

Avon and Somerset Police and Crime Commissioner

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

Tuesday 7 September 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-ninth meeting: 7 September 2021

Attendees: Mike Evans (Magistrate) (Chair), David Godfrey (HMCTS) (Deputy Chair), Paul Ashby (YOT), Giles Brown (Magistrate), Aidan D'Arcy (YOT), Niki Westerling (VOCAS – Adult Advocacy Support Service), Lauren Jones (Avon & Somerset Constabulary) Di Memmott (Minutes), John Shaddick (ASC), Kathryn Palmer (OPCC), Sally Helliwell (CPS).

Guests: Desmond Brown (Chair of the Lammy review).

Apologies: Paul Underhill (ASC), Helen Jeal (Avon and Somerset Constabulary), Rebecca Harris, Carla Cooper, Rachel Garstang, Joanne Quinton, Lynne Paraskeva, Frances Keel.

Panel Business

New member Sally Helliwell, Senior Crown Prosecutor - CPS South West. Ex defence solicitor.

Scrutiny of Case files

Theme: Disproportionality

Rationale and file selection

A total of 34 files were made available for scrutiny, selected as follows:

- 4 Serious Sexual Offences
- 30 Disproportionality

These were broken down by 4 Community resolution, 19 Adult Conditional Cautions, 11 Youth Cautions.

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).

Panel findings

Of the 34 cases available, 34 were scrutinised. Of the cases reviewed, the panel were able to reach a consensus on all 34 cases. 14 were considered appropriate, 12 appropriate with observations, and 8 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
01/34	Community Resolution	Sexual assault on a female	Inappropriate*
02/34	Community Resolution	Sexual assault on a female	Appropriate
03/34	Community Resolution	Sexual assault on a male	Inappropriate*
04/34	Community Resolution	Wounding with intent to do grievous bodily harm	Appropriate with observations
05/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
06/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
07/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
08/34	Youth conditional caution	Having possession of a controlled drug - Cannabis	Appropriate with observations
09/34	Youth conditional caution	Having possession of a controlled drug - Cannabis	Appropriate with observations

10/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
11/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
12/34	Adult conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
13/34	Youth conditional caution	Having possession of a controlled drug - Cannabis	Appropriate with observations
14/34	Youth conditional caution	Having possession of a controlled drug - Cannabis	Appropriate
15/34	Adult conditional caution	Causing intentional harassment, alarm or distress	Inappropriate*
16/34	Adult conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Inappropriate*
17/34	Adult conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Inappropriate*
18/34	Youth conditional caution	Causing intentional harassment, alarm or distress	Inappropriate*
19/34	Youth conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Appropriate with observations
20/34	Adult conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Appropriate
21/34	Adult conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Appropriate
22/34	Adult conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Appropriate

23/34	Youth conditional caution	Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)	Appropriate with observations
24/34	Youth conditional caution	Causing intentional harassment, alarm or distress	Appropriate with observations
25/34	Adult conditional caution	Theft from shops and stalls	Appropriate
26/34	Adult conditional caution	Theft from shops and stalls	Appropriate with observations
27/34	Adult conditional caution	Theft by an employee	Inappropriate*
28/34	Adult conditional caution	Theft in a dwelling other than from automatic machine or meter	Inappropriate*
29/34	Youth conditional caution	Theft of a pedal cycle	Appropriate with observations
30/34	Adult conditional caution	Theft from shops and stalls	Appropriate with observations
31/34	Adult conditional caution	Theft in a dwelling other than from automatic machine or meter	Appropriate with observations
32/34	Adult conditional caution	Theft from shops and stalls	Appropriate with observations
33/34	Youth conditional caution	Theft from shops and stalls	Appropriate
34/34	Youth conditional caution	Theft of a pedal cycle	Appropriate

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

01/34

The panel considered use of a Community resolution inappropriate in a case of Sexual assault on a female. There was clear evidence of grooming behaviour, child sexual abuse and sexual exploitation. It was viewed that the risk of future offending is likely to be quite high and the missed opportunity to challenge the perpetrator here is a concern. The officer involved made comment to the perpetrator may have not known how old the child was due to being heavily made up, the panel felt this was inappropriate, placed some blame on the victim and does not fit with the laws of consent. The panel advised that the officer should be educated about this.

An end date needed to be specified for the community resolution conditions to ensure compliance. The victim and mother were not supportive of the case going further, however the panel felt this case should have been referred to CPS for charging advice in the Rape and Serious Sexual Offence team (RASSO).

03/34

The panel considered use of a Community resolution inappropriate in a case of Sexual assault on a female. The panel agreed they did not feel comfortable with the use of CR for sexual assault cases. The assault was against a stranger in a public place and the offender had previous for sexual assaults against a minor. The panel held

concern of this being an indication of risk to further re-offending and vulnerability. Staff indicated that the offender often makes women feel uncomfortable. The panel felt there was an ongoing risk and more rehabilitative work needed to be done with the offender to reduce any future risk.

15/34

The panel considered use of an Adult Caution inappropriate in a case of Causing intentional harassment, alarm or distress. The offender involved had already been given a community resolution previously for a similar offence, thus showing it had not been effective as the offender went on to commit a further offence. It was viewed that a restraining order would have helped the situation. It was not clear if the victim supported a conditional caution.

16/34

The panel considered use of an Adult Caution inappropriate in a case of 'Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)'. The panel felt the offender should have been charged and gone to court. The officer seems to be confused in their decision making, recording that there is evidence to support a prosecution for S.5, indicating there was clear intent to cause disorder and ASB, the case was against police officers who had batons drawn, indicating the severity of the offence, and yet a conditional caution was issued.

The panel advised cases like this should be charged, actions like this against officers undermine good order and should not be tolerated. The panel also felt there was a strong public interest to prosecute this case as it was part of the black lives matter movement.

The offender also had previous for assaulting a Police officer.

17/34

The panel considered use of an Adult Caution inappropriate in a case of 'Use threatening / abusive words / behaviour or disorderly behaviour likely to cause harassment, alarm or distress (recordable)', detailed as Spitting at staff serving the public during COVID-19 pandemic. Although the panel observed the offender had lost his job and was suffering with mental health issues, this is a very serious offence and could have resulted in illness of the victim. Spitting in someone's face is not acceptable and in this case shop staff should not have to tolerate such abuse. The panel felt a custodial sentence should have been considered, this would have also given opportunity to apply to the courts for compensation to the victim. There is a strong public interest to prosecute spitting (battery) especially during the pandemic.

18/34

The panel considered use of a Youth Caution inappropriate in a case of 'Causing intentional harassment, alarm or distress'. The case involving multiple offences at multiple addresses exposure, indecency, and child present at one address, criminal damage/theft, unlawful entry, damage to cars, pushing a police officer about etc. raises question to why this case was not charged. These were very serious matters and would cause lasting impact upon others, throwing a dog and a worrying sexual element. Officers recorded the offender was of good character with no previous, however the panel felt this should have been taken into account following charge at court.

27/34

The panel considered use of an Adult Caution inappropriate in a case of Theft by an employee. The panel viewed this case as a serious breach of trust, theft of cash and personal effects taken on more than one occasion, proving more than an impulse occasion of theft.

The panel considered use of an Adult Caution inappropriate in a case of Theft in a dwelling other than from automatic machine or meter. This case involved theft within a school, from pupils, the panel felt this was a significant breach of trust in a school environment, planned out with multiple victims. The panel advised this was not just a simple theft but fraud by false representation by a matron in a position of trust and so required more than a conditional caution due to the seriousness of the offence.

Good Practice:

Good practice examples were identified including:

- Victims views being considered
- Letter of apology provided to the victims written well
- Good use of the drugs awareness course
- Emphasis on youth rehabilitation evidenced
- Good identification of vulnerable youth offenders, working with partner agencies to build trust in engaging in support mechanisms
- Proportionate use of conditions observed across many cases
- Safeguarding referrals observed appropriate

Recommendations and Observations:

The Panel put forward the following recommendations and observations:

- Sexual assault is perhaps too serious to be dealt with by community resolution
- Consider the needs of the offender when setting out conditions, to support reducing reoffending
- Ensure offender is educated through conditions for future awareness
- Ensure conditions are clear and robust, avoid vague, ambiguous or unenforceable conditions.
- Consider ongoing risks not just the isolated incident
- Not appropriate for officer to assist the offender with arranging a payment plan for conditions.
- Ensure it is clearly recorded that the offender completes the conditions/programme.
- Consideration to payment ability for those that are homeless
- Avoid using a conditional caution when one has been used previously for a similar offence
- Recognise that good character can be observed in court following charge
- Consider public interest, observed cases at this panel were of spitting and assault against emergency workers
- Offences involving a racial element should default to a charging decision.
- Serious breaches of trust, such as employee in a school, or repeat breaches should be charged

Disproportionality overview of defendant

30 cases – 13 Green/11 Yellow/6 Red (43% Green/20% Red)

Following completion of the panel review of cases ethnicity was looked at separately to see if the appropriate and inappropriate use of OOC were disproportionate, therefore implying an unfair or bias use of OOC or not a robust, rehabilitative use of the OOC. Here listed is a breakdown of the ethnicities, this evidences no disproportionality in the use of OOC from the sample of 30 cases observed by the panel on this occasion.

W1 – White British – 13 cases

4 Green (31%)
5 Yellow (38%)
4 Red (31%)

All other ethnicity (includes African/Indian/Caribbean/White and Black Caribbean/Any other Asian Background/ Any other Black Background/Any other mixed background) – 17 cases

9 Green (53%)

6 Yellow (35%)

2 Red (12%)

Conclusion of disproportionality present

No sign of disproportionality in appropriate use of OCCD between white and other ethnicity cases. The panel observed the appropriateness of the OCCD, the victim's voice being heard and the rehabilitative nature of the OCCD all being appropriate.

Next Meeting: 7th December 2021

The theme of the next meeting was agreed as Domestic Abuse cases.