Magistrates and representatives of the Crown Prosecution Service, HMCTS, Youth Justice Teams, and victim services. The role of the Panel is to ensure that the use of Out of Court Disposals (OoCD) is appropriate and proportionate, consistent with national and local policy, and considers the victims' wishes where appropriate.

The Panel is supported by the Office of the Police & Crime Commissioner (OPCC), Force Out of Court Disposals Tactical Lead and the ASCEND Team Manager.

Findings of the Panel, recommendations, and action taken in response are published at the following link:

[Out of Court Disposals Panel Reports | OPCC for Avon and Somerset \(avonandsomerset-pcc.gov.uk\)](https://www.avonandsomerset-pcc.gov.uk)

## Panel Business

(Jo Coulon, OPCC Scrutiny & Performance Manager)

The Panel met in person for the first time since the pandemic, with two members joining

online. Case scrutiny had been divided into two, with Domestic Abuse cases reviewed in advance and Shop Theft cases reviewed on the day in order to test the feasibility of access to cases and seek to reduce time commitment for Panel Members. Arrangements worked well, however it was acknowledged that complex cases with multiple files would benefit from being reviewed in advance.

## Membership:

The Panel said a sad farewell to Magistrate representatives Mike Evans (Panel Chair) and Giles Brown. Mike had served on the Panel since its inception in 2014 and Giles has served on the Panel for the past 9 years. Both Mike and Giles were thanked for their invaluable contribution to the Panel over the years. The Police and Crime Commissioner attended the Panel to present Mike with a coin to recognise his service as Chair of the Scrutiny Panel since it was first set up and reflecting on the impact of the Panel in supporting changes in policy and practice and in promoting public understanding and confidence in the use of Out of Court Disposals. It was acknowledged that Avon and Somerset is recognised as a national leader in the field of Out of Court Disposals, and the scrutiny panel plays an important part in the Avon and Somerset approach.

New HMCTS representatives (Court Legal Advisors) were welcomed to the meeting.

The Panel welcomed Clive Powell, Avon and Somerset Bench Chair, to the meeting. An update was provided on the process for nominating a replacement for the Panel chair and for Magistrate representation moving forward. Expressions of interest have been sought and preferred candidates will be put forward in the new year.

## Terms of Reference / Work Programme:

A meeting will be held in the new year to review Panel Terms of Reference and consider the proposed workplan for 2024. It

will be a more substantive review this year in order to take into account the developments including:

- New national Code of Practice
- Change of language (Out of Court Resolutions; Youth Justice Services)
- Avon and Somerset Deferred Prosecution / Chance to Change initiative for 16-24 year olds
- Implementation of Identifying Disproportionality work including IAG / independent member to support scrutiny
- OPCC Victim Service Recommissioning process – impact on membership
- Links to new national initiatives e.g. Immediate Justice (part of the government's Anti Social Behaviour Action Plan)
- Establishment of the Youth OoCD Peer Review Group (see below for details).

The 2024 work programme will include a training and development session on the new Two Tier Plus Framework, to be held following publication of the final Code of Practice.

## OoCD Overview & Performance

(Rebecca Marshall, Force OoCD Tactical Lead)

### Update from last meeting:

A review of local policy has taken place in response to Panel recommendations on Knife Crime Youth cases. The key findings related to concerns at the wording of the local policy and the lack of consistency its application, presenting the risk of a post-code lottery. Publication of the new national Child Gravity Matrix will help to address issues around consistency. Its publication also means that the local Outcome 22 Knife Crime Policy is no longer required and has therefore been rescinded.

A new Youth OoCD Peer Review Group has been established, bringing together police and Youth Justice Service representatives to review decision making in youth cases and support efforts to bring consistency across the Force area. The first meeting, held in November, looked at female peer on peer assault cases. In the five cases reviewed,

significant differences in outcomes were identified, despite the similarity in cases. The Review Group will continue to meet on a quarterly basis to support implementation of the Child Gravity Matrix and to scrutinise consistency in decision making across the Force. This is intended to complement the work of the scrutiny panel which will continue to provide independent scrutiny of youth cases on an annual basis.

### Theme of this meeting: Domestic Abuse

The Local Criminal Justice Board have raised a query in relation to disparities in the rate of breaches for Domestic Abuse Conditional Cautions (referrals to CARA) and Conditional Cautions more broadly. Analysis shows that the breach rate for CARA is 11.5% (16 breaches), whilst the overall breach rate for Conditional Cautions is 8.1%. It was noted that of the CARA cases breached, none had been prosecuted. Work is underway to establish why. The overall prosecution rate for Conditional Caution breaches is 26%. It was acknowledged that successful completion rates for Conditional Cautions are consistently high in Avon and Somerset. Evaluation of the Hate Crime Conditional Caution (for which Avon and Somerset was one of three Forces participating) showed that Avon and Somerset had a noticeably stronger attendance rate than other Forces, with 90% attendance in Avon and Somerset compared with 50% in West Midlands. The ASCEND team is considered to be the significant success factor, with a centralised team speaking directly to the offender to conduct a needs assessment and set appropriate conditions. This is considered as best practice and is a model that many other Forces are seeking to emanate in preparation for the new Code of Practice.

### National Developments:

Implementation of the new Code of Practice had been expected in April 2024 but has now been pushed back to the end of 2024. This is in order to give time for systems to be set up and tested for new elements such as fines and compensation. It is understood that 12 themes have been identified from consultation responses, and that the new Code of Practice may not be as similar as anticipated when it is finalised. Project management support has been secured to support implementation locally, with oversight through the Force Investigative Standards workstream. The NPCC lead will be writing to Chief Constables

to ensure that momentum is maintained in preparing for implementation, despite the delays. This will continue to be an important area for oversight by the Panel in the coming year.

Rebecca Marshall has been approached to lead on the development of a national commissioning framework to support Forces in commissioning interventions. This recognises the strength of the Avon and Somerset approach and menu of interventions available to ensure that out of court disposals are robust and effective.

#### Local updates:

The commissioning process has started for the Deferred Prosecution Scheme, with 15 organisations attending a market engagement event in November. The specification will be going out to tender in January 2024. The scheme will see a big shift in decision making for Out of Court Disposals in Avon and Somerset based on age:

- U18s – Youth OoCD Framework / Youth Justice Service
- 18 – 24 year olds – Chance to Change Deferred Prosecution Scheme
- 24+ year olds – Adult OoCD Framework / new Code of Practice

A Decision Making App is being developed to support officers on the ground and guiding them through the process in issuing out of court disposals, referring as appropriate to ASCEND and deciding on suitable interventions in Community Resolution cases. Consultation has been carried out with officers to input into the design of the app.

Recommissioning is underway for CARA, the Domestic Abuse intervention, and SHE, the specialist intervention for women offenders.

## Theme: Domestic Abuse Conditional Cautions

Avon and Somerset is one of a number of Forces which has been granted dispensation by the Director of Public Prosecutions to allow use of Conditional Cautions in Domestic Abuse cases. Annual scrutiny of these cases is a requirement of dispensation.

### How are Conditional Cautions used in Domestic Abuse cases?

Conditional Cautions may be used for **standard** or **medium-risk** Domestic Abuse (DA) offences, using the Domestic Abuse Stalking Harassment (DASH) assessment, and must meet the following requirements:

- The offender must make an admission, show genuine remorse and understand the seriousness and impact of the offence.
- Must have no previous DA conviction or caution and no conviction or caution in the last two years.
- No risk factors that would exclude use of a Conditional Caution (e.g. making threats to kill, using sexual violence).
- Victim views must be taken into account.
- Victim must be aware of the referral to the CARA or SHE intervention.
- Inspector authorisation is required.
- The offender must be referred to the ASCEND team for assessment and referral to an appropriate intervention.

### National Developments

The new Code of Practice will extend the use of Conditional Cautions in Domestic Abuse cases to all Forces. However, as proposals currently stand, Conditional Cautions will be available in standard risk cases only. Discussions are ongoing to explore the feasibility of continuing to enable use of Conditional Cautions in medium-risk cases under the new arrangements so that the opportunity and impact of the intervention currently available is not lost.

### INTERVENTION SPOTLIGHT:

There are currently **THREE** interventions for DA offences. All are free of charge.

#### **Project SHE (Support, Help and Engagement)**

– mandatory for FEMALE perpetrators of Intimate Partner DA offences. Delivered by Nelson Trust through appointments with a support worker, working through a tailored plan.

#### **CARA (Cautioning and Relationship Abuse) (Intimate Partner)**

– mandatory for MALE perpetrators of Intimate Partner offences. Delivered by Hampton Trust in two full-day group workshops designed to raise awareness of domestic abuse, its impact and consequences, engage with offenders and promote access to specialist services.

#### **CARA (Non-Intimate offences)**

– NOT mandatory. MALE perpetrators of Non-Intimate Partner DA offences (siblings, parents etc). Currently only available in Bristol.

# Case Scrutiny

## Summary of cases scrutinised

A total of 16 Domestic Abuse Conditional Caution cases were reviewed. All were adult cases.

## Criteria

The Panel discuss whether the method of disposal is considered appropriate, based on a review of the information/evidence available to the decision maker at the time, and agree a categorisation against four options:

<b>GREEN:</b> Appropriate and consistent with national and local policies including: the OoCD Code of Practice, NPCC Guidance, CPS Code, Force Policy, and the Gravity Matrix
<b>YELLOW:</b> Appropriate, but with observations from the panel
<b>RED:</b> Inappropriate and/or inconsistent with policy
The Panel Members fail to agree on the appropriateness of the decision made

The Panel *cannot* change the outcome of the case, but can make observations and give feedback on the case reviewed. Feedback is provided to individual officers and supervisors on cases considered inappropriate. Observations are used to identify training needs, inform development of policies and interventions and promote good practice.

## Panel Decision

Disposal	Initial Offence	Panel Decision
Conditional Caution	Common assault and battery	Appropriate
Conditional Caution	Common assault and battery	Appropriate with observations
Conditional Caution	Malicious Communications	Inappropriate*
Conditional Caution	Criminal Damage	Appropriate with observations
Conditional Caution	Section 4 Public Order – Fear or provocation of violence	Appropriate
Conditional Caution	Assault occasioning actual bodily harm	Appropriate with observations
Conditional Caution	Common assault and battery	Inappropriate*
Conditional Caution	Assault occasioning actual bodily harm	Appropriate with observations
Conditional Caution	Disclose private sexual photographs and films with intent to cause distress	Inappropriate*
Conditional Caution	Assault occasioning actual bodily harm	Appropriate
Conditional Caution	Assault occasioning actual bodily harm	Appropriate with observations
Conditional Caution	Possession of offensive weapon	Appropriate with observations
Conditional Caution	Section 4 Public Order – Fear or provocation of violence	Appropriate with observations
Conditional Caution	Common assault and battery	Inappropriate*
Conditional Caution	Malicious Communications	Appropriate with observations

Conditional Caution	Non-fatal strangulation and suffocation	Inappropriate*
<b>SUMMARY: Appropriate (3); Appropriate with Observations (8); Inappropriate (5)</b> <b>* A summary of cases considered inappropriate can be found below.</b>		

## Summary of cases considered inappropriate by the Panel

**Case 1:** The incident involved breach of a court order following serial, persistent unwanted contact and should have gone to court. At court, the offender would have received a high level community order at a minimum.

**Case 2:** An assault in which the victim had been bitten on the face and dragged up the stairs in front of their child was considered too serious for an out of court disposal and may have gone to Crown Court given the bite injury. This was a repeated incident. The Panel expressed concern at the lack of safety measures put in place with no bail conditions and no consideration of imposing a Domestic Violence Protection Order (DVPO). The Panel also queried the reference in the entry log to the bite as being a 'minor' assault, and disparities regarding victim preference over whether or not the victim wished to pursue a prosecution.

**Case 3:** Disclosure of private sexual photographs and films to multiple work colleagues with intent to cause distress was considered too serious for a Conditional Caution. It was noted that this is an either way offence with a starting point of 12 weeks custody, had the case gone to court. It was however acknowledged that the victim did not wish to go to court. Officers had stated restorative justice would not be suitable, however with the support of the specialist RJ service, this may have enabled the victim to express the impact. The Panel questioned eligibility given a previous out of court disposal in 2010. The Panel expressed concern at the lack of victim contact, with the victim having to follow up with police for updates.

**Case 4:** The assault was considered too serious for a Conditional Caution, given the injury to the head and presence of children. The Panel also queried eligibility given recent convictions for assault against emergency workers. Whilst the victim did not wish to pursue a prosecution, an evidence-led prosecution may have been possible given video evidence. The Panel queried why the offender had not been referred to Project CARA and the victim to the Lighthouse Safeguarding Unit. This was because both parties live outside the Force area. Referral to victim support would have been provided by the relevant Force. This may have prevented referral to Project CARA as the Force in question is not covered by the dispensation granted by the Director for Public Prosecutions in place in Avon and Somerset.

**Case 5:** Assault involving biting and strangulation was considered too serious for a Conditional Caution, and may have instead gone straight to Crown Court given the nature of the offences. The Conditional Caution as not felt to have sufficient 'teeth' to provide the level of protection, nor mental health support needed. It was noted that whilst safeguarding issues are considered in decision making for out of court disposals, they are dealt with separately. It was noted that had the case gone to court, outcomes including mental health treatment requirements and hospital orders may have been imposed.

## Organisational Learning

The Panel identified the following issues to inform organisational learning and improvement:

### Domestic Abuse Conditional Cautions

- Overall, the Panel noted the **robust approach** in Domestic Abuse Conditional Caution (DA CC) cases, with clear criteria, targeted conditions and the **role of the ASCEND Team** in gatekeeping

cases, assessing need and monitoring compliance. This model is being replicated by other Forces nationally.

- The Panel highlighted the **value of specialist interventions** such as Project CARA (for domestic abuse) and the SHE Programme (for female offenders) in addressing the root causes and reducing future offending.
- There is a need to ensure that **all DA CCs follow the correct process of being referred to ASCEND**. A DA CC case which had not been referred to ASCEND had inadequate conditions, did not include a requirement to complete Project CARA and protective measures such as a DVPN/O had not been considered.
- There is a need to clarify the protocol for **ascertaining the views of the victim** at the time of the incident and whether they wish to support prosecution.
- The Panel identified **missed opportunities to activate suspended sentences, enforce breaches and pursue evidence-led prosecutions** where appropriate.
- The Panel highlighted appropriate safeguarding measures in the majority of cases, for example through MARAC referral. However, the Panel expressed surprise at limited mention of **Domestic Violence Protection Notices/Orders (DVPN/Os)** in cases reviewed. These are an important tool in consideration of victim safety measures. It was noted that DVPO applications are seldom supported by victim and that there is a key role for Magistrates and police to take forward applications for public protection.
- The Panel wished to see conditions put in place for **compensation in cases involving injury**, akin to compensation offered in court. Sentencing Guidelines include a table to support Magistrates in setting compensation orders for injury caused.

#### Constabulary Response:

Significant training for front line officers and partners has taken place through the past year through the Domestic Abuse Matters programme to improve the police response to domestic abuse. Work continues to strengthen processes to ensure appropriate referrals are made, enforcement opportunities maximised and safety measures appropriately considered and put in place.

Scoping work is underway to look at introducing a compensation policy. The challenge in the lack of guidance on injury levels in Out of Court Disposals cases (akin to Sentencing Guidelines for Magistrate compensation orders) has been escalated nationally. The preferred option would be for a national guidance on compensation to be put in place. There is the potential for this to happen as part of the introduction of the new Two Tier Plus Framework for Out of Court Disposals. However, the 16 week timeframe required to complete conditions presents a barrier. As an example, looking at court compensation guidelines, compensation for a black eye would be £500. Court compensation orders have the potential to be set over a longer time period on affordability grounds.

## Theme: Shop Theft Cases

The theme of Shop Theft cases was selected in recognition of the exponential rise in shop lifting nationally exacerbated by the cost-of-living crisis, the perception portrayed in national media that cases are often dealt with by voluntary, light touch outcomes, with offenders given a 'mere slap on the wrist', and a move to treat shoplifting as a 'high harm' crime with the introduction of a new national police intelligence unit to crackdown on shoplifting perpetrated by organised gangs. The Panel selected cases resolved by Community Resolution and Conditional Caution in order to explore:

- **The impact of Community Resolutions:**  
Were outcomes meaningful and effective, or was the perception of the Community Resolution as a light touch, 'easy option' for police officers to resolve the case justified?
- **The quality of conditions attached to Conditional Cautions:**



There is currently no specialist intervention available for shop theft cases, however offenders may be required to complete the **Victim Awareness Course**, designed to challenge offenders to reflect on their actions and challenge the perception that shop theft is a 'victimless crime'. However, it is offered on an offender-pays basis which may present a barrier to participation given the potential drivers. In many of the cases reviewed, the sole condition was a blanket ban on the shop in question. To what extent was this sufficient to address the underlying issues? And was the wording accurate enough to enable enforcement in the case of breach?

- **The underlying issues and potential vulnerabilities driving the behaviour:**  
The cases reviewed revealed a broad range of complex underlying issues that may be driving behaviour, from alcohol misuse and mental health issues to flags for potential coercion through trafficking or gang-related activity. These wider issues and vulnerabilities were not always considered, particularly in cases dealt with by imposing a blanket ban. The Panel sought to explore how this could be rectified.

## Summary of cases scrutinised

A total of 14 case involving shop theft were reviewed. All were adult cases.

## Panel Decision

Disposal	Offence	Panel Decision
Community Resolution	Theft from shop	Appropriate
Community Resolution	Theft from shop	Appropriate with observations
Conditional Caution	Theft from shop	Appropriate with observations
Conditional Caution	Theft from shop	Appropriate with observations
Conditional Caution	Theft from shop	Inappropriate*
Conditional Caution	Theft from shop	Appropriate with observations
Community Resolution	Theft from shop	Appropriate with observations
Community Resolution	Theft from shop	Appropriate
Community Resolution	Theft from shop	Inappropriate*
Conditional Caution	Theft from shop	Inappropriate*
Conditional Caution	Theft from shop	Inappropriate*
Conditional Caution	Theft from shop	Inappropriate*
Conditional Caution	Theft from shop	Appropriate with observations
Community Resolution	Theft from shop	Appropriate with observations
<b>SUMMARY: Appropriate (2); Appropriate with Observations (7); Inappropriate (5)</b>		
* A summary of cases considered inappropriate can be found below.		

## Summary of cases considered inappropriate by the Panel

**Case 1:** In a case in which a 60 year old had stolen alcohol to give to the 16 year old who was accompanying them, the Panel expressed concern at the lack of consideration of safeguarding aspects and needs assessment for the perpetrator. The offender had a number of serious previous convictions. The condition, a ban, to be monitored by the shop, was not felt to be robust enough to address the wider concerns. There were discrepancies in the enquiry log regarding the value of stolen goods.

**Case 2:** A Community Resolution was considered too lenient in a case involving repeated, daily theft of alcohol from a shop. The condition, to abide by a ban from the shop in question, was

unenforceable (being voluntary, having no time limits and not specifying the store to which the ban applied). The value exceeded the limits for use of an out of court disposal. The underlying issue of alcohol misuse did not appear to have been addressed.

**Case 3:** A Conditional Caution was considered too lenient given the high value of the stolen goods, and on multiple occasions in a planned manner. The Panel welcomed the inclusion of conditions beyond a ban from the shopping centre. The condition relating to the ban was unenforceable as it had no timescale attached. Had the case gone to court, a community order and engagement with services would be the likely outcome. The Panel queried reference to 'balance of probability', the civil rather than criminal standard of proof. This issue was identified in a number of case files.

**Case 4:** A Conditional Caution was considered too lenient given the high value of the stolen goods. Concern was expressed regarding the quality of the condition attached ('not to enter') and the lack of onward referral for support to address underlying issues of homelessness.

**Case 5:** A Conditional Caution was considered inappropriate in a case in which the value of stolen goods significantly exceeded the limit. The gravity matrix indicated that the case should have been charged. The condition attached had an end date which was welcomed, however the wrong year was stated, making it unenforceable. The Panel queried whether the condition to write a letter of apology was realistic given that the offenders required interpreters. Concern was expressed at the lack of consideration of safeguarding concerns given potential trafficking, modern slavery, coercion, or gang involvement indicated by the circumstances.

## Organisational Learning

The Panel identified the following issues to inform organisational learning and improvement:

- The Panel noted a lack of enquiry around the drivers in shop theft cases, with **missed opportunities to identify vulnerabilities and signpost to appropriate support**. The Panel identified mental health, alcohol misuse, homelessness and risk of trafficking / modern slavery or potential gang-related crime in a number of cases reviewed.
- **Quality of conditions** - These cases were generally dealt with by way of Community Resolution, including a 'blanket ban' on entering the shop in question. Not only does this not address the underlying issue, but the ban is unenforceable, unless given as part of a Conditional Caution. Care needs to be taken in ensuring that conditions are specific and enforceable, for example referencing a particular store (not just a chain), a map, clearly defined limits, and timescales.
- **Admission** – The Panel identified that the **civil standard of proof ('balance of probabilities') had been used rather than the criminal standard of proof ('beyond reasonable doubt')** in a number of shop theft case files. It was highlighted that **admission needs to be clear in documentation** – admission of guilt is a requirement in eligibility for conditional caution, while admission of responsibility is required for a community resolution.
- The Panel discussed whether there was sufficient support available for **mental health needs** through the Out of Court Disposals route. It was noted that a Court Order may have been the only viable option to put appropriate support in place.
- The Panel discussed the potential for a **bespoke intervention for shop theft cases**. It was acknowledged that it would be difficult to replicate the consistent and robust approach in place for domestic abuse cases would be difficult to replicate for shop theft cases. The Victim Awareness course offers a suitable intervention for shop theft cases, however whilst it emphasises that shop theft is not a 'victimless crime', it does not consider perpetrator needs and vulnerabilities.
- There is a need to make **more robust use of the gravity matrix** to ensure appropriate outcomes in cases involving high value shop theft, aggravating features, severity of injury in domestic abuse cases and to establish eligibility.
- Good practice was identified in the appropriate award of compensation in a number of cases.

#### Constabulary Response:

- Analysis has been undertaken to identify and target training to address the issue of over-use of Community Resolutions and 'blanket bans'. Training has been delivered with teams, including at Cribbs Causeway / The Mall.
- Opportunities to strengthen the approach in shop theft cases include use of restorative justice (especially where the victim is a small business), and a greater role for the ASCEND team in assessing offender needs and signpost to appropriate support. It was acknowledged that by the nature of the offence, it would be difficult to put in place an intervention on an 'offender pays' model, the service would need to be commissioned, which comes with an associated cost. Provision is in place for female offenders through the SHE Programme, and coming soon for 18-24 year olds through the Deferred Prosecution model (which will be introduced in June 2024). The ASCC service offers support for drug and alcohol misuse, however referral must be on a voluntary basis, it cannot be mandated. The Liaison and Diversion service is available for offenders who come into police custody, but does not cover those who are dealt with as Voluntary Attendees. Shoplifting is a trigger offence for drug testing on arrest where offenders are brought into police custody.
- A new online Directory of Services has been developed to enable signposting to support services across offender need pathways. There are currently 170 services listed, and work is ongoing. This will enable wrap around support and enhance existing interventions such as the SHE Programme. [www.ascendpathways.org.uk](http://www.ascendpathways.org.uk)
- Work is ongoing to develop the Decision Making App to guide officers in appropriate use of out of court disposals. This incorporates the Gravity Matrix, and will ensure a more robust and consistent approach in decision making.

#### What happens next?

Action is taken to respond to Panel findings and reported to the next meeting. Feedback on inappropriate cases is provided to individual officers and their supervisors to reflect and inform future decision making.

#### Theme of the next meeting:

- Annual Meeting / Work Programme
- Training and Development Session
- Community Resolution cases