

Avon and Somerset Police and Crime Commissioner

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

Tuesday 1 June 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-eighth meeting: 1 June 2021

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Paul Ashby (YOT), Frances Keel (Victim Support) Rebecca Harris (Office of the Avon and Somerset Police and Crime Commissioner), Gemma Kneebone (CPS), Lynne Paraskeva (Magistrate), Di Memmott (Minutes), Helen Jeal (Avon and Somerset Constabulary), Paul Underhill (Avon and Somerset Constabulary).

Guests: Mark Shelford (Police and Crime Commissioner), Thomas Herbert (Avon and Somerset Constabulary).

Apologies: Niki Westerling, Aidan D'arcy, Dr Giles H Brown, Carla Cooper, Rachel Garstang, Marc Hole, Joanne Quinton, David Godfrey.

Panel Business

The Panel were introduced to the new Police and Crime Commissioner, Mark Shelford.

The panel reviewed the Force response to the March panel report on Hate crime and stated it was an honest appraisal from the Force highlighting good practice.

OCD Overview and performance data by Paul Underhill

- Performance overview, 3 month average of OCDs comparison.
2020 – March, April, May - 1475
2020 – March, April, May – 1601
- A new OCD will shortly be launching for Hate crime offences. Avon and Somerset will be one of only three forces to do this, including West mids and Hampshire.
- Definitions of hate crime are either:
Show hostility – How this can be used when someone makes a derogatory remark in the heat of the moment but states they are not racist.
Ingrained hatred – When this is the reason for the commission of the offence.
- To be eligible for the hate crime OCD the defendant must make a full admission and show remorse.
- There are a number of factors when an OCD cannot be used – a persistently targeted victim, if a custodial sentence is likely, if the defendant has previous convictions for hate crime offences.
- The new service will be delivered by RISE and aim to be launched by the end of June.
- A tender is currently out for an assault on emergency worker OCD. Guidance is currently being reviewed by unions and staff for feedback.
- A training package has been created, including a questionnaire to be delivered to the Independent Advisory Groups (IAG's) across the force. This is to promote confidence in the OCD system with our communities and also to seek feedback on how we can promote them even more.
- An overview package is due to be delivered to magistrates. Designed to provide an overview of all of our OCD's and promote discussion around ensuring a robust process with compliance of the OCD issued.
- A new form has been designed for access to defendants and legal advisors in custody, explaining the OCD process when appropriate.

Scrutiny of Case files

Theme: Covid Fixed Penalty Notice (FPN)

Rationale and file selection

A total of 30 files were made available for scrutiny, selected as follows:

- 6 Serious Sexual Offences
- 24 Fixed Penalty Notices

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

On this occasion the panel also looked at the effective application of COVID rules and regulations to enforce compliance. Chief Inspector Thomas Herbert attended the panel as a guest speaker and explained the approach of A&S constabulary. A warning system was established to ‘Engage, Explain, Encourage, Enforce’, to help educate members of the public who were in breach of covid restrictions before issuing them with a fixed penalty notice. In total 2211 fixed penalty notices were issued in Avon and Somerset (as of 27.05.21).

The panel reviewed the steps taken across a selection of 24 cases to see if it had been appropriate for police to take the final step of enforcement with a fixed penalty notice. It was found that all 24 cases were appropriately handled.

Panel findings

Of the 30 cases available, 30 were scrutinised. Of the cases reviewed, 5 out of 6 community resolution cases were found to be appropriate but with observations, the other 25 cases were all found to be appropriate. A summary of findings on files scrutinised by the Panel is set out in the table below:

Reference	Disposal	Offence Type	Panel Decision
01/30	Community Resolution	Assault	Appropriate with observations
02/30	Community Resolution	Sexual assault (boy under 12)	Appropriate
03/30	Community Resolution	Assault by beating	Appropriate with observations
04/30	Community Resolution	Assault	Appropriate with observations
05/30	Community Resolution	Malicious Communications	Appropriate with observations
06/30	Community Resolution	Sexual Assault	Appropriate with observations
07/30	Fixed Penalty Notice		Appropriate
08/30	Fixed Penalty Notice	Breach of quarantine	Appropriate
09/30	Fixed Penalty Notice	Breach of quarantine	Appropriate
10/30	Fixed Penalty Notice	Party 6+ people/£200	Appropriate
11/30	Fixed Penalty Notice	In group	Appropriate
12/30	Fixed Penalty Notice	House party	Appropriate
13/30	Fixed Penalty Notice	House party	Appropriate
14/30	Fixed Penalty Notice	Parties in commercial building	Appropriate
15/30	Fixed Penalty Notice	Gathering outdoors/out of area they live/£200	Appropriate
16/30	Fixed Penalty Notice	Gathering 30+ amplified music	Appropriate
17/30	Fixed Penalty Notice	Gathering 2 + indoor space Tier 4 /£200	Appropriate
18/30	Fixed Penalty Notice	Contravened directions (to see friends)	Appropriate
19/30	Fixed Penalty Notice	2 or more people/£200	Appropriate
20/30	Fixed Penalty Notice	2 or more people/party/£200	Appropriate
21/30	Fixed Penalty Notice	£200/outside where living/different households	Appropriate

22/30	Fixed Penalty Notice	30+ at birthday party	Appropriate
23/30	Fixed Penalty Notice	6+ drinkers in street	Appropriate
24/30	Fixed Penalty Notice	2 + Tier 3/£200	Appropriate
25/30	Fixed Penalty Notice	6+ drinkers in street	Appropriate
26/30	Fixed Penalty Notice	2+ Tier 3/£200	Appropriate
27/30	Fixed Penalty Notice	6+ gathering /£200	Appropriate
28/30	Fixed Penalty Notice	Failure to self-isolate	Appropriate
29/30	Fixed Penalty Notice	Indoor gathering Tier 2 /£200	Appropriate
30/30	Fixed Penalty Notice	Outside of area / £200	Appropriate

Good Practice:

Good practice examples were identified including:

- Community resolution application on sexual offences reviewed were all deemed applicable, but with some areas of improvement (listed below).
- A reactive operational model was put in place in quick time to respond to the government covid restrictions.
- Application of this model to engage, explain, encourage and then as a last resort enforce citizens breaching covid rules was done well and the use of fixed penalty notices were deemed 100% accurate in the cases scrutinised (listed above).

Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- Community resolutions appeared to be lacking letters of apology. Room for improvement with use of restorative justice application and recording.
- Community resolutions have time delays. There is a need to include an expiry date for the condition to set expectations clearly and to ensure it is proportionate.
- Ensure the behaviour is addressed, to prevent re-offending and to allow defendant to learn from their behaviour not being acceptable.
- Ensure the check and recording of course completion recorded on police systems to enforce robust outcome.
- Positive safeguarding referrals for children involved.

Next Meeting: 7th September 2021

The theme of the next meeting was agreed as Disproportionality.