

## Avon and Somerset Police and Crime Commissioner

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

Wednesday 20 March 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-first meeting: 20 March 2019

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Paul Ashby (YOT), Carla Cooper (YOT), Giles Brown (Magistrate), Lynne Paraskeva (Magistrate), Frances Keel (Victim Support), 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).

Superintendent Tina Robinson, Force Lead for Domestic Abuse, was welcomed to the meeting.

Apologies: Justine Leyland (YOT)

##### Appointment of Chair and Deputy Chair

Mike Evans and David Godfrey were reappointed as Chair and Deputy Chair of the Panel. Thanks were extended to Mike and David for their service, and for being willing to continue in these roles for a further year.

### **Panel Business**

#### **Policy and Performance Update:**

- Helen Jeal gave a demonstration of the Out of Court Disposals Qlik App, and took the Panel through performance information since the new two-tier framework was introduced in November 2018.
- It was clarified that the Domestic Abuse Conditional Caution was introduced later (24 December 2018) and operated according to a strict set of preconditions set through dispensation by the Director of Public Prosecutions. Additional guidance has been created for officers to ensure appropriate use.
- A decision on dispensation in relation to Conditional Cautions in Hate Crime cases is awaited, and the Force continues to work with Hampshire and West Midlands to design the interventions that will be available.
- The Panel was encouraged to see that just 10 Simple Cautions were used in January, with a month-on-month reduction since. Where Simple Cautions have been used, individual cases have been reviewed, and it was confirmed that the incidents in question pre-date the move to the two-tier framework (which included the removal of Simple Cautions, except in Hate Crime cases pending dispensation for use of Conditional Cautions). The Panel discussed the need to ensure that cases that would previously have been dealt with by Simple Caution are now being dealt with by either Community Resolution or Conditional Caution and are not simply being NFA'd (No Further Action). It was confirmed that should a Simple Caution be applied in cases other than Hate Crime, the case would be sent back to the officer by the Constabulary Outcomes Team.
- ASCEND workers had been involved in 42.8% of cases, increasing up to just over half of cases in March. It was clarified that ASCEND worker involvement would only be expected in more complex cases, and that Community Resolutions are designed to be dealt with by officers. Violence Against the Person cases account for the largest volume of cases dealt with by Out of Court Disposal.
- HJ demonstrated how filters can be applied to see how disposals are being used by teams and individuals for supervisory purposes and to enable learning from good practice.
- Performance information for ASCEND appointments was shown, with offenders generally being seen within 1 week. Officers are responsible for making the appointment with the offender. A total of 183 appointments have been held so far, with 11% of appointments being missed. Appointments are held in the Patchway, Keynsham and Bridgwater Custody suites. Bridgwater-based ASCEND workers also hold appointments in Yeovil. Appointments are available in the Bridewell on request.
- Performance relating to use of conditions was reviewed. A total of 888 conditions have been set to date, and breaches are starting to come through with 9 prosecuted so far. A breakdown of intervention referrals was shown. It was noted that the Consider programme (for low-level sexual offences) has had low take up to date.
- Interventions relating to Domestic Abuse are CARA (for male perpetrators) and SHE (for female perpetrators). Familial domestic abuse is generally dealt with by Community Resolution. There have been 19 referrals to CARA and 11 referrals to SHE to date. It was highlighted that the Hampton Trust (responsible for delivering CARA) had praised Avon and Somerset for strong attendance rates.
- The Panel discussed concerns around domestic abuse cases finalised due to the time limit expired (accounting for 53 cases). This was of particular concern given the nature of the case. It was acknowledged that timeliness issues reflects a wider concern around use of 'Released Under

Investigation' following changes in Bail legislation. It was confirmed that this issue is subject to ongoing scrutiny both by the Constabulary and the Avon and Somerset Criminal Justice Board.

- Concerns with respect to timeliness in youth cases were also raised. CC gave an example of a recent case which was 14 months old, and stated that cases were frequently taking 6 months to come to court.
- **ACTION: JC to feedback timeliness concerns to the Constabulary OoCD Steering Group for consideration.**

#### Terms of Reference

- ME, HJ and JC had met to review the Panel Terms of Reference. Proposed amendments were circulated in advance of the meeting. Key changes include:
  - Setting out the role of the Panel in scrutinising implementation of the new two tier framework, including reviewing Domestic Abuse Conditional Caution cases on an annual basis to satisfy dispensation requirements;
  - Inviting representatives of specialist organisations to attend where relevant to a particular theme;
  - Inclusion of a draft work plan for the year.
- The Panel considered ideas for inclusion in the work plan: including football matches within the scope of scrutiny of the use of OoCD at major events; use of OoCD in Operation Remedy (Constabulary operation to tackle drugs, knife crime and burglary); and use of Electronic monitoring / GPS – the latter was clarified as being out of scope of this panel.
- The Panel approved the Terms of Reference.
- ME reported that a total of 89 cases had been reviewed by the Panel in 2018, which was considered to be statistically significant.

#### Panel report and response

- The Chair thanked the Constabulary for their open and honest response to the report of the last meeting. Overarching feedback around the need for training and awareness to ensure the accurate identification of stalking and harassment had been taken on board, and it was positive to see direct feedback provided to officers to inform future decision making.
- Feedback had been requested from YOTs in relation to youth cases, however as none had been considered by Youth Panel, there was no feedback. PA shared feedback with the Panel in relation to YOT involvement in a harassment case that had taken place since the Panel meeting.
- Feedback in relation to the CPS case had been provided by JLG and was circulated to Panel Members.

#### **Scrutiny of Case files**

##### Rationale and file selection

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

- 5 cases of Serious Sexual Offences and Serious Violence Against the Person dealt with Community Resolution (required under the Panel Terms of Reference);
- 26 cases on the theme of cases involving domestic abuse.

The theme of the meeting was cases involving domestic abuse. The theme was selected to scrutinise appropriate use of new arrangements enabling use of a Conditional Caution for domestic abuse, to satisfy dispensation requirements.

##### Panel findings

Of the 31 cases available, 23 were scrutinised. Of the cases reviewed, 4 were considered appropriate, 14 appropriate with observations, and 5 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
001/19	Community Resolution	Sexual Assault on a Male	Inappropriate*
002/19	Community Resolution (youth)	Sexual Assault on a Female	Appropriate with observations
003/19	Community Resolution	Wounding with intent to do serious bodily harm	Appropriate with observations
004/19	Community Resolution (youth)	Wounding with intent to do serious bodily harm	Appropriate with observations
005/19	Community Resolution (youth)	Sexual Assault of a child under 13	Appropriate with observations
006/19	Conditional Caution – CARA/SHE	Criminal Damage	Appropriate with observations
007/19	Conditional Caution – CARA/SHE	Assault	Appropriate with observations
008/19	Conditional Caution	Malcoms – disclose private sexual photographs	Inappropriate*
009/19	Youth Conditional Caution	Assault	Appropriate with observations
010/19	Youth Conditional Caution	Possession of cannabis and theft	Appropriate with observations
011/19	Youth Conditional Caution	Theft	Appropriate with observations
012/19	Community Resolution (youth)	Criminal Damage	Appropriate with observations
013/19	Community Resolution (youth)	Assault	Appropriate with observations
014/19	Community Resolution (youth)	Criminal Damage	Appropriate with observations
015/19	Community Resolution (youth)	Criminal Damage	Appropriate
016/19	Community Resolution	Harassment	Appropriate
017/19	Community Resolution	Criminal Damage	Inappropriate*
018/19	Simple Caution	Assault	Inappropriate*
019/19	Conditional Caution	Criminal Damage	Appropriate with observations
020/19	Conditional Caution	Criminal Damage	Appropriate
021/19	Conditional Caution	Production of cannabis	Appropriate
022/19	Conditional Caution	Criminal Damage	Appropriate with observations
023/19	Conditional Caution	Assault	Inappropriate*

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

#### 001/19

The Panel considered use of a community resolution inappropriate in a case involving sexual assault by a female of a male colleague as it was too lenient. The incident had taken place whilst the harmer was under the influence of alcohol. It was not clear from the file whether the views of the victim had been taken into account and conditions attached were not felt to be appropriate, with the first amounting to requiring that the harmer admit the offence. The Panel were not satisfied

with the letter of apology, and drew caution to ensuring that the removal of Simple Cautions did not have the unintended consequence of leading to 'invented outcomes'. The Panel noted that the incident had taken place in a setting in which the parties were responsible for supervising young people, expressing concern at the need for strict boundaries, and queried whether the outcome would have been different had the sexes been reversed.

#### 008/19

The Panel considered use of a conditional caution inappropriate in a case in which the offender had sent explicit photos and videos to his ex's new partner and partner's mother. The Panel noted an element of premeditated and coercive behaviour evident in the apparent blackmailing element in eliciting comments from the victim to state they did not wish to see their children. Had the case gone to court, a 9 week custodial sentence would be the starting point. The Panel felt that the case was too serious to have been dealt with by conditional caution, and that it should have gone to court.

#### 017/19

The Panel considered use of a community resolution inappropriate in a case in which the offender had damaged property in the family home whilst under the influence of drugs, after being denied money by his family. The Panel expressed concern at the pattern of behaviour and complex underlying issues that were unlikely to be resolved through a community resolution. It was acknowledged that the incident pre-dated the introduction of CARA and therefore a conditional caution was not an option at the time. The Panel felt that the conditions applied to the community resolution were not robust enough and that the case should have gone to court.

#### 018/19

The Panel considered use of a simple caution inappropriate in a case in which the victim had been hit in her face and to her torso by her partner in a shopping precinct, witnessed by members of the public. The victim was pregnant. The Panel acknowledged that the victim did not support prosecution, however noted that given that there were two independent witnesses, the level of assault and the history of offending, the case could have been dealt with as an evidence-based prosecution and as such should have gone to court.

#### 023/19

The Panel considered use of a conditional caution inappropriate in a case in which the informant's boyfriend had been attacked by his mother's partner, who subsequently attempted to regain entry to the house using a crowbar. It was clarified that a DASH risk assessment had been carried out as appropriate. The Panel highlighted that the outcome was incorrect as use of a conditional caution for a domestic abuse case was not available at the time of the incident, and expressed concern that one of the conditions set had the effect of imposing an indefinite restraining order. Moreover the Panel felt that in view of the sustained attack on several people, history of offending behaviour, and opportunity to consider imposing a restraining order through the correct channels, the case should have gone to court.

In addition, the following observations were made:

#### Good Practice:

Good practice examples were identified including:

- The Panel highlighted positive progress in implementing the new out of court disposals framework and effective use of new intervention pathways available;
- The Panel identified good practice in taking the victim's needs and wishes into consideration and keeping the victim up to date with progress in a case involving an assault at school. The Panel

did however note that a balance needed to be struck in ensuring that the victim's wishes were not driving the investigation. It was acknowledged that given the age of the victim, there was a need for certainty in determining how the victim would like to proceed;

- The Panel identified examples of clear Inspectors rationale to inform decision making;
- The Panel highlighted strong reports from the YOT and the school, dealing effectively with issues around trauma and witnessing of domestic abuse, in a case involving assault of a mother by her son;
- Good practice was identified in a comprehensive approach to victim referrals, with needs assessments viewed by the Panel;
- The Panel identified positive progress in use of technology, viewing examples of the new Airpoint (electronic pocket notebook) entries on file;

#### Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- In a number of cases, the Panel queried the extent to which 'off the peg' interventions could be targeted to address the specific needs or behaviour in the case in question, and noted general concerns around timeliness in youth cases. Further details are set out below.
- In a case involving sexual assault of a female, the Panel felt that wording on file in relation to the incident was not sufficiently specific to clearly inform decision making;
- In the same case, the Panel would have liked to see an intervention to address problematic behaviour, whilst acknowledging the rationale for use of a community resolution in this youth case in which there was no history of offending;
- In a case involving assault of a taxi driver, the Panel felt that the level of compensation awarded was too low, reflecting reparation for damage only and not accounting for loss of earnings. In the same case, the Panel debated whether the assault was too serious to have been dealt with out of court, however acknowledged that the absence of injury and bruising and clear investigation evidenced on file provided a clear rationale for the decision to deal with the incident by community resolution;
- The Panel queried whether the extent to which the content of the selected intervention was suitable for the offence in a case involving an alleged assault at school. In other cases, the Panel sought assurance around the extent to which interventions could be targeted to challenge and respond to the root cause of the behaviour in the incident in question. In relation to CARA, it was clarified that it is a group intervention and not tailored to the individual. However the programme is structured to allow individuals time to reflect on their behaviour between sessions. The programme has also been subject to academic evaluation and designed to ensure that it is appropriate for the risks and behaviours addressed through the programme;
- The Panel expressed concerns with regard to timeliness, particularly in a number of youth cases reviewed. In one case that had taken 3 months to resolve, the Panel expressed concern that in the interim the young person's behaviour had escalated at a rapid pace, evident in a further incident also considered by the Panel;
- In a case involving sexual assault of a young person with learning difficulties, the Panel expressed concern at the apparent lack of referral to victim services. In the same case, it was noted that YOT had not been contacted by social services as stated on file, and the case had not gone to Youth Panel. It was acknowledged that correct procedure in reference to harmful sexual behaviour had been followed with referral to a strategy meeting;
- In a case in which the victim did not wish to proceed and a Conditional Caution was utilised, the Panel highlighted that there been a breach, the case would have had to go to court. The Panel therefore queried whether the victim's wishes had been adequately taken into account in applying the outcome. In the same case, the Panel were not convinced that the offence had been made out, and queried whether the offender had had legal representation;

- The Panel queried whether Community Resolution would have been a more appropriate than a Youth Conditional Caution in a case involving assault of a mother by her son, taking the view that the same outcome could have been achieved with a lower-level disposal. In the same case, the Panel considered that the conditions were not specific enough, referring to the requirement to attend a 'series of sessions'. Timeliness concerns referred to above were raised in relation to this case, which due to the time taken to arrange a strategy meeting were beyond the standard 16 weeks to check compliance;
- In a case involving possession of cannabis and theft by a young person, the Panel expressed concerns that the file did not address the possibility or likelihood that the young person was being exploited, citing a number of risk factors and circumstances present in the case. The Panel reiterated the need for assurance that interventions were sufficiently tailored to address the needs and behaviours of the young person involved. Concern was expressed at the rapid escalation in this case and view behaviour was at risk of 'going off a cliff edge' without serious intervention, and queried whether the matter should have been dealt with at court in order to show clear consequences. Discussion ensued around the difference with the youth system, with the focus on seeking interventions as opposed to resorting to court. In this case, the Panel did not feel that they had a clear picture of the young person from the information on file to understand what was driving his behaviour, or to pursue the coercion or exploitation aspect;
- In a case involving damage to a curtain pole, the Panel questioned whether the incident constituted a police matter. In the same case, the condition requiring the young person to attend the police station to wash cars was queried, the Panel questioning whether setting a condition of this nature is permissible;
- The Panel discussed the police culture in relation to positive action in domestic abuse cases in the context of a case involving assault of a mother by her daughter. On the basis of the information on file, the Panel questioned whether social services as opposed to police involvement would have been more appropriate. The Panel again highlighted the issue of the extent to which 'off the peg' workshops were appropriate to adequately address complex situations. It was acknowledged that commissioning bespoke interventions would prove too costly, however the Panel felt that paperwork could helpfully clearly set out why referral to a particular course had been made and what participants were expected to gain from attending;
- In a case involving criminal damage to the family home by the victim's son, the Panel noted difficulties around merging of two incidents within a single file. The Panel noted that the Community Resolution form had been signed, however it was not clear whether this was in accordance with the victim's wishes. In addition, the Panel expressed concern that conditions appeared to relate the domestic abuse aspect, in which the file stated that No Further Action was being taken, whereas the second incident, a school assault, was being proceeded with, but with no apparent conditions attached;
- In a case involving criminal damage by a young person, the Panel would have liked to see referral to the young victim's service for the younger sibling who had witnessed the incident. In the same case, the Panel would have liked to see the YOT report in order to understand the full picture and take a view on whether interventions were likely to be appropriate;
- In a case involving damage to a property by the victim's sister, the Panel noted that whilst compensation had been awarded for damage to a police cell, no consideration had been given to compensation with respect to the damage caused during the incident. The Panel clarified that whilst the file refers to issuing a 'fine', the appropriate term should be 'compensation'. In the same case, the Panel queried the condition to 'attend a minimum of 1 session with SHE' (specialist intervention for female offenders). It was clarified that the condition covers the initial appointment, at which time parameters and requirements for future participation would be set. The Panel recommended that wording of conditions relating to the SHE programme is reviewed to ensure that there is a clear understanding of what constitutes engagement for compliance purposes;

- The Panel questioned whether admissions had been made in a case involving criminal damage caused in the family home. In the same case, the Panel queried whether the compensation aspect had been discussed with the complainant, particularly given the risk that it may inflame rather than help the situation in this instance;
- In a case involving a Conditional Caution for criminal damage caused to the offender's mother's home, the Panel noted that the incident pre-dates the introduction of CARA and as such a Conditional Caution was not permitted under policy at this time. It was clarified that as the case was familial, it would not have been eligible for CARA in any case. The Panel would have liked to see a referral in relation to alcohol misuse and queried how much weight is given to the victim's view in determining the outcome, noting that the balance is in favour of prosecution.

**Next Meeting: 5 June 2019**

The theme of the next meeting was agreed as knife crime / bladed article (youth cases) and hate crime (adult cases).