

## Avon and Somerset Constabulary Response

Thank you for your report of the Avon and Somerset Out of Court Disposal (OOC) Scrutiny Panel of Wednesday 12<sup>th</sup> September 2018. We welcome the opportunity to respond to the report. The findings of the panel were fed back into our next OOC Steering Group when they met in January and as always are useful in helping to shape our policies and procedures. Feedback will also be passed on to individual officers where appropriate and general themes will be passed on to all supervisors in briefings sent around.

### Scrutiny of Case Files

Thirty five new case files were made available to the Panel for review including 5 CRs for serious violence or serious sexual offences. The Panel reviewed a total of 24 cases at this meeting. The theme for this panel was sexual offences where both the victim and the perpetrator are young people, including 'sexting' and malicious communications. For adults conditional cautions were scrutinised. Following review 4 cases were considered to be appropriate, 13 appropriate with observations and 7 were considered inappropriate.

### Inappropriate Cases

The first inappropriate case relates to a CR given for a case involving the taking or making of indecent photographs inappropriate on the basis that the image in question did not constitute an 'indecent' image and the Panel felt unconvinced that an offence had been made out. However, the difficulty around the legal definition was acknowledged and that what constitutes 'indecent' is a matter for a jury. The Panel also noted that the image had been taken with the victim's consent as part of a campaign and the victim knew that the image was to be shared albeit not as widely as the image was eventually shared. The Panel also felt that the letter of apology was impersonal and whilst acknowledging the consequences of the offender's actions did not appear to have been written in their own words. The Panel felt that officers had engaged well with the school and there was a strong focus on education and awareness but the school itself should have used the incident as a learning opportunity with regards to sharing on social media. The Panel's insights have been fed back to the investigating officers.

The second inappropriate case was in relation to the use of a Community Resolution in a case involving or making of indecent images inappropriate in the basis that a rape allegation had been made in relation to the same incident, with an investigation ongoing. The Panel felt that as the offence was linked to the incident of rape the two aspects should have been dealt with under the same investigation and the offence of indecent images should not have been disposed of before the rape investigation had been concluded. Also 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. Referrals had been made to Lighthouse and the Independent Sexual Violence Advisor service. Again, this has been fed back to the officers involved in making those decisions.

The third case that the Panel found to be inappropriate was the use of a Community Resolution in a case in which an indecent image had been shared via social media. Again the Panel felt that based on the description of the image it was not clear that the offence was made out. The Panel again 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 the circumstances in which the image is taken and conduct of the offender are not relevant. In this case the circumstances appeared to have been taken into account by the officers due to the covert nature of the picture and the fact that the image had been shared without consent. The Panel also felt that the conditions attached to the resolution were vague and the outcome dates applied were inappropriate. This has been fed back to the investigating officers.

The fourth case which was considered inappropriate was the use of a Community Resolution in a case involving the distribution of a video containing sexual activity which had been circulated around several schools in the area. The victim indicated that she had been coerced into making the video. Based on the images shared the Panel felt that the outcome applied was inappropriate. The offender was required to attend a police station for words of advice and a presentation on 'sexting'. Whilst the panel appreciated the educational element it was felt that the words of advice were too lenient considering the nature of the images shared. Overall the Panel felt that this was a poor investigation and that there is a lack of consistency when dealing with these offences. The Panel also considered that the quality of the file was poor and that while the outcome had been recorded as Community Resolution there was no form included on the file and as such it appeared that the outcome was No Further Action. These comments have been fed back to the investigating officers.

The fifth case which was considered inappropriate was the use of a Conditional Caution in a case involving possession of a bladed article. The Panel felt that the offence should have been charged in order to test in cross examination the changed account for how the offender came to be in possession of the knife, or if the changed account was seen to hold up, the case should have been filed as No Further Action. The Panel felt that the Conditional Caution was an 'unhappy compromise'. The Panel also queried whether the fact that the offender was female and there was a potential domestic violence element to the case had made a difference in considering use of a Conditional Caution as opposed to a charge. This was fed back to the investigating officers.

The sixth case which the Panel considered inappropriate was a case where a Conditional Caution had been applied to an offender who was found in possession of cannabis when stop-searched after being observed street dealing. The offender admitted to street dealing on a daily basis. The Panel felt that this offence should have been charged as the offender fully admitted to dealing on a regular basis. The Panel observed that sentencing guidelines for offences of this nature have a starting point of 4 years custody for a leading role and 1 year custody where the offender has a significant role. This has been fed back to the investigating officers.

The seventh case which was considered inappropriate was the use of a Conditional Caution for a case involving theft of tools by an employee in order to fund a drugs and gambling

addiction. The Panel felt 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 the conditions did not include rehabilitative elements to address the addictions of the offender and seek to change future behaviour. If the offence had been charged this could have helped with the drug and gambling issues. The Panel's comments have been fed back to the investigating officers.

### Good Practice

The Constabulary are always happy to hear about the good feedback from the Scrutiny Panel, and were pleased to note that the Panel praised the Constabulary's efforts in regards to Youth cases involving sexting offences that officers were correctly making referrals to Lighthouse and victim support for the young victims. The Panel also praised an investigation undertaken into a peer-on-peer child sexting offence, the Panel felt that the officer in the case had undertaken all reasonable lines of enquiry and recorded all the rationale correctly. The Panel also felt that the recording and case file was exemplary.

The Panel noted that in the Youth cases there was a strong emphasis on education and raising awareness of actions and that officers made the effort to engage with schools in relation to 'sexting'.

The Panel welcomed that in a case involving a Conditional Caution for assault of a police officer, the offender was charged following a breach of their conditions. The Panel also highlighted good practice in the use of body worn video (BWV) footage for evidential purposes. The file included clear descriptions of BWV clips to assist in navigating evidence.

### Recommendations and Observations

With regard to the theme of peer-on-peer child sexting offences the Constabulary recognises that there is an inconsistent approach by officers to these offences and that clear guidance is needed to aid officers in their decision making. Feedback has been provided to officers with regards to checking the guidelines on indecent images before proceeding with an investigation as it may be that it would be more appropriate for the school to take action. The CPS guidelines for indecent images have been circulated to the investigating officers. The Constabulary also notes the Panel's suggestion that a change in policy is considered to require officers to refer cases involving indecent images to Youth Panel, even if for a limited period of time, in order to bring consistency of approach.

In response to the Panel's comments about the quality of the conditions on the Conditional Cautions and concerns around time limits not being set, following the move to the two tier framework which went live on the 5<sup>th</sup> November, there are now six ASCEND workers based around the force. The ASCEND workers will be responsible for meeting with offenders and conducting a needs assessment in order to determine the best conditions for offenders. They will be able to use a range of intervention options to address behaviour. This means that conditions on cautions and community resolutions should now be more consistent and be set with reasonable timescales.

All the other points raised by the Panel refer specifically to youth cases and how they were dealt with in the Youth Panel setting so it is not appropriate for the Constabulary to respond directly to those observations.