

## Avon and Somerset Police and Crime Commissioner

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

Wednesday 5 December 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 twentieth meeting: 5 December 2018

Attendees: Mike Evans (Magistrate) (Chair), Frances Keel (Victim Support), Paul Ashby (YOT), James LeGrys (CPS), Chief Inspector Guy Shimmons (Avon and Somerset Constabulary), Lauren Jones (Avon and Somerset Constabulary), Joanna Coulon (Office of the Avon and Somerset Police and Crime Commissioner).

Apologies: David Godfrey (HMCTS) (Deputy Chair), Giles Brown (Magistrate), Lynne Paraskeva (Magistrate), Carla Cooper (YOT), Justine Leyland (YOT), Nainesh Pandit (SARI).

The Chair welcomed the following observers to the meeting:

- Emma James (OPCC)

#### Panel Business

### 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. Overarching feedback around seeking to improve consistency of approach in dealing with 'sexting' cases had been taken on board, and CPS guidance on what constitutes an 'indecent image' has been circulated to officers. With regard to the theme around the quality of conditions, the response highlights that ASCEND workers are now in post and the Panel should expect to see a significant improvement moving forward. This issue will remain under scrutiny and the Panel will have a key role in providing oversight and assurance as the new approach is embedded.
- The Panel welcomed feedback from YOTs in relation to youth cases and thanked Paul Ashby for his assistance in coordinating responses.
- A demonstration of the app created to assist officers in decision making under the new two tier framework will be arranged for the next meeting.
- The issue of the impact of increased use of 'released under investigation' and how disposal volumes compared with previous years, raised at the previous meeting, was considered at the recent Local Criminal Justice Board meeting and is subject to ongoing scrutiny.
- Panel Members extended their thanks to Lauren Jones for her support of the Panel over the past year. It was confirmed that Helen Jeal would return to her role in supporting the Panel at the March meeting.

### Policy and Performance Overview

- The Panel received an update on progress following the introduction of the new two tier framework for Out of Court Disposals.
- Six ASCEND workers ('ASC Engage Navigate Divert') are in post, operating from custody centres in Keynsham, Patchway and Bridgwater. Consideration is being given to extending provision at Bridgwater and Yeovil in response to demand. A 'soft launch' took place for a two week period with full launch on 5 November.
- Simple Cautions are no longer in use (other than restricted use for cases involving Domestic Abuse, Hate Crime, low level breaches of Sexual Harm Prevention Orders e.g. failure to notify of new bank card). It is anticipated that Simple Cautions will no longer be used for Domestic Abuse from mid-December, following dispensation from the Director of Public Prosecutions. Arrangements for Hate Crime are still in development.
- A range of conditions are available under the new two tier framework, including: Community Remedy - rehabilitative (including interventions and restorative justice), reparative (financial payment as opposed to physical reparation in view of supervision and demand considerations), punitive (conditions that are restrictive, for example not to enter a certain area at a certain time).
- Alongside conditions, a range of interventions are in place:
  - Perpetrator-pays courses including: the Victim Awareness Course, the 'Consider' course, drug and alcohol awareness courses and the kerb crawling awareness course;
  - Soliciting – with the condition to attend an awareness course run by Project 125;
  - Project CARA for domestic abuse perpetratorsCourse materials will be made available and Panel Members were invited to attend courses to observe.
- Use of a Conditional Caution for Domestic Abuse cases will go live in mid-December. Guidance is in development and governance and scrutiny arrangements are in place. Cases must be assessed by the ASCEND worker for gatekeeping purposes. Arrangements for non-intimate partner cases (e.g. siblings, or parent/child) are being considered. Failure to attend a Project CARA course will constitute a breach of condition and will go to court. Project CARA will be delivered by Hampton Trust, working with Bristol provider, 'Splitz'.

- Work is ongoing, in partnership with West Midlands and Hampshire, to develop the proposed approach to enable use of Conditional Cautions in Hate Crime cases. Two universities have expressed interest in leading on academic evaluation.
- Training arrangements were outlined, including a distance learning package, face-to-face training with supervisors and the Detainee Investigations Team, changes to input for trainee police officers, planned input into custody training sessions and neighbourhood masterclasses. Training is being supplemented by utilising the Champions Network and through input by ASCEND workers at briefings.
- Administrative support is in place and processes have been modified in line with demand. A performance framework has been developed – a screenshot of performance information held in the Qlik App was shown.
- Figures since go-live on 5 November shows a significant rise in Conditional Cautions from 23 to 73. Use of Community Resolutions has reduced from 89 to 36 – this is likely to be due to a backlog with the crime recording team, however the issue remains under review.
- Conditions used since the launch include: 21 referrals to the Victim Awareness Course; 12 alcohol interventions; 16 drug interventions; 1 referral to 'Consider' (for low level harassment / malicious communications offences); 1 referral to SSAFA (support for veterans); 34 reparation / compensation conditions; 6 fines. Interventions are accessed on a perpetrator pays model. It was noted that referral is not means tested, however alternative condition options will be explored where necessary.

#### Performance Update:

- LJ provided an overview of performance:
- Year to date levels of disposals show similar levels to the previous year, though court disposals have seen a significant increase in the last few months.
- The 24 month tracker illustrates changes with the introduction of the two-tier framework, with only 3 Simple Cautions issued in November.
- As noted above, Community Resolutions have seen a drop, potentially due to a backlog in the crime review team. This issue is remains under review.

#### **Scrutiny of Case files**

##### Rationale and file selection

A total of 39 files were made available for scrutiny, selected as follows:

- 2 cases of Serious Sexual Offences and Serious Violence Against the Person dealt with Community Resolution (required under the Panel Terms of Reference);
- 37 cases on the theme of cases involving stalking and harassment.

The theme of the meeting was cases involving stalking and harassment, scrutinising whether the appropriate crime has been recorded and approach taken in each case. The theme was suggested by the CPS representative, with a focus on whether stalking had been correctly identified as opposed to harassment.

Stalking was made a specific offence through the Protection of Freedoms Act 2012 s111 which inserted two new offences into Protection from Harassment Act 1997. Whilst stalking is recognised as a specific offence, there is no definition for stalking on the basis of concern that definition would risk limiting the application of the new stalking offence. Instead, s2A(3) PHA 1997 gives examples of behaviours associated with stalking – the list is not exhaustive, but gives an indication of the types of behaviour that may be displayed in a stalking offence.

A joint inspection HMIC and HMCPSP, *Living in Fear – the Police and CPS Response to Harassment and Stalking* (July 2017) identified a lack of understanding at the difference between stalking and harassment, a lack of recognition of stalking as a serious offence, and resulting incorrect crime recording – this in turn has detrimental consequences such as: lack of referral to appropriate victim services, lack of allocation of specialist officers, insufficient risk assessment / management and unacceptably low levels of prosecutions.

#### Panel findings

Of the 39 cases available, 24 were scrutinised. Of the cases reviewed, 3 were considered appropriate, 8 appropriate with observations, and 12 were considered inappropriate. The Panel could not reach a consensus in 1 case. A summary of findings on files scrutinised by the Panel is set out in the table below:

Reference	Disposal	Offence Type	Panel Decision
066/18	Community Resolution	Sexual Assault on a Female	Appropriate with observations
067/18	Community Resolution	Sexual Assault on a Female	Appropriate with observations
068/18	Simple Caution	Harassment	Inappropriate*
069/18	Conditional Caution	Harassment	Appropriate with observations
070/18	Simple Caution	Stalking	Inappropriate*
071/18	Simple Caution	Stalking	Panel could not reach a conclusion*
072/18	Breach of conditions of injunction against harassment order	Harassment	Inappropriate*
073/18	Breach of conditions of injunction against harassment order	Harassment	Inappropriate*
074/18	Community Resolution (Youth)	Harassment	Appropriate with observations
075/18	Community Resolution (Youth)	Harassment	Appropriate with observations
076/18	Community Resolution (Youth)	Harassment	Inappropriate*
077/18	Community Resolution (Youth)	Harassment	Appropriate with observations
078/18	Community Resolution (Youth)	Harassment	Inappropriate*
079/18	Community Resolution (Youth)	Harassment	Appropriate
080/18	Community Resolution (Youth)	Harassment	Inappropriate*
081/18	Conditional Caution	Harassment	Appropriate with observations
082/18	Simple Caution	Stalking	Inappropriate*
083/18	Simple Caution	Stalking	Appropriate with observations
084/18	Conditional Caution	Harassment	Inappropriate*
085/18	Community Resolution	Harassment	Inappropriate*
086/18	Simple Caution	Harassment	Inappropriate*
087/18	Community Resolution	Harassment	Appropriate
088/18	Simple Caution	Harassment	Appropriate with

			observations
089/18	Simple Caution	Harassment	Inappropriate*

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

068/18

The Panel considered use of a Simple Caution in a case involving unwanted calls made to the victim in the early hours of the morning as inappropriate. The Panel based their decision on the pattern of behaviour of the offender, the timing and sexual content of the calls, the lack of protection offered to the victim and the lack of intervention to prevent future behaviour. The Panel also expressed concern at the timeliness of the investigation, taking a month from the point of report to the charter application to access the mobile phone evidence required.

070/18

The Panel considered use of a Simple Caution as too lenient in a case involving the offender turning up unwanted at the victim’s evening engagements and blocking her in the car park. The Panel considered the balance between policy, which suggested that the case should have been charged, and practical, which took into account the fact that events occurred in the immediate aftermath of a break-up, making it difficult to establish a pattern of behaviour. The Panel acknowledged the serious nature of the incident and noted a file reference to a previous domestic incident, expressing concern that whilst the victim was informed about Lighthouse, no referral was made in order to protect the victim. The Panel also questioned recording of the offence, noting that the caution refers to ‘amounts to a course of harassment’ rather than stalking.

071/18

The Panel was unable to reach a conclusion in a case involving the offender sending unwanted messages to the victim, the content of which made her fearful that the offender was watching her house. The Panel felt that the information on file was insufficient and contradictory, expressing the view that the allegation is not reflected in the messages regarding a dispute over childcare arrangements that appear on file and the offence does not appear to be made out. This does not concur with the officer enquiry log which is more serious than the contents of the evidence on file make out. The Panel felt that it was not clear from the file that the victim had articulated that the persistent messages were causing her harassment. It was noted that a Harassment Warning would have been a useful tool to make clear the unacceptable behaviour and lay the ground for an offence if required in the future. It was noted that harassment warnings are no longer available.

072/18

The Panel considered use of a breach of conditions of an injunction against harassment order as too lenient in a case in which the offender had driven to the victim’s home address and sounded his horn. The Panel felt that breach of the injunction should have gone to court. The Panel was not satisfied that the disposal would stop future behaviour, noting that the offender had ignored the warning and not fully admitted the offence. It was also noted that the offender was driving without a licence or insurance. It was not clear whether action had been taken in relation to these offences.

073/18

The Panel considered use of a breach of conditions of an injunction against harassment order too lenient in a case in which the offender had contacted the victim via social media, in breach of conditions of a restraining order. The Panel felt that the breach should have been dealt with at court. The Panel noted that it was positive to see a referral to Lighthouse for onward referral to the equivalent victim care service where the victim lived.

076/18

The Panel considered use of a Community Resolution inappropriate in a case nuisance calls made by a 10 year old child to another 10 year old child. The Panel felt that the outcome was disproportionate and words of advice would have been more appropriate given the age and impact on the offender, given that a Community Resolution must be disclosed on enhanced checks. The Panel noted that the letter of apology clearly demonstrated the remorse shown by the offender. The Panel questioned whether the incident constituted a police matter at all, and would be more appropriately dealt with at school to address the bullying aspect.

#### 078/18

The Panel considered use of a Community Resolution inappropriate in a case in which the victim had received unwanted, abusive phone calls from a group of young people. The Panel felt that evidence on file was not clear as to who had done what, and did not feel that the offence had been made out. The Panel also noted disparity in the outcomes in two linked cases which were dealt with by words of advice.

#### 080/18

The Panel considered use of a Community Resolution inappropriate in a case in which the victim received one short message (three words) from an unknown caller. The Panel felt that this did not amount to harassment and felt that the outcome was also disproportionate, particularly given the age of the offender and the impact of the outcome. The Panel felt that words of advice would be more appropriate.

#### 082/18

The Panel considered use of a Simple Caution inappropriate in a case in which the victim's ex-partner had repeatedly and unwantedly left flowers on her doorstep and brought chocolates into her workplace. The Panel acknowledged that the victim no longer wished to pursue the case and that their wishes had been taken into account, however the Panel expressed concern at the offender's pattern of behaviour. The Panel noted good practice in the Inspector's supervisory notes to guide the investigation which were felt to be very strong and comprehensive, however there was an inaccuracy stating that there were no previous convictions whereas in fact the offender did have a history of similar offending behaviour. As such, the Panel felt that the outcome was too lenient.

#### 084/18

The Panel considered use of a Conditional Caution inappropriate in a case in which the offender had attended the victims' place of work, and sent unwanted gifts and flowers over a period of time following a brief relationship. The Panel welcomed the fact that a referral to Lighthouse had been made. The Panel expressed concern that no end date had been set for conditions, presenting enforcement issues. If the victim did require indefinite protection, this should be sought from the court by way of injunction. The Panel noted that the victim statement slips into the third person on a number of occasions, indicating that she did not write it herself, and presenting the risk that it would not stand up in court. The Panel acknowledged that whilst the victim appeared to be satisfied with the outcome, issues around the conditions set led the Panel to conclude that the outcome was inappropriate.

#### 085/18

The Panel considered use of a Community Resolution inappropriate in a case involving an ongoing neighbour dispute including threats to kill. The Panel felt that the disposal was too lenient in view of the nature of the threats made, and questioned whether the incident should also have been considered as a hate crime given the physical disabilities of the victim and ongoing abuse by the neighbours.

### 086/18

The Panel considered use of a Simple Caution inappropriate in a case in which the offender has sent threats via social media following a disagreement over the sale of an item online. The Panel noted the severity, frequency, duration and impact on the victim's personal and professional life, however expressed concern at the extent to which the case had been driven by the complainant as opposed to the police, and as such did not appear to follow what would be considered reasonable lines of enquiry. Concern was also expressed at the format of the statement on file and the inappropriate use of the term 'barrister' when not acting in a professional capacity. The Panel queried whether the offender had admitted the offence.

### 089/18

The Panel considered use of a Simple Caution inappropriate in a case in which the victim had received unwanted text messages and emails from her ex-partner, including threats that he would kill himself. The Panel felt that given the continuous and serious nature of the messages, the outcome was too lenient. The Panel noted an inaccuracy in the crime record in relation to the case.

In addition, the following observations were made:

#### Good Practice:

Good practice examples were identified including:

- Appropriate referral to victim services including onward referral of a victim to equivalent victim care services outside the Force area;
- In one case, the Panel praised the strong set of victim care and safety measures noted on file to protect a victim from ongoing harassment by a group of young people. In the same case, the Panel noted the excellent victim care evidenced on file, with frequent updates and checks on the victim's wellbeing, and language used throughout the file that is appropriate in view of the victims' needs. The victim had written a letter of thanks to the police which was held on file;
- Examples of files containing clear rationale for decision making and strong supervisory notes on file from an Inspector to guide the investigation;
- Examples of cases that had been taken very seriously both by the police and by third parties, for example employers;

#### Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- To improve the quality of conditions, take care in the wording and ensure that end dates are set so that a) conditions are enforceable and b) do not in effect create an indefinite restraining order, which must be a judicial decision and therefore must be considered at court;
- The need to ensure oversight of letters of apology to ensure that content is appropriate before it is sent to the victim and satisfactory in meeting conditions set;
- To develop training and guidance to improve the understanding and identification of stalking and harassment to improve accuracy in crime recording;
- To ensure that all documentation is on file – in one case, the letter of apology was not included on file. As such, the Panel could not be confident that the outcome was likely to achieve its desired outcome;
- In one case involving verbal abuse by a group of young people, the Panel felt that whilst the outcome appeared to be appropriate, the file did not include sufficient information to be clear on the offence made out. It was noted that ongoing verbal abuse could range from low level comments to something that may amount to a s4 Public Order offence;
- In a number of cases considered, the Panel questioned whether police involvement was appropriate. These included cases involving young children which may be more appropriately dealt with in a school setting, and a case involving a boundary dispute. In the latter case, the

Panel acknowledged that the officer's rationale made clear that the outcome was considered to be the most appropriate in a difficult set of circumstances, and questioned whether the outcome would have been any different had the case gone to court;

- In a case involving offensive letters sent by the offender to people she believed to be of interest to her ex-partner, the Panel would have liked to have seen a referral to mental health services. In the same case, the Panel expressed concern that multiple victims were being treated 'as one' within one case;
- In a case involving a dispute between two families over custody of a child, the Panel noted the difficulty in identifying and balancing the 'victim' and 'offender', appearing here to be a case of whoever calls the police first is treated as the 'victim'.

**Next Meeting: Dates for 2019 to be confirmed**

The theme of the next meeting was agreed as knife crime / bladed article (youth cases) and hate crime (adult cases).