

Out of Court Disposals Scrutiny Panel

Assault Against Emergency Workers

September 2022

Out of Court Disposals Scrutiny Panel: September 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 **Assault against Emergency Workers.**

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.

The Panel is supported by the Office of the Police & Crime Commissioner (OPCC), Force Out of Court Disposals Tactical Lead and the ASCEND Team Manager.

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 \(avonandsomerset-pcc.gov.uk\)](#)

Panel Business

(Jo Coulon, OPCC Scrutiny & Performance Manager)

The A&S Criminal Justice Board has approved plans for a pilot for the OoCD Scrutiny Panel to review cases that went to court, but may have been eligible for an out of court disposal.

This is part of work to tackle disproportionality in the criminal justice service. Criteria for selecting cases to scrutinise are being drawn up. The pilot will test the methodology and practicalities to inform future scrutiny arrangements.

The OPCC has been restructured, bringing together support for all PCC-led scrutiny panels into one team. This will strengthen and coordinate working arrangements, share good practice and provide resilience.

OoCD Overview & Performance

(Rebecca Marshall, Force OoCD Tactical Lead)

The new Youth Interventions and Justice Tactical Group met on 27 September to discuss recommendations from the June OoCD Panel Meeting which highlighted a lack of consistency across the Force area in dealing with youth cases. The aim of the group is to put in place clear and consistent processes and communicate key messages to police and YOT staff.

Work continues to prepare for the new Two Tier Plus OoCD Framework ready for implementation in April 2023. The new system will include a new five part test to ensure that OoCDs are being used appropriately. The test was shared with the Panel and will be taken into account in scrutinising cases under the new system.

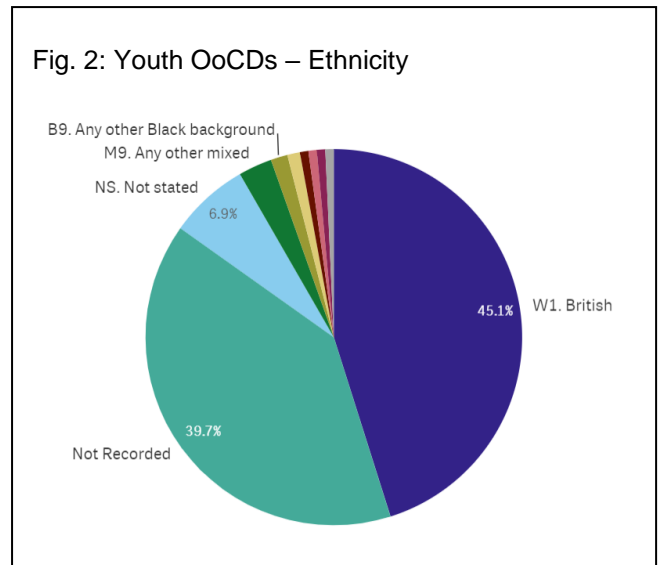
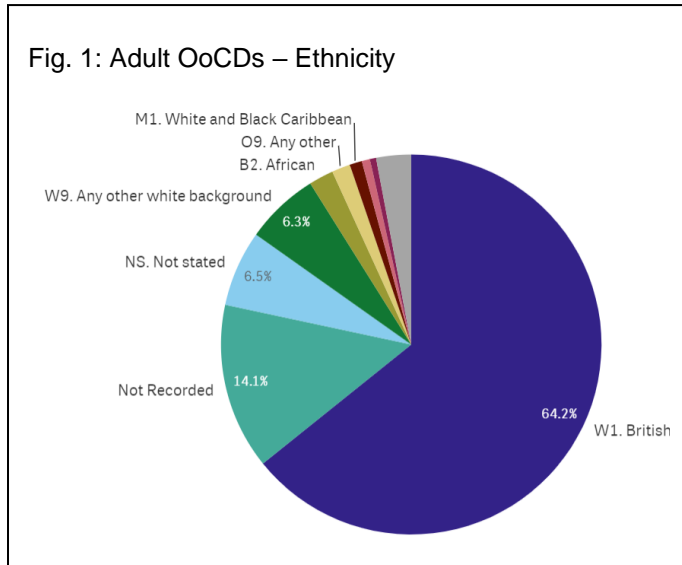
(Caroline Elwood, ASCEND Manager)

Quarterly performance information was shared with the Panel. June-August 2022 saw:

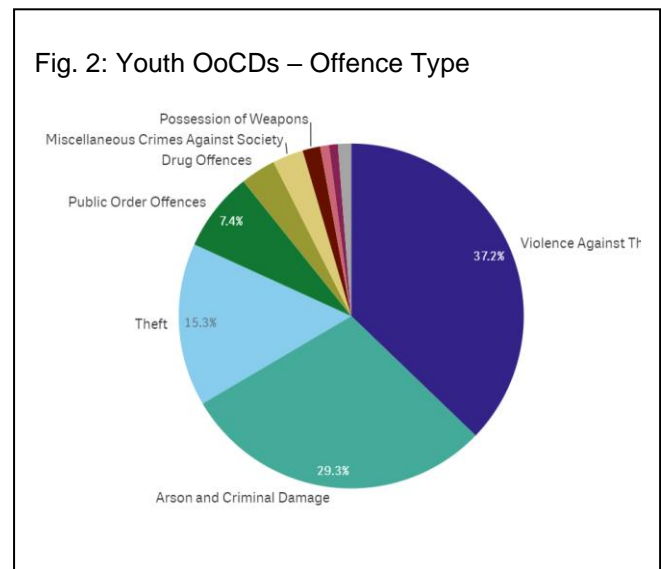
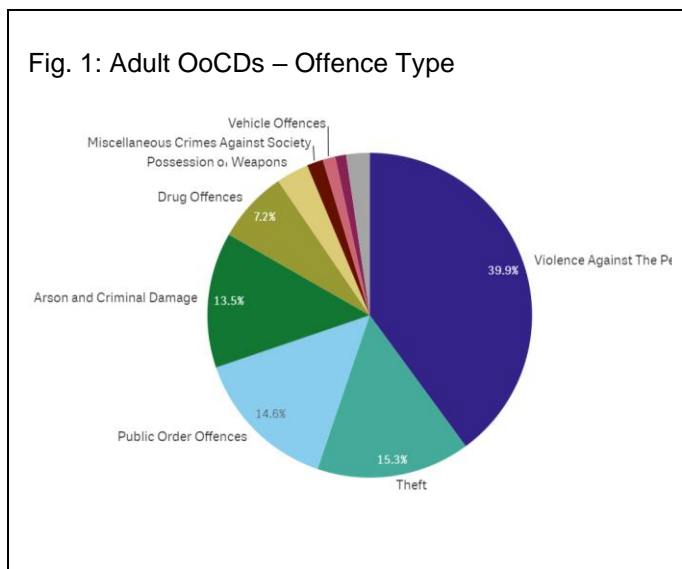
- 261 Conditional Cautions
- 295 Community Resolutions
- 310 Outcome 22 (including 109 Drug Education Programme)

The Panel requested comparative information for future reports, using a pre-Covid baseline (2019/20). A breakdown of statistics showed:

- **Ethnicity:** Non-recorded ethnicity remains a concern, accounting for 20.6% in adult cases and 40% of youth cases. This issue is being addressed through the Identifying Disproportionality in the Criminal Justice System work programme.



- **Offence type:** Violence against the person accounts for the majority of adult OoCDs (32.6% of adult cases and 37.2% of youth cases).



- **Conditions:** 275 conditions were set, the majority of which were restrictive (60), followed by: CARA – for use in Domestic Abuse Conditional Cautions (34); Victim Awareness Course (25); Compensation (20); KIC (19); Alcohol Diversion (18); SHE – female offenders intervention (18); Drug Diversion (17); Letters of Apology (13). ‘Other’ conditions (51) included: assault against emergency workers (11); RISE against hate; Consider; Always Choose to Tell; Restorative Justice; Reparation Costs; and Fines.

Theme: Assault Against Emergency Workers

Rationale

The September meeting focused on cases involving assault on emergency workers. The theme was selected to ensure that powers are being used to send a clear message that emergency workers should not tolerate abuse in the line of duty.

The Panel compared powers available to Magistrates at court with the approach out of court, which includes the specialist intervention for assault against emergency workers, introduced by the Force in November 2021.

National Context

The Assaults on Emergency Workers (Offences) Act 2018 sought to protect emergency workers by creating a specific offence (previously prosecuted as common assault). The Police, Crime, Sentencing and Courts Act 2022 enhanced protection, increasing the maximum custodial sentence for assaulting an emergency worker from 12 months to 2 years.

Research by Transform Justice¹ looked at effective ways to resolve and prevent assaults against police and NHS staff. Research found limited evidence that powers available to court would provide an effective deterrent, and highlighted the particular risk of new sanctions sweeping more people with mental health conditions, or who are neurodivergent into the criminal justice system. The report identified the need for employers to improve how they support victims and deal with assaults through consistent, compassionate de-briefings followed up by action to resolve the harm and reduce the risk of it happening again. Findings highlighted that ways to resolve assaults without going to court, such as through diversion to courses, services or restorative justice, could be much better utilised.

Avon & Somerset Approach

Where cases are suitable for an out of court disposal, a specialist Assault Emergency Worker (AEW) Intervention is available as a condition. The course was developed in

partnership with emergency service partners and launched in November 2021.

The need for this disposal option was identified when considering the volume of incidents against police (approximately 150 per month) and the proportion of these that are non-injury assaults, which is around 75%. It was also identified that there is often a degree of vulnerability around the suspect and that incidents of assault against emergency workers can often take place when the suspect is themselves in crisis. The AEW course offers the opportunity to divert people with mental health conditions away from the criminal justice system where appropriate, addressing concerns raised in national research.

The intervention is victim focused and always considers impact, not just injury. All officers or staff who have been assaulted are supported according to the 7 Point Promise. This sets out clear care plans according to the type of assault and level of injury, actions and responsibilities for supervisors, and ongoing care through TRiM (support in the aftermath of a traumatic event), the Health Assured Employee Assistance Programme and Counselling service, Occupational Health, Physiotherapy and specialist support groups.

INTERVENTION SPOTLIGHT

Assault Emergency Worker Intervention

- Two-part course covering assault against emergency workers and anger management
- Delivered by RISE (hate crime course provider)
- 65 referrals since course started in Nov 2021
- 11 participants in the last quarter
- Open to all emergency services – not just police
- Developed in consultation with a multi-agency team including police, ambulance, health and fire services.

¹ <https://www.transformjustice.org.uk/wp-content/uploads/2022/06/Protecting-the->

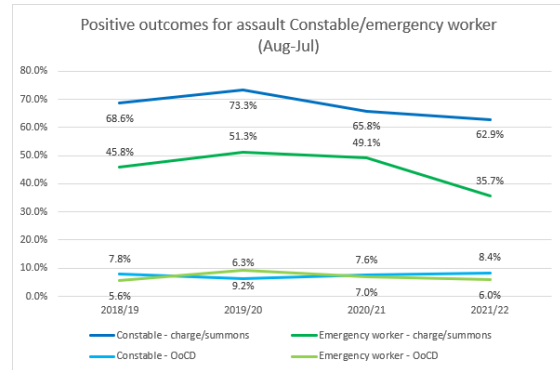
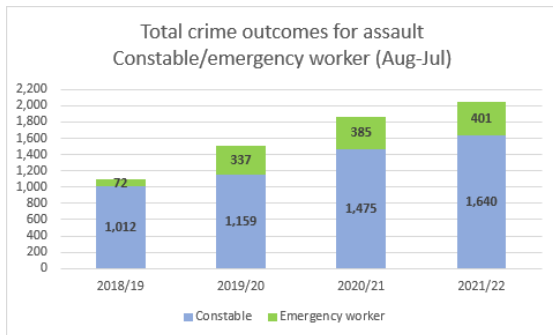
[protectors-Do-criminal-sanctions-reduce-violence-against-police-and-NHS-staff.pdf](#)

Performance

The Panel considered performance in relation to the theme of assault against emergency workers.

When considering assaults against the police and emergency workers together:

- There is a moderate upward trend in the number of crimes, but a downward trend in the positive outcome rate.
- This decline is caused by a downward trend in charge/summons whereas OoCD are stable.
- It should be noted that violence against the person, not against these workers, has also seen a downward trend.



When looking at assaults against the police and emergency workers separately:

- The proportion of OoCD is broadly similar across the two groups.
- However assaults against emergency workers have a charge/summons rate which is 22% points lower than assaults against officers (45% and 67% respectively).
- It should also be noted that these levels are considerably higher than violence against the public more broadly; which had a positive outcome rate of 13%.

Case Scrutiny

Summary of cases scrutinised

A total of 28 cases were scrutinised by the Panel:

- 21 cases on the selected theme of Assault Against Emergency Worker – 14 adult cases and 7 youth cases;
- 1 case was not assessed as it was incorrectly flagged as Assault Against Emergency Worker;
- 7 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
Community Resolution – Serious Sexual Offences / Serious Violence		
Community Resolution	Sexual Assault	Appropriate with observations
Community Resolution	Sexual Assault	Inappropriate*
Community Resolution	Sexual Assault	Appropriate with observations
Community Resolution	Sexual Assault	Appropriate with observations
Community Resolution	Sexual Assault	Appropriate with observations
Community Resolution	Assault	Inappropriate*
Community Resolution	Wounding/GBH	Appropriate
Assault Against Emergency Worker cases		
Conditional Caution	Assault Emergency Worker	Appropriate with observations
Conditional Caution	Assault Emergency Worker	No consensus
Conditional Caution	Assault Emergency Worker	Appropriate with observations
Conditional Caution	Assault Emergency Worker	Inappropriate*
Conditional Caution	Assault Emergency Worker	Appropriate
Conditional Caution	Assault Emergency Worker	Appropriate
Conditional Caution	Assault Emergency Worker	Appropriate with observations
Conditional Caution	Assault Emergency Worker	Appropriate with observations
Conditional Caution	Common Assault	Not assessed
Conditional Caution	Assault Emergency Worker	Appropriate
Conditional Caution	Assault Emergency Worker	Appropriate with observations
Community Resolution	Assault Emergency Worker	Appropriate with observations
Community Resolution	Assault Emergency Worker	Inappropriate*
Community Resolution	Assault Emergency Worker	Inappropriate*
Youth Conditional Caution	Assault Emergency Worker	Appropriate with observations
Youth Conditional Caution	Assault Emergency Worker	Appropriate with observations
Youth Conditional Caution	Assault Emergency Worker	Appropriate
Youth Caution	Assault Emergency Worker	Appropriate with observations
Youth Caution	Assault Emergency Worker	Appropriate
Youth Conditional Caution	Assault Emergency Worker	Appropriate with observations
Youth Restorative Disposal	Assault Emergency Worker	Appropriate with observations
SUMMARY - Appropriate (6); Appropriate with Observations (15); Inappropriate (5);		

Summary of cases considered inappropriate by the Panel

- 1. Sexual touching at work night out:** concern at age disparity between victim and offender and aggravated element due to alcohol consumption, with the offender unable to confirm or deny what had happened. The Panel felt that the Community Resolution was too lenient and the case should have been charged. Lack of admission prevented use of a Conditional Caution. It was acknowledged that the victim did not wish to go to court. The Panel queried whether early advice on Special Measures may have encouraged the victim to proceed. Whilst the victim supported the Community Resolution, the Panel expressed concern at the impact on the victim, the lack of rehabilitative element for the offender, with a missed opportunity to refer to the Alcohol Awareness course, and the quality of the letter of apology, which lacked victim-focus. The Panel also identified issues in cooperation with a neighbouring Force in assisting with the investigation.

***Constabulary Response:** a thorough response was provided setting out a clear rationale for the decision and detailing measures taken for service recovery following initial investigation by a neighbouring Force. It was confirmed that Special Measures were discussed with the victim, and initially a Conditional Caution proposal was sent to ASCEND. However, evidential difficulties and a lack of sufficient admission meant that this was not an option. The victim and family were consulted again and made it clear they did not wish to go to court. A Community Resolution was agreed as the preferred option and conditions set in accordance with the victim's wishes. The response agreed that the letter of apology was of poor quality, and highlighted the need for guidance / processes to be put in place to improve the quality of letters of apology as currently this is perceived to be beyond the influence of the police.*
- 2. Assault of young person during fight at college:** the Panel felt that a Community Resolution was too lenient and that the

case should have been charged. The sustained nature and severity of the attack, the victim kicked repeatedly in the body and face, and causing serious injury (broken nose, fingers, bruising and other injuries) led the Panel to query whether the offence should have been increased to Actual or Grievous Bodily Harm. Whilst the incident is alleged to have started during an altercation between the three students, this attack went far beyond self-defence. The Panel noted the lack of any rehabilitative element, such as anger-management.

***Constabulary Response:** this was a difficult investigation. The OIC persisted with the investigation, however the victim did not support a prosecution and refused to sign their statement, meaning that it would not meet the evidential test to charge. Officers worked closely with the college to ensure safeguarding for both parties and felt that the college was providing the rehabilitative aspect. It was clarified that whilst injuries were initially reported as ABH/GBH, the victim had a cut to the lip and no other injuries, therefore reducing this level of injury. A Community Resolution was utilised as the preference to the alternative which was to file with no further action.*

- 3. Assault of a police officer following a road traffic collision:** given the severity of the assault, intoxication whilst driving and presence of young children, the Panel felt that a Conditional Caution was inappropriate and the case should have been charged and considered at court as part of an overall sentencing plan. The only condition given was a letter of apology, which in itself was felt to be inappropriate, making reference to 'accidental assault'. It was clarified that the incident took place before the Assault Against Emergency Worker intervention was available.

***Constabulary Response:** as identified by the Panel, this incident took place before*

the Assault for Emergency Worker intervention was introduced. Panel observations again highlight the need for guidance / processes to be put in place to improve the quality of letters of apology.

4. **Assault on a nurse in a mental health ward:** the Panel considered use of a Community Resolution inappropriate in a case in which a patient, who was being lawfully restrained, headbutted a Health Care Assistant, causing the victim to black out and serious injury. The Panel based their decision on the severity of the incident, public protection concerns, the fact that the patient did have capacity, and concerns that the victim had initially supported prosecution and whether she had subsequently been persuaded to agree to a Community Resolution. The Panel felt that the case should have been charged.

***Constabulary Response:** discussions have taken place with the Force Mental Health Lead in relation to findings of this case. As a result, A&S Procedural Guidance relating to mental health will be updated to include a section around out of court disposals, to include the question of capacity, as this is not currently explicitly covered in the guidance.*

5. **Assault on a paramedic:** the Panel considered use of a Community Resolution too lenient in a case in which a paramedic was spat at whilst administering anti-heroin medication, with spit entering the eye. The Panel acknowledged that intent was unclear, balancing the repeated spitting having been told to stop, with the potential effects of the medication given. Comparison was also drawn to the context for this offence during the Covid-19 pandemic, the starting point at court being a custodial sentence.

Constabulary Response: as acknowledged by the Panel, it was not possible to prove that the suspect spat deliberately. The suspect was hallucinating at the time of the incident and reacting in a manner expected given the medication that had been administered. Ambulance CCTV was not working and the paramedic witnessing the event was ambivalent at whether the suspect had spat deliberately. A Community Resolution was deemed the best way forward as there was no realistic prospect of prosecution. The response highlighted the fact that no such scrutiny arrangements are in place for cases in which no further action is taken, which could be considered a worse outcome.

The Panel was unable to reach a consensus in one case:

Assault of police officer: the Panel was unable to reach consensus in a case in which during an arrest following an altercation in a bar, a police officer was punched in the face twice, causing injury. PAVA spray had been used, indicating the level of aggression. Magistrate members of the Panel of the attack compared this incident to lower-level assaults frequently seen in court, noting that given sentencing guidelines and the uplift applied to assault against emergency worker cases, the court outcome would be significantly more robust. Given the sustained and deliberate nature of this assault, they felt that the case should have been charged. Other members of the Panel were satisfied with the outcome, highlighting referral to the alcohol awareness course and a letter of apology.

Summary of observations and good practice identified by the Panel

Theme: Assault Against Emergency Worker

Panel Observations	Organisational Learning
Serious Sexual Offences / Violence Community Resolution Cases	
<p>Consistency of Youth Cases</p> <p>The Panel felt that two cases should have gone to Youth Panel for assessment. One case involved touching without consent. Referral to Youth Panel would enable work with the offenders around harmful sexual behaviour and the impact on the victim. The second case involved a repeat incident of sexual touching in which both parties had vulnerabilities. Youth Panel referral would enable the appropriate response to identified need.</p>	<p>A Youth OoCD Tactical Group has been established to bring consistency in youth cases and clarify working practices between YOTs and police across the Force area. Terms of Reference have been shared with the Panel. The first meeting is in December 2022.</p>
<p>Quality of letters of apology</p> <p>Examples of letters of apology which were felt to be insincere / poor quality</p>	<p>This issue is currently being explored with Restorative Approaches Avon and Somerset (RAAS) (PCC commissioned service) and the Force OoCD Tactical Lead to put in place support and guidance to ensure that letters of apology are appropriate and provide a restorative learning opportunity. A pilot is underway whereby letters of apology in youth cases are handled by RAAS to provide specialist input.</p>
<p>Offer of Restorative Justice</p> <p>Restorative justice not offered – missed opportunity for the victim to explain the impact of the offender’s actions.</p>	<p>As above, discussions are underway with Restorative Approaches Avon and Somerset to put in place processes and guidance to ensure restorative justice is offered where appropriate. This includes cases involving sexual offences, subject to risk assessment and specialist support service advice, and on a victim-led basis only.</p>
<p>Choices & Consequences Course</p> <p>Queried suitability of the Choices and Consequences course in a case involving harmful sexual behaviour and in which the offender has autism.</p>	<p>Each Choices & Consequences session is tailored to the needs of the young person taking part, with further support where required and links made with other agencies working with the child. Somerset YOT confirmed that a member of the mental health team/qualified social worker joined this specific session to allow the young person to engage fully in the interventions and offer further support where needed. The programme covers sexualised behaviours (specifically production, possession and</p>

	<p>distribution of indecent images of a child), and the issue of consent. Examples of offences and their consequences are tailored to the attendees. At the end of the session, there is a quiz to demonstrate learning. Further support is offered where a child struggles to demonstrate their learning.</p> <p>Niche records confirm that the school had completed safeguarding measures and a tailored intervention was in place (Gift work - focused on harmful sexual behaviour). Delivery in the school environment is the preferable option for children not known to youth justice services.</p>
<p>Community Resolution requirements</p> <p>Queried whether a Community Resolution can be given where there is a lack of acceptance. In this case, the offender did not accept the behaviour but could not deny it either.</p>	<p>Confirmed that the offender is required to accept responsibility for their conduct in the case of a Community Resolution. In the case of a Conditional Caution, they must admit the offence.</p>
<p>Language on file</p> <p>Concern expressed at language on file e.g. reference to 'boobs' rather than 'breasts'</p>	<p>Review of the file indicated that language recorded on file was quoting words of the caller when reporting the crime.</p>
<p>Interventions for Sexual Offences</p> <p>Concern at lack of referral to intervention to address harmful sexual behaviour.</p>	<p>Suggested process change so that all Community Resolutions issued for Serious Sexual Offences / Violence should go through ASCEND to ensure appropriate intervention.</p>
<p>Accessibility of interventions</p> <p>Queried whether interventions are accessible and that reasonable adjustments can be made.</p>	<p>Clarified that all providers are required to offer their service in an accessible manner. Can offer courses 1:1, virtually and in other ways. Flexibility is built into the process.</p>
<p>Assault Emergency Worker Cases</p>	
<p>Adult Cases</p>	
<p>Treatment of AEW Cases in Court v Out of Court</p> <p>Magistrate members expressed concern at the disparity between outcomes available at court and out of court, and whilst welcoming the introduction of the AEW intervention, expressed concerns at the potential risk of a two-tier system and postcode lottery, given the discretion involved in out of court disposal decision making. Panel members expressed a</p>	<p>The out of court approach in Avon and Somerset is detailed above and includes a specialist intervention designed in partnership with emergency service colleagues. This sits alongside support available to officers and staff through structured care plans and referral to additional support services as required. The A&S model is in line with national research (see above) which found limited evidence that</p>

<p>desire to send a clear message that assault against emergency workers will not be tolerated and will be taken seriously at court.</p>	<p>powers available to court would provide an effective deterrent and highlighted the particular risk of new sanctions sweeping more people with mental health conditions, or who are neurodivergent into the criminal justice system. Referral of all Conditional Cautions to the ASCEND team provides a safeguard in ensuring consistency for cases dealt with out of court. There remains a need to ensure that emergency workers are referred to victim services and offered restorative justice (in line with the Victims Code of Practice) in addition to employee support arrangements.</p>
<p>Compensation</p> <p>The Panel identified a number of cases in which compensation could have been awarded and recommended that a process is developed, learning from the process used at court.</p>	<p>The out of court disposals compensation policy is being updated following guidance from the NPCC to cross-refer to the CPS legal guidance. A copy of that refreshed policy will be shared with the panel once it is finalised.</p>
<p>Firearms Licensing</p> <p>The Panel expressed concern at an incident in a rural location in which the offender was intoxicated and aggressive and weapons were seized. Whilst the incident itself was considered to have been dealt with appropriately, the Panel sought assurance around the firearms licensing process.</p>	<p>The Firearms licensing department has confirmed that the individual concerned has had their firearms licence revoked. A number of automated processes are in place to highlight when an individual with a firearms license has come into contact with the policy. Action is taken before the conclusion to the case. The licensing renewal process involves reviewing PNC and PND so would pick up on out of court disposals recorded.</p>
<p>Mental Health</p> <p>The Panel identified the need for clear guidance on the use of out of court disposals in relation to suspects with mental health issues, and the question of capacity. The Panel questioned whether in some cases, the victim was persuaded to agree to a Community Resolution despite having initially supported prosecution.</p>	<p>As above, discussions have taken place with the Force Mental Health Lead in relation to findings of this case. As a result, A&S Procedural Guidance relating to mental health will be updated to include a section around out of court disposals, to include the question of capacity, as this is not currently explicitly covered in the guidance.</p>
<p>Oversight of Community Resolutions</p> <p>In the majority of cases identified as by the Panel as inappropriate, the decision to issue a community resolution was due to issues with the investigation, a lack of evidence or lack of victim support for court proceedings. The alternative was to file the case with no further action. Whereas Conditional Cautions are reviewed by the ASCEND Team or Youth Panel, there is a greater degree of discretion with Community Resolutions and as such a greater need for</p>	<p>The Force would welcome Panel scrutiny of Community Resolutions to provide assurance and ensure consistent and appropriate use. The introduction of the new two tier plus framework in April 2023 and training on the new NPCC CPS guidance provide an opportunity to remind officers how Community Resolutions should be used. Guidance will also provide a benchmark for the Panel to assess performance against.</p>

oversight to ensure consistent and appropriate use.	
Youth Cases	
<p>Gravity Matrix</p> <p>The Panel queried consistency in the use of the Gravity Matrix, highlighting that one case reviewed by the Panel had a Gravity Matrix score of 4, whereas it was possible for cases involving a Gravity Matrix score of 2 to go to court.</p>	<p>Training and guidance on the move to the new two tier plus framework will provide clarity on the decision making framework for out of court disposals. There is an opportunity to address the issue of consistency in youth cases through the new Youth OoCD Tactical Group.</p>
<p>Quality of Conditions / Targeted Interventions</p> <p>The Panel identified a number of cases in which an assessment was completed but needs were not addressed in conditions/interventions; conditions were too vague and therefore unenforceable; suitable but unlikely to be impactful given multiple complex issues. It was unclear in some cases whether additional interventions in response to need would be duplicating other work ongoing with the young person by other agencies.</p> <p>In other cases, the Panel saw examples of strong assessments linked with appropriate and robust interventions. This included voluntary intervention programmes in Community Resolutions.</p>	<p>The issue of the quality of conditions and targeted interventions in youth cases will be explored through the new Youth OoCD Tactical Group. The aim of the group is to bring consistency to the way that youth cases are dealt with across the Force area and ensure strong and appropriate interventions are in place. The Scrutiny Panel can support this issue by continuing to review YOT paperwork linked to the case to give a more complete picture of the decision making process and outcome.</p>

Good Practice

- Availability of a specialist intervention for Assault Against Emergency Worker cases dealt with out of court in line with national research and good practice;
- Examples of strong rationale and OoCD decision making logs demonstrating serious thought and careful consideration;
- Targeted and appropriate use of Youth Conditional Cautions including consideration of victim views;
- Use of voluntary conditions / interventions to make Community Resolution outcome more robust.

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:

- Domestic Abuse – Conditional Cautions and the CARA intervention