

Avon and Somerset Police and Crime Commissioner

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

Wednesday 5 June 2019

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 twenty-second meeting: 5 June 2019

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Paul Ashby (YOT), Giles Brown (Magistrate), Lynne Paraskeva (Magistrate), James LeGrys (CPS), Niki Westerling (VOCAS – Adult Advocacy Support Service), Chief Inspector Guy Shimmons (Avon and Somerset Constabulary), Helen Jeal (Avon and Somerset Constabulary), Joanna Coulon (Office of the Avon and Somerset Police and Crime Commissioner).

The Panel welcomed Rachel Garstang (CPS) and Simon Eames (Constabulary) attending as observers, and Alex Raikes (SARI), invited to support scrutiny of hate crime cases.

Apologies: Justine Leyland (YOT), Carla Cooper (YOT), Frances Keel (Victim Support)

Panel Business

Policy and Performance Update:

- To mark National Volunteers Week, Panel Members were thanked for their invaluable contributions to the work of the Panel and its role in shaping and scrutinising the Constabulary approach to Out of Court Disposals.
- Concerns with regard to timeliness in youth cases were raised, citing one recent example of a case which was 14 months old, and frequent examples of cases taking 6 months to come to court. It was suggested that youth cases may be considered as a theme for a future meeting.
- HJ presented an overview of performance, using the Qlik App showing real-time performance information.
 - Use of Simple Cautions has dropped away as anticipated since the move to the new two-tier framework. Reviews are being carried out in all cases in which Simple Cautions have been used since to ensure that they are appropriate.
 - Discussions are ongoing to secure dispensation for the use of Conditional Cautions in cases involving hate crime.
 - Qlik data shows that Conditional Cautions have been used for hate crime (despite being currently against policy) with 4 in February, none in March, 1 in April and 1 in May – these cases will be scrutinised as part of today's meeting.
 - Qlik data indicates that bladed article cases are dealt with by both Youth Conditional Caution and Community Resolution.
 - Data in relation to ASCEND appointments was reviewed: average timeliness is 6.3 days after an incident (therefore within 1 week). 10% of appointments are missed. Appointments are based in custody sites in Keynsham, Patchway and Bridgwater. It was noted that arrangements have been made for appointments to take place in Yeovil, with 53 appointments to date.
 - 1,342 conditions have been set for 618 occurrences so far. The breakdown of condition type and intervention referrals was shown. 15% of cases have been prosecuted following breach.
 - The Panel welcomed the availability of real time performance information.

Panel report and response:

- The Chair thanked the Constabulary for their open and honest response to the report of the last meeting. The Chair thanked PA for coordinating responses to recommendations relating to Youth Offending Teams.

Scrutiny of Case files

Rationale and file selection

A total of 31 files were made available for scrutiny, selected as follows:

- 21 cases on the theme of cases involving hate crime;
- 10 bladed article / knife crime cases;
- There were no cases of Serious Sexual Offences and Serious Violence Against the Person dealt with Community Resolution (required under the Panel Terms of Reference).

Themes were selected to support ongoing work to secure dispensation from the Director of Public Prosecutions for the use of Conditional Cautions for hate crime cases, and local work to tackle serious violence under the Home Office Serious Violence Strategy respectively.

Panel findings

Of the 31 cases available, 23 were scrutinised. Of the cases reviewed, 4 were considered appropriate, 9 appropriate with observations, and 9 were considered inappropriate. The Panel did

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
024/19	Conditional Caution	Racially aggravated s4 public order	Inappropriate*
025/19	Conditional Caution	Racially aggravated threatening, abusive or insulting words	Inappropriate*
026/19	Simple Caution	Malicious Communications	Appropriate with observations
027/19	Simple Caution	Assault / Actual Bodily Harm	Inappropriate*
028/19	Simple Caution	Racially aggravated harassment, alarm or distress	Inappropriate*
029/19	Conditional Caution	Assault / Actual Bodily Harm	Inappropriate*
030/19	Community Resolution	Common Assault	Appropriate with observations
031/19	Community Resolution	Racially aggravated fear or provocation of violence	The Panel did not reach consensus*
032/19	Youth Caution	Possession of Offensive Weapon	Appropriate with observations
033/19	Youth Conditional Caution	Possession of a Bladed Article	Appropriate
034/19	Youth Caution	Possession of Prohibited Weapon	Appropriate with observations
035/19	Youth Conditional Caution	Possession of a Bladed Article	Appropriate with observations
036/19	Community Resolution	Carrying a Weapon	Appropriate
037/19	Community Resolution	Possession of firearm / imitation firearm	Inappropriate*
038/19	Community Resolution	Possession of a Bladed Article in School	Appropriate
039/19	Youth Conditional Caution	Threaten with a Bladed Article	Appropriate with observations
040/19	Youth Conditional Caution	Possession of a Bladed Article	Appropriate with observations
041/19	Community Resolution	Possession of a Bladed Article	Appropriate
042/19	Community Resolution	Racially aggravated common assault	Inappropriate*
043/19	Community Resolution	Racially aggravated intentional harassment, alarm or distress / Criminal Damage	Appropriate with observations
044/19	Community Resolution	Assault on a Police Officer	Inappropriate*
045/19	Conditional Caution (CARA)	Common Assault – Domestic Abuse	Appropriate with observations
046/19	Breach of Conditional Caution – discontinued at court	Common Assault	Inappropriate*

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

024/19

The Panel considered use of a Conditional Caution inappropriate in a case involving the offender being racially abusive to door staff while being ejected from a club because use of this outcome in hate crime cases is not allowed under policy. The Panel acknowledged that the content of the conditions set appeared appropriate, and the file included a positive letter of apology, however until dispensation for use of Conditional Cautions in cases involving hate crime has been granted, this outcome cannot be applied. The Panel discussed the value of specialist services to support victims in cases involving hate crime. The Panel expressed disappointment at the conflicting decision making

evident through the file, including references to 'persuading the CPS to change their minds'. It was noted that the police taken the decision to issue a Simple Caution from the outset.

025/19

The Panel considered use of a Conditional Caution inappropriate in a case involving the offender shouting racially abusive language at a group of Somali women because use of this outcome in hate crime cases is not allowed under policy. The Panel felt that the incident was too serious for use of an out of court disposal, noting that the offender showed no evidence of remorse. It was noted that the case had been recorded as harassment whereas a public order offence (racially aggravated s4A) would have been more appropriate. The Panel again discussed opportunities for referral to specialist hate crime support.

027/19

The Panel considered use of a Simple Caution inappropriate in a case of assault in which the offender punched the victim to the chest causing broken ribs on the basis that it was too lenient. It was noted that the case had originally been recorded as s18 Grievous Bodily Harm with intent. It was acknowledged that the victim initially did not wish to proceed, however subsequently changed their mind after the disposal had been finalised. The Panel queried the 'hate crime' element of the incident, and concluded that it was likely to be in reference to 'mate crime' arising from the alleged use of the offender's cash card by the victim that triggered the incident. The Panel queried whether this allegation of fraud had itself been investigated. Given the severity of the incident, the Panel felt that the case should have been dealt with at court.

028/19

The Panel considered use of a Simple Caution inappropriate in a case involving racial abuse by a resident of housing for vulnerable people of other residents on the basis that the wrong offence was recorded given that the incident had occurred in a private place. The Panel did not feel that use of a Simple Caution would be effective in addressing what appeared to be an ongoing issue, and would be unlikely to change future behaviour. This was of particular concern given that the incident had taken place in supported housing in which vulnerable people should be able to feel safe. The Panel discussed the need for guidance in relation to dealing with cases involving harassment.

029/19

The Panel considered use of a Conditional Caution inappropriate in a case involving a neighbour dispute in which the offender entered the victim's garden and punched her to the floor, causing a black eye. The Panel acknowledged that it was very difficult to navigate the case in order to establish what had happened. It was noted that the self-defence element did not appear to have been investigated, nor establishing the extent of injuries. The Panel was not convinced that the offence was made out and queried whether No Further Action would have been a more appropriate outcome. Again, the Panel could not identify why the case had been flagged as having a hate crime element.

031/19

The Panel was unable to reach a consensus in considering the use of a Community Resolution inappropriate in a case in which the victim (a doctor) was racially abused by his patient during a consultation in A&E. The location, nature of abuse and need to take a strong approach in protecting public workers were felt by some members of the Panel to indicate that the outcome was too lenient, particularly given the absence of an intervention to change future behaviour. However others felt that the outcome was appropriate, pragmatic and queried the benefit of pursuing the case at court. The Panel identified good practice in the officer's persistence in pursuing the doctor

to provide a witness statement in order to progress the case, going out of their way to attend hospital in order to make it more convenient for the victim.

037/19

The Panel considered use of a Community Resolution inappropriate in a case in which a group of young people were spotted wielding an imitation firearm in a public place, and when approached by security, stated that one of the group had a gun in their bag. Body worn footage was viewed, in which the Panel observed firearms officers being deployed to deal with the incident, which clearly had a strong impact on the young people involved. It was acknowledged that each individual was taken home by firearms officers and their parents spoken to. However, the incident was felt to be too serious to be dealt with by way of a Community Resolution. The Panel noted an evidential gap in clarifying the actions of each individual, and felt that the outcome may have been appropriate had it applied to an individual.

042/19

The Panel considered use of a Community Resolution inappropriate in a case in which the victim was racially abused and grabbed by the throat by her neighbour on the basis that the outcome was too lenient. Despite the victim not wishing to proceed, the Panel noted that availability of CCTV footage would enable the case to be prosecuted in the public interest. The Panel discussed the relative merits of Body Worn Footage and raised a potential issue around how interviews are conducted 'on the spot' and how admittance is captured. It was noted that the offender was on licence at the time of the incident and would have been recalled had he been charged.

044/19

The Panel considered use of a Community Resolution inappropriate in a case in which the offender pushed and kicked a police officer while being arrested for domestic abuse on the basis that it was too lenient. The Panel noted that there was an ongoing complaint matter in relation to the case. The Panel felt that given the level of violence both at the point of arrest, in transit to custody and in the cells, that a charge would have been more appropriate. Public servants should expect to be safe in their working environment.

046/19

The Panel considered inappropriate a case involving breach of a Conditional Caution that had been discontinued at court on the basis that the outcome was too lenient. The case involved verbal abuse of a Street Warden before being punched to the face. The Panel noted that the CPS had questioned the police charging decision in the case. By way of background, it was clarified that the officer did not advise the offender at the start that a Conditional Caution had been used and that there was a requirement to write a letter of apology. As such, there was a breach. The letter of apology was eventually produced, the content and value of which was queried by the Panel. The Panel again expressed the view that public servants should expect to feel safe at work and as such felt that the outcome was too lenient.

In addition, the following observations were made:

Good Practice:

Good practice examples were identified including:

- The Panel highlighted the persistence of an officer in going out of their way to accommodate a victim in order to get a witness statement to pursue the case.
- The Panel identified good practice in an ASCEND worker intervening in a case to provide advice to an officer to guide decision making, thus avoiding a Conditional Caution being inappropriately applied in a case involving hate crime.

- Good practice in a strong report by the Bristol Youth Offending Team was highlighted, giving a clear picture of the offender, the issues considered by the Panel in forming their decision and a clear rationale for the outcome.
- In a case involving possession of a knife in a school, the Panel highlighted practical guidance clearly set out in the file signposting officers to resources on Pocketbook (Constabulary intranet / online guidance) including an up to date package for dealing with knife crime cases and guidance on how it should be used. The file included input by specialist officers to support response officers in decision making and ensuring that the outcome was appropriate.

Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- Conditional Cautions in cases involving hate crime had been issued against policy in a number of cases. Whilst work is ongoing to secure dispensation from the Director of Public Prosecutions to enable use of Conditional Cautions for hate crime, supported by an appropriate intervention, arrangements are not yet in place. The Panel queried whether there may be confusion among officers given the significant changes with the move to the two-tier framework, introduction of ASCEND and availability of Conditional Cautions in cases involving domestic abuse. The need for ongoing communication to support implementation of the new approach as well as any future changes was emphasised. The Panel highlighted the limits of the use of Simple Cautions in cases involving hate crime, without the availability of an intervention to address future behaviour and supported ongoing efforts to securing dispensation for the use of Conditional Cautions in relation hate crime, alongside Hampshire and West Midlands police forces.
- In a number of cases, Panel Members struggled to identify the hate crime element. In some cases, it appeared that this may be due to categorisation in flagging / tagging (for example, assault against a police officer is currently flagged as hate crime).
- In a number of cases, the Panel discussed the value and availability of specialist support services for victims of hate crime. It was clarified that the OPCC had recently concluded recommissioning of victim services and that details of the needs assessment, consultation on commissioning intentions and overview of commissioned services would be made available to the Panel to show how services are currently provided.
- The Panel identified the need for greater clarity and guidance for officers in relation to cases involving harassment.
- The Panel noted the need for clear and effective conditions. In one case, the condition to ‘try to avoid each other’ had been issued. The Panel felt that this condition was both unworkable (due to the victim and offender living together in supported accommodation) and unenforceable (in view of the lack of timescales stated). The Panel also identified an example of a condition (‘to engage with restorative approaches’) that was well-meaning, but ineffective. Whilst restorative justice can be a positive way of dealing with neighbour disputes (as in the case in question), the wording of the condition lacked clarity needed to be effective and enforceable. In another case, the Panel cautioned against naming individuals within conditions, which present potential enforcement issues.
- In a case in which possession of a knife had been dealt with by a Youth Caution, the Panel noted that the offence had been committed within a week of a referral order, and that the case could have been taken back to the court to decide with the potential to extend the referral order. It was agreed that feedback would be requested from the relevant Youth Offending Team on the rationale for not seeking to extend the existing referral order.
- The Panel discussed the content of interventions available are sufficient to address knife crime, whether they are suitably tailored and whether they are available across the Force area. The ‘Ambitions’ course is available in Bristol, and involves five sessions covering the themes of knives, drugs and gangs.

- In a case in which a prohibited weapon had been intercepted, the Panel felt that the outcome of a Youth Caution was appropriate, however noted that the crime recorded was incorrect as the young person had never been in possession of the weapon. In the same case, the Panel observed the history of offending, indicating risks as to the potential use of the weapon had it not been intercepted. The Panel debated the effectiveness of voluntary conditions.
- In a case in which a Youth Conditional Caution had been used for possession of a bladed article, the Panel felt that there was not sufficient information on the file get a clear picture of the young person involved, or to justify the outcome.
- In a case in which a Community Resolution had been issued for carrying a weapon, the Panel felt that the YOT report did not give sufficient information to make an informed decision. In the same case, it was noted that the Community Resolution form had not been signed.
- The Panel discussed the response of schools to knife crime and whilst acknowledging the difficulty of the issue and the risks involved, questioned use of a permanent exclusion in one case.
- In a case dealt with by Conditional Caution with intervention from Project CARA, the Panel acknowledged the constraints of interventions available and the need for ongoing help and support for families, particularly those experiencing mental health issues.

Next Meeting: 24 September 2019

The theme of the next meeting was agreed drugs cases (to include use of Outcome 22 and health-based interventions such as the Drugs Education Programme).