

Avon and Somerset Police and Crime Commissioner

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

Wednesday 12 September 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 nineteenth meeting: 12 September 2018

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Giles Brown (Magistrate), Lynne Paraskeva (Magistrate), Paul Ashby (YOT), James LeGrys (CPS), Lauren Jones (Avon and Somerset Constabulary), Joanna Coulon (Office of the Avon and Somerset Police and Crime Commissioner)

Apologies: Carla Cooper (YOT), Justine Leyland (YOT), Frances Keel (Victim Support), Nainesh Pandit (SARI), Chief Inspector Mark Runacres (Avon and Somerset Constabulary)

The Chair welcomed the following observers to the meeting:

- Rebecca Harris (ASCJB Business Manager)
- Louise Meacham (OPCC)

Panel Business

- In advance of changes to HQ site access arrangements, Panel Members will be asked to supply vehicle details.

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.
- The Panel welcomed feedback from YOTs in relation to youth cases and thanked Paul Ashby for his assistance in coordinating responses.

Policy and Performance Overview

- The Panel received an update on work to prepare for the introduction of the new two tier framework for Out of Court Disposals in October 2018.
- Training is ongoing, utilising planned training for Supervisors. Training for Custody / Detainee Investigation Teams will be delivered as part of the custody cycle training. A distance learning package has also been developed. Work continues to finalise guidance, and a 'decision making app' has been developed to support officers in decision making. **ACTION: JC to arrange a demonstration of the decision app for the next meeting.** Panel Members queried what arrangements had been made to brief Magistrates on the new arrangements. It was confirmed that Professional Users Training Events were planned, however additional briefing materials would be welcome. **ACTION: JC to raise with the Project Team.**
- A Champions Network has been established, with some 50 volunteers. Champions will support training and communications including delivering briefings and supporting peers. David Godfrey attended the launch event on 17 September and gave positive feedback on the event which had been valuable and well-received. Training scenarios were explored to test decision making and options available under the new two tier system. David gave input on the role of the Panel and had received requests from officers to observe future meetings.
- Recruitment of the new ASCEND workers has completed and vetting is underway. Work is ongoing with Legal Services with regard to delegated powers to sign off Conditional Cautions. It is proposed that Custody Sergeants will carry out this role if ASCEND workers cannot.
- Work continues to satisfy pre-conditions for dispensation by the Director of Public Prosecutions for the use of Conditional Cautions in relation to Domestic Abuse and Hate Crime, with the aim to secure dispensation before the DPP leaves her post in the Autumn. An application has been submitted in relation to Domestic Abuse, based on the existing intervention model in place (Project CARA). Work is ongoing (led by West Midlands) to develop proposals for the new Hate Crime intervention. There will be a key role for the Scrutiny Panel in providing assurance for the new arrangements, which is included among the pre-conditions for dispensation.
- Work is ongoing to put in place a system to collect financial compensation awarded through Conditional Cautions to avoid a scenario whereby victims are required to share banking details with offenders.
- Following feedback at the last meeting regarding concerns following the removal of Cannabis Street Warnings, process mapping has taken place to clarify how this will work under the new system, including where the Drugs Education Programme fits in.
- LJ presented a performance update:
 - The Force Overview showed a slight drop in charges and corresponding slight increase in use of Out of Court Disposals.
 - The 24 month tracker showed a significant dip towards the end of the time period, however it was noted that this was due to cases not being finalised as opposed to a significant drop in use of OoCD.

- In relation to scrutiny of cases resolved by Conditional Caution, a breakdown of offences was shown. The most common offences involved violence against the person, arson and criminal damage.
- In relation to scrutiny of cases involving sexual offences where both the victim and perpetrator are young people, it was noted that the majority are disposed as 'not in the public interest to prosecute'. 1% are dealt with by disposal.
- Panel Members queried how disposal volumes compared with previous years, and whether there is a general decrease in disposals. The perception from the CPS perspective is that caseloads are decreasing, which may be in line with an increase in use of 'released under investigation'. **ACTION: JC to follow up with performance lead.**

Scrutiny of Case files

Rationale and file selection

A total of 35 files were made available for scrutiny, selected as follows:

- 10 cases on the theme of sexual offences where both the victim and perpetrator are young people, including 'sexting' and malicious communications;
- 20 cases disposed by Conditional Caution;
- 5 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 is sexual offences where both the victim and perpetrator are young people, to include consideration of 'sexting' and malicious communications offences. The Panel selected the theme as a follow up to scrutiny of malicious communications cases to identify whether progress has been made in the response to this relatively new crime type, and looking at young people in particular given the balance between police involvement and a focus on education/awareness in order not to criminalise young people and change future behaviour. The theme of cases disposed by Conditional Cautions was selected to follow up on previous scrutiny work that identified issues in relation to incomplete forms and conditions that are unenforceable.

Panel findings

Of the 35 cases available, 24 were scrutinised. Of the cases reviewed, 4 were considered appropriate, 13 appropriate with observations, and 7 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
042/18	Community Resolution	Sexual Assault on a female	Appropriate with observations
043/18	Community Resolution	Sexual Assault on a female	Appropriate with observations
044/18	Community Resolution	Causing or inciting a child under 16 to engage in sexual activity	Appropriate with observations
045/18	Community Resolution	Sexual Assault on a female	Appropriate with observations
046/18	Community Resolution	Sexual Assault on a female	Appropriate with observations
047/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Appropriate with observations
048/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Inappropriate*
049/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Inappropriate*
050/18	Community Resolution	Take or make indecent photograph or	Inappropriate*

		pseudo-photograph of children	
051/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Appropriate with observations
052/18	Community Resolution	Disclose private sexual photographs and films with intent to cause distress	Appropriate with observations
053/18	Youth Conditional Caution	Take or make indecent photograph or pseudo-photograph of children	Appropriate with observations
054/18	Youth Restorative Disposal	Take or make indecent photograph or pseudo-photograph of children	Appropriate with observations
055/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Appropriate with observations
056/18	Community Resolution	Take or make indecent photograph or pseudo-photograph of children	Inappropriate*
057/18	Conditional Caution	Assault on a Constable	Appropriate
058/18	Conditional Caution	Having an article with a blade or point in a public place	Inappropriate*
059/18	Conditional Caution	Supplying or offering to supply a controlled drug – Cannabis	Inappropriate*
060/18	Conditional Caution	Assault on a Constable	Appropriate
061/18	Conditional Caution	Theft from shops and stalls	Appropriate
062/18	Conditional Caution	Harassment	Appropriate with observations
063/18	Conditional Caution	Theft by an employee	Inappropriate*
064/18	Conditional Caution	Assault occasioning actual bodily harm	Appropriate with observations
065/18	Conditional Caution	Soliciting another for the purpose of obtaining their sexual services as a prostitute in a street or public place	Appropriate

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

048/18

The Panel considered use of a Community Resolution in a case involving taking or making of indecent photographs inappropriate on the basis that the image in question did not constitute an 'indecent' image, and as such the Panel was not convinced that the offence had been made out. It was acknowledged however that what constitutes 'indecent' is a matter for a jury. The Panel also noted the circumstances, in which the photograph had been taken with the knowledge and consent of the victims for the purpose of sharing as part of a campaign. In relation to the photograph being maliciously shared on social media, the Panel felt that whilst the letter of apology included information acknowledging the consequences of the actions, it was impersonal and did not appear to have been written in the offender's own words. The Panel welcomed the efforts of officers in engaging with the school and the strong focus on education and awareness with regard to the consequences.

049/18

The Panel considered use of a Community Resolution in a case involving taking or making of indecent images inappropriate on the basis that a rape allegation had been made in relation to the same incident, with an investigation ongoing. The Panel felt that it was inappropriate to split an explicitly linked incident and that the two aspects should have been dealt with under the same investigation. In addition, the Panel expressed concern that the Community Resolution included arranging a meeting for the perpetrator to apologise to the victim, which was considered inappropriate in light of the ongoing rape investigation. Appropriate referral to Lighthouse and the Independent Sexual Violence Advisor service had been made.

050/18

The Panel considered use of a Community Resolution in a case in which an indecent image had been shared via social media inappropriate on the basis that it was not clear whether from the description of the image whether the offence was made out. It was acknowledged that there is no legal definition of what constitutes an indecent image, and that it is a matter for the jury based on an objective test of 'recognised standards of propriety' in relation to the image itself. Consideration of circumstances and conduct are not relevant. It appeared that it was consideration of circumstances and conduct, with the individual in the image looking away giving the impression that the photograph may have been taken covertly, and the fact that it had been shared without permission, that had guided decision making in the case. The Panel also noted the poor quality of conditions and outcomes applied in the Community Resolution.

056/18

The Panel considered use of a Community Resolution inappropriate in a case involving distribution of a video containing sexual activity that had been circulated around several schools in the area. The victim indicated that she had been coerced into making the video. The offender had been required to attend the police station for words of advice and to be taken through a presentation on 'sexting'. Whilst it was acknowledged that the outcome included an educational element, the Panel felt that the outcome appeared to be very lenient, highlighting the inconsistency of approach in dealing with offences of this nature particularly those involving young people. The Panel felt that the quality of file was poor, and noted that whilst the outcome had been recorded as Community Resolution, the relevant form was not included on file, and as such it appeared that the outcome was No Further Action.

058/18

The Panel considered use of a Conditional Caution in a case involving possession of a bladed article to be inappropriate on the basis that either it should have been charged, in order to test in cross-examination the changed account for how the offender had come to be in possession of the knife, or if the changed account was seen to hold up, the case should have had No Further Action. The Panel felt that the Conditional Caution outcome appeared to be an 'unhappy compromise'. The Panel also queried whether the fact the offender is female had made a difference in considering use of a Conditional Caution as opposed to a charge.

059/18

The Panel considered use of a Conditional Caution inappropriate in a case involving an offender found to be in possession of cannabis when stop searched after being observed street-dealing, and admitting to street-dealing on a daily basis on the basis that it is too lenient. Panel Members consulted sentencing guidelines for offences of this nature with a starting point of 4 years custody for a leading role and 1 year custody where the offender has a significant role. On this basis, the Panel considered that a charge would have been more appropriate.

063/18

The Panel considered use of a Conditional Caution inappropriate in a case involving theft of tools by an employee in order to fund a drugs and gambling addiction on the basis that the outcome involving financial compensation may have exacerbated and increased the risk of future offending. The Panel considered references on file to the potential for the case to be pursued as a civil issue to be a generous interpretation of the law, and given the breach of trust, high value and sentencing guidelines, the criminal threshold had been crossed. The Panel were disappointed that conditions did not include rehabilitative elements to address the addictions of the offender and seek to change future behaviour.

Good Practice:

Good practice examples were identified including:

- Strong emphasis on education and raising awareness of the consequences of actions – including efforts of officers to engage with schools in relation to ‘sexting’. This included school visits, input from PCSOs during PHSE as well as 1-1 sessions.
- The Panel recognised a number of examples of clear rationale for decision making, including one particularly strong example of a clear and thoughtful rationale by a supervising inspector.
- In another case, the Panel again highlighted a clearly set out rationale and described the recording and case file as ‘exemplary’.
- The Panel identified good practice in a file which included a clear ‘plan of action’ set out on file to outline the next steps in investigating and dealing with the offence, proposed timescales and progress in completing tasks. Supervisor review and rationale in the same case was considered to be very comprehensive.
- In a number of cases, the Panel welcomed appropriate referrals to support services including Lighthouse Victim care, and the Young Victims Service.
- The Panel highlighted references in one case to the role of the National Crime Agency and Child Exploitation and Online Protection agency and how social media account issues are investigated overseas. The file detailed efforts to investigate the identity and track down an Instagram account holder in relation to the case.
- In a case involving a Conditional Caution for assault of a police officer, the Panel welcomed the fact that the offender had been charged following breach of conditions.
- The Panel highlighted good practice in use of body worn video (BWV) footage for evidence purposes in a case involving a Conditional Caution for assault occasioning actual bodily harm. The file included clear descriptions of BWV clips to assist in navigating evidence.

Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- The Panel made an overarching observation at the inconsistency of approach in dealing with offences of this nature, pointing to the need for clear guidance for officers to guide decision making. The Panel identified inconsistencies including two linked cases which appear to use the same outcome, but a different process, and comparing two cases in which a Youth Conditional Caution had been given in one case whereas a Community Resolution had been given for the previous case reviewed which appeared to be more serious.
- The Panel suggested that consideration is made for a change in policy to require that police refer cases involving indecent images to Youth Panel, even if for a limited period of time, in order to bring consistency of approach.
- Whilst the Panel welcomed the strong emphasis on education and awareness raising in schools, the Panel noted caution that school intervention alone may be too ‘light touch’ and that a balance must be struck in appropriate involvement of the school, youth offending team and police as appropriate. In view of the increasing prevalence of this offence type and the potential lifelong impact of images being out in the public domain, the Panel felt that there is a need to review and bring consistency to the approach taken in cases of this nature.
- In one case involving the offender facing charges in other force areas, the sequencing of events was unclear in order to inform decision making.
- The Panel queried whether provision had been made for financial compensation to cover a lost taxi fare, which did not appear on the Community Resolution form. It was clarified that the Officer Enquiry Log stated that the fare had now been paid.

- The Panel noted difficulties in assessing potential mental health and alcohol misuse issues in one case, that had led to decision making by the officer in the case. It was acknowledged that potential mitigating factors are harder to assess in reviewing case files, without having seen or spoken to the offender.
- In one case in which the offender had been given Words of Advice, the Panel observed that whilst this appeared to be a pragmatic resolution, the outcomes listed were not felt to be effective (for example, the requirement for 'no atmosphere at work').
- In one case, the Panel expressed concern that a safeguarding referral had been delayed by three shifts due to operational constraints.
- The Panel requested further information on interventions for offenders including the Choices and Consequences workshop in order to understand whether referral and participation in this course is sufficiently targeted, or whether there is a need for a specific course in relation to 'sexting' and similar offences.
- In one case, referral to Youth Panel would have been preferable to get a clear picture of the offender and identify appropriate interventions. The outcome itself appeared to be appropriate.
- In a case involving sharing of an indecent image and video, the Panel felt that further investigation was required in order to explore serious aggravating features including the blackmailing aspect, assessment of risk posed by the offender and analysis of the offender's phone to identify other potential victims.
- In the same case, it was noted that Victim Statements both incorrectly state that the victim was 'over 18', which is significant given the nature of the case. It was also noted that no dates are given on the Community Resolution form.
- In one case, the Panel noted the statement 'appears to be no CSE', however it was not clear from the file how this assessment had been made.
- The Panel expressed concern at the wording in one Community Resolution requiring words of advice to 'make her aware of her actions' – it was felt that the focus needs to be on the consequences of the actions.
- As detailed in cases considered as inappropriate above, in a number of the cases, the Panel debated the extent to which an offence had been made out with respect to circulation of images considered to be 'indecent'.
- In a case in which a Community Resolution had been given for an offence involving topless photographs being circulated without the victim's consent, the Panel felt that the requirement for an apology was insufficient and would like to have seen an intervention.
- In the same case, the Panel noted a reference on the Officer Enquiry Log to Home Office guidance stating that sexting offences should not be prosecuted except where malicious in intent, which appears at odds with the legal position discussed earlier in the meeting in which it was stated that consideration of circumstances and conduct are not relevant.
- The Panel noted concern expressed by a teacher on file in one case involving a victim sharing images despite being given advice on the risks and consequences previously.
- The Panel identified examples of poor quality files, and examples of inappropriate wording used in some files.
- The Panel recommended that the age of the victim and offender could be included in brackets throughout the file to assist in decision making and identifying an appropriate outcome.
- In a case in which the Panel welcomed the fact that the offender had been charged for breach of a Conditional Caution, however noted that the outcome at court was less than the outcome had the offender complied with the conditions set.
- In a case in which a condition had been set to pay in full for goods stolen, the Panel felt that the condition was not sufficient to account for the fact that a crime had been committed, and would have preferred for the condition to require that stolen goods were returned.
- In one case involving a Conditional Caution in a harassment case, the Panel expressed concern that the Conditional Caution did not set time limits and as such presented compliance issues. It

was also highlighted that the lack of time limits had the effect of imposing an indefinite restraining order, which is potentially unlawful.

- In a case involving a Conditional Caution for assault occasioning actual bodily harm, the Panel questioned whether it was sufficiently clear that the offender was responsible for offence given potential links to another altercation and aspects of joint enterprise. The Panel was assured insofar as the offender had advice from a solicitor in custody and that the solicitor had viewed body worn video footage in relation to the case.
- In a case involving a Conditional Caution for soliciting, the Panel recognised the strong and targeted intervention given, however queried whether the offender had admitted the offence.

Next Meeting: 5 December 2018

The theme of the next meeting was agreed as stalking and harassment cases and scrutinising whether the appropriate crime has been recorded and approach taken in each case.