

Out of Court Disposals Scrutiny Panel

Disproportionality: Pilot - Cases that did go to court but may have been suitable for an Out of Court Disposal

June 2023

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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**. The purpose of this meeting was to pilot scrutiny of cases that DID go to court but may have been suitable for an Out of Court Disposal.

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)

Terms of Reference have been updated to reflect arrangements for terms of office, membership appointments and renewals. The order of the work programme has been changed to account for delays in the new Two Tier Plus Framework. A training and development session on the new framework will be held at the December meeting.

Panel Members were asked to consider succession planning in preparation for Mike Evans (Chair) stepping down from the Panel at the end of the year.

Vetting is underway for new members and renewal for existing members. Access to WiFi was discussed to facilitate in-person meetings.

OoCD Overview & Performance

(Rebecca Marshall, Force OoCD Tactical Lead)

Work continues to prepare for the new Two Tier Plus OoCD Framework. Implementation has been delayed until the 'end of the year'. The Code of Practice is due out for consultation in June. The Force is in a strong position with a well-established approach to out of court disposals, menu of interventions and central team. Avon and Somerset is recognised as national leaders and have been inundated with contacts to support preparations in other Forces.

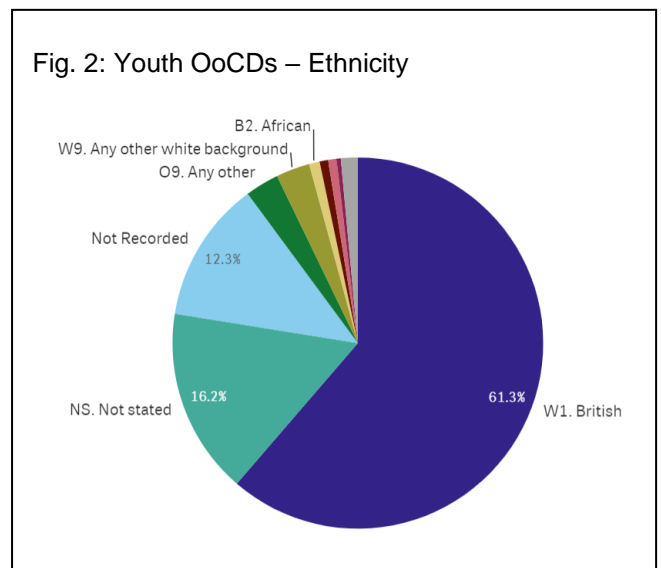
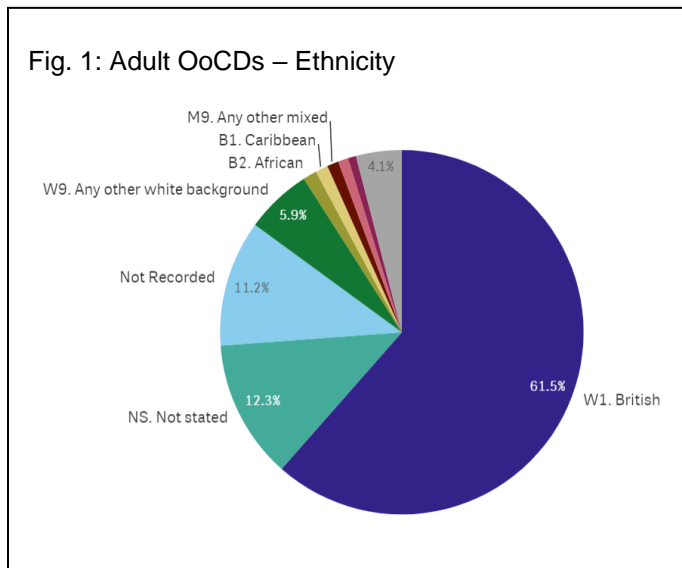
A business case is being developed for a deferred prosecution scheme for 18-24 year olds. The 'Chance to Change' pilot will involve supported interventions over a 16 week period, similar to current Conditional Cautions. The significant difference is that there is no requirement to admit the offence. The pilot will provide an alternative route to help address the challenges being explored at this meeting of the impact of BAME detainees being more likely to give a 'no comment' interview and less willing to admit the offence, making them ineligible to be dealt with out of court.

(Caroline Elwood, ASCEND Manager)

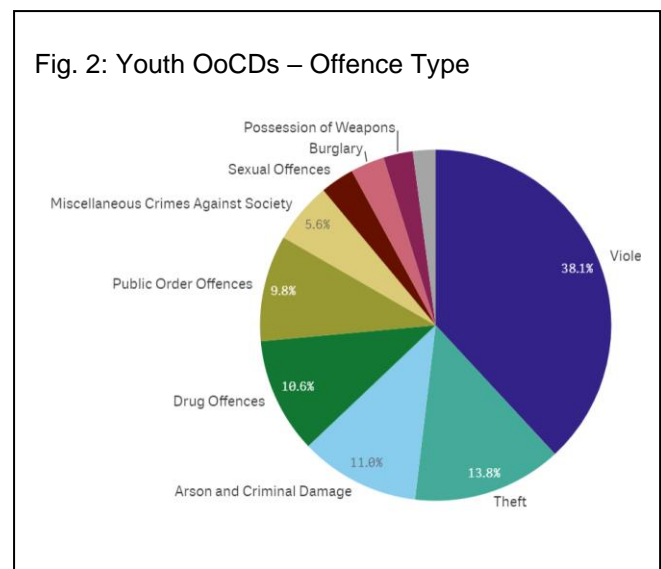
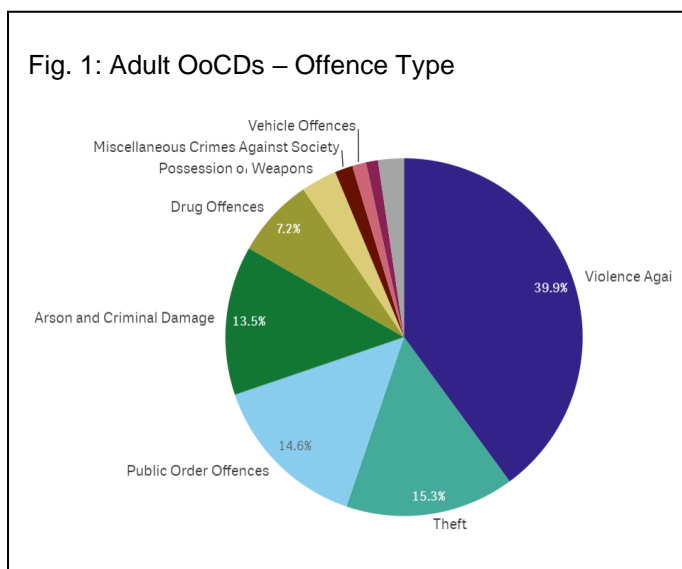
Quarterly performance information for March – May 2023 was shared with the Panel.

Outcome	Adult Cases	Youth Cases
Conditional Cautions	320	28 (Youth Conditional Cautions)
Community Resolutions	337	216
Youth Simple Caution	N/A	38
Outcome 22	309 (inc 108 Drug Education Programme Referrals)	194

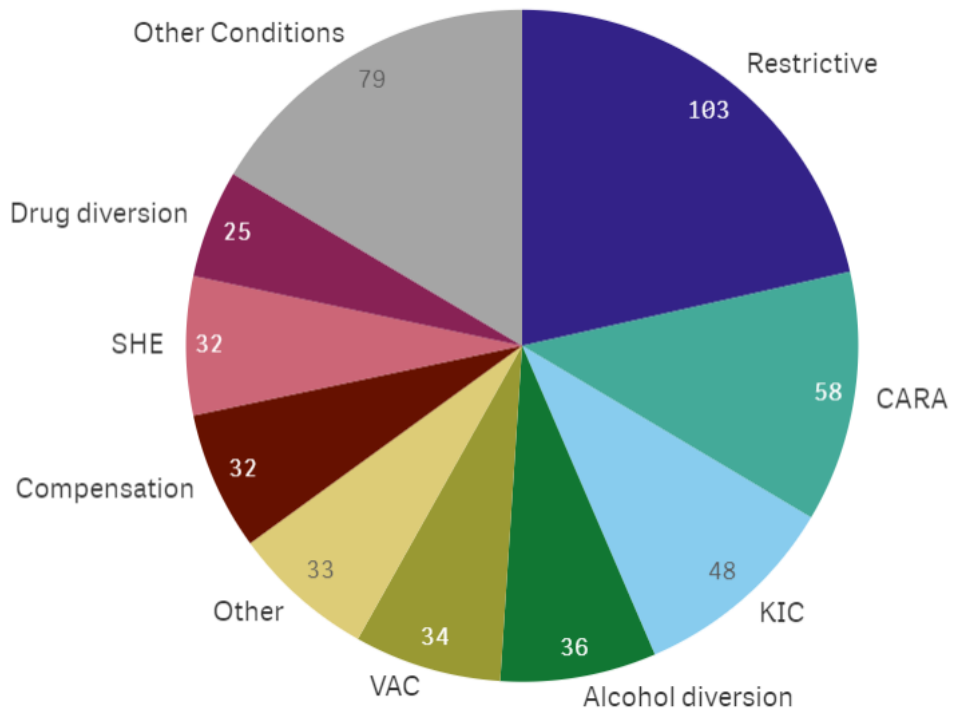
- Ethnicity:** Non-recorded ethnicity remains a concern, accounting for 23.5% in adult cases and 28.5% of youth cases. This issue is being addressed through the Identifying Disproportionality in the Criminal Justice System work programme.



- Offence type:** Violence against the person accounts for the majority of OoCDs (35.1% of adult cases and 38.1% of youth cases).



- **Conditions:** 480 conditions were set over 286 occurrences.
 - 'Other Conditions' includes: Assault on Emergency Worker, RISE Against Hate Crime, Consider, Always Choose to Tell, Restorative Justice, Reparation Costs and Fines.
 - The Panel welcomed the inclusion of Compensation as a condition – this is now available in response to recommendations from the Panel.



Theme: Disproportionality – Piloting scrutiny of cases that DID go to court but may have been suitable for an Out of Court Disposal

Rationale

The Panel scrutinises disproportionality in the use of Out of Court Disposals on an annual basis. This year, scrutiny focused on recommendations of the Identifying Disproportionality in the Avon and Somerset Criminal Justice System report¹. The approach this year was different to the usual scrutiny sessions. This session was designed to pilot scrutiny of cases that DID go to court, but may have been eligible for an out of court disposal.

The Panel sought to examine potential disproportionality in the use of out of court disposals as outlined in Chapter 3 of the report. The report found that black defendants were twice as likely to have been charged (where the case could have been eligible for an out of court disposal) than white defendants. The primary reason for this was that black defendants were more likely to give a 'not guilty' plea, making them ineligible for an out of court disposal, and leading to harsher outcomes overall.

Case selection focused on **Public Order cases**, on the basis that it is among the offences most commonly dealt with by means of an out of court disposal, and was included in the scope of the ASCEND Evaluation conducted by the University of West of England in 2020 to assess potential disproportionality (p53). Evaluation considered the following criteria:

- At the time of the incident was the offender eligible for an OOCDD?
- If eligible, were admissions made or did they answer "No Comment" or deny the offence?
- If Police made the decision in the view of the reviewing officer, was it proportionate?
- Was the case referred to ASCEND but they refused it for any reason, and if so why?

Evaluation concluded that there was no evidence of bias towards or away from OOCDDs for any particular ethnic group, as where there were a higher number of cases that could have been eligible for an OOCDD but which resulted in a charge, there were mitigating reasons for these outcomes. The volume of potentially eligible cases is small, but there is an indication that there is a higher rate of denying the offence within the Black Group compared to the White Group which was the most common reason that ruled out an OOCDD as a possible outcome. Evaluation recommended that further scrutiny is required to understand the differences in 'not guilty' pleas between the ethnic groups and whether this is further evidence of the trust issues that were highlighted in the 2017 Lammy Review which may result a disproportionate amount of BAME offenders going to court. (p55)

The session was designed in response to recommendation 30 of the Identifying Disproportionality report - *For the A&S OPCC to set up a scrutiny framework that scrutinises cases that have been charged, but may have been eligible for an OOCDD, rather than reviewing only cases that have resulted in an OOCDD*. This pilot will inform development of future scrutiny arrangements, including methodology to ensure appropriate file selection and capacity within the existing work programme.

¹ The full report can be found at the following link: [Identifying Disproportionality Report | OPCC for Avon and Somerset \(avonandsomerset-pcc.gov.uk\)](https://www.avonandsomerset-pcc.gov.uk/identifying-disproportionality-report)

Case Scrutiny

Summary of cases scrutinised

A total of 30 cases were scrutinised by the Panel made up of:

- 30 Public Order cases
- Of these, 5 cases involved Breach of a Criminal Behaviour Order and 1 case Breach of a Sexual Harm Prevention Order which are required to be charged to court. Case selection methodology will be changed in future to remove Breach cases from case scrutiny.

Panel Decision

Disposal	Offence	Panel Decision
Charge	Breach of Sexual Harm Protection Order	Appropriate
Charge	Affray	Appropriate
Charge	Fear or provocation of violence	Appropriate
Charge	Use threatening words/behaviour likely to cause harassment, alarm or distress	Appropriate
Charge	Casing intentional harassment, alarm or distress	Appropriate
Charge	Breach of a Criminal Behaviour Order	Appropriate
Charge	Racially or religiously aggravated intentional harassment, alarm or distress	Appropriate
Charge	Fear or provocation of violence	Appropriate
Charge	Causing intentional harassment, alarm or distress	Appropriate
Charge	Causing intentional harassment, alarm or distress	Appropriate with observations
Charge	Affray	Appropriate
Charge	Breach of a Criminal Behaviour Order	Appropriate
Charge	Racially or religiously aggravated harassment, alarm or distress	Appropriate
Charge	Breach of a Criminal Behaviour Order	Appropriate
Charge	Fear or provocation of violence	Appropriate
Charge	Use threatening words/behaviour likely to cause harassment, alarm or distress	Appropriate
Charge	Affray	Appropriate
Charge	Use threatening words/behaviour likely to cause harassment, alarm or distress	Appropriate with observations
Charge	Fear or provocation of violence	Appropriate
Charge	Breach of a Criminal Behaviour Order	Appropriate
Charge	Causing intentional harassment, alarm or distress	Inappropriate*
Charge	Racially or religiously aggravated intentional harassment, alarm or distress	Appropriate with observations
Charge	Sex offenders register – failure to comply with notification requirements	Appropriate
Charge	Causing intentional harassment, alarm or distress	Appropriate
Charge	Use threatening words/behaviour likely to cause harassment, alarm or distress	Appropriate with observations
Charge	Affray / Bladed Article	Appropriate
Charge	Affray	Appropriate with observations
Charge	Bladed Article	Appropriate
Charge	Breach of a Criminal Behaviour Order	Appropriate
Charge	Causing intentional harassment, alarm or distress	Appropriate
SUMMARY - Appropriate (24); Appropriate with Observations (5); Inappropriate (1);		

Summary of cases considered inappropriate by the Panel

Cases considered inappropriate	Constabulary Response
<p>The one case found to be inappropriate involved a charge for causing intentional harassment, harm or distress following arrest for threatening/abusive behaviour whilst intoxicated late at night in a bus station. The only previous conviction was for possession of cannabis 20 years ago, meaning that the offender should have been eligible for an OoCD. The Panel was concerned that the offender was not even interviewed, just arrested and charged. An OoCD would have been a more appropriate outcome in the opinion of the Panel.</p>	<p>The Supervising Officer has responded to the Panel's observations and has highlighted some working practices which are being explored further to better understand that out of court disposals are being offered fairly and appropriately. A further update will be provided once that work has been completed.</p>

Summary of observations and good practice identified by the Panel

Theme: Disproportionality – Piloting scrutiny of cases that DID go to court but may have been suitable for an Out of Court Disposal

Panel Observations	Organisational Learning
Scrutiny of cases that DID go to court but may have been suitable for an OoCD	
<p>Recording rationale for decision making to ensure proper consideration of OoCD</p> <p>The Panel identified a common theme around the need to record that an OoCD was considered and the rationale for the decision not to offer an OoCD in the OEL, in order to demonstrate that OoCD had been considered where appropriate.</p>	<p>The introduction of the new decision-making app for out of court disposals will help to address this panel observation.</p>
<p>Issues with PNC records</p> <p>The Panel identified issues with duplicate PNC records – in one case, the PNC print viewed by the Panel indicated that the offender would have been eligible for an OoCD, however a duplicate PNC for the same offender accessed on the day by the ASCEND Team representative showed an extensive offending history that made the offender ineligible for an OoCD. Accurate PNC records are essential to assess eligibility for an OoCD.</p>	<p>This observation has been forwarded onto the relevant PNC lead.</p>
<p>Information to explain OoCDs to defendants</p>	

<p>The Panel discussed information available to defendants to explain what OoCDs are, eligibility criteria, and clearly set out the impact of a 'no comment' interview or 'not guilty' plea on outcomes available.</p>	<p>The ASCEND Manager confirmed that a Custody Notice is given to all people coming into custody, including legal representatives.</p> <p>There is an opportunity to check and test the use of the Custody Notice by the PCC's Independent Custody Visiting (ICV) Scheme. ICVs make unannounced visits to police custody to check on the welfare and rights of detainees. Further information can be found here: www.avonandsomerset-pcc.gov.uk/get-involved/independent-custody-visiting-scheme/</p>
<p>Complexity of OoCD decision making</p> <p>The Panel acknowledged the complexity of OoCD decision making including consideration of eligibility, criteria, gravity matrix, interventions available.</p>	<p>The OoCD Tactical Lead advised that a decision making tool is currently in development to support officers in decision making. This will encourage use of OoCDs where appropriate.</p>
<p>Vulnerability / Risk of Child Criminal Exploitation</p> <p>In a case involving a fight between a group of young people and possession of a knife, concern was expressed that the description at the start of the OEL states that the 17 year old offender 'is a gang member'. It was felt that this description may influence the way in which the case was dealt with, which in this case involved charge to court. The starting point should be to highlight vulnerability and the risk of child criminal exploitation.</p>	<p>It was noted that Outcome 22 guidance (offering a diversion and education programme for possession of a knife) is aimed at under 16s. Youth cases involving knife crime in order to consider Force Policy and consistency across the five Youth Offending Team areas is the theme of the next meeting.</p>
<p>Piloting the approach to scrutiny of cases that DID go to court</p>	
<p>Methodology and Case Selection</p> <p>Of the 30 cases considered, 5 cases involved Breach of a Criminal Behaviour Order and 1 case Breach of a Sexual Harm Prevention Order which are required to be charged to court. The Panel recommended that case selection methodology is changed in future to remove Breach cases from case scrutiny.</p>	<p>The ASCEND Manager will work with the Business Objects Team to identify how filters can be enhanced so that case selection takes account of offence history that would make the offender ineligible for an OoCD, and to changes to the recorded offence. Public order was the initial recorded offence in all cases reviewed, however a large proportion were charged as breach of court order, which would always need to be dealt with at court.</p> <p>If there is no automated way to apply filters, an additional step needs to be built into the preparation process for a manual trawl which is time consuming and therefore has resource implications.</p>
<p>Future scrutiny arrangements</p>	

The Panel discussed who would be best placed to scrutinise cases that DID go to court moving forward:

- There is a strong willingness of the Panel to take on this area of work, and a view that looking at outcomes from the reverse position is complementary and will further enhance scrutiny of OoCDs.
- It was noted that the OoCD Scrutiny Panel work programme currently has limited capacity for new standing items, however this situation is likely to change in the near future with the introduction of the new Two Tier Plus framework which will remove the requirement for annual scrutiny of Conditional Cautions as a requirement of dispensation from the DPP. This will become known when guidance is published in late 2023.

Good Practice

- Discussed the value of the menu of interventions available via the OoCD route – providing education, rehabilitation and more timely intervention / protection without having to wait to go to court.
- Of the **30** cases scrutinised, **24** were considered appropriate:
 - **6** cases involved breach of a court order, for which charge to court is the appropriate outcome;
 - **8** were considered appropriate on the basis of the **severity** of the incident;
 - **4** cases were considered appropriate due to the **offending history** which made the offender ineligible for an OoCD;
 - In one case involving racially aggravated public order incident directed at a police officer, the Panel noted that the officer had been consulted and wanted to prosecute. The Panel welcomed the victim's **wishes being taken into account**.
 - In **5** cases the defendant **did not make full admissions**, gave a 'no comment' interview or pleaded not guilty and was therefore ineligible for an OoCD. The Panel did not identify evidence of disproportionality in these cases.

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:

Youth Cases involving Knife Crime: to support review of Force Policy and ongoing work with Youth Offending Teams to ensure consistency of policy and practice across the Force area.