

Memorandum of Understanding between Police Scotland and the Scottish Children's Reporter Administration



Criminal Justice Division / August 2013 / v1.02

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The effectiveness and ongoing relevance of this document will be subject to review by the Police Scotland Criminal Justice team detailed above.

The next review of this document is due by to be updated and date inserted; however, it will be updated according to significant legislative and policy changes and re-released earlier, if required.

VERSION CONTROL

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1. INTRODUCTION

- 1.1 This Memorandum of Understanding (MoU) has been agreed between Police Scotland and the Scottish Children's Reporter Administration (SCRA). It sets out the principles for communication and co-operation between these parties so that all young persons aged between 16 & 17 years who are subject of a Compulsory supervision order (or who have an open referral to the Children's Reporter) are recorded on the Police National Computer (PNC) to inform decision making where that young person comes to the attention of Police Scotland.
- 1.2 The parties agree to keep the MoU under review as appropriate.
- 1.3 The MoU provides a framework within which each party can carry out their respective roles and responsibilities and recognises the symbiotic relationship between the two with regard to the Scottish Criminal Justice system and young persons.
- 1.4 A "child" is defined in section 199 of the Children's Hearings (Scotland) Act 2011, as:
- (a) a person who is under 16 years of age;
 - (b) a person who is aged 16 or 17 years of age and is subject to a compulsory supervision order; or
 - (c) a person who becomes 16 years of age after section 66 of the Children's Hearings (Scotland) Act 2011¹ applies in relation to the person but before a "relevant event". A "relevant event" is:
 - the making of a compulsory supervision order in relation to the person;
 - the Children's Reporter notifying the person under section 68(3) that the person will not be referred to a children's hearing; or
 - the discharge of the referral.²
- 1.5 For the purposes of this MoU, a "child" as defined in paragraph (bc) is referred to as having an "open referral".
- 1.6 A "child" is defined in section 307 of the Criminal Procedure (Scotland) Act 1995 as being a child as defined in section 199 of the Children's Hearings (Scotland) Act 2011.
- 1.7 Section 61(3) requires that 'If the constable makes a report under section 17(1)(b) of the Police (Scotland) Act 1967 in relation to the child, the constable must also make the report to the Principal Reporter.' The Lord Advocate has issued guidelines to the Chief Constable regarding the

¹ Unless otherwise stated, all references to section numbers in this MoU refer to sections of the Children's Hearings (Scotland) Act 2011.

² In effect that the person has been referred to the Reporter prior to their 16th birthday and that referral remains "open" after their 16th birthday as no final disposal has been made in relation to the referral.

reporting to Procurators Fiscal of offences alleged to have been committed by children (the 'Lord Advocate's Guidelines').

- 1.8 For the purposes of the Criminal Procedure (Scotland) Act 1995 and Section 61(3) of the Children's Hearings (Scotland) Act 2011, it is essential that the police know whether a young person aged 16 or 17 is a 'child' as defined in section 307 of the Criminal Procedure (Scotland) Act 1995 and section 199 of the Children's Hearings (Scotland) Act 2011.
- 1.9 Rule 90(3) of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ('the Rules') states that 'When a child subject to a Compulsory supervision order reaches the age of 16 years, the Reporter must, as soon as reasonably practicable, notify the Chief Constable of the area in which the child resides.'
- 1.10 Rule 90(2) of the Rules states that when "the decision of a children's hearing is to make a Compulsory supervision order in relation to a person aged 16 or older, as soon as reasonably practicable, the Reporter must notify the Chief Constable of the area in which the person resides.
- 1.11 Rule 90(4) of the Rules states that when section 199(3) and (4) of the Children's Hearings (Scotland) Act 2011 applies to a person³, as soon as reasonably practicable, the Reporter must inform the Chief Constable of the area in which the person resides of:
 - the application of section 199(3) and (4) to the person; and
 - when a relevant event has taken place in relation to the person.
- 1.12 Rule 90(5) of the Rules states that when a young person aged 16 or 17 years is no longer subject to a Compulsory supervision order, the reporter must, as soon as reasonably practicable, notify the Chief Constable of the area in which that person resides.
- 1.13 This MoU ensures that the Principal Reporter complies with his/her duties under Rules 90(2)-(5), of the Rules, and that Police Scotland have the necessary information to know whether a young person aged 16 or 17 is a "child".
- 1.14 For the purposes of this MoU, a 'working day' means every day except:
 - Saturday and Sunday; and
 - any public holiday.

2. THE SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

SCRA will provide the following reports⁴ to Police Scotland:

³ A person who becomes 16 years of age after section 66 applies in relation to the person but before a "relevant event" (see paragraph 4(b) above.

⁴ The reports provided under this Memorandum of Understanding will contain details of multiple children.

2.1 CHILDREN 16+ ON CSO – CURRENT

2.1.1 At the commencement of this agreement, SCRA will communicate a report containing the following details to Police Scotland for recording on PNC:

- Name of subject of compulsory supervision order;
- Date of birth of subject of compulsory supervision order;
- The subject's identification number in SCRA's Case Management System;
- Current Correspondence Address(es) of subject of compulsory supervision order;
- SCRA Locality Team (and their contact phone number) of subject of compulsory supervision order;
- An indicator as to whether the subject of compulsory supervision order is currently subject to Non-Disclosure measures, meaning that the subject and his/her details should not be presented to certain individuals;
- Date of the decision to make or continue a Compulsory supervision order; and
- The relevant local authority for the child.

2.2 CHILDREN 16+ ON CSO – NEW

2.2.1 Where a young person attains 16 years of age and is subject of a Compulsory supervision order, the SCRA will communicate a report containing the following details to the relevant Police Scotland for recording on PNC:

- Name of subject of Compulsory supervision order;
- Date of birth of subject of Compulsory supervision order;
- The subject's identification number in SCRA's Case Management System;
- Current Correspondence Address(es) of subject of Compulsory supervision order;
- SCRA Locality Team (and their contact phone number) of subject of Compulsory supervision order;
- An indicator as to whether the subject of Compulsory supervision order is currently subject to Non-Disclosure measures, meaning that the subject and his/her details should not be presented to certain individuals;
- Date of the decision to make or continue a Compulsory supervision order; and
- The relevant local authority for the child.

2.2.1 This report will be provided on each working day; a report with no names will be provided when there is no change.

2.3 CHILDREN 16+ ON CSO - REMOVE

2.3.1 Where a Compulsory supervision order relating to a young person aged 16 to 17 years is terminated by a Children's Hearing, the SCRA will communicate a

report containing the following details to Police Scotland for recording on PNC:

- Name of subject of Compulsory supervision order;
- Date of birth of subject of Compulsory supervision order;
- Current Correspondence Address(es) of subject of Proceedings;
- Date of the decision to terminate the Compulsory supervision order; and
- The subject's identification number in SCRA's Case Management System.

2.3.2 This report will be provided on each working day; a report with no names will be provided when there is no change.

2.4 CHILDREN 16+ WITH OPEN REFERRAL – CURRENT

2.4.1 At the commencement of this pilot, SCRA will communicate a report containing the following details to Police Scotland for recording on PNC:

- Name of subject of Open Referral;
- Date of birth of subject of Open Referral;
- The subject's identification number in SCRA's Case Management System;
- Current Correspondence Address(es) of subject of Compulsory supervision order;
- SCRA Locality Team (and their contact phone number) of subject of Open Referral;
- Date when section 66(1) applied (meaning date of referral to the reporter); and
- The relevant local authority for the child.

2.5 CHILDREN 16+ WITH OPEN REFERRAL – NEW

2.5.1 Where a young person attains 16 years of age and has an "open referral"⁵, the SCRA will communicate a report containing the following details to Police Scotland for recording on PNC:

- Name of subject of Open Referral;
- Date of birth of subject of Open Referral;
- The subject's identification number in SCRA's Case Management System;
- Current Correspondence Address(es) of subject of Compulsory supervision order;
- SCRA Locality Team (and their contact phone number) of subject of Proceedings;
- Date when section 66(1) applied (meaning date of referral to the reporter); and
- Relevant local authority for the child.

⁵ See paragraph ~~4(b)~~1.5 above

2.5.2 This report will be provided on each working day; a report with no names will be provided when there is no change.

2.6 CHILDREN 16+ WITH OPEN REFERRAL – REMOVE

2.6.1 Where a young person aged 16 to 17 years had an “open referral” and a “relevant event” has taken place⁶, the SCRA will communicate the following details to the relevant Police Force for recording on PNC:

- Name of subject of the Open Referral;
- Date of birth of subject of the Open Referral;
- The subject’s identification number in SCRA’s Case Management System;
- Current Correspondence Address(es) of subject of the Open Referral;
- Date of the “relevant event” (Latest Status update); and
- Relevant local authority for the young person.

2.6.2 This report will be provided on each working day; a report with no names will be provided when there is no change.

2.6.3 When a young person appears on this report, their status will require to be changed on the PNC. The proceedings that have concluded may have resulted in the young person being made the subject of a Compulsory supervision order. This will result in the young person’s details appearing on the report ‘Child 16+ on CSO – New’.

2.6.4 Where a child is subject to a Compulsory supervision order that includes an order that the child’s address shall not be disclosed to a named person or persons (a ‘non-disclosure order’), the existence of the non-disclosure order will be recorded on the relevant report.

2.6.5 The local authority/social work service should/will be able to provide details of the non disclosure order and, in particular, to whom the child’s address should not be disclosed.

2.6.6 The details of this MoU do not affect the current communication between the SCRA and the Police Scotland for all children who are under 16 years of age and are the subject of a referral by the police to the Children’s Reporter.

3. POLICE SCOTLAND

3.1 On notification of a young person made subject to a Compulsory supervision order or where a Compulsory supervision order is already in place and the subject attains the age of 16 years, Police Scotland will take the following action:

⁶ See paragraph 4(b) above. For example, the reporter decided not to arrange a children’s hearing for the young person or the children’s hearing discharged the referral of the young person.

- An entry will be placed on the PNC. This entry will be removed via notification by the SCRA that the Compulsory supervision order has been terminated or on the subject attaining 18 years or age.
- 3.2 On notification of a young person being the subject of an open referral⁷ and the subject attains the age of 16 years, Police Scotland will take the following action:
- An entry will be placed on the PNC. This entry will be removed via notification by the SCRA that those proceedings have now concluded.
- 3.3 Police Scotland undertakes to conduct appropriate checks of the PNC for all young persons under the age of 18 years to establish whether they are the subject of a Compulsory supervision order.

4. DATA SHARING

- 4.1 SCRA will provide the reports outlined in paragraphs 13, 15, 18 and 20 within two working days of the Children's Hearing having reached a decision.
- 4.2 Police Scotland will update the PNC within one working day of receipt of notification from the SCRA.
- 4.3 SCRA will provide these updates to Police Scotland via e-mail over a secure GSi network to the relevant Records Bureau. The formatting of the content for any attachments will be agreed between the Data Team of SCRA and the Records Bureau.
- 4.4 In the event of IT system failure, for either party, a manual system will be implemented.
- 4.5 To enable Police Scotland to carry out a reconciliation, on the first working day of every month SCRA will provide the following reports:
1. Children 16+ on CSO – Current; and
 2. Children 16+ Open Referral – Current.
- 4.6 Under Section 7 of the Data Protection Act 1998 an individual has the right to ask whether personal data about them is being processed. If a Subject Access Request is made to SCRA and an entry exists on PNC then SCRA must notify Police Scotland regarding the request.
- 4.7 Under Section 10 of the Data Protection Act 1998 an individual has the right to prevent processing if it is causing or likely to cause unwarranted and substantial damage or distress to the data subject. If a subject makes a Section 10 request to SCRA and an entry exists on PNC then SCRA must notify Police Scotland regarding the request.

⁷ See paragraph 4(b) above.

- 4.8 Under section 7 of the Data Protection Act 1998, an individual has the right to be informed of how personal information about them is being processed. SCRA will inform the young people that it has passed personal data about them to the police, and how this information will be processed. A leaflet explaining this will be sent with the Hearing notification when the young person reaches 16 years of age. This leaflet will also be available on SCRA's web site.

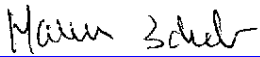
5. AGREEMENT DURATION

- 5.1 This MoU will remain valid until both parties agree termination of same.



Gordon Samson
Chief Superintendent
On behalf of Police Scotland

Date:



Malcolm Schaffer
Head of Practice & Policy
On behalf of the SCRA

Date: