



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# Practice Direction 4

## Non-Disclosure

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## SUMMARY

- A reporter **must not** provide any case-related information unless there is specific authority to provide that information to that person, whether or not any non-disclosure provision applies. Where there is discretion as to the level of case-related information to provide, the reporter must only provide relevant and proportionate information.
- The statutory non-disclosure provisions enable the reporter to withhold information which the reporter would otherwise have a duty to provide.
- An order or warrant may contain a measure prohibiting the disclosure (whether directly or indirectly) of the place a child is required to reside (or the place of safety) - a “non-disclosure measure”. The reporter is to determine what, if any, information might indirectly disclose the address/place of safety.
- Any person may make a “non disclosure request” to be considered by a hearing or pre-hearing panel. A non-disclosure request is a request that information should be withheld on the basis that disclosure would be likely to cause significant harm to the child. The reporter must refer a non-disclosure request to the hearing and may make a request on his own initiative.
- Rule 16 allows the reporter to withhold information disclosing the whereabouts of the child when sending any notification or documents before or after a hearing, if disclosing this would be likely to cause significant harm to the child or any relevant person.
- Section 178 of the Act allows a children’s hearing not to disclose information about the child or about the child’s case if disclosure of that information to that person would be likely to cause significant harm to the child.
- When considering an application for proof under section 93 or 94, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder.
- Whenever information is to be withheld or a request to withhold information is made, the reporter must (in terms of Rule 15):
  - remove the relevant information from any document which s/he is required to send to the person from whom that information is withheld;
  - must inform everyone to whom the reporter is required to give the document what information is being withheld and from whom. The reporter must only give a general picture of the withheld information to the person from whom that information is withheld.

- Where disclosure of a child's home address would place the child at risk, the reporter is to give the child's address as care of the Principal Reporter, Ochil House.
- Whenever a non-disclosure provision is in place, the reporter must be alert to this and alert others to this in relation to the management of hearings, and court matters.
- If a breach of a non-disclosure provision occurs, the reporter must comply with the breach of non-disclosure process including completing a Breach of Non-Disclosure Notification Form.

## CONTENTS

1. Introduction .....	5
2. Non Disclosure Requests .....	6
3. Measure Contained in Order.....	10
4. Rule 16 of The Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 .....	13
5. Non disclosure of information under s.178 of the Children’s Hearings (Scotland) Act 2011 .....	14
6. Sheriff ordering non-disclosure of address in proof application under section 93 or 94 .....	16
7. Practical Issues – Management of Hearings.....	17
8. Practical Matters- Court Proceedings .....	17
9. Informing Panel Members of Purpose of Hearing .....	19
10. Protocol where Breach of Non-Disclosure .....	19
Appendix 1 – Non Disclosure Request .....	22
Appendix 2 – Breach of Non-Disclosure Notification Form .....	23

## 1. Introduction

- 1.1. This Practice Direction outlines the legal provisions relating to non-disclosure. Teams must adopt the supporting processes set out in the "2011 Act Non-Disclosure Operational Process and Guidance Note" to ensure effective implementation of practice direction on non-disclosure.

Provisions which authorise non-disclosure of information fall in to the following categories:-

An order may contain a measure prohibiting the disclosure (whether directly or indirectly) of a specified place. See Section 3 below.

Any person may make a "non-disclosure request" which must be considered by a hearing or pre-hearing panel<sup>1</sup>. A non-disclosure request is a request that any document, or part of a document or information in a document relating to a hearing or pre-hearing panel should be withheld from a specified person on the grounds that disclosure of that would be likely to cause significant harm to the child. See Section 2 below Rules 84-87 The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (in the following Direction any reference to a Rule or the Rules is a reference to these Rules).

When the reporter is sending any notification or documents before or after a hearing, s/he may withhold information disclosing the whereabouts of the child or of any relevant person if the reporter considers that disclosing this would be likely to cause significant harm to the child or any relevant person. In those circumstances, the child's and/or relevant persons address is to be given as care of the Principal Reporter, Ochil House. See Section 4 below Rule 16.

A children's hearing may decide not to disclose to any person any information about the child or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child. See Section 5 below on section 178.

When considering an application for proof under section 93 or 94, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder. See Section 6 below.

Each of these provisions is considered in more detail below.

- 1.2. Where information is to be withheld under the Act or the Rules (including when a non-disclosure request has been made but not yet considered by the hearing) the reporter:
- must ensure that the relevant information is removed from any report, information or document which s/he is required to send to the person from whom that information is withheld; Rule 15(1) and
  - must inform everyone to whom the reporter is required to give the report, information or document what information is being withheld and from whom.

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<sup>1</sup> where the non-disclosure request relates to documents to be considered by the pre-hearing panel

Rule 15(2) The reporter is only to give a general picture of the withheld information to the person from whom the information is withheld.

- 1.3. A reporter **must not** provide any case-related information unless there is specific authority to provide that information to that person, whether or not any non-disclosure provision applies. Where the reporter has discretion about the information s/he provides (e.g. when informing a relevant person about a referral or when conducting an investigation) s/he must only give relevant and proportionate information in the communication. **Any communication with the child or a relevant person must not include unnecessary personal information about another person.**
- 1.4. Where the reporter has an obligation to provide certain information to a child or relevant person, that information must be provided unless one of the non-disclosure provisions referred to above applies.
- 1.5. Where disclosure of a child's home address would place the child at risk, the reporter is to give the child's address as care of the Principal Reporter, Ochil House.
- 1.6. It is competent for more than one type of non-disclosure provision to apply at any one time.
- 1.7. The local authority has a duty to comply with a measure in an order, and it and other agencies have wider duties to promote the child's welfare. Therefore, it is appropriate for the reporter to strongly encourage agencies to consider their wider duties and specifically that agencies must:
  - consider whether it is necessary to recommend that an order contain a non-disclosure measure, and if so provide relevant and sufficient reasons for this;
  - alert the reporter to any risk of significant harm to the child and/or relevant person if the whereabouts of the child and/or relevant person were disclosed;
  - consider whether any information should be withheld from a specified person or persons on the ground that disclosure of that would be likely to cause significant harm to the child; and
  - convey to the reporter any information which is not to be disclosed in a manner that best facilitates the reporter handling that information in a safe and secure way (e.g. sending the information in a separate document, or tabling information at the hearing).

Locality Reporter Managers are to seek to ensure that the local authority and other relevant agencies in their area are aware of the provisions in relation to non-disclosure. Continuing inter-agency work at local level is important to raise and maintain awareness of the legal provisions and their application.

- 1.8. This Practice Direction must be read alongside Practice Direction 18 on the Completion of Forms and the Record of Proceedings at a Children's Hearing.

## **2. Non Disclosure Requests**

- 2.1. A non-disclosure request is a request that any document, part of a document or information contained in a document relating to a hearing should be withheld

from a specified person on the basis that disclosure would be likely to cause significant harm to the child to whom the hearing relates. Rule 84(1). A non-disclosure request can relate to information which is much broader than simply a specified place of residence or whereabouts of a child. For example, a non-disclosure request could relate to family history or to information about a relevant person's health. However, a non-disclosure request could also relate to withholding of a child's address or prospective address. See 2.14 below.

- 2.2. A non-disclosure request relates to information contained in documents relating to a specific hearing or pre-hearing panel. The non-disclosure request has to be considered by the hearing or pre-hearing panel which will be considering the report, document or other information. If the non-disclosure request is accepted by the hearing, the information, document, etc. will not be provided to the named non-disclosure individual either before or after the hearing. The hearing's decision to accept the non-disclosure request will apply to future hearings until a substantive decision is made.
- 2.3. Any person, including the reporter (Rule 85(1)), may make a non-disclosure request prior to the hearing or pre-hearing panel.
- 2.4. A non-disclosure request can be made during a hearing but only by the child, any relevant person, any appointed safeguarder, the reporter or the author of any document that is the subject of a non-disclosure request. Rule 87.
- 2.5. For non-disclosure requests made prior to the hearing, reporters are to encourage others to provide written non-disclosure requests using the "Non-disclosure request pro-forma" in Appendix 1. The reporter may accept a non-disclosure request made verbally, in which case the reporter is to complete the non-disclosure request pro-forma. The reporter is to use the non-disclosure request pro-forma to make a non-disclosure request to the hearing.
- 2.6. If the reporter is aware of information which would be likely to cause significant harm to the child if disclosed to a specified person, the reporter is to make a non-disclosure request by completing the non-disclosure request pro forma in Appendix 1. The reporter may wish firstly to check with the lead agency as to whether that agency is going to make a non-disclosure request.
- 2.7. A non-disclosure request must specify:-
  - Which document or part of the document or information to which the non-disclosure is requested (referred to in this Practice Direction as "the withheld information"); and
  - the persons to whom the document or part of the document or information is not to be disclosed (referred to in this Practice Direction as the "named non-disclosure individual"); and
  - a reason for each document or piece of information which is not to be withheld and for each person from whom information is to be withheld<sup>2</sup>.

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<sup>2</sup> Rule 84(3)

Provided the non-disclosure request specifies these matters, it is a valid non-disclosure request. The reporter is to treat it as a non-disclosure request even if the reasons given do not appear to the reporter to meet the significant harm test.

- 2.8. Certain documents may not be the subject of a non-disclosure request, namely:
  - The statement of grounds.
  - Any order or warrant which the child is subject to under the Act or Rules (but see section 3 below regarding a measure contained in an order).
  - A remit by a court under s.49 of the Criminal Procedure (Scotland) Act 1995.
  - A requirement by a sheriff under section 12(1A) or statement under section 12(1B) of the Antisocial Behaviour etc. (Scotland) Act 2004.
- 2.9. The reporter is to record the non-disclosure request on the Case Management System.
- 2.10. The reporter must ensure that the withheld information is removed from any report, document or information which the reporter is giving to the named non-disclosure individual. Rule 15(1) The information to be removed must be deleted by reliable means (i.e. in a way that ensures that the recipient cannot read what has been deleted).
- 2.11. The reporter must inform everyone who is entitled to receive the report or document containing the relevant information of the identity of the named non-disclosure individual and of the withheld information. Rule 15(2). See "2011 Act Non-Disclosure Operational Process and Guidance Note" for specific forms and standard letters to be used.
- 2.12. In complying with Rule 15(2) as regards the named non-disclosure individual, the reporter is only to give a general picture of the withheld information, not the information itself. For example, the reporter is not to disclose the specific family history details which have been withheld but say that "details of the history of X, the child's mother have been withheld".
- 2.13. In order to comply with Rule 15(2), the reporter is to send **everyone other than the named non-disclosure individual** who is entitled to receive papers for the hearing a form containing the full information which has been withheld and from whom.
- 2.14. The reporter is to send to the local authority a copy of a form containing the full information withheld and from whom to prevent the local authority inadvertently disclosing the withheld information.
- 2.15. The reporter must refer any non-disclosure request which relates to documents or information for the hearing to that hearing for determination. Rule 85(1). If the non-disclosure request relates to documents or information to be considered at a pre-hearing panel, the reporter must refer the non-disclosure request to that pre-hearing panel. Rule 85(1) and 84(4)
- 2.16. It is competent for the person who makes a non-disclosure request to withdraw the request before the reporter refers the request to a hearing. This may occur for example if the reporter has already applied Rule 16 (see below). However, the decision as to whether to withdraw the non-disclosure request should be

made by the person who made the non-disclosure request and the reporter is not to influence this decision, other than providing factual information about the existence of another non-disclosure provision. The reporter is to record the withdrawal of the request. It is competent for more than one non-disclosure provision to be in place at one time, and it is arguably more transparent for the hearing to consider a non-disclosure request than for the reporter to apply Rule 16.

- 2.17. Every hearing, except a grounds hearing, must consider the non-disclosure request at the beginning of the children's hearing. Rule 86(1) A grounds hearing may wait until after the grounds are put but before the hearing proceeds to decide whether to make a CSO. Rule 86(2) The non-disclosure request should be considered at a grounds hearing before consideration of an interim order.
- 2.18. The hearing or pre-hearing panel must consider and determine the non-disclosure request. Rule 86(4). The rules are not clear as to the test for the hearing to apply. The request must be made on the basis of likely significant harm to the child. Therefore our view is that the hearing or pre-hearing panel must apply the same test when deciding to accept the request.
- 2.19. When considering a non-disclosure request, the hearing may exclude the named non-disclosure individual from the hearing if it considers that the presence of that person would prevent proper consideration of the non-disclosure request. Rule 86(3). If the named non-disclosure individual is excluded, s/he must be invited to return and advised of the determination. Rule 86(5).
- 2.20. If the hearing rejects the non-disclosure request, the hearing must ensure that the withheld information is provided to the named non-disclosure individual at a time and in such a manner as it considers appropriate having regard to the best interests of the child. Rule 86(6) This means that the hearing need not provide the information at that hearing but may decide that it should be provided at a later date. The hearing may be deferred if it is unfair to proceed. The reporter is to alert the panel members to issues of fairness.
- 2.21. Where a local authority wishes a children's hearing to consider non-disclosure of the address of carers with whom the local authority is recommending the child be placed, the local authority can either make a written non-disclosure request in advance of the hearing or table the request at the hearing. In the latter case, at any stage during the hearing, the social worker may table the information about the new placement in writing and make a verbal non-disclosure request. The social worker would not provide the written tabled information to the person or persons from whom the information is not to be disclosed in accordance with the non-disclosure request. The hearing would then consider the non-disclosure request and make a decision as to whether to accept or reject the non-disclosure request (see paragraphs 2.12-2.14 above). The hearing may also include a measure in an order, if applicable, see Section 3 below.
- 2.22. Before a children's hearing includes a measure in an order that requires the child to reside at a specified place, the children's hearing require to know the details of that place (the name of the place or carers, and the address). Unless a non-disclosure request is made and accepted by a children's hearing, the details of that place must also be provided to the people who are entitled to information at

the hearing (i.e. the child if able to understand, the relevant persons, and the safeguarder).

2.23 Where the reporter has withheld information from a person because of a non-disclosure request that the children's hearing has then accepted, rule 77(6) enables the withheld information to be redacted from a report the hearing requires to prepare under section 95 of the Adoption and Children (Scotland) Act 2007. The reporter is to send to the court:

- The full section 95 report;
- The section 95 report with the 'non-disclosure information' redacted; and
- The details of the hearing's determination of the non-disclosure request from the record of proceedings.

Such a situation will most often arise when the local authority has recommended that the child's CSO is varied to move the child to a new placement and the withheld information is the detail of that placement. Under rule 51 of the Sheriff Court Adoption Rules 2009, the sheriff may decide to send only the redacted report to any party to the permanence order proceedings.

### **3. Measure Contained in Order**

3.1. The following orders may contain a non-disclosure measure:

- A Compulsory Supervision Order (CSO), if a child is required to reside at a specified place, may contain a measure prohibiting disclosure (whether directly or indirectly) of that place. Section 83(1), 83(2)(a), 83(2)(c)
- An Interim Compulsory Supervision Order (ICSO), if a child is to reside at a specified (named) place or at a place of safety away from where the child predominantly resides, may contain a measure prohibiting the disclosure (whether directly or indirectly) of the named place or the place of safety. Section 86(1), 86(2)
- A Medical Examination Order (MEO), if a child is required to attend or reside at a specified clinic, hospital or other establishment, may contain a measure prohibiting the disclosure (whether directly or indirectly) of the clinic, hospital or other establishment. Section 87(1) and (2)
- A warrant to secure attendance may prohibit the disclosure (whether directly or indirectly) of the place of safety to any person specified in the warrant. Section 88(1)(a) and (b)
- A Child Protection Order may contain an information non-disclosure direction which is a direction to the applicant for the CPO<sup>3</sup> that:-
  - The location of any place of safety at which the child is being kept, and
  - Any other information specified in the direction relating to the child,
  - must not be disclosed (directly or indirectly) to any person or class of person specified in the direction. The sheriff must consider whether to include such a direction. Section 40. A hearing can add such a direction at a second working day hearing. Section 47(1)(a)(ii)

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<sup>3</sup> When notifying the making of a CPO, it is for the applicant to redact the CPO and supporting documents. However, if the reporter receives an unredacted set of papers, the reporter must comply with the sheriff's direction.

- 3.2. The order should specify the person(s) (or in a CPO the class of persons) to whom the non-disclosure measure applies (in this Practice Direction, such person or persons are referred to as the named non-disclosure individual). If a hearing fails to specify this, the reporter is to express a view to the hearing about this. It may also be necessary to remind a sheriff to be specific.
- 3.3. The same principles apply to a decision in relation to a non-disclosure measure as to any other decision made by a hearing or sheriff: the principles contained in sections 25/26 (welfare of the child), 27 (views of the child) and 28/29 (better for the child if the order is made than not). In addition, Article 8 of the European Convention on Human Rights is particularly relevant and requires that any interference in family life must be proportionate to the legitimate aim pursued. This means that there must be relevant and sufficient reasons for the hearing/court taking the measures they did. The more important the right or the more far reaching the interference, the stronger the reasons required to justify it.

Given that a non-disclosure request is made on the basis that disclosure of the information would be likely to cause significant harm to the child, it is likely that a sheriff, or hearing making the significant decision to withhold information about where the child is required to reside would have to apply a similar test.

- 3.4. Reporters must refer to Practice Direction 18 on the Completion of Forms and the Record of Proceedings at a Children's Hearing for direction in relation to completion of forms in a children's hearing.
- 3.5. The reporter must comply with an order by a sheriff or children's hearing that the place where the child is required to reside is not to be disclosed to a named non-disclosure individual. The reporter must record a non-disclosure order on the Case Management System.
- 3.6. In complying with the order, the reporter must identify any information which would indirectly disclose the place where the child is required to reside. The reporter is to record his/her assessment of which information on Case Management System.
- 3.7. Following the hearing, the reporter must remove from the copy of the order, the record of proceedings or any other information or document being sent to the named non-disclosure individual<sup>4</sup> any reference to:
- the specified place of residence,
  - any details as to the place of safety, and

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<sup>4</sup> This includes but is not restricted to:

- notification of hearing outcomes including reasons for decision
- notification of court outcomes
- applications to court under sections 65: and all court related documents including notices and productions
- advice to be sent to the court and parties
- answers to appeals and related papers: including reports of proceedings, compulsory supervision order, warrants, decisions and reasons
- notifications for pre-hearing panels
- notifications of hearings and review hearings
- all other reports or papers provided to a hearing by the reporter

- any information which the reporter has identified would indirectly disclose these.

The information to be removed must be deleted by reliable means (i.e. in a way that ensures that the recipient cannot read what has been deleted). Rule 15(1)

It is essential that **any** communications sent out, or provided, to the named non-disclosure individual do not include details of the child's place of safety or place of residence or information which would indirectly disclose this. The reporter should be aware that this includes court related documents such as notification of court outcomes, applications to court, productions, and advice to court.

- 3.8. The reporter must inform everyone who is entitled to receive the report or document containing the relevant information of the identity of the named non-disclosure individual and of the withheld information. Rule 15(2). See "2011 Act Non-Disclosure Operational Process and Guidance Note" for specific forms and standard letters to be used.
- 3.9. In complying with Rule 15(2) as regards the named non-disclosure individual, the reporter is only to give a general picture of the withheld information, not the information itself. For example, the reporter is not to disclose the information which would indirectly reveal the place where the child is required to reside but say that "The place where the child is required to reside and information which might indirectly disclose that place is being withheld".
- 3.10. In order to comply with Rule 15(2), the reporter is to send **everyone other than the named non-disclosure individual** who is entitled to receive papers for the hearing a form containing the full information which has been withheld and from whom.
- 3.11. The reporter is to send to the local authority a copy of a form containing the full information withheld and from whom to prevent the local authority inadvertently disclosing the withheld information. An order by a sheriff or children's hearing applies not only to the reporter but to the local authority.
- 3.12. If the reporter considers that it is appropriate for others to be aware of the order (e.g. another agency working with the child or family which is not entitled to be notified by the reporter) the reporter must alert the local authority to this. It will be for the local authority to determine whether to take any specific action in relation to this.
- 3.13. Where the reporter is applying for an ICSO under section 98, 99, or 109 of the Act or interim variation of a CSO under section 109 the reporter must consider whether it is also necessary to seek an order of non-disclosure. Where the existing ICSO or interim variation contains a non-disclosure measure, the reporter must assess whether it continues to be necessary.
- 3.14. Where a sheriff grants any order which contains a non-disclosure measure, other than a CSO or MEO, the reporter is to notify any relevant person who was not present when the order was granted and the local authority of the terms of the

order<sup>5</sup>. Where a CSO or MEO is granted, the sheriff clerk must intimate this forthwith to the parties and the relevant implementation authority<sup>6</sup>. Where a sheriff grants any order which contains a non-disclosure measure, the reporter must also comply with Rule 15 (and consequently comply with paragraphs 3.5-3.8 above)

#### **4. Rule 16 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013**

- 4.1. When a reporter is sending (or giving) any notification or documents before or after a hearing or pre-hearing panel, s/he may withhold information disclosing the whereabouts of the child or of any relevant person (see Practice Direction 3 on Relevant Persons if the reporter considers that disclosing this would be likely to cause significant harm to the child or any relevant person. Rule 16.
- 4.2. Rule 16 has a broader application than a non-disclosure measure in an order. Rule 16 does not only apply where the child requires to be in a specified place of residence or place of safety. Rule 16 also applies to both the child and/or relevant person rather than just the child. However, its application is subject to the test that disclosing this would be likely to cause significant harm to the child and/or relevant person. Rule 16 cannot be applied to someone who is not a relevant person, for example, a future carer.
- 4.3. **'Whereabouts'** is not restricted to a place of safety or place where child is required to reside and covers any place where the child or relevant person currently is. The reporter may withhold any information necessary to prevent disclosure of the whereabouts of the child or relevant person. For example, this could be the names of carers, names or addresses of schools, or any other details which may identify the child's or relevant person's whereabouts. It does not cover future whereabouts.
- 4.4. **'Significant harm'** is undefined but covers physical, mental or emotional harm. Risk of harm in itself does not enable the application of rule 16 – the risk must be of significant harm. Inconvenience or the simple preference not to share an address does not meet the test of serious harm.
- 4.5. Where the reporter has decided to apply rule 16, s/he must specify and record the person or persons to whom disclosure is not to be made (in this Practice Direction such a person or persons is referred to as a "named non-disclosure individual") and record reasons for the decision. The reporter must ensure that the information to be withheld is removed from any papers or communications issued to named non-disclosure individual. Rule 15(1) The information to be removed must be deleted by reliable means (i.e. in a way that ensures that the recipient cannot read what has been deleted).

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<sup>5</sup> Where a sheriff grants an ICSO, Rule 3.64A of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended provides that the reporter must notify the child of this using Form 65B, and the reporter must intimate this to such other persons as the sheriff determines using Form 65E.

<sup>6</sup> Rule 3.64B and Rule 3.64C of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended]

- 4.6. The reporter must give consideration to rule 16 on **every occasion** when a hearing or pre-hearing panel is to be or has been held. Therefore, on each occasion, the reporter may have to apply rule 16 for the first time, cease to apply rule 16 or modify the information to be withheld when applying Rule 16. These decisions must be recorded.
- 4.7. It is not necessary to apply Rule 16 where the reporter has discretion as to what information to include in a communication to the child or relevant person, for example when writing to advise of an initial investigation. In such a case, the reporter must not include unnecessary personal information about another person.
- 4.8. Rule 16 may be applicable whether or not there is a non-disclosure order in place. However, where there is an order in place, the order prevents the reporter disclosing information which would indirectly disclose the whereabouts of the child. Therefore, where there is a non-disclosure measure in an order, Rule 16 is only to be used by reporters where disclosure of the whereabouts of the relevant person would cause significant harm to the relevant person. If a hearing has not included a non-disclosure measure (where it could have), the use of Rule 16 in relation to the whereabouts of the child is unlikely to be justified without significant new information becoming available after the hearing.
- 4.9. The reporter must inform everyone who is entitled to receive the report or document containing the relevant information of the identity of the named non-disclosure individual and of the withheld information. Rule 15(2) See "2011 Act Non-Disclosure Operational Process and Guidance Note" for specific forms and standard letters to be used.
- 4.10. In complying with Rule 15(2) as regards the named non-disclosure individual, the reporter is only to give a general picture of the withheld information, not the information itself. For example, the reporter is not to disclose the information about the child's and/or relevant persons whereabouts but say that "Information relating to the whereabouts of [the child] and/or [a relevant person] has been withheld".
- 4.11. In order to comply with Rule 15(2), the reporter is to complete and send to everyone who is entitled to receive papers for the hearing **other than the named non-disclosure individual** a form containing the full information which has been withheld and from whom.
- 4.12. The reporter is to send to the local authority a copy of a form containing the full information withheld and from whom to prevent the local authority inadvertently disclosing the withheld information.

## **5. Non disclosure of information under s.178 of the Children's Hearings (Scotland) Act 2011**

- 5.1. A children's hearing may decide not to disclose to any person any information about the child or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child. s.178. This includes not disclosing such information when:

- giving an explanation of what has taken place during a relevant person's exclusion or absence from the hearing,
  - providing reasons for the decision and at the start of a hearing,
  - informing those present at the hearing of the substance of any relevant report or other document. S.178(2)
- 5.2. Given the potential unfairness which could arise, particularly if the not disclosed information forms a part of the reasons for the hearing's decision, this provision may be of limited application.
- 5.3. Section 178 is different from a non-disclosure request. Therefore, section 178 can only apply if the information is not the subject of a non-disclosure request and comes to light during a hearing:
- whilst a relevant person (or persons) have been excluded under s.76(1) in order to obtain the views of the child, or
  - whilst one or other relevant persons have voluntarily absented themselves from part of the hearing, or
  - at which a relevant person (or persons) is not in attendance.
- 5.4. Neither s.178 itself nor the hearing rules specify the process to be followed in relation to s.178 at a hearing. However, it is a decision of the hearing and is to be recorded by the reporter as such. As with any decision, the hearing must give reasons for the decision. The hearing is not required to inform the relevant person of the decision to withhold immediately upon the relevant person's return to the hearing.
- 5.5. The reporter must inform everyone who is entitled to receive the report or document containing the relevant information of the identity of the named non-disclosure individual and of the withheld information. Rule 15(2) See "2011 Act Non-Disclosure Operational Process and Guidance Note" for specific forms and standard letters to be used. This will apply to information withheld under s.178 if the information is in a document (most likely, the hearing's statement of reasons.)
- 5.6. In complying with Rule 15(2) as regards the named non-disclosure individual, the reporter is only to give a general picture of the withheld information, not the information itself.
- 5.7. In order to comply with Rule 15(2), the reporter is to complete and send to everyone who is entitled to receive papers following the hearing **other than the named non-disclosure individual** a form containing the full information which has been withheld and from whom.
- 5.8. The reporter is to send to the local authority a copy of a form containing the full information withheld and from whom to prevent the local authority inadvertently disclosing the withheld information.

## 6. Sheriff ordering non-disclosure of address in proof application under section 93 or 94

- 6.1. When considering an application for proof under section 93 or 94 of the Children's Hearings (Scotland) Act 2011, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder.
- 6.2. An application to the sheriff under section 93 or 94 must be in Form 60. The terms of Form 60 indicate that in considering an application under section 93 or 94 the sheriff may order that an address is not be disclosed in the application. This covers the address of the child and of a relevant person. The order made by the sheriff relates only to an address in the Form 60 application itself and does not apply to any other paperwork forming part of the child's proceedings, for example, the statement of grounds.
- 6.3. When making an application under section 93 or 94, the reporter must decide whether to seek such an order to cover the child's and/or relevant person's address which would otherwise appear in the application to be notified to other parties. Such an order is likely to be required where the child is subject to an order containing a non-disclosure measure or the reporter has applied rule 16 in the case. However, there may be other reasons to seek such an order for example where there is some risk but the rule 16 significant harm test is not met.
- 6.4. The request to the sheriff and related information is to be provided in a covering letter with the application.
- 6.5. Although Rule 15 does not strictly apply here, the reporter is to adopt the approach required in other circumstances by Rule 15. The reporter is to ensure that the address of the child or relevant person is removed from the copy application which the reporter serves on the child, relevant persons and safeguarder. The reporter is to inform everyone on whom the reporter is serving the copy application of the identity of the named non-disclosure individual and of the withheld information. See "2011 Act Non-Disclosure Operational Process and Guidance Note" for specific forms and standard letters to be used.
- 6.6. In following the approach in Rule 15(2) as regards the named non-disclosure individual, the reporter is only to give a general picture of the withheld information, not the information itself.
- 6.7. The reporter is to complete and send to everyone on whom the copy application is to be served **other than the named non-disclosure individual** a form containing the full information which has been withheld and from whom.
- 6.8. The reporter is to send to the local authority a copy of a form containing the full information withheld and from whom to prevent the local authority inadvertently disclosing the withheld information (unless the local authority has already been informed of this).

## 7. Practical Issues – Management of Hearings

- 7.1. Where any non-disclosure provision applies the reporter must alert panel members to this at the start of the hearing.
- 7.2. Reception staff must also be made aware that a non-disclosure provision applies to a hearing case. This should be ideally be done by providing them with a notification/attendance record sheet which includes a note about non-disclosure. In any case, reception staff must not distribute any reports to any person unless instructed to do so by the reporter attending the hearing. All offices are required to ensure that any register or log used at reception to record who attends hearings does **not** record the address of any child or their carer where non-disclosure is an issue. If there is a need to seek names and addresses verbally from persons attending a hearing this must be done outwith the hearing of persons who are not allowed that information.
- 7.3. Where non-disclosure is a live issue in a case and any person seeks to table a report within the hearing, the reporter must ask the hearing chair for an opportunity to consider the report before the hearing decides on its response to the tabling of the report and before it is distributed to other persons. The issue of non-disclosure is a factor for consideration by the hearing in deciding on its response (e.g. whether to defer the hearing to allow for proper consideration of the report) and the reporter must seek to ensure that the hearing is aware of the non-disclosure issues raised by the report. This may include issues relating to a non-disclosure order, Rule 16 and a non-disclosure request (ie information the reporter would have removed if sending out the report in advance) and may also include any practical issues such as the availability of photocopying facilities. If the hearing decides to take the report into consideration, the reporter **must offer to remove any information that should not be disclosed** to a particular person from the copy to be given to that person. The information withheld will depend on the terms of any order, the application of Rule 16 or the hearing's determination of a non-disclosure request.
- 7.4. If a child or relevant person from whom information has been withheld under one of the non-disclosure provisions requests sight of a set of papers to refer to during a hearing, the reporter must ensure that any papers provided by the reporter avoid any breach of non-disclosure. If any other person offers, or is considering offering, sight of their papers the reporter must alert that person to the issue of non-disclosure.

## 8. Practical Matters- Court Proceedings

- 8.1. Where there is a non-disclosure measure in place the reporter must comply with the order during the course of its existence, which may include proof or appeal proceedings. The reporter must ensure that the sheriff, any safeguarder, any agent acting for the reporter, and any agent acting for the child or relevant persons is aware of any current non-disclosure measure relating to a child, or application of rule 16.

- 8.2. Where the reporter has a duty to provide the sheriff with the papers available to the hearing, the reporter must provide the full papers, without any redaction (editing) of information, unless there is local agreement with the sheriff that the reporter provide the redacted version. The reporter must also take this approach to any safeguarder appointed in the proceedings. The reporter may choose to have redacted versions available for the sheriff and any safeguarder in case the sheriff would prefer to work from that version.
- 8.3. In appeals there is no obligation on the reporter to provide a set of copy hearing papers to the child or relevant persons. If papers are provided, the reporter must ensure that the information which is not to be disclosed to the named non-disclosure individual is not contained within the papers provided to that person. If providing papers to others, the reporter can also provide a redacted set of papers (as they will already have received notification of the withheld information under Rule 15).
- 8.4. Where there is an order of non-disclosure in place, the reporter must ensure that any productions or evidence in a proof or appeal which he copies or makes available to a person (including via a solicitor acting for that person) to whom disclosure is not to be made do not contain information which is not to be disclosed. This includes checking, for example, audio tapes, video and DVD recordings and medical records. The reporter must ensure the sheriff and all other parties are alert to the non-disclosure order in relation to their productions or any new reports produced in the course of the proceedings.
- 8.5. Rule 16 does not extend to productions or evidence in a proof or appeal. However, all parties will be aware that the reporter has applied rule 16 at an earlier stage in the proceedings (see paragraph xxxx). Where information has been withheld from a person by the reporter under rule 16 rather than under any order of non-disclosure, it will be for the sheriff to determine whether such information may be removed from productions or evidence to be provided to that person. **The reporter must not disclose the information to the person unless the sheriff has ordered that it must be so disclosed.** Where the reporter withholds information in productions or evidence in advance of consideration by the sheriff, the reporter must alert the sheriff and the person from whom the information has been withheld, in order that the issue may be considered by the sheriff should either that person or the sheriff wish to raise it.
- 8.6. In any motion for recovery of documents the reporter must ensure that any non-disclosure issue is taken into consideration in responding to the motion.
- 8.7. For withholding information in a report under section 95 of the Adoption and Children (Scotland) Act 2007 see paragraph 2.23.

## **9. Informing Panel Members of Purpose of Hearing**

The reporter is never to send out a copy of the child's notification in the panel papers. A standard form of Hearing Notification to Panel Members is to be used to ensure panel members are fully informed of the purpose(s) of the hearing and the application of rule 16, non-disclosure request or any non-disclosure order that is in force. The "2011 Act Non-Disclosure Operational Process and Guidance Note" covers this.

## **10. Protocol where Breach of Non-Disclosure**

10.1. For the purposes of this Protocol, a breach of non-disclosure occurs where:

- a) a children's hearing or a sheriff has made an order of non-disclosure, and the child's place of safety or specified place of residence is disclosed to a person named in the order,
- b) the reporter has decided to apply rule 16, and information is disclosed to a person from whom the reporter had decided to withhold that information,
- (c) a person makes a non-disclosure request, and information which is the subject of the non-disclosure request is disclosed to the person to whom the non-disclosure request relates,
- (d) a sheriff orders that the address of the child or relevant person not be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder, and the address of the child or relevant person is disclosed in breach of this.,
- (e) the hearing applies s.178 and information which is not to be disclosed to a certain person or persons is disclosed.

10.2. It is important that there is a clear and robust procedure which must be followed whenever a member of staff of SCRA becomes aware of a breach, or possible breach, of non-disclosure. A breach of non-disclosure may have serious implications for the personal health and safety of a child, relevant person or a child's carers and it is essential that immediate action is taken to assess the risks to the child, relevant person or child's carers and to limit the risks.

10.3. The following procedure must be followed whether the breach is by a member of SCRA staff, a third party or it is not known which agency or person is responsible for the breach. Where the breach has not been by a member of SCRA staff, the reporter nevertheless has a role to assess the risks, to liaise with other agencies and to take any other appropriate action to reduce the identified risks.

10.4. When a member of SCRA staff becomes aware of a breach or possible breach of non-disclosure the case holding reporter and their LRM and LSM

must be notified immediately. The case holding reporter and LRM will assess immediately whether there has been a breach and the risks to the person whose address or whereabouts was not to be disclosed and anyone associated with that person. Action must be taken to limit the risks. The appropriate immediate action will depend on the immediacy and seriousness of the risks.

- 10.5. Other agencies, such as the police and social work department, will be in a better position than the reporter to take direct action to protect the child, relevant person or the child's carers. For example the police may be able to take action to prevent an offence being committed or the local authority may be able to take action to move the child. Taking account of the immediacy and seriousness of the risks, the reporter must inform appropriate agencies of the situation and undertake careful and sensitive liaison. Effective liaison and understanding with other agencies is essential. Liaison with the child, carers or relevant persons is also likely to be required but the most appropriate person for doing this in the immediate short term will require specific consideration in each case.
- 10.6. The reporter must also give consideration to the need for action to prevent further breach of non-disclosure or to limit the risk of harm to other persons. There may be for example situations where there is more than one person whose address or whereabouts is not to be disclosed, or a connected person whose address or whereabouts is not to be disclosed (e.g. a sibling) or more than one person to whom an address or whereabouts is not to be disclosed.
- 10.7. Where the LRM is not immediately available, the matter **must** be addressed without delay through the line management structure. The non-availability of any particular member of staff must not cause delay in identifying risks to the child, carers or relevant persons and taking necessary immediate action to limit them.
- 10.8. The LRM must inform their Senior Operational Manager of the situation, the risk assessment and any action so far and liaise with them to consider what further action is required. This will include not just further immediate or short term action but also longer term action and communications with the child, carers, relevant persons and/or agencies about the circumstances of the breach, its consequences and the reporter's response.
- 10.9. Within one working day of the discovery of the breach or possible breach, the LRM must complete the Standard Form "Notification of Breach of Non-disclosure" and forward this to the persons specified on the Form. These include the Malcolm Schaffer (Head of Practice & Policy), Maggie McManus (Director of Support Services who is SCRA's Senior Information Risk Owner), the relevant Senior Operation Manager, and Gillian Henderson and Gwen McNiven (Information & Research team). The Form is attached at Appendix 2. As soon as possible after the LRM and Senior Operational Manager have considered the issues identified in paragraph 8.7 and taken action in response, the LRM must prepare a full Assessment Report. The report must detail the actions taken by members of SCRA staff and others to address the situation.

- 10.10. Each case in which there has been a breach of non-disclosure by SCRA staff will raise issues particular to that case. It is essential that a record is kept of all actions taken to ensure that the matter is resolved as carefully and comprehensively as possible.
- 10.11. Where there is ongoing action by the reporter under this protocol and a complaint has been made in relation to the breach or possible breach of non-disclosure, the LRM and SOM must liaise with the person dealing with the complaint. The complaint is to be dealt with according to SCRA's Complaints procedure.
- 10.12. Any breach of non-disclosure by a member of SCRA staff has the potential to place a child, their carers or relevant persons at risk, and therefore every breach will be treated extremely seriously by SCRA.

## APPENDIX 1

### Non-Disclosure Request Reports/Documents for Hearings or Pre-Hearing Panels

If you consider that any report or document, (or any information within the report or document) which you are submitting for a hearing or pre-hearing panel would be likely to cause significant harm to the child if disclosed to someone who has a right to receive it, you should provide this information by completing and returning the following form. Please only provide any such information in this form or an appendix to this form. **If you do not complete this form, the reporter will assume that your report or document is to be provided to the child and to all relevant persons in full.** If you consider that other reports or documents for the hearing or pre-hearing panel contain information which would be likely to cause significant harm to the child if disclosed please also complete a form. Please complete a separate form for each report.

Child's Name and Date of Birth:

Name/description of report/document:

What is not to be disclosed <sup>7</sup>	
Who is this not to be disclosed to <sup>8</sup>	
Reason for non-disclosure request <sup>9</sup>	

Name and role of person requesting:

Date of request:

<sup>7</sup> Please be specific e.g. page, paragraph and sentence number or specific information not to be disclosed e.g. Academy A, 1 High Street, Anytown, AB1 2CD (name and address of school)

<sup>8</sup> Please provide name and relationship to child

<sup>9</sup> Please provide a reason for the non-disclosure request. If different parts of the report are not to be disclosed to different persons, you must provide a reason for each specific non-disclosure request relating to each person.

## APPENDIX 2 – Breach of Non-Disclosure Notification Form

Please complete and submit this form as soon as any breach of non-disclosure becomes known.

<b>Locality Team</b>	
<b>Case Reporter</b>	
<b>Date of Breach</b>	
<b>Date of Discovery of Breach</b>	
<b>Date of Notification</b>	

<b>Child's Name &amp; CMS ID</b>	
<b>Date of Birth</b>	
<b>Home Address</b>	
<b>Current Address</b> (if different from above)  Please clarify if child with relevant person, foster care , pre adoptive placement or adoptive parents	
<b>Details of information disclosed</b>	
<b>Nature of breach</b> Which of the following apply  <ul style="list-style-type: none"> <li>• Hearing order <input type="checkbox"/></li> <li>• Sheriff order <input type="checkbox"/></li> <li>• Rule 16 Children's Hearing Rules (Scotland) Act 1996 <input type="checkbox"/></li> <li>• Other (provide details) <input type="checkbox"/></li> </ul>	
<b>Name of associate(s) to whom breach was made</b>	

<p><b>How information was released</b> (please be specific here about source of the breach e.g. address not to be disclosed not removed from CSO, school report, in SBR, address given verbally during hearing etc.)</p>	
<p><b>Immediate action taken in response to breach</b></p> <p>Please state date by which the full assessment report will be sent or an estimate of how long it will take to provide the report.</p>	
<p><b>Immediate assessment of risk to child/carers/ relevant persons</b></p> <p>High <input type="checkbox"/></p> <p>Medium <input type="checkbox"/></p> <p>Low <input type="checkbox"/></p> <p><b>Provide details to support Assessment</b></p> <p>If further information received changes the assessment of risk prior to the submission of the full assessment report, please provide further details to the person listed below *</p>	
<p><b>Contact made with external agencies</b> (please confirm who has made the contact and who has been contacted)</p>	

<b>Any other relevant information</b>	
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**\* Distribution:**

- Director of Support Services
- Senior Operational Manager
- Head of Practice and Policy
- Information & Research Manager
- IS Security & Technical Assurance Officer