

Dorset Police and Crime Commissioner's Out of Court Disposals Scrutiny Panel Annual Report 2019

Role

A number of independent scrutiny panels are administered by the Dorset Police and Crime Commissioner to enable him to hold Dorset Police to account. The Out of Court Disposals Panel oversees how Dorset Police and the Youth Offending Service issue out of court disposals and ensures that the use of such disposals is appropriate, proportionate and consistent with national and local policy and considers the victims' wishes where appropriate.

An Out of Court Disposal is a method used to allow the police and youth justice teams to deal efficiently and effectively with less serious and often first-time offending that can be proportionately and more appropriately handled without going to court. These cases are administered without the involvement of the courts. Therefore public expectations are that the police and youth services, who in such cases act as 'investigators, prosecutors, judge and jury' have some checks and balances in exercising that power and follow set guidelines and policies.

An Out of Court Disposal can only be used in limited circumstances and when the suspect takes responsibility for the alleged offence. The method for dealing with suspects in this way includes restorative approaches, community resolutions, conditional cautioning, and simple cautions, together with appropriate interventions.

Membership

The panel has a core of some 15 regular attendees at panel meetings. These include five independent members, representatives from Dorset Bench including Dorset Youth Panel, Her Majesty's Courts and Tribunal Service, the Crown Prosecution Service, Probation Services, local Youth Offending Services who regularly attend the scheduled meetings which are held four times a year. The panel is supported by members of Dorset Police including the Adult Out of Court Disposals Manager, Youth Out of Court Disposals Manager and a representative from Restorative Justice. The panel also invites a representative from a different charity relevant to the theme of cases being considered; these include those with specialist knowledge in areas such as victim support, domestic violence, stalking, drugs and alcohol and sexual offences.

As part of ongoing recruitment, an additional member joined the panel in December 2019, giving a total of five independent panel members. The independent members are all from different backgrounds and age groups and have brought a wealth of experience, skills and diversity of opinion.

Will Chakawhata, who has been the Chair since February 2017 decided to step down after a three year term. The Chair underwent his annual performance review with the Police and Crime Commissioner and fulfilled the agreed objectives from the previous year.

The new panel Chair, William Gibbons is a former Magistrate from Dorset. He joined the panel as a second independent member in May 2018. William is also a member of the Customer Service Improvement Scrutiny Panel. The independent members of the panel are neither employed by the police, judiciary or the Office of the Police and Crime Commissioner.

The members are:

- Dan Easterbrook
 - Jane Moir
 - Stephen Thorne
 - Isobel Why
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- William Gibbons is a retired JP who was on the Dorset bench, sitting as Chairman in Weymouth and Poole in January 2018, having previously served in central London and Portsmouth. He was Director of the Passenger Shipping Association between 1994 and 2013 and was subsequently appointed as Director of Discover Ferries until 2018. He was Poole Harbour Commissioner (non-Executive Board Member) from November 2016 to November 2019. William is Chairman of the Poundbury (Dorchester) Residents Association.
 - Dan Easterbrook is a politics student at the University of Exeter. He serves as the elected Chair of the University of Exeter Students' Guild and is an Ambassador for the Yong Trustee Movement. He will be joining the Civil Service in 2020 as part of the Civil Service Fast Stream. Dan is also Chair of Trustees for CP and Hemi Support, a charity supporting individuals with Cerebral Palsy and Hemiplegia.
 - Stephen Thorne is a former Head of Planning and Regeneration for Poole Borough Council and Commander of the Maritime Reserves as a Commodore RNR. Stephen is also Chair of the Customer Service Improvement Scrutiny Panel.
 - Jane Moir is currently a negotiator for Symonds & Sampson land agents and was a former member of the police misconduct panels. Jane was previously in recruitment and contracting for 28 years. Jane is also a member of the Use of Force Scrutiny Panel.
 - Isobel Why holds a BSc in industrial chemistry and worked as a supervisor for Kraft Foods and then as an area manager in retail, before becoming a senior manager for Lloyds Bank. Isobel has been an Independent Customer Visitor for the last eight years and is currently Vice Chair of the Independent Customer Visitor Scheme. Isobel was formerly a special constable for nine years, retiring with the rank of Divisional Officer.

Other members of the panel include representatives from Dorset Police, Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Probation Services, Youth Justice and Office of the Police and Crime Commissioner.

Governance

The separation of powers and governance of the panel is much stronger compared to three years ago.

The panel are grateful to Dorset Police for their continued work in preparing the summaries of the cases for the panel's consideration which have been independently selected by the Office of the Police and Crime Commissioner. The Office of the Police and Crime Commissioner prepares the draft minutes and circulates relevant papers, while the Chair sets the agenda for the meetings. Secondly, during panel meetings, while there is open debate about the cases before the panel, the independent members with support from HM Courts and Probation Services will decide on the appropriateness of the disposals issued. These changes have ensured that there is a clear separation of powers between the police and youth services who issue out of court disposals and others who hold them to account on behalf of the Police and Crime Commissioner and the public.

At the start of each meeting, all those in attendance make relevant declarations of any conflicts of interest. All members have signed a confidentiality agreement which incorporates the General Data Protection Regulation (GDPR) requirements. Confidential meeting papers (e.g. case summaries and performance data) are sent securely to panel members and collected after each meeting for safe disposal.

To ensure transparency and accountability, a summary of each panel meeting is published together with a full annual report on the Dorset Police and Crime Commissioner's website at <https://www.dorset.pcc.police.uk/information-hub/scrutiny-panels/> and this is open to members of the public to view.

Business activity

In 2019, the panel met on four occasions on 6 March, 19 June, 4 September and 18 December 2019 to review and consider 65 cases in total. The cases discussed were on the following broad themes:

- burglary, theft and shoplifting cases;
- weapon offences, violence against the person, knife crime and violence linked to weapon possession;
- females and Black, Asian, Minority & Ethnic individuals.

The Chair, Dorset Police's Adult Out of Court Disposals Manager and the Scrutiny Manager in the Office of the Police and Crime Commissioner held four pre-meeting conferences, to discuss the agenda and review actions among other issues.

At the March 2019 meeting, it was agreed to reduce the total number of cases considered by the Panel at each meeting from 20 to 15 to allow more time to be spent on each case. Dorset Police and the Youth Justice issued just over 3,000 out of court disposals in 2018 and 2,339 disposals in 2019. This means that the panel reviewed 2.6 % of the out of court disposals.

The scrutiny panel has a standing agenda which covers the following areas:

- Introductions, conflicts of interest and confidentiality
- Minutes from previous meetings (approved between meetings to save time at main meeting)
- Review of actions from previous meeting/s and updates
- Review of effectiveness (from Dorset Police, if any previous recipients of previous Out of Court Disposals have re-offended)
- Performance update
- Cases for discussion (previously 20 cases, reduced to 15)
- Any other business (including selection of theme for the next meeting)

The meetings last for two hours (usually 1.30-3.30pm) and are held every quarter at Madeira Road police station in Bournemouth. The scrutiny panel aims to consider 15 cases per meeting, these comprise ten adults and five youth cases based on a theme chosen by the members with cases randomly selected by a representative of the Office of the Police and Crime Commissioner as delegated by the Chair. The panel has also agreed that any contentious cases that have been highlighted during the quarter may be put forward for discussion.

In reviewing a case, the Panel will discuss and conclude one of four categories:

1. Appropriate and **consistent** with Dorset Police policies, the CPS Code for Crown Prosecutors and the Victim Code
2. **Appropriate** with observations from the Panel
3. **Inappropriate** use of out of court disposal
4. **Panel fails to agree** on the appropriateness of the decision made

6 March 2019	19 June 2019	4 September 2019	18 December 2019
Burglary, theft and shoplifting	Violence against the person using weapons	Conditional Cautions and possession with Intent to supply	Female offenders and BAME individuals
5 youth cases Level 1 x 4 (Appropriate) Level 2 x 1 (With observations) Level 3 x 0 (Inappropriate use) Level 4 x 0 (Panel failed to agree)	5 youth cases Level 1 x 4 Level 2 x 1	5 youth cases Level 1 x 5	5 youth cases Level 1 x 5
15 adult cases Level 1 x 10 (Appropriate) Level 2 x 1 (With observations)	10 adult cases Level 1 x 9 Level 2 x 1 Level 3 x 0	10 adult cases Level 1 x 4 Level 2 x 4 Level 3 x 2	10 adult cases Level 1 x 8 Level 2 x 0 Level 3 x 2

Level 3 x 4 (Inappropriate use)	Level 4 x 0	Level 4 x 0	Level 4 x 0
Level 4 x 0 (Panel failed to agree)*			
20	15	15	15

* On the rare occasions when the independent members felt that a disposal was inappropriate, there was robust discussion among the panel members and feedback provided to the police or youth teams. However, often, Dorset Police's Adult Out of Court Disposals Manager and her team have been effective 'gate-keepers' on many occasions by scrutinising and challenging some disposals before panel meetings. In almost all cases decisions taken in respect of Youth Out of Court Disposals are taken by the Youth Out of Court Disposals team. All Adult Out of Court Disposal decisions are made by the relevant police officer(s) involved in the case. There is however a Quality Assurance process whereby the Adult Out of Court Disposals team quality assure the decisions taken once the Out of Court Disposal has been issued. There have also been occasions when 'borderline' cases were brought to the panel for discussion. These are examples of good practice which have given the panel assurance that the police are willing to be open and to learn from these interactions.

Terms of Reference

At the meetings in March and December 2019, the terms of reference were reviewed to ensure they remain fit for purpose. The terms of reference were updated to provide for the appointment of a Deputy Chair which will ensure greater resilience. It was also agreed to include the Dorset Magistrates Youth Panel Chair within the terms of reference as a regular attendee at panel meetings.

When an Out of Court Disposal is issued, the views of the victim are important where they can be ascertained. There are state based incidents where such views cannot be sought. However, compared to 2017, there has been renewed focus by the panel to ensure where possible the victim's views are shared with the panel. The victim's views have been sought by the panel at each meeting and the police internal quality system has also been sensitive to this issue.

Disproportionality issue

My report last year included the panel's observation regarding the greater predominance of Out of Court Disposals in rural areas. The Purbecks, Bridport and North Dorset continues to have consistently the highest number of such disposals (about half of those issued), compared with the county average of 34.7%.

The panel have questioned Dorset Police if one of the influencing factors might be the distance from a custody suite. Although this is one possible suggestion there is insufficient evidence for this view and without more detailed analysis it has not been possible to confirm this.

Dorset Police confirmed that whether or not an Out of Court Disposal is applied can be influenced by a number of factors, including the seriousness or type of offence, any previous offences committed by the offender and what is in the public interest to deal with by way of such a disposal.

Internally, all Adult Out of Court Disposals are scrutinised by the relevant police departments to identify if any have been incorrectly applied. For Youth Out of Court Disposals the dedicated team make the decision which results in the issue of such disposals.

As Chair, I believe that justice should be fair and equal regardless of any particular location.

In response to the panel's concern that the likelihood of receiving an Out of Court Disposal may be influenced by the postcode of where the subject lives, I would reiterate my recommendation in my Chair's Annual Report last year which was that the Police and Crime Commissioner makes formal enquiries to ascertain whether this is the case. If it is found to be the case then recommendations for improvement should be made and an action plan put in place to address it and feedback provided to the panel.

On my recommendation last year and following intervention by the Police and Crime Commissioner and Chief Constable, this matter was debated at the Dorset Police Legitimacy Board chaired by the Chief Constable in March 2019. The panel's continued concerns were escalated to the Dorset Police Legitimacy Board in June, September and December 2019. At the December 2019 panel meeting it was confirmed that there continued to be a higher proportion of disposals issued in the Purbecks, Bridport and North Dorset as compared with the conurbations.

It was also confirmed that work has now been delegated to the Dorset Police Performance Team early in 2020 which will complement an evaluation which is being completed by students from Bournemouth University, to dip sample for each policing area a proportion of those decisions resulting in 'no further action' and charges to identify if there are any concerns. An update on the outcome of this work is expected to be provided at the panel meeting in March 2020.

The findings of the above work may well show that this 'apparent disproportionality' is in fact due entirely to the different demographics across Dorset. The findings will either help to conclude that there is no 'postcode lottery' and that the correct policies and procedures are being followed, or it will highlight learning and additional training needs that Dorset Police can then implement in order to improve.

The Youth Out of Court Disposal Manager and the Adult Out of Court Disposal Manager are satisfied that the decisions taken which result in the issue of these disposals are appropriate in the majority of cases. Where the scrutiny panel disagrees this is recorded at the meeting against the scoring matrix (see Categories 1 to 4 listed on page 4 above). Since April 2019, the Adult Out of Court Disposal team found that only 5% of Adult Out of Court Disposal were issued inappropriately in the context of Ministry of Justice guidance and Authorised Professional Practice from the College of Policing and for each one of these cases, feedback was given to the officer(s) concerned. This 5% was spread across Dorset Police and no particular area stood out.

What has not been considered at this time is whether certain areas of the Dorset Police are failing to consider an Out of Court Disposal and perhaps making a decision for 'no further action' or to charge the offender when a disposal might be more appropriate; this latter work has been tasked to the Dorset Police Performance Team.

Scrutiny Guidance

At their meeting in September 2019, the panel considered a guidance paper from the National Police Chiefs Council. There is existing guidance dated June 2013, however the Council recently provided guidance on what scrutiny panels should consider and who should ideally be attending.

As recommended by the guidance the panel agreed at their meeting each December to review a dip sample of cases on the twin theme of disposal issued to both Black, Asian, Minority and Ethnic communities and females to ensure there is no disproportionality. The Panel also agreed to consider a thematic review on the same theme of these areas at their meeting each December.

At its meeting in December 2019 the panel considered the new gravity matrix relating specifically to the two-tier Adult Out of Court Disposal framework which provided further background information in relation to the Out of Court Disposal decision making process. The panel also considered the briefing produced following research by the Centre for Justice Innovation which provides evidence for and recommendations around pre-court diversion for adults. The purpose of the briefing was to give the panel greater insight as to current thinking on this issue and in particular how this fits with Out of Court Disposals (or the deferred prosecutions which are being piloted by some police services).

Two-tier out of court disposal system

The Panel noted the introduction by Dorset Police of the two tier framework for adult Out of Court Disposals in April 2019. This meant that Community Resolution and Conditional Cautions are the two available disposals to which conditions are attached with the aim of providing reparation between the victim and the offender and to rehabilitate the offender to prevent re-offending.

The introduction of the two tier framework removed Simple Cautions, Cannabis Warnings, Penalty Notice for Disorder and Khat Warnings as available disposals.

It is too early to evaluate the full impact of the new system but it is anticipated that the conditions will provide both greater protection for victims in many cases and also offer some support for offenders. Those who fail to comply with conditions will be taken through formal court procedures.

Assaults

The Panel have expressed reservations that in some cases Out of Court Disposals have been issued for assaults. In certain cases Conditional Cautions have been issued for cases involving actual bodily harm with injuries and aggravating factors. The Panel believe that perhaps only minor assaults resulting in 'no injury' should be dealt with by way of Out of Court Disposals. The Panel are particularly concerned about assaults against emergency workers (such as the police), where the most serious cases can now be referred to the Crown Court with a maximum sentence of 12 months in custody. Dorset Police are currently

consulting with other police services, Federation and Unison to decide on the most appropriate disposal and potential Out of Court Disposal conditions in these cases.

Conclusion

The Out of Court Disposal panel is a key tool in enabling the Police and Crime Commissioner to hold Dorset Police and the Youth Justice (Youth Offending Service) to account for the out of court disposals they issue. As noted above, the Out of Court Disposals Scrutiny Panel met four times in 2019 and considered 65 cases against some 3000 total disposals issued during the year. Minutes for each meeting are produced and for further accountability, a redacted public facing summary is published on the Office of the Police and Crime Commissioner website.

As noted above, the panel looks forward to learning more at its next meeting regarding the results of the work by Dorset Police to dip sample for each policing area a proportion of those decisions resulting in 'no further action' and charges.

It is hoped that this will help to provide a greater understanding as to the reasons for the apparent disproportionality. Depending on the findings the panel looks forward to a greater awareness by Dorset Police to determine if this is a matter that can be corrected.

It has been a pleasure to serve as independent Chair of this scrutiny panel. We now have more independent members who are making a great contribution and bringing independent voices. The panel has strengthened its governance systems from three years ago. It has also set more time set aside to discuss and scrutinise cases.

I am grateful to the support given by each panel member from Dorset Police and the Youth Offending Service. However, the support from Tom Smith (Office of the Police and Crime Commissioner) and Jen Howard, Adult Out of Court Disposal Manager and her team (Dorset Police) and Sergeant Kerry Shelley, the Youth Out of Court Disposal Manager and her team in preparing case summaries for meetings has been exemplary.

I am pleased to have had the privilege to Chair such a wide and dynamic panel which holds itself and each other to high levels of accountability.

Will Chakawhata

Independent Chair December 2017-2019