

Out of Court Disposals Scrutiny Panel

Knife Possession – Youth Cases

September 2023

Out of Court Disposals Scrutiny Panel: September 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 theme of this meeting was **youth cases involving possession of a knife**. The purpose of this meeting was to inform a review of Force policy to ensure consistency across the Force area in youth cases relating to knife crime.

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)

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

An update was provided on membership changes, with the CPS representative and a YOT representative having to step down for the time being. Arrangements have been agreed for the process for nominating a replacement for the Panel Chair and for Magistrate representation moving forward.

A current backlog is causing delays in the vetting process, which is impacting on clearance for new and renewing Panel Members. The OPCC is continuing to monitor the situation and expedite the process where possible.

It was agreed that the proposed training and development session on the new Two Tier Plus Framework will be postponed to the new year, following publication of the final Code of Practice.

Panel Members were asked to consider succession planning in preparation for Mike Evans (Chair) stepping down from the Panel at the end of the year.

OoCD Overview & Performance

(Rebecca Marshall, Force OoCD Tactical Lead)

Panel observations on a 'red' case from the last meeting have been raised through the 'over-policed' pillar of the Police Race Action Plan. The practice of charging without interview in police-witnessed public order cases is viewed as problematic from a disproportionality perspective.

Work continues to prepare for the new OoCD Framework. Consultation on the new Code of Practice for Diversionary and Community Cautions has now been published¹, and closes in October. The Code of Practice is expected to be ratified in January. Confirmation of the 'go live' date is awaited, however the Force is planning on implementation in April-June 2024. It was noted that changes required to national IT systems (including PNC/PND) can only take place when the Code of Practice has been finalised and there will need to be workarounds in the interim. The Force is in a strong position with a well-established approach to out of court disposals, menu of interventions and central team. Avon and Somerset is recognised as national leaders and have been inundated with contacts to support preparations in other Forces.

A revised Youth Gravity Matrix has been published. There are significant differences from the existing version, and planning is underway for implementation. CPS feedback on the changes is currently being addressed before implementation can take place.

The PCC has approved a business case for a deferred prosecution scheme for 18-24 year olds. A presentation was given on the 'Chance to Change' pilot which will involve supported interventions over a 16 week period, similar to current Conditional Cautions. The significant difference is that there is no requirement to admit the offence. The pilot will provide an alternative route to help address the challenges being explored at this meeting of the impact of BAME detainees being more likely to give a 'no comment' interview and less willing to admit the offence, making them ineligible to be dealt with out of court. The pilot builds on success of evidence-based pilots elsewhere in the country, in particular Turning Point in London in which a random control trial showed a positive impact on disproportionality.

Panel members flagged issues with the language used in national Outcome 22 guidance, which refers to 'deferred prosecution' in youth cases in reference to deferred cautions. This requires clarification to avoid confusion.

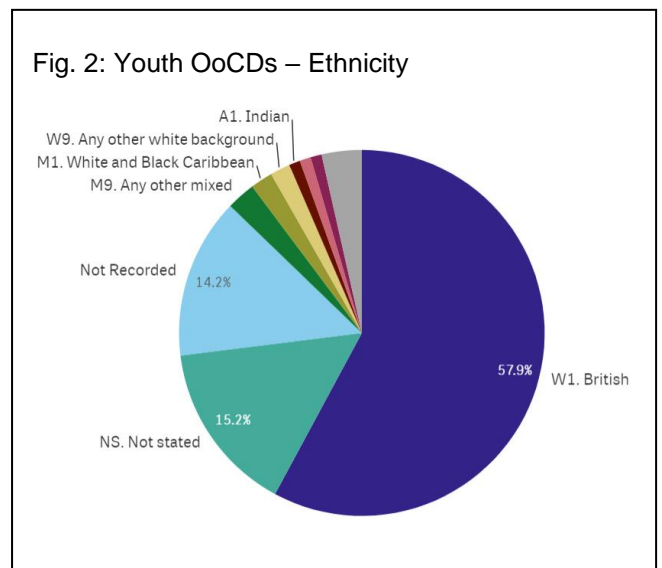
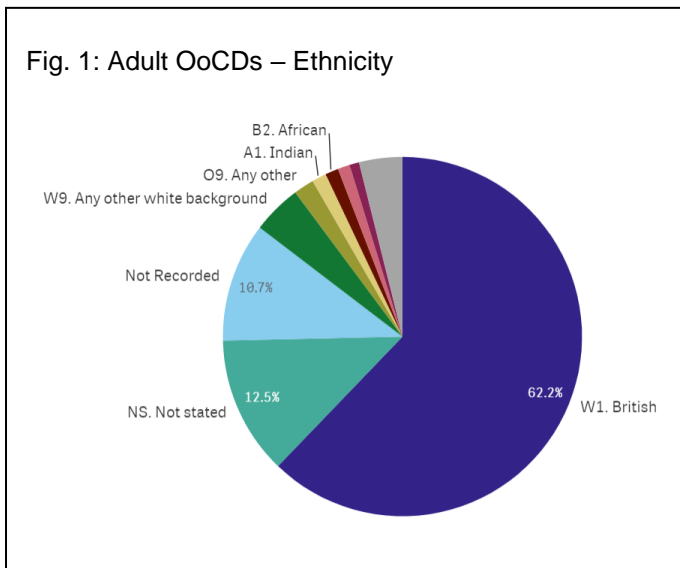
¹<https://www.gov.uk/government/consultations/diversionary-and-community-cautions-draft-code-of-practice>

(Caroline Elwood, ASCEND Manager)

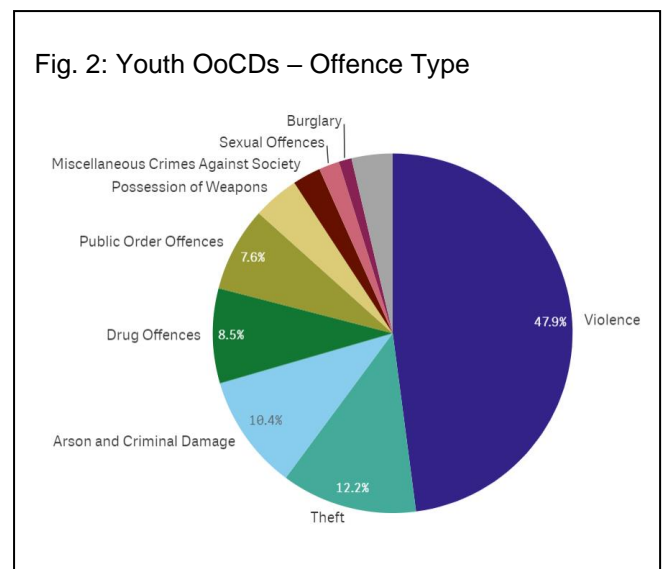
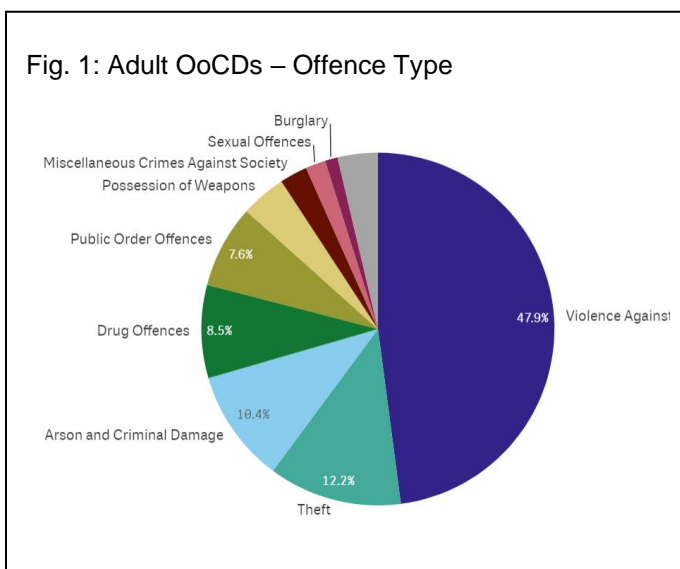
Quarterly performance information for June – August 2023 was shared with the Panel.

Outcome	Adult Cases	Youth Cases
Conditional Cautions	292	45 (Youth Conditional Cautions)
Community Resolutions	336	203
Youth Simple Caution	N/A	18
Outcome 22	277 (inc 111 Drug Education Programme Referrals)	168

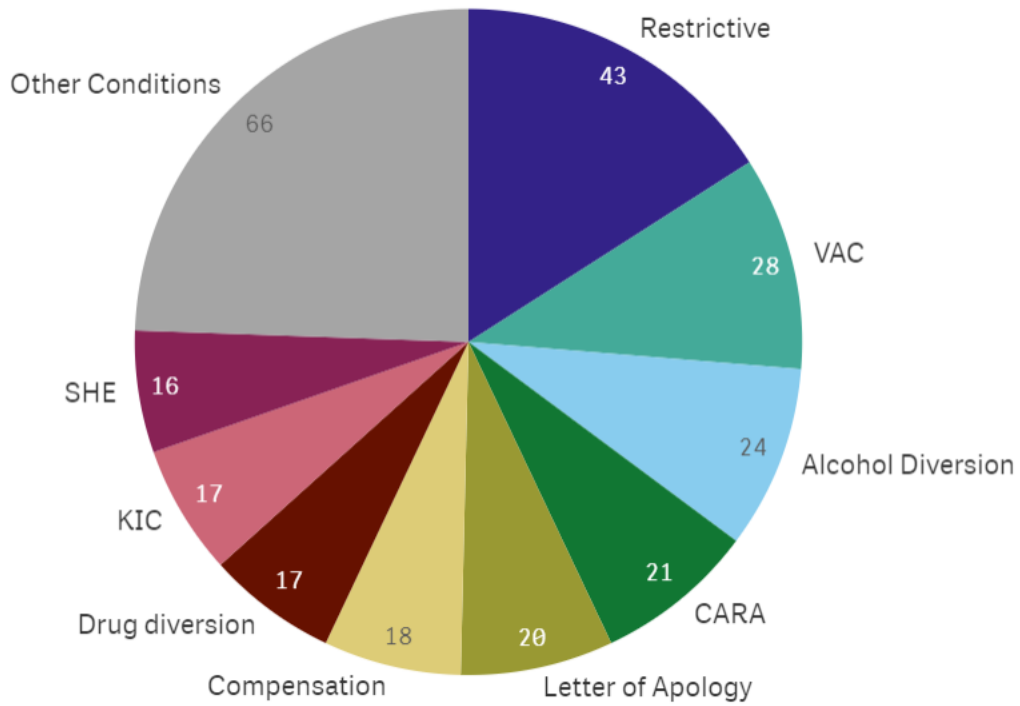
- **Ethnicity:** Non-recorded ethnicity remains a concern, accounting for 23.2% in adult cases and 29.4% of youth cases. This issue is being addressed through the Identifying Disproportionality in the Criminal Justice System work programme.



- **Offence type:** Violence against the person continues to account for the majority of OoCDs (37.6% of adult cases and 47.9% of youth cases).



- **Conditions:** 270 conditions were set over 164 occurrences.
 - 'Other Conditions' includes: Assault on Emergency Worker, RISE Against Hate Crime, Consider, Always Choose to Tell, Restorative Justice, Reparation Costs and Fines.
 - The Panel welcomed the inclusion of Compensation as a condition – this is now available in response to recommendations from the Panel.



Theme: Youth cases involving possession of a knife

The purpose of this meeting was to explore differences in the approach to youth cases involving possession of a knife to inform a review of Force policy to ensure consistency across the Force area in youth cases relating to knife crime.

The Panel reviewed the following background information:

- Constabulary Procedural Guidance – Knife Possession and Outcome 22
- Youth Gravity Matrix
- Government consultation on proposals to provide the police with more tools to disrupt knife possession and tackle knife crime²

Case Selection

Cases were selected to include a mix of cases resolved by:

- Charge
- Youth Conditional Caution
- Outcome 22

Outcome 22 case selection focused on 16 year olds in order to test how the current policy is being applied in 'borderline' cases. The current policy states that Outcome 22 should not be used in knife possession cases for a 16 year old unless there are exceptional circumstances. Where there are considered to be exceptional circumstances, a detailed rationale from an officer of the rank of Inspector or above must be completed alongside the Youth Report Form and submitted for referral to the Youth Panel Out of Court Disposal Multi-Agency Meeting for decision.

The intervention offered for Outcome 22 for possession of a knife should be bespoke to the needs of the individual child and include support and educational elements. It can be offered by a variety of partner organisations, including Violence Reduction Partnerships and Early Intervention Services.

WHAT IS 'OUTCOME 22'?

Outcome 22 is defined as '*Diversionary, educational or intervention activity, resulting from the crime report, has been undertaken and it is not in the public interest to take any further action*'.

The aim of Outcome 22 is to:

- o Avoid unnecessarily criminalising people.
- o Recognise and address the reasons for their behaviour.
- o Provide support and intervention to prevent further offending.

Outcome 22 should only be applied once the intervention has been completed so alternative criminal justice options remain open.

² [Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime \(accessible\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/new-knife-legislation-proposals-to-tackle-the-use-of-machetes-and-other-bladed-articles-in-crime)

Case Scrutiny

Summary of cases scrutinised

A total of 39 cases were scrutinised by the Panel made up of:

- 37 Possession of a bladed article cases:
 - 12 Charge / Summons
 - 1 Taken into Consideration (TIC) in a more serious offence
 - 15 Youth Caution / Youth Conditional Caution
 - 9 Outcome 22
- 2 Community Resolutions for serious violence or sexual offences cases. The Panel scrutinises all cases recorded in the last quarter in this category at every meeting.

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:

GREEN: Appropriate and consistent with national and local policies including: the OoCD Code of Practice, NPCC Guidance, CPS Code, Force Policy, and the Gravity Matrix
YELLOW: Appropriate, but with observations from the panel
RED: 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	Offence	Panel Decision
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Youth Conditional Caution	Having an article with a blade or point on school premises	Appropriate
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Charge/Summons	Having an article with a blade or point in a public place	Appropriate

Conditional Caution	Having an article with a blade or point in a public place	Appropriate
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Youth Caution	Having an article with a blade or point in a public place	Appropriate with observations
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate with observations
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Youth Caution	Having an article with a blade or point in a public place	Appropriate with observations
TIC	Having an article with a blade or point in a public place	Appropriate
Charge/Summons	Threaten with a blade or sharply pointed article in a public place	Appropriate with observations
Youth Caution	Having an article with a blade or point in a public place	Appropriate with observations
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate
Charge/Summons	Threaten with a blade or sharply pointed article in a public place	Appropriate
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Charge/Summons	Possessing an offensive weapon in a public place	Inappropriate*
Youth Conditional Caution	Having an article with a blade or point in a public place	Appropriate
Youth Caution	Having an article with a blade or point in a public place	Appropriate with observations
Charge/Summons	Having an article with a blade or point in a public place	Appropriate
Outcome 22	Having an article with a blade or point in a public place	Appropriate
Outcome 22	Possession of offensive weapon	Inappropriate*
Outcome 22	Having an article with a blade or point in a public place	Appropriate
Outcome 22	Threaten with a blade or sharply pointed article in a public place	Appropriate with observations
Outcome 22	Possession of offensive weapon	Appropriate with observations
Outcome 22	Carrying a loaded or unloaded or imitation firearm or air weapon in public place	Appropriate with observations
Outcome 22	Possession of offensive weapon	Appropriate
Outcome 22	Possession of an offensive weapon in a private place	Appropriate with observations
Outcome 22	Possession of offensive weapon	Appropriate with observations
Community Resolution	Sexual assault on a female	Appropriate
Community Resolution	Sexual assault on a female	Inappropriate*
SUMMARY: Appropriate (19); Appropriate with Observations (17); Inappropriate (3)		
* A summary of cases considered inappropriate can be found below.		

Summary of cases considered inappropriate by the Panel

Case 1: 16 year-old charged having found to be in possession of a kitchen knife during a search following arrest for attempting to drive a vehicle while under the influence of drugs. The Panel acknowledged that an Outcome 22 was not possible due to the age of the young person, however queried why a Youth Conditional Caution was not offered given no previous offences and full admissions were made. It was noted that the young person was given a referral order, which gave the Youth Panel an opportunity to go back to court to request an Out of Court Disposal. It was not clear why this did not happen.

Case 2: 16 year-old given a Youth Conditional Caution having been found in possession of a knife when stopped riding a bike without lights. The Panel expressed concern that the decision had been taken solely by the police, without referral to the Youth Justice Team for assessment, and as such did not follow local policy. Had the young person been assessed, they may have been considered eligible for an Outcome 22 under exceptional circumstances. The case had been reviewed by the Force Youth Justice Officer and advice provided about the correct process to follow. This role is no longer in place following a restructure, and there is a question mark over how gatekeeping and advice in relation to youth cases will work in future. The officer apologised and the case was subsequently passed to the relevant Youth Justice Team to deliver a one-off knife awareness intervention through the 'Choices and Consequences' programme.

Case 3: The Panel considered a Community Resolution too lenient in a sexual assault case in which the victim had been grabbed by the throat, had her body exposed and her breast licked. Language used by the offender indicated a hate crime element. It did not appear that a referral to victim services had been made. The Panel noted that there had been a 6 week delay in dealing with the case due to the officer returning to university. A letter of apology was written eventually, however this was written from the perspective of the offender and was not victim-focused. It was acknowledged that if a victim does not wish to support a prosecution, it is challenging to offer a Conditional Caution given that they must be prepared to go to court if the offender fails to comply. A Community Resolution may therefore be considered a better outcome than the alternative which would be no further action. The victim had agreed to the outcome in this case. The introduction of the new OoCD Framework will enable breach of conditions to be enforced by financial penalty rather than having to go to court, which would be a welcome change to enable a more robust outcome in these circumstances in future.

Organisational Learning

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

Outcome 22 Guidance

The Panel identified a number of issues with the local Outcome 22 Guidance for knife possession:

- **Inconsistency** in how the guidance was applied in different Youth Justice Service areas. This was in part due to the need to tighten up local guidance, and potential confusion with national Outcome 22 guidance, including reference to 'deferred caution / prosecution'. Inconsistent application of the policy increases the risk of disproportionality, as well as the potential for a 'post code' lottery in outcomes for young people in different parts of the Force area.
- Inconsistency was a particular issue in what was deemed to **constitute 'exceptional circumstances'** – greater clarity is needed on when it is acceptable to go outside the policy.
- A need for **clarification on the size of the knife** – it was noted that national consultation is currently underway on this issue.

- Concern at the **language** in the guidance – in particular reference to **‘gang markers’**. The panel expressed concern at the potential risk of disproportionality in cases in which the file stated that the young person was labelled in this way. It was not clear from the guidance on what is considered to constitute a ‘gang marker’.
- **Decision making processes** were not correctly followed in all cases, with decisions signed off by a Sergeant in a number of cases, rather than Inspector or above as required.
- The Panel acknowledged the **benefits of Outcome 22**, noting that use of a Youth Caution with voluntary interventions does not have the ‘teeth’ that Outcome 22 has in ensuring that young people complete the intervention work, and bring them back to youth panel if not.
- The Panel also acknowledged the **challenge in balancing risk** – considering that possession of a knife has the potential for significant harm to the public versus the desire to avoid unnecessarily criminalising young people and **recognising and addressing vulnerabilities and needs**. The Panel highlighted the importance of the Youth Panel assessment in this process, enabling a holistic assessment of the young person to identify vulnerabilities and needs and ensure appropriate interventions and onward referrals are put in place.

Approach to Youth Cases

The Panel identified the following issues to strengthen the approach to youth cases:

- **Inconsistency in processes** followed in youth cases in different parts of the Force area. There is a need to **increase awareness with officers to ensure cases are referred to the relevant Youth Justice Service for assessment** where appropriate. The current approach increases the risk of disproportionality and a potential ‘postcode lottery’ in outcomes for young people in different parts of the Force area. The Panel highlighted the effectiveness of the approach where the correct process was followed, and importance of consistency in youth cases to ensure that all young people are given the same opportunity.
- Clarity is needed on **responsibility for decision making** in the decision to charge. By the time the case reaches the Youth Panel, the assumption is that the decision has already been made. The final decision should be made on the basis of assessment by the Youth Panel in order to access a full picture of the young person, including any vulnerabilities and mitigating factors.
- **File quality** needs to be improved in order to ensure that the **Youth Panel assessment is included on file**, and that there is a **consistent approach in writing the panel decision**, and what information is provided to the police to upload to the Niche system. It was noted that in Bristol cases, the police write the decision, which gives a different slant. The need to **improve the quality of 143 Forms** were identified in a number of cases.
- **Timeliness** was identified as an issue in a number of cases, including one in which a significant amount of time lapsed following the officer’s return to university.
- **Quality of letters of apology** continued to be identified as an issue, particularly to ensure referral to the specialist provider Resolve West, and that the letter was written in a victim-focused matter.

Constabulary Response:

The decision has been taken to rescind the local Outcome 22 Guidance for Knife Possession.

The recent publication of the new Child Gravity Matrix³ by the National Police Chiefs’ Council (September 2023) provides an opportunity to guide decision making and improve consistency in youth cases. The matrix includes a step-by-step guide for decision makers and a clear scoring framework, recognising the diversity in children’s behaviour and the importance of addressing their vulnerabilities and needs. The framework aims to provide a more nuanced approach to decision making, considering the specific circumstances surrounding each case.

The Constabulary has set up a multiagency Youth Out of Court Disposals Tactical Group to oversee implementation of the new Child Gravity Matrix, understand the new way of assessing young people, and ensure it is applied consistently across the Force area. Representatives of all

³ [child-gravity-matrix-v2.2---september-2023.pdf \(npcc.police.uk\)](#)

five Youth Justice Services are involved, as well as police and Violence Reduction Partnership and prevention colleagues.

A Youth Out of Court Disposals Peer Review Group has also been established to scrutinise case files and support work of the Tactical Group to strengthening consistency across the Force area. Independent scrutiny of youth cases by the Out of Court Disposals Scrutiny Panel will continue on an annual basis.

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:

- Shop theft
- Domestic Abuse Conditional Cautions / Project CARA