

## Avon and Somerset Police and Crime Commissioner

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

Tuesday 2 March 2021

#### 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-seventh meeting: 2 March 2021

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Paul Ashby (YOT), Giles Brown (Magistrate), Frances Keel (Victim Support) Aidan D'Arcy (YOT), Niki Westerling (VOCAS – Adult Advocacy Support Service), Rebecca Harris (Office of the Avon and Somerset Police and Crime Commissioner), Gemma Kneebone (CPS), Carla Cooper (YOT), Lynne Paraskeva (Magistrate), Lauren Jones (Avon & Somerset Constabulary) Di Memmott (Minutes).

Guests: Andy Bennett (ASC- Hate Crime), John Shaddick (representing Paul Underhill)

Apologies: Paul Underhill (ASC), Helen Jeal (Avon and Somerset Constabulary)

## **Panel Business**

**Annual Meeting – Election of Chair / Deputy Chair:** The Panel unanimously nominated and elected Mike Evans as Chair and David Godfrey as Deputy Chair for the coming year. Thanks were extended to Mike and David for their continued service in these roles and for their invaluable contribution to the work of the Panel over the past years.

## **Scrutiny of Case files**

Theme: Hate Crime

### **Rationale and file selection**

A total of 29 files were made available for scrutiny, selected as follows:

- 11 Serious Sexual Offences
- 18 Hate crime

These were broken down by 21 Community resolution, 2 Adult Cautions, 2 Adult Conditional cautions, 3 Youth Cautions.

The theme was selected to look at effective and appropriate use of OOCD as an alternative to charge to court or NFA (No further action).

### **Panel findings**

Of the 29 cases available, 29 were scrutinised. Of the cases reviewed, 1 case the panel could not reach a consensus on, 9 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:

<b>Reference</b>	<b>Disposal</b>	<b>Offence Type</b>	<b>Panel Decision</b>
01/29	Community Resolution	Wounding with intent to do grievous bodily harm	Not Agreed
02/29	Community Resolution	Sexual assault on a female	Appropriate with observations
03/29	Community Resolution	Sexual assault on a male	Appropriate with observations
04/29	Community Resolution	Sexual assault on a female	Appropriate with observations
05/29	Community Resolution	Sexual assault on a female	Inappropriate*
06/29	Community Resolution	Sexual assault on a female	Inappropriate*
07/29	Community Resolution	Sexual assault on a male	Appropriate with observations
08/29	Community Resolution	Sexual assault on a female	Appropriate with observations
09/29	Community Resolution	Sexual assault on a female	Appropriate with observations
10/29	Community Resolution	Sexual assault on a female	Inappropriate*

11/29	Community Resolution	Sexual assault on a female	Appropriate
12/29	Community Resolution	Threats to kill	Appropriate
13/29	Adult caution	Threats to destroy or damage property	Appropriate
14/29	Adult caution	Racially or Religiously Aggravated assault or assault occasioning actual bodily harm	Inappropriate*
15/29	Community Resolution	Sending letters etc. with intent to cause distress or anxiety (Mal Comms)	Appropriate with observations
16/29	Community Resolution	Harassment	Appropriate with observations
17/29	Community Resolution	Racially or religiously aggravated intentional harassment, alarm or distress	Appropriate
18/29	Adult conditional caution	Common assault and battery	Appropriate with observations
19/29	Adult conditional caution	Assault occasioning actual bodily harm	Inappropriate*
20/29	Community Resolution	Racially or religiously aggravated harassment or alarm or distress	Appropriate
21/29	Adult Caution	Racially or religiously aggravated harassment or alarm or distress	Appropriate
22/29	Youth Caution	Racially or religiously aggravated intentional harassment, alarm or distress	Appropriate with observations
23/29	Youth Caution	'Sending or causing sending of grossly offensive / indecent / obscene / menacing or false message / matter by electronic communications network - Communications Act	Appropriate with observations
24/29	Youth conditional caution	Racially or religiously aggravated intentional harassment, alarm or distress	Appropriate with observations
25/29	Community resolution	Racially or Religiously Aggravated assault or assault occasioning actual bodily harm	Appropriate
26/29	Community resolution	Assault occasioning actual bodily harm	Appropriate
27/29	Community resolution	Criminal Damage	Appropriate
28/29	Community resolution	Racially or religiously aggravated fear	Appropriate with

		or provocation of violence	observations
29/29	Community resolution	Sending letters etc. with intent to cause distress or anxiety (Mal Comms)	Appropriate with observations

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

01/29

The panel could not reach a consensus on the correct outcome of this case of Wounding with intent to do grievous bodily harm. The offence was a very serious assault involving a weapon to the victims face resulting in hospital treatment, therefore panel members were of the opinion due to the seriousness of the offence it should have been charged to court. Other panel members thought that OOC in the form of Restorative Justice (RJ) was appropriate considering the victim's views and the fact that it was a youth offence between two young people with learning difficulties, allowing for a diversion away from a criminal lifestyle was the key outcome with the Youth panel consulted. Other areas for improvement with this case was that it was not clear what the RJ outcome was, this needs to be recorded and the offence was not taken to the youth panel until 5 months after the offence. The defendant also appeared to have a previous offending history which needed to be addressed in more detail to prevent further offending, this seems to have been missed.

05/29

The panel considered use of a Community resolution inappropriate in a case of sexual assault on a female on the basis that the offence was too serious. The panel observed concerns about the offender's behaviour and that he carried out sexual touching on a girl aged 13 years old in the presence of his young son.

The Community resolution provided the defendant no learning opportunities or suggestion of an apology to the victim. The victim has shown signs of trauma since the incident, including self-harming behaviour. This is also not the first time the defendant has been provided with a community resolution, with patterns of abusive behaviour the panel felt concerns over the risk that the individual has towards children. The investigation appeared to be slow, taking time to obtain statements. However some panel members felt there was insufficient evidence towards the sexual element of the offence.

06/29

The panel considered use of a Community resolution inappropriate in a case of Sexual assault on a female on the basis of a community resolution deemed to not be serious enough for a sexual assault on a stranger. Sexual assault against a stranger is a serious offence and highlights considerable risk factors for future offending, an intervention that provides learning is required to prevent similar offences in the future. There is no record of a discussion between the officer and victim to show that the victim was happy with this outcome or other potential outcomes including an intervention.

10/29

The panel considered use of a Community resolution inappropriate in a case of Sexual assault on a female, on the basis that the offender did not fully admit the offence and therefore is not eligible for an OOC. A number of the allegations remained disputed, the case should have been charged to court or No further action if it had

been resolved fully with the school. It was noted that the offender made an apology but did not seem to understand the seriousness.

The panel advised that inappropriate slang has been used within a professional report, 'bum' and 'boobs' officers must consider the use of language used in official reports.

#### 14/29

The panel considered use of an Adult Caution inappropriate in a case of racially or religiously aggravated assault or assault occasioning actual bodily harm. The panel felt the case should have been charged to court due to the inexcusable violence and racial language used by the offender. The offender punched the victim to the face causing actual bodily harm, causing a visible injury and using racially aggravated language. The disposal was deemed as too lenient.

The offender showed an admission of guilt and regret, Restorative justice was considered but not followed up, this would have been beneficial to both the victim and offender in resolving the incident.

#### 19/29

The panel considered use of an Adult Conditional Caution inappropriate in a case of Assault occasioning actual bodily harm on the basis of the assault being too serious for an OOC and the victim did not support this outcome.

The victim has mental Health issues and the Father did not support the outcome of an OOC, this should have been considered. An anger management course was considered but not pursued, the panel deemed this as the appropriate route to support the defendant with their learning of their behaviour. The panel were not certain the evidence supported a disability hate crime. It was noted that officers ordered compensation on behalf of the victim, however a route through court may have provided a higher amount. The officers conditions were written well and an out of court method provided swift justice for the victim, however the victim was not supportive of this route and this must be considered when making the decision on outcome.

#### Good Practice:

Good practice examples were identified including:

- Good referral from LSU to YVS.
- Good referral of hate crime to SARI.
- Good examples of letters of apology to the victim.
- Well thought through decisions, considering ages, effect of offence and voluntary work allowing for an accurate decision.
- Several supportive/rehabilitative elements to the Conditional Caution.
- Conditions are often well thought out and relevant.

#### Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- Community Resolution does not provide learning to those who have committed serious sexual offences.
- Community resolution is deemed not significant enough in many sexual offence cases.
- Intervention is required in sexual assault cases against a stranger. It highlights considerable risk factors for future offending.
- Officers must discuss options with the victim about potential outcomes and consider their opinion when making that decision. These conversations must be recorded on the police database to show this has taken place and the thought process to the final outcome.
- Offence needs to be fully admitted by the offender to use an OOC, this is still not clear in some cases and so they may not have been suitable for this option.

- Restorative Justice should be considered in all appropriate cases.
- OOCB not always robust enough.
- Element to ensure the suspects learn from actions and such incidents are not repeated.
- Educational element to be considered to add more value in terms of rehabilitation/preventing any future incidents.
- When racial language is used, but did not mean to cause distress, educational requirements are required.

Next Meeting: 1 June 2021

The theme of the next meeting was agreed as Covid related incidents.