

Avon and Somerset Constabulary Response

Thank you for your report of the Avon and Somerset Out of Court Disposal (OCD) Scrutiny Panel of Wednesday 5th June 2019. We welcome the opportunity to respond to the report. The findings of the panel will be fed back into our next OCD Steering Group, when they next meet and where appropriate they will go through our new Organisation Learning procedures and feed into wider learning opportunities, and as always are useful in helping to shape our policies and procedures. Feedback will also be passed on to individual officers where appropriate.

Scrutiny of Case Files

Thirty one new case files were made available to the Panel for review, 21 cases of adult offenders on the theme of hate crime, and 10 cases involving offenders under 18 on the theme of bladed article/knife crime. There were no new cases of serious sexual offences or serious violence dealt with by way of Community Resolution for the Panel to review, which they would review as a matter of course under the Terms of Reference.

The Panel reviewed a total of 23 cases at this meeting. Following review 9 were considered to have been done inappropriately, 9 appropriate but with observations, 4 were considered by the Panel to have been done fully appropriately. There was one case where the Panel failed to agree whether it had been done appropriately or not.

This Panel meeting focussed on the theme of Hate Crime and the cases brought to the Panel were identified through the use of the "Hate Crime" flag on the crime recording system. This flag can be applied to a case by anyone involved in the case at any point. Several of the cases reviewed did not have an obvious hate crime element to them, but it could be the case that the flag was applied by the call handler on the basis of what they have heard, or by any officer involved in the case, with little or no justification required. A flag will be added to identify it as hate crime if any of the victim, offender, witness or anyone else perceive it to be hate crime. Another way to find cases to review on the theme of hate crime would be to search on actual offences of racially or religiously aggravated crimes which would lead to a slightly different sample being made available. The Panel could choose to take this route in the future when this theme is revisited.

Inappropriate Cases

The first case that was found to have been done inappropriately was a conditional caution (CC) for a racially aggravated offence. As CCs are allowed for hate crime if authorised by CPS and this CC was what happened in this case – this case should not be considered inappropriate on this point. The Panel don't appear to have an issue with the content of the conditions, the only issue raised is that there was some persuasion taking place in order to get the CPS's agreement that a CC was indeed appropriate, which is not necessarily ideal. These decisions are often collaborative, but the CPS must be strong enough in their decision making to oppose a police preference if necessary and therefore if a caution is not appropriate it should not be authorised by the CPS lawyer. The Constabulary would like to

ask the Panel to reconsider this decision because the CPS have authorised this decision, which can be done, as per national guidance.

The second case that was found to have been done inappropriately is a simple case of a conditional caution being used for a hate crime (without reference to the CPS), and therefore it is inappropriate. As well as that the crime committed it of a more serious nature than should be dealt with by way of out of court disposal. There were several issues with this case including the offences recorded, the aggravation of it being a racial hate crime and the lack of remorse shown. These issues are replicated across the other cases found to have been done inappropriately at this Panel and the Constabulary recognises that there is some Organisational Learning that needs to take place to address these issues, this has been instigated and further detail will be provided later in this report.

The third case to have been found inappropriate is essentially too serious an offence to have been dealt with by way of out of court disposal, being a serious assault. Based in the facts of the case presented to Constabulary would agree that this should be been dealt with differently, although it is also noted that the victim declined to prosecute. If this is the case then officers had the options of pursuing a victimless prosecution if the evidence was available, so finalising it as outcome 16 – victim declines to prosecute (suspect identified). Issues arising from this case will feed into the Organisation Learning mentioned previously.

The fourth case to have been found to have been done inappropriately for a variety of reasons including the incorrect use of offences recorded, and ineffective outcomes bearing in mind the circumstances involving residents of housing for vulnerable people. The case showed little understanding of the background of the situation of the victim and offender and has all the markings of an out of court disposal being used as an “easy option” rather than it being the right thing to do.

The fifth case to have been found to have been done inappropriately appears to be a tit-for-tat case with allegations from both parties and a self-defence element that does not appear to have been investigated, nor the extent of the injuries. In this case the Panel were unsure that the offence is made out fully, and questioned whether the case, on evidence recorded, should in fact be NFA.

The case that the Panel could not agree on was one where the victim was a doctor in A&E and one of the patients verbally racially abused him. The discussions were around the balance of the doctor’s perception of the racial nature of the abuse with the victim’s perception minimising the offence. The reality of the situation is such that there is unlikely to have been any further sanction had the offender gone to court for this offence, even with the uplift for this offence being against an emergency worker. The Panel were also keen to reflect the gap that exists currently between where police led interventions stop and Probation starts.

The sixth case to have been found to have been done inappropriately is a youth case where a 16 year old was in possession of a BB gun imitating a real firearm. Bodyworn camera footage showed the incident with Firearms officers deployed and dealing with the group of youths and initially the incident appeared to have been dealt with well. There is a balance to

be had between dealing with these young people for a first offence which would generally lead to a lower level sanction being used, and the nature of the offence that itself was very serious and could have had very severe consequences. The officers took the approach that the way it was dealt with was in itself a valuable lesson and chose to use a community resolution, and there was a condition to attend a choice and consequences workshop which is used with community resolutions and conditional cautions alike.

The seventh case to have been found to have been done inappropriately is a case where a community resolution was used in a case of racially aggravated assault. While the victim did not want to proceed with a prosecution in this case it would have potentially been possible to pursue a victimless prosecution with CCTV and other evidence. While on the face of the incident a community resolution might seem appropriate due to the lack of willingness to engage by the victim, the offender was actually on licence at the time of the incident and if he had been charged and gone to court is likely to have been recalled to prison. The need for thoroughness in cases like these will form part of the organisational learning that is arising from this Panel.

The eighth case to have been found to have been done inappropriately is a case where a police officer was assaulted and the Panel felt that a more serious sanction than a community resolution should be used. The Panel are always very clear that assaults on officers should be charged unless there are extenuating circumstances that indicate otherwise. The culture amongst officers is changing to reflect this opinion but it is taking time for this to be reflected throughout the force as a whole. There is work ongoing to raise the profile of this with officers throughout the force and the guidance was changed to ensure that the decision to use either a community resolution or a conditional caution is authorised by an inspector.

The final case that the Panel considered inappropriate is one where a conditional caution was breached but then complied with, so the court proceedings that were commenced were then discontinued. The Panel felt that the offence of assault being dealt with by conditional caution was too lenient. There were several failings in this case, not least the failure by the officer to inform the offender of the date by when the condition set should be completed. The case dates back to before the change took place moving the Constabulary to the two tier framework and all the training and guidance publication that went with that change. Since that time a lot of work has been done raising the profile of out of court disposals and how they should be done, along with the introduction of ASCEND and the ASCEND workers to help officers in cases such as these. Any learning that could have been derived from this case will have already been addressed as a part of that work.

Good Practice

While it is understood that the Constabulary can learn a lot from this Panel it is gratifying to know that there are still some example of good work picked up by the Panel. In particular the highlighting of the good practice being exhibited by the ASCEND Workers is useful as we move in to the evaluation phase of the ASCEND Project and try to determine whether the roles are offering value to the force.

Recommendations and Observations

It is obvious that the Constabulary has a lot to learn from the outcome of this Panel, which is why the decision has been taken to take a different approach to feeding this back. There are common issues that have cropped up in many of the cases, including those ultimately found to have been done appropriately but with observations. The Organisational Learning process is newly introduced and this is one of the first instances of it being used. The issues raised by the Panel members have been recorded and scored according to perceived priority by the Governance Team. This has then been passed by them to the Constabulary Lead for the theme, in this case Supt. Andy Bennett. There will be some discussion then about the improvement activity that could be put in place to improve this, such as training and comms. As yet this activity has not been agreed with Supt. Bennett but he is aware of the issues raised and the circumstances of the cases involved. This process is in a pilot phase and we are still working out how it can be refined, but it was felt that the learning from this Panel meeting would fit better into this than the previously used feedback mechanisms as there is more opportunity to link in with other issues raised and be more efficient and effective in delivering training that we feel in this case is required.

Work is always ongoing to ensure that the nature of the conditions set as part of an out of court disposal are meeting the needs of the victim and offender, whilst adhering to the SMART principles. The ASCEND Workers are easy to reach in terms of delivering advice and training but reaching officers who deal with cases themselves is a lot more difficult. We are due to deliver some communications to officers to coincide with the one year anniversary of the launch of ASCEND which will allow all ongoing issues to be raised with officers across the board.

The next OOC Steering Group is due to be held in late September and all of the issues raised above will also still be fed in that forum as well as being raised as Organisational Learning.