

Out of Court Disposals Scrutiny Panel

Use of Community Resolutions

March 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 **use of Community Resolutions.**

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 \(avonandsomerset-pcc.gov.uk\)](https://www.avonandsomerset-pcc.gov.uk/out-of-court-disposals-panel-reports)

Panel Business

The Panel considered and approved changes in the Terms of Reference following the annual

review. Key changes include confirming terms of office, and the proposed work plan for 2023.

Mike Evans (Magistrate) was re-elected as Chair and Dr Giles Brown (Magistrate) was elected as Deputy Chair. The Panel thanked David Godfrey (HMCTS) for his service since the inception of the Panel. The Chair gave notice that he would be stepping down at the end of the year. Succession planning therefore needs to take place.

Recruitment of an independent member to join the Panel had not been successful. It is proposed to invite a member of the police Independent Advisory. This is the model for community representation recommended in National Police Chiefs Council (NPCC) guidance.

The Panel discussed case file preparation to identify which elements were necessary to enable robust scrutiny and reduce the administration burden. Case preparation currently takes approximately 30 hours. The following documents were suggested:

- OEL and witness statements
- OoCD Outcome document / conditions
- Gravity Matrix
- Letter of apology (to check quality)
- Photographs (injury / damage)
- Previous convictions (to check eligibility)
- YOT report (in youth cases)
- DASH (in Domestic Abuse cases)

The work of the Panel continues to attract national interest. Transforming Justice met the PCC, Scrutiny Panel Chair and staff to discuss good practice and opportunities for further improvement following publication of their recent report¹. Cheshire OPCC got in touch to find out more about the Panel report.

¹ [How can police forces make better use of diversion and out of court disposals? - Transform Justice](https://www.transformjustice.org.uk/news/how-can-police-forces-make-better-use-of-diversion-and-out-of-court-disposals/)

OoCD Overview & Performance

(Rebecca Marshall, Force OoCD Tactical Lead)

National changes through implementation of the new ‘two tier plus’ model have been delayed until end 2023. The Panel asked about the impact of the changes on local dispensation to use Hate Crime and Domestic Abuse Conditional Cautions:

- A&S is one of three Forces taking part in the Hate Crime Conditional Caution pilot. The approach will continue after completion of the pilot until a national decision is taken.
- Conditional Cautions for low risk Domestic Abuse cases are included in the new framework. Discussions are ongoing regarding future use in medium risk cases which is currently available for Forces granted dispensation, but is currently out of scope in the new framework.

Evaluation of the Assault Against Emergency Worker intervention has been carried out by the University of West of England following completion of the 12 month pilot. The scrutiny panel session in September 2022 fed into evaluation. The intervention will be delivered 1:1 in future, rather than in a group, to enable a more bespoke intervention, and will be offender-pays rather than commissioned.

Work is ongoing to strengthen the approach to restorative justice. Training has been developed for officers to improve the quality of letters of apology and ensure that the process is delivered in a restorative manner. Cases are more sensitive or complex will be referred to the restorative justice provider. Changes have been made to the way restorative justice is recorded on Niche to enable monitoring and quality assurance.

(Caroline Elwood, ASCEND Manager)

Quarterly performance information for January – March 2023 was shared with the Panel:

Outcome	Adult Cases	Youth Cases
Community Resolutions	195	122
Youth Caution	-	17
Conditional Cautions / Youth Conditional Caution	228	9
Total	423	148
Outcome 22 Total (# Drug Education Programme)	202 (72)	87

Fig. 1: Adult OoCDs – Ethnicity

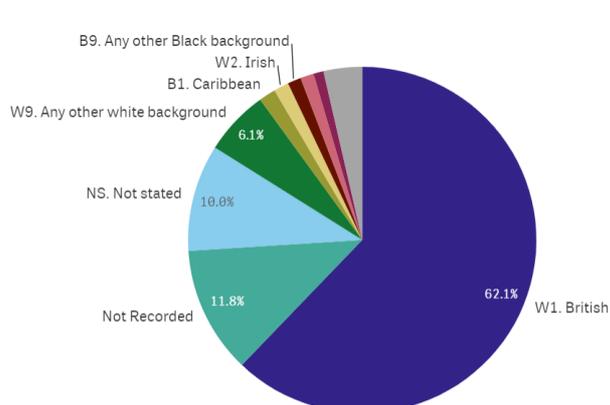
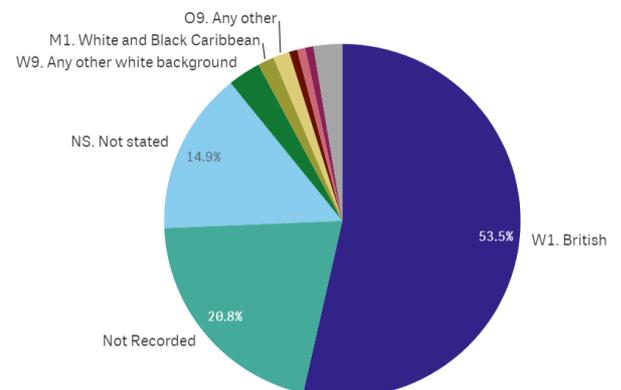
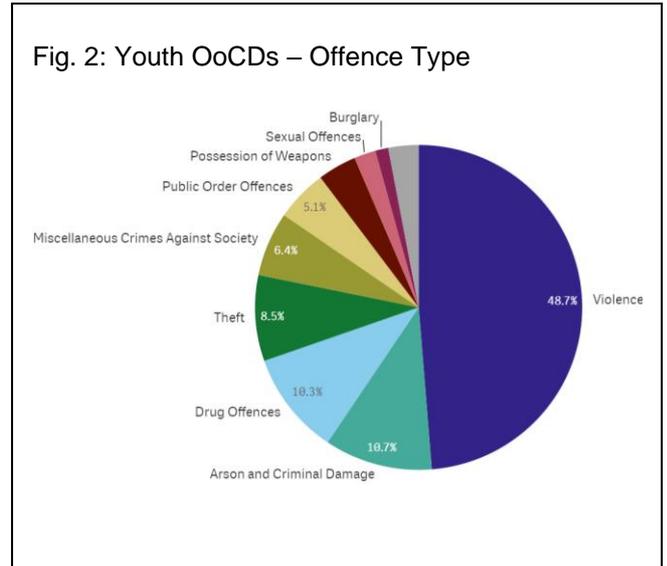
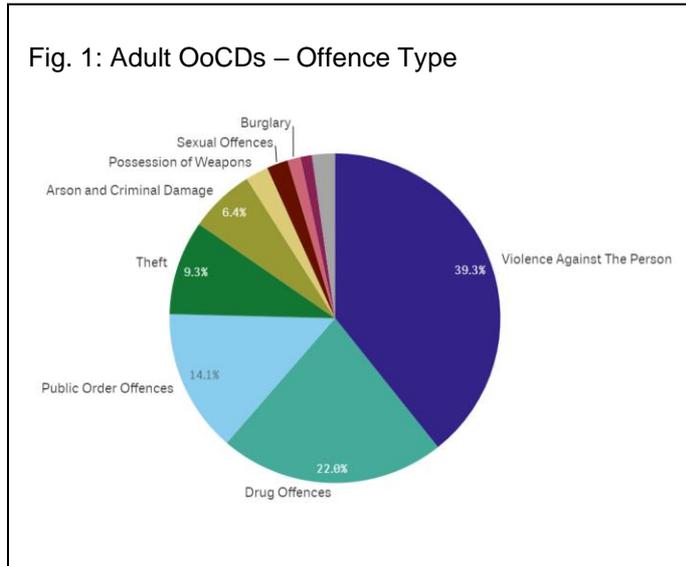


Fig. 2: Youth OoCDs – Ethnicity



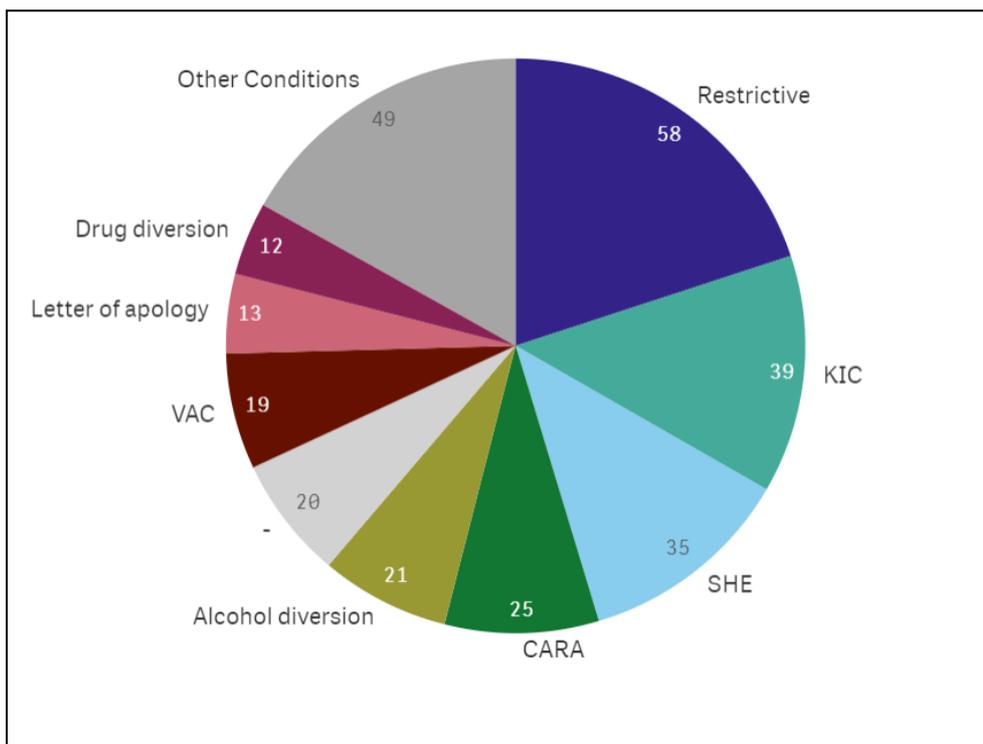
- **Offence type:** Violence against the person accounts for the majority of adult OoCDs (39.3% of adult cases and 48.7% of youth cases).



Conditions (Adult Cases)

291 conditions were set over 179 occurrences.

'Other Conditions' include: Assault on Emergency Worker; Rise Against Hate Crime; Consider; Always Choose to Tell; Restorative Justice; Reparation Costs; Fines.



Theme: Use of Community Resolutions

Rationale

Community Resolutions was selected as the theme of the meeting for the following reasons:

- **New national guidance** was published in October 2022² – scrutiny of cases using Community Resolution is needed to support implementation of the new guidance and inform additional guidance and training requirements locally.
- Community resolutions are **in need of a greater level of scrutiny** generally given that they involve **greater discretion** for officers and less oversight (whereas Conditional Cautions are reviewed by the ASCEND team as a matter of course).

Definitions & Requirements

Community Resolutions enable police to make decisions about how to deal proportionately with lower-level crime and is aimed at first time offenders.

‘Less serious’ is not nationally defined, but should be determined on a case by case basis taking into account factors such as the circumstances of the offence, impact on the victim, risk to the public, likely penalty on conviction, and relevant offending history.

Previous offences in the last **12 months** may make a Community Resolution inappropriate. Supervisor authority is required.

Community Resolution **should not** be issued for:

- Indictable only offences
- Intimate partner Domestic Abuse
- Other offences as determined by Force policy.

WHAT IS A COMMUNITY RESOLUTION?

A Community Resolution is the lowest disposal available to policing. It is used for **less serious offences** where:

- A case is capable of proof.
- An offender has been identified.
- There is an acceptance of responsibility or an admission of guilt.

When undertaking a Community Resolution, the officer must make the victim aware of the **PCC Community Remedy list** and set interventions that are rehabilitative or reparative. Any interventions agreed are **voluntary** and not legally enforceable.

The Community Remedy list can be found here:

[Out of court disposals | Avon and Somerset Police](#)

² [Microsoft Word - New Community Resolution Guidance Document V4 \(npcc.police.uk\)](#)

Case Scrutiny

Summary of cases scrutinised

A total of 30 cases were scrutinised by the Panel:

- 27 cases on the selected theme of use of Community Resolutions – 17 adult cases and 10 youth cases;
- 3 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	Appropriate with observations
Community Resolution	Sexual Assault	Inappropriate*
Use of Community Resolution – Adult Cases		
Community Resolution	Public Order	Inappropriate*
Community Resolution	Common Assault	Inappropriate*
Community Resolution	Criminal Damage	Appropriate with observations
Community Resolution	Common Assault	Appropriate with observations
Community Resolution	Theft/handling stolen goods	Appropriate
Community Resolution	Other Sexual Offences	Inappropriate*
Community Resolution	Common Assault	Appropriate with observations
Community Resolution	Other Sexual Offences	Appropriate
Community Resolution	Assault/Harassment	Appropriate with observations
Community Resolution	Theft/Handling Stolen Goods	Appropriate with observations
Community Resolution	Production of Cannabis	Inappropriate*
Community Resolution	Threats to Kill	Appropriate with observations
Community Resolution	Theft/Handling Stolen Goods	Appropriate with observations
Community Resolution	Malicious Communications	Appropriate
Community Resolution	Public Order (Hate Crime)	Appropriate
Community Resolution	Offensive Weapon	Appropriate with observations
Community Resolution	Dog Out of Control	Appropriate with observations
Use of Community Resolution – Youth Cases		
Community Resolution	Common Assault	Appropriate with observations
Community Resolution	Criminal Damage/Burglary	Appropriate with observations
Community Resolution	Criminal Damage/Burglary	Appropriate with observations
Community Resolution	Other Sexual Offence	Inappropriate*
Community Resolution	Public Order	Appropriate
Community Resolution	Disorderly/Criminal Damage	Appropriate
Community Resolution	Possession of Cannabis / going equipped	Inappropriate*
Community Resolution	Possession of Cannabis / vehicle interference	Appropriate with observations
Community Resolution	Malicious Communications	Appropriate with observations
Community Resolution	Common Assault	Appropriate with observations
SUMMARY - Appropriate (6); Appropriate with Observations (17); Inappropriate (7);		

Summary of cases considered inappropriate by the Panel

Case 1: An incident involving the victim being followed to the toilets at school and assaulted was considered too serious for use of an out of court disposal. The incident had been assessed as Gravity Matrix 3. The Panel acknowledged that the offender had been excluded from school and had been referred to the Choices and Consequences programme, but expressed concern at whether this generic intervention was appropriate, particularly in addressing harmful sexual behaviour. The Panel would have liked to see the case being considered by the YOT Panel to enable a more thorough assessment in relation to harmful sexual behaviour. Restorative justice should have been considered to enable the victim to explain the impact of the incident. It was noted that the victim was struggling to go into school and experiencing flashbacks.

Case 2: The Panel felt that a Community Resolution was inappropriate in a case involving racially motivated public order incident directed against a public-facing member of staff. Concern was expressed at comments on file stating that it was 'one word against another' and felt that a case for prosecution should have been built. The Panel questioned police resourcing issues noting the absence of sergeant review and inspector clearance required for hate crime cases. There was no evidence that a letter of apology had been received. It was acknowledged that the offender had since moved away. Good practice was identified in referral to SARI. The Panel would have liked to see compensation. It was noted that a Force compensation policy is in development for use in out of court disposal cases, however use of compensation in community resolution cases is problematic as they are not enforceable.

Case 3: This case involved intimate domestic abuse. Use of a Community Resolution was inappropriate as it is contrary to Force policy which requires assessment by the ASCEND team for consideration of either a Conditional Caution and robust intervention through Project CARA, or for an evidence-led prosecution. It was noted that the criminal damage aspect had not been pursued. The Panel would have liked to see compensation in relation to damage caused. There was confusion at the referral to the YOT Panel given that this was a case involving adults.

Case 4: This case involved sexual images sent without consent by the victim's partner. This falls within the criteria of intimate domestic abuse and as such use of a Community Resolution is contrary to Force policy. The case should have been assessed by the ASCEND team for consideration of a Conditional Caution with appropriate intervention. It was queried whether the images met the criteria for indecent images, with conflicting references on file. Concern was expressed at use of the terminology 'revenge porn' on file instead of the correct words for the offence.

Case 5: A case involving production of cannabis was considered unsuitable for Community Resolution as the offender was not eligible for an Out of Court Disposal, having been given a Conditional Caution within the last two years. It was acknowledged that the Conditional Caution was not listed on the PNC record. It was also noted that whilst the file initially made reference to 6 plants, it later describes 15-20 plants and a sophisticated set up that would place the offence into category 3 (with sentencing guidelines of a mid to high community order) had the case gone to court. The Panel expressed concern that the outcome required the offender to attend a local drug service for initial assessment rather than referral for assessment by the Liaison and Diversion Service. This raises issues with consistency across the Force area.

Case 6: The Panel expressed concern at the use of a Community Resolution in a case involving online grooming and distribution of indecent images of a vulnerable child with learning difficulties and known to be under child protection. The Panel felt that the outcome of a Community Resolution was too lenient and that the Choices and Consequences programme was not suitable for a case of this nature. The Panel felt that the case should have been considered by YOT panel to enable assessment and appropriate referral. It was also noted that the incident had taken place on the Somerset / B&NES border and the importance of ensuring that all relevant YOTs were

sighted to ensure action was taken as appropriate. This issue will be discussed at the next Forcewide YOT Managers meeting.

Case 7: The Panel felt that a Community Resolution was inappropriate in a case involving possession of cannabis and going equipped to steal due to the offender's previous offences, including three previous convictions. The offender was also subject to a referral order at the time of this offence. A Youth Conditional Caution may have been more appropriate. Community Resolutions are intended for use in low-level, first time offences, and, in youth cases, to avoid criminalising young people. Use of a Community Resolution in this case was outside guidance and not in the spirit of diversion. It was also noted that the condition was vague, and the case had not been referred to a youth panel.

Organisational Learning

The Panel identified the following issues to inform organisational learning and improvement:

- **Complexity of decision making** – the Panel acknowledged the challenge faced by officers given levels of discretion and the lack of guidance on 'less serious' offences, and the need to make decisions on a case by case basis. There is a need for clear guidance for officers and supervisors – especially given numbers of new / inexperienced officers. Proposals to develop a Decision Making App to support officers were welcomed by the Panel. Whilst the Panel acknowledged the risk of Community Resolutions being perceived as a 'quick and easy' option, a number of cases demonstrated that Community Resolutions can provide a pragmatic approach to deal with cases in which the victim does not wish to prosecute, where there is insufficient evidence to pursue an 'evidence-led' prosecution, and in cases involving complex circumstances, which is more desirable than the alternative of 'No Further Action'. The Panel did however wish to see greater safeguards, particularly in sexual offences dealt with by Community Resolution, to ensure detailed recording of the rationale and summary of the conversation with the victim to confirm their views. One way to achieve this would be to require all Community Resolution sexual offences cases to be reviewed by the ASCEND team for assurance purposes and onward referral to the Consider Course where appropriate.
- **Interventions in Community Resolutions** – in some cases, the Panel identified a missed opportunity for targeted interventions. In others, poor quality 'conditions' had been imposed. It was acknowledged that interventions attached to Community Resolutions are **voluntary and therefore not enforceable**.
- **Restorative Justice / Letters of Apology** – the Panel identified quality issues in a number of cases. No input had been received from victim about content of letter. It was noted that an unsolicited letter risks revictimizing the victim. RJ must be victim led. No referral had been made to the specialist RJ provider where appropriate, and no copy of letter of apology could be found on file in a number of cases.
- **File Quality** – in several cases, the resolution form had not been completed fully.
- **Suitability** – a number of cases **did not appear to meet the suitability requirements** for Community Resolution:
 - Three cases involved **intimate partner domestic abuse**, and should therefore be excluded from the criteria for Community Resolution. These cases should have been dealt with by the Domestic Abuse Conditional Caution and referral to Project CARA.
 - One case was recorded as **level 3 on the Gravity Matrix**, and was therefore too serious to be eligible for OoCD.
 - In one case involving **hate crime**, a Hate Crime Conditional Caution with referral to RiSE would have provided a more robust and suitable outcome.

- In one case, the offender had a **history of previous similar offences** which indicate that a Community Resolution is unlikely to act as a deterrent or address underlying causes.
- One case involving a young person with three previous convictions and a caution – a Community Resolution was not suitable on the basis of offending history.
- One case involving **cannabis possession was felt to far exceed individual use** and should have gone to court. The offender had had a Caution within 2 years and was therefore not eligible for a Community Resolution. The offender should have been assessed by the Liaison and Diversion service rather than referred ad hoc to local services.
- **Partial admissions** appeared to have been made in two cases. Admission of guilt or responsibility is a requirement for a Community Resolution.
- **Authorisation** – Inspector level clearance not provided as required in a case involving hate crime. Reference was made to resourcing issues as the reason. It did not appear from the file that a Sergeant review had been carried out in its place.
- **Youth Panel** – two cases should have been referred to the relevant YOT for assessment by the Youth Panel. In one case, the young person was on the child protection register, and as such had significant safeguarding needs. There is a need for a consistent approach in dealing with youth cases, and for awareness and training for officers to ensure correct processes are followed.
- **Timeliness** – in one youth case, the offence took place in October and the Community Resolution was issued in December. Two further serious offences had been committed in the meantime. The Panel expressed concern at lack of timeliness, and that given the emerging issues, queried why the case had not been referred to Youth Panel.
- **Compensation** – the Panel would have liked to see compensation considered in a number of cases, and for a Force policy to be developed to enable this. It was acknowledged that Community Resolutions are not enforceable.
- **Drug possession cases** – in a case in which the offender was found to be in possession of cannabis whilst breaking into a van, the Panel queried why a YADD / Outcome 22 had not been considered to address drug misuse.
- **Dog Cases** – in a case involving a dog bite, it was felt that a Contingent Destruction Order at court would have provided a more robust and suitable outcome. Strong and enforceable conditions are required for public protection.
- **Good practice:**
 - A number of files in which Community Resolution provided a proportionate and satisfactory outcome, in line with its intended use.
 - Appropriate referral to support services including safeguarding, victim care and SARI
 - Appropriate offer of restorative justice
 - Good example of letter of apology

Constabulary Response:

In all cases found to be inappropriate, the officer in the case (OIC) and their supervisor have been written to and the latest NPCC Community Resolution guidance was provided to them alongside additional Force guidance relating to the offence type which was reviewed. In the majority of cases, it was felt that in the circumstances of the case, use of community resolution had been proportionate. The reasons for this included a lack of evidence or evidential difficulties, lack of victim support for an alternative outcome or alternatively, a desire to provide the victim with a positive outcome as the alternative was no further action.

From the feedback received, there is organisational learning about officers understanding of the evidential requirements for the issuing of a community resolution, the criteria for referring a youth

case into the youth out of court disposal panel and local dispensation around the use of out of court disposals for intimate domestic abuse cases. There is a need to provide additional training for supervisors who approved the use of community resolutions in these cases to ensure their knowledge is up to date.

Action is being taken to address this is by updating Force intranet pages known as Pocketbook around community resolutions and the youth out of court disposal process. A review is underway to update the training package delivered to new PCSOs and PCDA students about the use of community resolutions. Longer term, a Decision Making App will be developed to support officers in navigating decision making in out of court disposals on the ground.

The following specific feedback was provided in response to cases 1 and 4:

Case 1

The officer discussed this case with Somerset YOT and the Choice and Consequences Coordinator, and referred the case to the YOT for assessment as advised before the intervention was delivered. It appeared from Niche records that the task had been completed, and the officer heard nothing further from the YOT, as such assumed the decision had been ratified. This was a case where the victim did not want to make a formal complaint but the officer desired for the offender to receive some education rather than no further action. The officer was given further information about the use of community resolution in these circumstances and alternative options he could have used to guide future decision making.

Regarding feedback on the use of the Choices and Consequences course for addressing sexual behaviour, it was clarified that the Choices and Consequences course can be adapted to address offending behaviours and underlying issues in each specific case and is delivered 1:1.

Case 4

The officer confirmed that feedback regarding the use of terminology on the CR form had been taken on board, however highlighted that this offence is widely referred to as 'revenge pornography' (including in key documents published on the Crown Prosecution Service, College of Policing and National Police Chiefs Council websites).

With regards to the images meeting the criteria for 'indecent images,' the terminology 'indecent' does not appear in guidance for this offence. The officer felt it would meet the criteria for 'sexual,' given the description provided by one of the recipients 'one of them was of *victim* in the nude and showing her lower half,' and the definition of 'sexual' is given in the Criminal Justice and Courts Act 2015 as 'a) it shows all or part of an individual's exposed genitals or pubic area; b) it shows something that a reasonable person would consider to be sexual because of its nature, or; c) it's content, taken as a whole, is such that a reasonable person would consider it to be sexual.'

The 'conflicting references on file' are due to two different witnesses being spoken to, and the understanding of the crime recording standards-and consequently the way a crime is investigated-is that on balance of probabilities, based on the information that the police are aware of, a crime has been committed. In this case, there is no 'AVI' (additional verifiable information') to confirm that sexual photographs have not been sent.

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:

- **Disproportionality:** Scrutiny of Cases that went to court but may have been suitable for an out of court disposal – focusing on Section 5 Public Order cases