

Out of Court Disposals Scrutiny Panel Disproportionality (Youth Cases) & Hate Crime Conditional Caution

June 2022

Out of Court Disposals Scrutiny Panel: June 2022

The OoCD Scrutiny Panel carries out independent scrutiny of the use of Out of Court Disposals to bring transparency to the use of Out of Court Disposals, drive improvement and increase understanding and confidence in their use.

The theme of this meeting was Disproportionality (with a focus on youth cases) and Hate Crime Conditional Cautions.

About the Panel

The Panel includes Magistrates and representatives of the Crown Prosecution Service, HMCTS, Youth Offending Teams, and victim services. The role of the Panel is to ensure that the use of Out of Court Disposals (OoCD) is appropriate and proportionate, consistent with national and local policy, and considers the victims' wishes where appropriate.

Findings of the Panel, recommendations, and action taken in response are published at the following link:

[Out of Court Disposals Panel Reports | OPCC for Avon and Somerset \(avonandsomerset-pcc.gov.uk\)](#)

OoCD Overview & Performance (Inspector Yannis Georgiou)

Performance

Use of Out of Court Disposals have remained at a steady level year on year:

Outcome	Jan-May 2021	Jan-May 2022
Community Resolution	949	856
Conditional Caution	451	529
Diversions Outcome 22	714	752
Total	2114	2137

Year on year use of Community Resolutions is higher in Neighbourhood Teams (an increase of 37%), while use of Conditional Cautions by Detainee Investigations Team has more than doubled (from 86 to 192 comparing January – May 2021 with the same period in 2022). This is to be expected, given the respective roles of each team.

Policy Update

The **Police Crime Sentencing and Courts Act 2022** will formalise the Two Tier system for Out of Court Disposals. Avon and Somerset is one of the early adopter Forces, and as such in a strong position to prepare for the changes. The new system introduces a 'two tier plus' model. Conditional Cautions will be replaced by:

Outcome	Offence type	Breach
Diversions Caution	Any Offence	Prosecution for the offence
Community Caution	Any Offence other than an excluded offence*	Financial Penalty

*Excluded Offence: indictable-only offence; offence triable either way prescribed in regulations; summary offence prescribed in regulations

Community Resolutions remain the same. Changes will be introduced in April 2023. A working group has convened to prepare for the changes, with the support of the Panel.

Theme: Hate Crime Conditional Caution

Rationale

Avon and Somerset is one of three Forces piloting the use of Conditional Cautions in Hate Crime cases. Annual scrutiny of these cases is required as a condition of dispensation by the Director of Public Prosecutions for use of disposals of this kind. Findings of case scrutiny will be fed into evaluation, due to be carried out in September 2022.

Intervention Spotlight

The Hate Crime intervention, RISE Against Hate Crime, is jointly commissioned by the three Forces, with West Midlands Police as lead. The intervention is delivered over a four day course, and aims to:

- Help develop an understanding and acceptance of other's beliefs, cultures and values;
- Increase emotional self-management;
- Increase empathy and victim awareness;
- Enhance awareness of the impact of their behaviour;
- Increase respectful communication;
- Reduce reoffending.

Performance

There have been 18 referrals since the pilot began in July 2021. This is lower than hoped, however it reflects challenges identified during the pilot including:

- Strict conditions for referral;
- Format of the intervention:
 - Feedback has been received that four days is prohibitive, with attendees having to take time off work, arrange childcare/transport etc for four separate sessions.
 - Due to low referral numbers, the provider has run some of the sessions virtually. This led to issues with attendees not engaging appropriately (e.g. joining the session while using public transport).

The pilot is due to run until September 2022.

Theme: Disproportionality (youth cases)

Rationale

Annual scrutiny of disproportionality in the use of Out of Court Disposals is a requirement of NPCC/MoJ Guidance for Out of Court Disposals. A focus on youth cases was selected for this year's theme following recommendations of the Identifying Disproportionality in the CJS in A&S report, published in May.

Case Selection

Cases were selected to cover 6 offences with one committed by a White youth and the same offence committed by a youth from an ethnic minority group, each pair from the same YOT area. While every attempt has been made to ensure a geographic spread across the Force, not all YOT areas were represented (B&NES and North Somerset). Cases were selected from nearly 500 cases in the last 6 months, and is therefore a very small sample size.

Case Scrutiny

Summary of cases scrutinised

A total of 34 cases were scrutinised by the Panel:

- 11 cases resolved by Hate Crime Conditional Caution;
- 18 cases on the selected theme of disproportionality (with a focus on youth cases);
- 5 cases involving serious violence and serious sexual offences resolved by Community Resolution - all such cases are scrutinised by the Panel in order to provide assurance and for the purposes of transparency and public confidence.

Panel Decision

Disposal	Offence	Panel Decision
Hate Crime Conditional Caution cases		
Conditional Caution (Hate Crime)	Assault without injury	Appropriate
Conditional Caution (Hate Crime)	Harassment	Appropriate
Conditional Caution (Hate Crime)	Threats to kill	Appropriate with observations
Conditional Caution (Hate Crime)	Racially aggravated public order	Inappropriate*
Conditional Caution (Hate Crime)	Racially aggravated public order	Inappropriate*
Conditional Caution (Hate Crime)	Malicious communications	Appropriate with observations
Conditional Caution (Hate Crime)	Racially aggravated Assault on Emergency Worker	Panel could not reach consensus*
Conditional Caution (Hate Crime)	Malicious communications	Appropriate
Conditional Caution (Hate Crime)	Harassment	Appropriate with observations
Conditional Caution (Hate Crime)	Common assault	Appropriate with observations
Conditional Caution (Hate Crime)	Harassment	Appropriate with observations
Disproportionality (Youth Cases)		
Youth Caution	Violence Against the Person	Inappropriate*
Youth Caution	Violence Against the Person	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Assault	Appropriate with observations
Youth Caution	Possession of Weapons	Appropriate
Community Resolution	Assault	Appropriate with observations
Youth Caution	Possession of Weapons	Appropriate with observations
Community Resolution	Possession of Class B Drug	Appropriate
Youth Caution	Possession of Class A Drug	Appropriate with observations
Community Resolution	Theft	Appropriate with observations
Community Resolution	Theft	Appropriate
Community Resolution	Theft	Inappropriate*
Community Resolution – Serious Sexual Offences / Serious Violence		
Community Resolution	Assault	Appropriate
Community Resolution	Sexual assault	Appropriate
Community Resolution	Sexual assault	Appropriate
Community Resolution	Assault	Appropriate with observations
Community Resolution	Sexual assault	Appropriate with observations
SUMMARY - Appropriate (9); Appropriate with Observations (20); Inappropriate (4)		

Summary of cases considered inappropriate by the Panel

- 1. Racial abuse and assault of two women at a train station:** Offender did not give a clear admission, therefore not suitable for OoCD and should have been charged. Nasty and unprovoked assault in a public setting, witnessed by members of the public, offender showed no remorse. Feedback from Hate Crime intervention provider was that having initially queried whether to accept the offender, he had engaged positively. The Panel queried what had happened with the assault allegation, which appeared not to have been pursued.
- 2. Racially aggravated assault towards staff at a hotel:** sustained attack on three members of hotel staff, in their place of work. Given the severity of the incident and aggravating factors, with heavy intoxication and racial abuse, the case should have gone to court. It was not clear whether the victim had agreed to the outcome. The panel noted missed opportunities for timely consideration of compensation to replace victim's glasses – this should be considered as a matter of course. The letter of apology was missing from file. The offender had shown strong engagement on the intervention and was extremely remorseful. His case has since been used as a case study to demonstrate the impact of the intervention.
- 3. Racially aggravated assault of emergency worker:** the Panel was unable to reach consensus in the case involving racial abuse and deliberate push against a police officer whilst intoxicated. Difficulties in contact meant that the offender did not complete the intervention, however no further action was taken. Should have been breached and charged. Given the nature of the offence, the Panel considered that a racist assault on an emergency worker should have gone to court.
- 4. Assault of member of staff by young person:** Physical assault, including spitting (increased in severity in the context of Covid), on a member of staff, causing damage to glasses. The Panel felt that a letter of apology was not sufficiently robust or rehabilitative and that a tailored, longer-running intervention would be more appropriate, particularly given the complex situation / needs (arising from a domestic abuse incident, identified risks regarding child sexual and criminal exploitation). Whilst the possession of a weapon aspect was dealt with swiftly via Outcome 22 and referral to the youth panel, the Panel expressed concerns at the lack of timeliness in processing the assault aspect of the offence. A delay of 5 months meant that the assault aspect was dealt with under the adult system due to the age of the offender. The question of disproportionality was therefore difficult to assess.
- 5. Multiple thefts from shops:** the Panel considered use of a Community Resolution appropriate in the linked case on the basis that the second offender had no previous. However, given significant previous offending history in this case, the Panel deemed the outcome inappropriate and felt that the offender should have been charged. The Panel queried whether due diligence had been carried out by the officer on scene.

Summary of observations and good practice identified by the Panel

Hate Crime Cases

- In scrutinising cases referred to the RISE Against Hate Crime intervention, the Panel identified the value of bespoke interventions – offering a structured and targeted outcome, whereas the outcome at court would have been generic and less likely to impact on future behaviour. It was valuable to hear feedback from the RISE Against Hate Crime intervention manager about engagement in the course and its impact on participants. Recommended looking at the feasibility of cohort tracking to measure the impact of specific interventions on reoffending.
- The Panel noted low referral levels into the Hate Crime Conditional Caution. This may indicate that referral criteria are too restrictive. This issue is also experienced by other forces within the 3 force pilot. Presents a missed opportunity for positive intervention. This issue will be taken forward within the evaluation for consideration by the Crown Prosecution Service (responsible for granting dispensation for use of Conditional Cautions in Hate Crime cases).
- In one case, the offender did not admit the hate element, and was therefore ineligible for the hate crime intervention, so referred instead to the anger management intervention. The Panel suggested comparing Hate Crime flagged cases with cases referred to the Hate Crime Conditional Caution to assess the issue of eligibility and referral criteria.
- Compensation approach – in a number of cases, the panel questioned why compensation had not been ordered, and recommended development of automatic consideration of compensation that could be built into the ASCEND process. Magistrate members of the Panel offered support in enabling the Force to learn from the court approach in respect of compensation orders.
- Consistency in breach arrangements for non-completion of course – in a case in

which the offender had been difficult to contact and failed to appear on two scheduled courses, the Panel queried why the case was completed as No Further Action rather than breached and charged to court. In another case, non-completion did result in breach.

- In a case involving a neighbour dispute, Panel members questioned whether a court restraining or non-contact order may have offered further protection to the victim. The Panel did however acknowledge the difficult balance in dealing with offenders with mental health issues, noting that the officer on the ground has the insight into how best to reduce risk and protect against further offending. It was noted that the victim was clearly consulted and satisfied with the outcome.
- In a case involving racially aggravated abuse of a parking attendant, the Panel felt that it may be in the public interest to charge, noting that media coverage of court cases may act as a deterrent and send a clear message that this behaviour is not acceptable.
- Intoxication – the Panel noted that whereas in most cases intoxication was treated as an aggravating factor, in some it appeared to have been seen as a mitigating factor.

Disproportionality (Youth Cases)

- Difficulties in assessing disproportionality arose from: lack of consistency; timeliness issues; differences in treatment and outcomes in the transition between youth and adult systems.
- Lack of consistency across the Force area in the approach to youth cases was identified in a number of cases – the change in policy in 1st time knife possession was one example. This has the potential for significantly different outcomes for young people in different parts of the Force area, and the risk of a 'postcode lottery'. Clarity on policy and a consistent approach across the Force area in youth justice and working with the Youth Offending Teams is essential to ensure fair and proportionate outcomes and safeguard against perceived or actual disproportionality.

- Timeliness – 5 month delay in one case meant that one aspect of the incident was dealt with swiftly under the youth system (possession of a knife – dealt with via Outcome 22 / referral to Youth Panel with positive intervention), while the other (assault) was dealt with under the adult system.
- Differences in treatment and outcomes were identified in a group incident involving young people with one defendant dealt with under the adult system due to their age. It was noted that the system does not have the flexibility to bring parity and proportionality in outcomes at the transition from youth to adult offending services.
- The Panel would have liked to see further intervention, including consideration of referral to Prevent Channel in a graffiti case involving Nazi symbols.
- Clarified policy for 1st time knife possession. One case was dealt with as an Outcome 22 (educational diversion), whereas in another case, the outcome was much higher, a Youth Conditional Caution. It was clarified that the previous policy had required a mandatory YCC (unless the incident took place in school. However a new policy was introduced in April 2022 requiring use of Outcome 22 for knife possession in youth cases. Potential disproportionality in the first time knife possession resolved by Youth Caution (while the same offence in another case was dealt with using Outcome 22), followed the correct Force policy at the time. As such, no disproportionality was found.
- In another case involving knife possession, the Panel questioned practice for forfeiture and destruction in Out of Court Disposal cases. It was confirmed that a clear audit trail is required.
- The Panel discussed flexibility to enable use of a Youth Alcohol and Drug Disposal (YADD) to reduce criminalisation in more complex cases where the young person was vulnerable. The case in question had been resolved by a Youth Caution. It was clarified that where there is suspicion of intent, YADD is considered unsuitable.
- A need for officer awareness was identified to encourage referral to the YOT Panel for complex cases, understanding that this does not criminalise the young person. Referral to YOT Panel enables a rounded picture of the young person to be built up, to understand underlying issues and address need.
- The Panel questioned whether shop theft workshops are still in use? It was clarified that only similar educational outcome for Community Resolutions is the Choices & Consequences course in Somerset. It was noted that the vast majority of Community Resolution outcomes in youth cases involve a letter of apology only. For this reason, the Force has initiated a pilot to improve the quality of letters of apology working in partnership with the Restorative Justice provider.

Serious Sexual Offences / Violence Community Resolution

- In a case involving assault between peers in a school, the Panel questioned whether a Community Resolution would be sufficient, had it not been for the school decision to exclude.
- The Panel would like to have seen an adult safeguarding referral in a case involving sexual assault in supported accommodation.
- A case involving a serious assault was deemed 'just about' suitable for Community Resolution on the basis of the victim's wishes, and not wanting to break up their friendship group.
- Concerns were expressed that a Community Resolution and words of advice were not sufficient in a case involving sexual assault in the toilets at school. Again, the victim's wishes swayed the Panel to consider the case 'appropriate with observations' rather than inappropriate.

Organisational Improvement

Continued examples of issues which have been previously identified by the Panel as areas for improvement:

- The need to ensure that conditions are clear, appropriate, workable, respond to identified concerns and are enforceable;
- Quality and suitability of letters of apology continues to be an issue. In one case, the apology was given by means of a comment on social media. The Constabulary reported that a pilot is underway to refer youth cases in which a letter of apology is required to the restorative justice service for support and guidance in writing a meaningful and appropriate letter;
- For youth cases to be referred to the Youth Offending Team Panel for assessment to allow targeted work to address behaviour;
- Inaccuracies in case files: ensuring the correct name is stated on the Community Resolution form.

Good Practice

- Availability and impact of bespoke interventions such as RISE Against Hate Crime. The Panel noted that the course provided a better outcome than the court would have available to offer.
- Availability of and referral to ASCEND and Lighthouse Safeguarding Unit – enabling needs assessed support and intervention for both offenders and victims.
- Examples of victim-focused outcomes including referral to specialist support services for victims of Hate Crime, for example SARI.
- Referral to restorative justice.

What happens next?

Action is taken to respond to Panel findings and reported to the next meeting. Feedback on inappropriate cases is provided to individual officers and their supervisors to reflect and inform future decision making.

Theme of the next meeting:

- Assault against Emergency Workers