

## Avon and Somerset Police and Crime Commissioner

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

Wednesday 14 March 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 seventeenth meeting: 14 March 2018

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Eric Evans (Magistrate), Paul Ashby (YOT), Gemma Knee (CPS), Frances Keel (Victim Support), Chief Inspector Mark Runacres (Avon and Somerset Constabulary), Helen Jeal (Avon and Somerset Constabulary), Joanna Coulon (Office of the Avon and Somerset Police and Crime Commissioner)

Apologies: Carla Cooper (YOT), Nainesh Pandit (SARI), Lynne Paraskeva (Magistrate), Justine Leyland (YOT), James Legrys (CPS)

The Chair welcomed the following observers to the meeting:

- Detective Inspector Angela Burtonwood, Avon and Somerset Constabulary
- Sergeant Elaine Costanza, Avon and Somerset Constabulary

### Panel Business

- Mike Evans was reappointed as Chair and David Godfrey as Deputy Chair of the Panel. JC extended thanks on behalf of the Police and Crime Commissioner to Mike and David for their continued service in the role of Chair and Deputy Chair and their invaluable contribution since the inception of the Panel.
- Eric Evans advised that he would be stepping down from the Panel, pending retirement from the Bench. The Panel thanked Eric for his invaluable contribution.
- JC provided an update on membership arrangements and advised that a recruitment process would be carried out to appoint a new Independent Member to the Panel.
- The Panel considered and approved changes to the Terms of Reference, amended to take account of developments and planned changes in the coming year.

### 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.
- It was noted that there are significant opportunities to build learning from the panel into current work to develop the new two-tier framework for out of court disposals, especially informing key messages for training and communications.

### 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. Findings and recommendations from the Panel are being built into proposals, in particular informing key messages for training and communications. Dispensation has been sought from the Director of Public Prosecutions for use of Conditional Cautions for Hate Crime and Domestic Abuse, subject to compliance with a set of pre-conditions including assurance that interventions are suitable and appropriate. Scoping work is ongoing, supported by the OPCC, to commission interventions with respect to Hate Crime and Domestic Abuse. There will be a key role for the OoCD Scrutiny Panel in providing assurance in line with conditions for dispensation for the new approach.
- Role profiles have been completed in relation to the new 'navigator' role (to be called 'ASCEND' workers), to support offenders and deliver interventions.

### **Scrutiny of Case files**

#### Rationale and file selection

A total of 53 files were made available for scrutiny, selected as follows:

- 41 cases on the theme of violence against the person (alternating male / female offences);
- 8 cases carried over from the last meeting; and
- 4 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 the meeting was cases involving violence against the person, comparing outcomes for males and females. The issue of considering gender alongside violence against the person was identified as an emerging national theme during the YOT/OoCD inspection in 2017.

#### Panel findings

Of the 53 cases available, 21 were scrutinised. Of the cases reviewed, 12 were considered appropriate, 5 appropriate with observations, and 4 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
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001/18	Community Resolution	Sexual Offence	Appropriate
002/18	Community Resolution	Sexual Assault	Appropriate with observations
003/18	Community Resolution	Violence Against the Person – Assault	Inappropriate*
004/18	Community Resolution	Violence Against the Person – Assault	Appropriate
005/18	Simple Caution	Assault (Male)	Appropriate
006/18	Simple Caution	Assault (Female)	Appropriate
007/18	Conditional Caution	Assault on a Police Officer (Female)	Appropriate
008/18	Conditional Caution	Assault on a Police Officer (Male)	Inappropriate*
009/18	Simple Caution	Assault (Male)	Appropriate with Observations
010/18	Simple Caution	Assault (Female)	Appropriate with Observations
011/181	Youth Conditional Caution	Assault (Male)	Appropriate
012/18	Youth Conditional Caution	Assault (Female)	Appropriate with Observations
013/18	Community Resolution	Assault (Male)	Appropriate
014/18	Community Resolution	Assault (Female)	Appropriate with Observations
015/18	Youth Caution	Harassment (Female)	Appropriate
016/18	Youth Conditional Caution	Harassment (Male)	Appropriate
017/18	Simple Caution	Child Neglect (Female)	Appropriate
018/18	Simple Caution	Harassment (Male)	Appropriate
019/18	Simple Caution	Assault – failure to keep dog under control (Female)	Inappropriate*
020/18	Community Resolution	‘Other Offences’ – failure to keep dog under control (Male)	Inappropriate*
021/18	Conditional Caution	Assault (Male)	Appropriate

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

### 003/18

The Panel considered use of a Community Resolution inappropriate in a case in which the victim had been repeatedly kicked to the head, and had fallen unconscious. The Panel identified aggravating features, with the incident taking place at night, in a group and involving a weapon (in the form of a shod foot). The attack followed a sustained period of bullying over the course of a year. The Panel considered injuries to be consistent with Grievous Bodily Harm, however acknowledged that it was not clear whether the loss of consciousness had been caused by alcohol consumption or by the injuries inflicted. The Panel felt that the letter of apology did not show remorse and did not give confidence that the condition to ‘stay away from the offender including on social media’ would be adhered to. The Panel felt that the disposal was too lenient, and felt that the offender should have been arrested and interviewed, however acknowledged that a charge would be unlikely given the conflicting accounts from witnesses.

### 008/18

The Panel considered use of a Conditional Caution too lenient in an assault on a police officer attending a disturbance outside a nightclub, in which both PAVA and Taser were deployed. The offender had taken cocaine and consumed a significant quantity of whisky. The Panel questioned whether the conditions, to write a letter of apology and attend a Victim Awareness Course, would be sufficient to address the root cause of the behaviour. It was noted that development of the ‘ASCEND worker’ approach will in future help to address behaviour in a more holistic way, including

appropriate referral to services. The Panel felt that a charge should have been brought, noting a starting point of 12 weeks in custody had the case gone to court. The need to safeguard the police workforce and send a strong message that to assault on those working in public service is unacceptable was highlighted by the Panel.

#### 019/18

The Panel considered use of a Simple Caution inappropriate in a case in which a runner had been bitten by a dog which was not on a lead. The Panel queried the offence which appeared to be based on a civil complaint under section 2 of the Dogs Act 1871 ('dog not under proper control') and as such out of scope for a criminal outcome. The Panel noted that files made reference to multiple reports and questioned whether action had been taken by the Local Authority dog warden. The Panel felt that the Simple Caution outcome did not appear to have made a positive impact, and noted that had the case gone to court as a civil matter, an order could have been made (for example requiring the dog to be muzzled). The Panel requested that the case be referred to the Force Crime and Incident Registrar for review.

#### 020/18

The Panel considered use of a Community Resolution inappropriate in a case in which the victim was bitten by a dog whilst walking on a public right of way. The Panel noted that this was the third incident involving the same dog, and that the current incident constituted a breach of a previous condition to muzzle the dog. The Panel discussed the issue of liability given that the person in charge of the dog at the time of the incident was not the owner, concluding that the owner was liable in so far as the dog had not been placed under appropriate supervision. Whilst it was acknowledged that the Community Resolution form included a clear set of conditions with a view to prevent future occurrences, it was noted that a Community Resolution itself is not enforceable and in view of the breach of previous condition and the level of injury involving puncture to the skin, it was felt that the outcome was too lenient.

#### Good Practice:

Good practice examples were identified including:

- The Panel identified examples of appropriate referrals to with regard to safeguarding concerns, and to support agencies, for example the Young Victims Service.
- The Panel highlighted examples of good practice in one case showing a clear rationale and gravity matrix to clearly evidence decision making.
- The Panel identified examples of clearly set out and effective conditions in a number of Conditional Caution forms.
- In an assault case in which a Youth Conditional Caution had been issued, the Panel identified positive diversion and support to help to change future behaviour.
- In a case in which a Simple Caution had been issued for child neglect, the Panel highlighted good practice in the quality of the file, clearly tracking progress through multi-agency intervention and evidencing positive outcomes as a result of interventions made.
- In a case involving an assault following an altercation in a nightclub between two rival student sports teams, the Panel noted the proactive attempts by police to engage with the Universities to address the issue of alcohol-induced behaviour by university sports teams. In the same case, the file included the following message of thanks from the victim: *'Thank you very much for your help throughout the entire process and I have been extremely impressed by the professionalism and speed with which yourself and the police force have acted.'*

#### Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- In a case involving ‘sexting’, the Panel queried whether appropriate safeguarding referrals had been made, and whether any intervention had been made by the school.
- The Panel identified examples where the wording of conditions lacked clarity, making the outcome less effective and giving rise to issues around enforceability. In one case involving a vulnerable young person, the Panel highlighted the need for one clear condition to be made in order to place clear expectations and for the avoidance of doubt.
- In the same case involving a vulnerable young person, in view of multiple reports of similar behaviour, the Panel queried whether action had been taken by the care home to build appropriate interventions into the young person’s care plan.
- In one case, the Panel queried the stated offence of ‘common assault’, on the basis that it did not acknowledge the sexual aspect of the offence. It was noted that the case had appeared in the file search for sexual offences, indicating a disparity in recording.
- In two cases involving an assault within schools, the Panel queried whether police involvement was appropriate, and considered that the school would have been best placed to deal with the incident. The influence of a parent was noted in one case.
- The Panel queried authorisation by a Sergeant in a Simple Caution. It was clarified that Sergeant authorisation is in line with national guidance, with local policy for Inspector-level authorisation over and above the national requirement. Current work to move to a two-tier framework for out of court disposals in Avon and Somerset will include a change in authorisation to Sergeant level, in line with national guidance.
- In a case involving an assault in a pub, the Panel noted the significant time taken to secure CCTV footage from the pub. The Panel queried whether there is potential to set licensing conditions to support or require disclosure of evidence. The risk of potential loss of evidence was highlighted.
- In one case involving a disturbance between estranged family members outside a school, the Panel would have liked to see a witness account to verify potential counter-allegations. The Panel expressed concern at the potential for a disproportionate impact on the family member who had been issued with a Caution and as such risked losing their employment. It was felt that No Further Action may have been a more appropriate action, and queried whether the incident required police intervention. However, the fact that the incident had taken place outside, and the presence of children, was acknowledged.
- The Panel queried the condition in one case in which a police officer was awarded financial compensation. It was clarified that this approach is in line with Force policy under the ‘Seven Point Plan’, intended to promote safety and wellbeing of officers and staff at work and on duty. In the same case, it was noted that the file did not state whether the condition had been fulfilled.
- In one case involving a drunken altercation, the Panel highlighted discrepancies in the Inspector’s rationale, with references to ‘previous good character’ and commentary with regard to the injury that were not consistent with records of previous convictions and medical evidence on file.
- The Panel expressed concern in one case that the racial element of an aggravated assault between estranged family members appeared to have been glossed over. The Panel sought clarification over whether cases involving a racially aggravated element required referral to the CPS for a caution decision. It was clarified that referral would be regarded as good practice and not as a requirement. It was acknowledged that had the case gone to court, the racial element was unlikely to have been proven beyond reasonable doubt, with acquittal a likely outcome. The case was identified as a further example a situation involving family breakdown in which the Panel questioned whether the police should have been involved.
- In a Youth Conditional Caution case, the Panel noted that no appropriate adult had been named on the form. It was acknowledged that this is likely to be due to an electronic signature not appearing on the Niche system.

- In a case in which a Youth Conditional Caution had been issued for an assault, the Panel noted that the YOT form was not complete and observed that the file did not contain enough information to get a complete picture of the young person in order to put in place appropriate interventions.
- In a case involving an assault on hospital staff by a young person under the influence of drugs and alcohol, the Panel queried whether appropriate referrals had been made to access support in relation to substance misuse. It was acknowledged that a referral may have been made by the hospital.
- In a case involving abusive phone calls from a withheld number, some Panel members felt that the outcome of a Youth Conditional Caution did not provide restitution for the victim and that had the case gone to court, a Victim Impact Statement may have been read out to demonstrate the impact on the victim. It was noted that the file made reference to the YOT Panel decision and plan for intervention, however this did not appear on file. It was clarified that through the YOT Panel process, the young person would have access to twice as many intervention sessions than had the case gone to court and a referral order made.

**Next Meeting: 6 June 2018**

The theme for the next meeting was agreed as 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.