

Practice Direction 6

Framework for Decision Making by Reporters

| | |
|--------------------|-----------------|
| Date Issued: | 24 June 2013 |
| Date Implemented: | 26 January 2015 |
| Date Last Revised: | 24 October 2018 |

SUMMARY

Children not subject to a compulsory supervision order

- In making a decision about the initial action to be taken about a referral of a child, in deciding on the level of information required in order to make a final decision, the reporter is to consider:
 - The extent of concern regarding the child's welfare (taking into account the child's development, parenting and family and environmental factors);
 - The nature of the incident (the level of gravity of the incident) that led to referral (if a single incident); and
 - The level of co-operation and the impact of any current and/or prior intervention.

- In making a final decision on whether it is necessary for a compulsory supervision order (CSO) to be made in respect of a child, the reporter is to consider:
 - The extent of concern regarding the child's welfare (taking into account the child's development, parenting and family and environmental factors) - the greater the level of concern, the more likely that a CSO is necessary;
 - The history of co-operation with any previous intervention and the impact of any previous intervention - the lesser the degree of co-operation with, or the impact of, previous intervention, the more likely that a CSO is necessary; and
 - The current motivation to change and willingness to co-operate with any intervention - the lesser the motivation to change, or the willingness to co-operate, the more likely that a CSO is necessary.

Children subject to a compulsory supervision order

- A reporter is only to refer a child subject to a compulsory supervision order to a children's hearing to consider a new statement of grounds if:
 - The reporter is of the view that the child's welfare requires that a specific new statement of grounds is considered by the hearing; or
 - The reporter is of the view that the referral indicates that the child's welfare requires that his/her compulsory supervision order is varied.

- In assessing whether or not either of these situations applies, the reporter is to take into account the following factors:
 - The nature of the current referral;
 - The response and attitude of the carers and/or child to the referral;
 - The nature of the current compulsory supervision order;
 - The co-operation with and progress of the current care plan; and
 - The length of time since the last hearing.

- The reporter is not to refer a child to a children's hearing to consider a new statement of grounds simply on the basis that there is a review hearing already scheduled to take place for another reason.

Reasons for decision

- The reasons for decision recorded by the reporter are to reflect the reporter's assessment of the principal factors in the decision. The reasons are to be relevant and sufficient, referring to relevant, reliable information, sufficient to justify the extent of the intervention (including any investigation that the reporter has undertaken) and the extent of intervention and the decision.

CONTENTS

| | |
|---|-----------|
| Section A | 8 |
| Decisions about children who are not subject to a compulsory supervision order - the Basic Framework | |
| Decision about initial action | |
| Final Decision Stage – options available | |
| Section B | 13 |
| Guidance on Factors to be Considered in Assessment of The Extent of Concern Regarding the Child’s Welfare | |
| Child’s Development | |
| Parenting | |
| Family and Environmental Factors | |
| Section C | 28 |
| Gravity of Incidents | |
| Gravity of Offences Committed by a Child | |
| Gravity of Offences Committed Against Children | |
| Gravity of Incidents of Domestic Abuse | |
| Section D | 32 |
| Decisions about children who are subject to a compulsory supervision order | |
| Factors to be considered in decision where the child is subject to a CSO | |
| Decision about initial action | |
| Final Decision Stage | |
| Final Decision Stage – options available | |
| Section E | 36 |
| Recording of Reasons for Decisions | |
| Appendix – Recording Reasons in CMS | |

Introduction

Making decisions about referrals of children is a central role of the reporter. This practice direction provides a framework for reporters making these decisions.

The purposes of this Practice Direction are:

- To assist reporters in:
 - Deciding on the initial action to be taken about the referral of a child;
 - Making the final decision about whether it is necessary for a compulsory supervision order (CSO) to be made in respect of a child; and
 - Deciding on the need to arrange a grounds hearing for a child who is already subject to a CSO.
- To provide principles and guidance to reporters on the issues that are to be considered in coming to such decisions.
- To assist reporters, and indirectly report providers, to work effectively and efficiently.
- To balance appropriately the principle of proportionate intervention with the principle of investigating and responding to individual need.
- To provide for transparency of decision-making by promoting consistent and structured recording of reasons for decision.
- To equip reporters to adopt a consistent approach to decision making and to make appropriate decisions in a range of circumstances with variable information and assessments. The Framework is not intended to enable reporters to carry out a comprehensive assessment of risk or need but recognises that the reporter takes account of other professional assessments.

Background

The investigation of children's circumstances following referral, and the making of decisions on the basis of investigation, are core tasks for reporters. Statute offers a wide discretion at the investigation stage ("The Principal Reporter may make further investigations relating to the child that the Principal Reporter considers necessary." Children's Hearings (Scotland) Act 2011, section 66(3)).

Given the breadth of that discretion, however, it is all the more important to set it in its proper context and to provide principles and guidance to Reporters on the issues that are to be considered in coming to a decision.

The European Convention on Human Rights and the UN Convention on the Rights of the Child also form part of the context for the work of Reporters. Both require respect for family life but also justify proportionate intervention when needed to protect individual rights.

The need for intervention to be proportionate is reflected in section 28 of the Children's Hearings (Scotland) Act 2011 ("the Act"). While the Act does not explicitly state that the section covers actions and decisions by reporters, reporters are to adhere to a principle of proportionate intervention.

The scope of the discretion at section 66(3) of the Act recognises that some referrals will trigger a need for intensive, pro-active multi-agency intervention, whereas others will not.

At another level, neither reporters nor agencies involved in working with children and providing reports have limitless resources available. Reporters have a responsibility to work with those agencies in order to ensure that resources are used to the best possible effect for those children who require them.

Using the Framework

Section A of this Framework applies when a child is not subject to a CSO. It sets out the principal factors that the reporter is to take into account at the stages of deciding on the initial action to be taken about a referral of a child, and making the final decision about the need for a CSO.

Professional judgement will always be required as to what investigation is appropriate in relation to the particular circumstances of an individual child at any given time. At any stage prior to making a final decision, further information received may precipitate re-assessment against the criteria stated in the Framework, and thus a change in the investigation required.

Section B gives further guidance on what the reporter is to consider in assessing the “extent of the concern regarding the child’s welfare”, one of the principal factors at the stages of both deciding about initial action and making a final decision.

Section C gives further guidance on the consideration of the gravity of the referral incident, one of the principal factors at stage of deciding about initial action.

Section 69(1) of the Act says that the reporter must arrange a grounds hearing when the reporter considers that:

- a section 67 ground applies in relation to the child, and
- it is necessary for a CSO to be made in respect of the child.

The decision about whether a section 67 ground applies in relation to the child is an evidential one. The reporter must consider whether there is sufficient prima facie evidence for there to be a realistic prospect that a section 67 ground will be established.

This framework does not consider that assessment of evidence. Instead it applies to the assessment of whether a CSO is required, although it is recognised that there can be an overlap with the assessment of evidence.

The extent to which the detail of the Framework is referred to in any particular case will be a matter for professional judgement in relation to that case. However, the reasons recorded by the reporter for both the initial action taken and final decision are to reflect the reporter’s assessment of the principal factors listed in Section A.

Section D applies when a child who is already the subject of a CSO is referred to the reporter. It sets out the principal factors the reporter is to take into account in deciding on the initial action to be taken about a referral of such a child, and in making the final decision on the need to arrange a grounds hearing for a child.

Section E provides direction in relation to the recording of the reasons for both the initial action and final decision.

Section A

Decisions about children who are not subject to a compulsory supervision order - the Basic Framework

Decision about initial action

At the stage of deciding on the initial action to be taken in relation to the referral of a child, the reporter is to consider the following factors in deciding on the level of information required in order to make a final decision:

| | | |
|--|---|--|
| <p>1. The extent of concern regarding the child's welfare - taking into account any previous knowledge of child and the likelihood of the reason for the referral recurring</p> | <p>The reporter is to consider the:</p> <ol style="list-style-type: none"> 1. child's development; 2. parenting; 3. family and environmental factors <p>and in relation to all 3, is to consider:</p> <ol style="list-style-type: none"> (a) strengths, and (b) weaknesses. <p>For a more detailed consideration of this, see Section B.</p> | <p>The greater the level of these concerns then the greater the information required – the greater the information required, the more likely it is that this will involve a comprehensive assessment of the child.</p> |
| <p>2. The nature of the incident that led to the referral (if single incident)</p> | <p>The reporter is to consider the gravity and seriousness of the incident.</p> <p>For a more detailed consideration of this, see Section C.</p> | <p>The higher the gravity of the incident then the greater the information required -the greater the information required, the more likely it is that this will involve a comprehensive assessment of the child.</p> |
| <p>3. Co-operation / Impact of intervention</p> | <p>The reporter is to consider the level of co-operation with, and the impact of, any current and prior intervention (e.g. by health, SWD, education, voluntary agencies etc).</p> | <p>The lesser the co-operation or response, the greater the information required -the greater the information required, the more likely it is that this will involve a comprehensive assessment of the child.</p> |

Having determined the information required, the reporter is to consider what investigation is required in order to obtain that information.

Any investigation of a child is in itself an intervention in the life of the child and his/her family. The reporter is to consider the factors outlined in Section A to identify the key areas of concern and to decide what additional information (if any) is necessary to enable an appropriate final decision to be made.

For example, the reporter may already have a considerable amount of information regarding the child. Therefore, although the reporter may decide that extensive information is required in order to make a final decision, only a minimal investigation is required in order to obtain the additional information that is required.

There will always be gaps in the information available to the reporter. A key task for the reporter is deciding whether it is necessary to fill those gaps in order to come to a final decision. Further guidance regarding the judgement regarding the “Extent of Concern Regarding the Welfare of the Child”, and the information required to make this judgement, is contained in Section B.

However, where the reporter’s assessment is:

- “Low”: regarding the “The extent of concern regarding the child’s welfare” (or there is no information to make such an assessment); and
- “Low”: regarding the “The nature of the incident that led to the referral” (or this is not applicable); and
- There are no outstanding referrals already under investigation;

there is a presumption that:

- The reporter will proceed immediately to make a final decision in relation to that referral; and
- The decision will be “not to arrange a children’s hearing”.

In these circumstances it is presumed that there is no basis for investigation of the referral. If the reporter does not follow this presumption, the reporter is to justify this in the reasons recorded for the decision.

Final Decision Stage

The reporter is to take a final decision when the reporter has sufficient information in order to make a decision, or having made efforts to obtain further information that information is not likely to be forthcoming.

In deciding whether it is necessary for a CSO to be made in respect of a child, the reporter is to consider the following factors:

| | | |
|--|---|---|
| <p>1. The extent of concern regarding the child's welfare - taking into account any previous knowledge of child and the likelihood of the reason for the referral recurring</p> | <p>The reporter is to consider the:</p> <ol style="list-style-type: none"> 1. child's development; 2. parenting; 3. family and environmental factors and in relation to all 3, is to consider: <ol style="list-style-type: none"> (a) strengths, and (b) weaknesses. <p>For a more detailed consideration of this, see Section B.</p> | <p>The greater the level of concern, the more likely that a CSO is necessary</p> |
| <p>2. The history of co-operation with previous intervention and impact of any previous intervention</p> | <p>The reporter is to consider the level of co-operation with, and the impact of, any previous intervention (with any agency).</p> | <p>The lesser the degree of co-operation with, or the impact of, previous intervention, the more likely that a CSO is necessary</p> |
| <p>3. The current motivation to change / willingness to co-operate</p> | <p>The reporter is to consider the current motivation to change and the willingness to co-operate with any intervention (with any agency).</p> | <p>The lesser the motivation to change, or the willingness to co-operate, the more likely that a CSO is necessary</p> |

The following factors are not relevant in themselves at the stage of making a final decision:

- **Current Age**

The reporter is not to take a decision to arrange a grounds hearing or not to arrange a grounds hearing on basis of the child's age. However the age of the child will clearly be relevant to the assessment of the extent of the concern regarding the child's welfare (for example, in relation to the basic care required, the level of parental supervision that is appropriate, or the difference in age with offending associates).

- **Gravity/Seriousness of Referral Incident**

The reporter is not to take a decision to arrange a grounds hearing or not to arrange a grounds hearing on the basis of the seriousness of the incident that led to the referral. However factors relating to the referral incident will clearly be relevant to the assessment of the extent of the concern regarding the child's welfare (for example, the parental misuse of alcohol during incident, or a child's substance abuse, attitudes to authority, or aggressive behaviour).

- **Availability of Service from Local Authority**

The reporter is not to refer a child to a grounds hearing to ensure that he/she receives a service from the authority. However a decision to refer to the local authority under section 68(5)(a) of the Act is to be informed by a commitment by the authority to provide a service or intervention that the reporter considers acceptable in relation to the child's needs and/or behaviour.

Final Decision Stage – options available

At the stage of making a final decision, the following options are available to the reporter:

1. **Arrange a children's hearing.** This applies where the reporter considers that:
 - a section 67 ground applies in relation to the child, and
 - taking into account the factors in the framework, it is necessary for a CSO to be made in respect of a child.
2. **Not to arrange hearing – insufficient evidence.** This applies where the reporter considers that, *prima facie*, there is insufficient evidence for there to be a realistic prospect that a section 67 ground will be established.
3. **Not to arrange a hearing – no action.** This applies where the reporter considers that the referral does not justify any action (compulsory, voluntary or informal) by virtue of its age, triviality or irrelevance.
4. **Not to arrange a children's hearing – family action.** This applies where the reporter considers that the issues raised by the referral either have been or will be satisfactorily addressed by the actions of the family (which includes actions by the child/young person).

5. **Not to arrange a children's hearing – current measures.** This applies where the reporter considers that current measures of intervention are in place and it is appropriate for this referral to be addressed within these measures. These measures need not be provided by the local authority, and need not be provided following a previous referral to the local authority under section 68(5)(a).
6. **Not to arrange hearing – refer to local authority.** This referral is made under section 68(5)(a) and applies where the reporter considers that the issues raised by the referral will be satisfactorily addressed by informal engagement with a local authority service (normally a social work service). The decision is to be informed by a commitment by the authority to provide a service or intervention that the reporter considers acceptable in relation to the child's needs and/or behaviour.
7. **Not to arrange a children's hearing – diversion.** This applies where the reporter considers that the issues raised by the referral either are being or will be satisfactorily addressed by informal engagement with a service or activity *that does not come within the range of local authority services covered by s.68(5)(a)*. This includes but is not limited to situations where the reporter initiates the referral to this service or activity.

Section B

Guidance on Factors to be Considered in Assessment of The Extent of Concern Regarding the Child's Welfare

The key outcome that the reporter's decision is seeking to achieve for every child referred is the enhancement of the child's welfare, whether that be in terms of a reduction in the risk to the child, a reduction in the child's offending, an improvement in the child's life opportunities, or in many cases, a combination of all three. As a result, Section A of this Framework identifies the extent of the concern regarding the child's welfare as one of the principal factors in both the decision about initial action and final decision about the need for a CSO.

In considering the extent of the concern regarding the child's welfare, Section A of this Framework indicates that the reporter is to consider the child's development, the parenting and the family and environmental factors, and in relation to all 3 areas, is to consider the strengths and weaknesses.

In assessing the extent of the concern regarding the child's welfare, the reporter is to consider the likelihood of the reason for the referral recurring. The reporter is to take into account any significant delay since the referral incident in considering the likelihood of recurrence.

The table that follows gives specific aspects of the child's development, the parenting and the family and environmental factors that should be considered. It also provides examples of strengths and weaknesses in relation to these factors, and describes specific risk factors to be considered in relation to the risk of a young person re-offending and the risk of domestic abuse recurring.

In deciding on the investigation required at the stage of taking initial action, the extent to which such strengths and weaknesses are present will be a significant consideration. A key task is to balance appropriately proportionate intervention with the principle of investigating and responding to individual need. Having considered the information available from the current referral, and from any previous information available regarding the child and his/her family, (recognising that the available information may be limited at this stage) the reporter is required to exercise a professional judgement on the extent of the concern regarding the child's welfare.

At the stage of making a final decision, it is not intended that the reporter carries out a comprehensive assessment of risk or need but instead they should take account of other professional assessments. However, the reporter is to consider to what extent the assessment received is sufficiently comprehensive to enable a decision to be made, while still recognising the principle of keeping any intervention proportionate.

The reporter is to gauge the quality of the information received and be alert to any significant gaps in that information, and then to analyse and assess the significance of that information.

There may also be situations where, having made efforts to obtain further information, that information is not likely to be forthcoming, or where the reporter requires to take a decision as a matter of urgency.

The factors detailed in the table below are intended to assist the reporter in making such judgements. However, the examples in relation to the factors are intended to be illustrative, not exhaustive. It is not a checklist and the reporter is to make a professional judgment regarding the extent of the concern regarding the child's welfare.

In using the Framework reporters require an appropriate knowledge and understanding of child development, assessing risk and need, and any relevant racial and cultural issues.

The structure of the table below is based primarily on the Department of Health's "Framework for the Assessment of Children in Need and their Families"¹. However it also draws on other assessment frameworks, in particular ASSET², YLS/CMI³ and the Spousal Assault Risk Assessment framework⁴.

As part of their work in relation to "Getting it Right for Every Child", the Scottish Government has developed the My World triangle (see page 16 of "A Guide to Getting it Right for Every Child"). The Department of Health's assessment framework influenced the development of the My World triangle, although the My World triangle uses its own language. The titles of the sections in the My World Triangle are shown in brackets and italics in the table.

¹ Published jointly by the Department of Health, Department of Education and Employment, Home Office 2000

² Published by the Youth Justice Board for England and Wales

³ "Youth Level of Service/Case Management Inventory" published by the Cognitive Centre Foundation

⁴ Published by The British Columbia Institute Against Family Violence

Section B

Factors relevant to the assessment of the extent of the concern regarding the welfare of the child

| 1. Child's Development (where the child is developmentally) (<i>"How I grow and develop"</i>) | | | | |
|--|---|---|--|---|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| i. Health (<i>"Being healthy"</i>) | Frequent casualty attendance; previous non-accidental injuries; unexplained physical injury; child's addiction issues impacting on child's health; physical disability; chronic illness; concerns regarding child's mental health | Good health; Good mental health | <i>Substance misuse:</i> chronic use of illicit drug; chronic alcohol use; substance misuse interferes with life e.g. education or relationships with others; substance use linked to offences whether directly by virtue of committing offences whilst under influence or indirectly by virtue of committing offences to pay for substances; occasional use of illicit drug | |
| ii. Education (<i>"Learning and achieving"</i>) | Not attending school; behavioural difficulties in school; learning difficulties; persistent low attainment; being bullied or bullying others; specific educational needs not being met | Regularly attending nursery/school; having a positive experience of education; progress at school commensurate with ability | <i>Education concerns:</i> non-attendance at school without reasonable excuse for absences; disruptive behaviour in school, whether in or out of class; low achievement in class; history of exclusion from school; problems with relationships with peers, such as being bullied, isolated or disliked; problems with relationships with teachers; unemployed or not seeking employment if left school | |

| 1. Child's Development (continued) | | | | |
|--|---|---|---|---|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| <p>iii. Emotional and behavioural development <i>("Learning to be responsible"/ "Being able to communicate")</i></p> | <p>Attachment difficulties; lack of appropriate self-control; not showing age-appropriate behaviour; hyperactivity; aggression; excessive wariness and anxiety and child appears fearful of parent/ hostile towards parents; sexualised behaviour</p> | <p>Positive early attachments; Warm, secure and stable relationships with parents/carers; child is able to show appropriate compliance with boundaries in other settings such as school</p> | <ul style="list-style-type: none"> • <i>History of anti-social behaviour:</i> physically aggressive, verbally aggressive and abusive; behaviour is defiant of authority, including that of parents, school and police; intention to cause serious harm to other person or animal; early involvement in such behaviour • <i>Concerns regarding personality / attitudes:</i> poor control of temper; short attention span / is hyperactive; participates in reckless activity to get a "buzz"; poor tolerance of frustration; tendency to act impulsively; lack of concern for the welfare or feelings of victim; lack of remorse for behaviour or unwillingness to accept responsibility for actions; antisocial or pro-criminal attitudes; anti-authority attitudes; lack of concern for the welfare or feelings of others; has discriminatory attitudes that provide motive for offending; • <i>History of offending</i> • <i>Concerns regarding leisure time:</i> | |

| | | | | |
|--|--|--|--|--|
| | | | spends large periods of time just “hanging around” / in activities that are not constructive; not involved in positive activities or organised activities such as sports or youth clubs | |
|--|--|--|--|--|

| 1. Child's Development (continued) | | | | |
|---|---|---|--|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| iv. Identity <i>("Confidence in who I am")</i> | Child's negative view of him/herself, or negative self-image or self-esteem; Child's views self as a "trouble-maker" | Positive self-esteem; Positive sense of racial and cultural identity | Child views self as an "offender" | |
| v. Family and social relationships <i>("Enjoying family and friends")</i> | Lack of a stable and affectionate relationship with parents/carers; poor relationship with siblings; age-inappropriate relationships with peers; isolated from peers | Stable and affectionate relationships with parents/carers; Age-appropriate relationships with peers; Friends who represent positive role-models | <i>Concerns regarding peer relationships:</i> few or no acquaintances or friends who represent positive role models; lack of age-appropriate relationships; age-inappropriate relationships | |
| vi. Social presentation <i>("Becoming independent, looking after myself")</i> | Poor cleanliness or personal hygiene; lack of age-appropriate understanding of social norms of behaviour and dress; | Understanding of social norms of behaviour; Appreciation of the need for cleanliness or personal hygiene | | |
| vii. Self care skills <i>("Becoming independent, looking after myself")</i> | Lack of early practical skills such as dressing and feeding ; lack of independent living skills(in relation to older children); | Having independent living skills (in relation to older children); Having the practical, emotional and communication skills for increasing independence | | |

| 2. Parenting (what the child's carers are doing that impacts on the child's needs and whether they are met) (<i>"What I need from people who look after me"</i>) | | | | |
|--|---|--|--|---|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| i. Basic care (<i>"Everyday care and help"</i>) | Concerns regarding caregiver's motivation or ability to meet basic needs; Lack of co-operation with medical treatment; Physical neglect; Not ensuring child is appropriately dressed for the weather; Providing poor/inadequate diet; Not providing with appropriate health/dental care, or immunisations; Not ensuring adequate personal hygiene | Ability to meet the child's physical needs; Ability to respond to support and advice; Understanding of children's needs; Ensure adequate health care; Ensures child is provided with appropriate health and dental care; Provides nutritious diet | | |
| ii. Ensuring safety (<i>"Keeping me safe"</i>) | Not ensuring child is adequately protected from danger, including unsafe adults or other children; History of failure to protect; Lack of supervision appropriate to age; Lack of knowledge of child's activities and | Recognition of harm by parents and ensuring protection from harm; Parent takes protective measures appropriate to child's age and stage of development | | |

| | | | | |
|--|---|--|--|--|
| | whereabouts when out of the home; Lack of recognition of hazards and danger in the home and elsewhere; Poor hygiene in home | | | |
|--|---|--|--|--|

| 2. Parenting (continued) | | | | |
|---|---|---|--|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| iii. Guidance and boundaries <i>("Guidance, supporting me to make the right choices")</i> | Not providing the child with clear boundaries or effective discipline; Not demonstrating or providing guidance on, the management of anger, or consideration for others; Caregiver's unrealistic expectations of the child; Inappropriate discipline of child, such as excessive use of physical punishment or overly strict rules | Parent provides clear boundaries and effective discipline; Supervision and monitoring of child's whereabouts as appropriate to the child's age and development; Parent shows an awareness of the importance of guidance and boundaries; Parent has been willing to implement strategies suggested by practitioners | <i>Concerns regarding parenting:</i> inadequate supervision of child by parents; parents have difficulty in controlling child's behaviour; inappropriate discipline of child, such as excessive use of physical punishment or overly strict rules; inconsistent supervision, boundary setting or discipline; lack of concern at child's offending | |
| iv. Stability <i>("Knowing what is going to happen and when")</i> | Not providing sufficiently stable family environment to enable child to develop and maintain a secure attachment to primary carer; History of regular changes of address; Failure to meet child's need for continuity in relationships; Emotional stability and support during changes in family structure or housing change | Parent ensures secure attachments are not disrupted; Consistent response by parent to similar behaviour | | |

| 2. Parenting (continued) | | | | |
|--|---|--|---|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| v. Emotional warmth <i>("Being there for me")</i> | Not meeting the child's needs for secure, stable and affectionate relationships with significant adults; Little evidence of parental approval or praise; Child is scapegoated within family Early bonding difficulties; Persistent criticism and hostility; Active emotional abuse | Meeting child's emotional needs, including the need for a secure and affectionate relationship with significant adults; Parents meet child's needs for praise and encouragement | <i>Concerns regarding parenting:</i> poor relationship with parent(s) | |
| vi. Stimulation <i>("Play, encouragement and fun")</i> | Not promoting child's learning and intellectual development; Not promoting social opportunities; Lack of encouragement to attend school (or equivalent educational/ social opportunities); Collusion in child not attending school | Promoting the child's development through encouragement, stimulation and promoting social opportunities | | |

| 3. Family and Environmental Factors (factors that impact on parenting or on where the child is at developmentally) (“My wider world”) | | | | |
|---|--|--|--|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| <p>i. Family history and functioning <i>(“Support from family, friends and other people”)</i></p> | <p>Concerns regarding the impact of negative family relationships on child, including the impact of domestic violence, or bullying/abuse by or towards siblings; Anti-social behaviour or offending by adults in household; Effect of parent’s mental or physical health on capacity to meet child’s needs; Effect of parent’s substance misuse on capacity to meet child’s needs;</p> | <p>Family has sought help and responded positively to intervention in the past; Positive acceptance of the child by family; Parents use strategies to minimise the impact of their lifestyle upon the children</p> | <p><i>Concerns regarding living situation:</i> chaotic living situation / lack of stable accommodation; other members of household involved in criminal activity; other members of household involved in alcohol or drug abuse</p> | <p>Factors that give rise to increased risk of repeat of domestic abuse (all factors relate to the abuser):</p> <ul style="list-style-type: none"> • Current offence includes serious physical injuries, sexual violence, use of weapons or credible threats of death; violation of “no contact” interdict or bail condition • Previous incidents include assaults of past or current partner, use of weapons or credible threats of death towards past or current partner • Escalation in frequency or severity of violent behaviour towards partner in past year • Violations of “no contact” interdicts or |

| | | | | |
|--|---|--|--|--|
| | Lack of acceptance by family; History of concerns regarding other siblings Parent's negative experience of care/abuse as a child; | | | bail conditions in the past <ul style="list-style-type: none">• Minimising or denial of past domestic violence or attitudes that support or condone domestic violence |
|--|---|--|--|--|

| 3. Family and Environmental Factors (continued) | | | | |
|--|---|---|---|---|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| i. Family history and functioning (continued) | | | | <ul style="list-style-type: none"> • Previous actual or attempted assault of family members (other than past or current partners) or assault of strangers or acquaintances • Previous violation of a criminal justice order e.g. bail, probation (regardless of whether the order was in relation to previous domestic violence) • Recent relationship problems with partner • Recent employment problems i.e. unemployed or unstable work history in past year • Victim of and / or witness to family violence as a child or adolescent • Substance abuse or dependence in past year • Homicidal or suicidal ideas; psychotic symptoms in past year; or serious problems with anger |

| 3. Family and Environmental Factors (continued) | | | | |
|--|---|---|---|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| ii. Network of Support / Wider family <i>(“Support from family, friends and other people”)</i> | Lack of supportive friends or extended family; Negative contributions by extended family / friends Isolation | Extended family members take an interest in the child; Supportive network of family or friends; Network of attachment figures available in extended family/carers; Access to formal support resources – eg family centre Child is a member of a club, or has a mentor | <i>Anti-social associates:</i> some friends or associates are known offenders or exhibit antisocial attitudes or behaviour | |
| iii. Housing <i>(“Comfortable and safe housing”)</i> | Lack of the basic amenities and facilities for age and development of child; Overcrowding; | Suitable accommodation for age and development of child; Access to, and willingness to work with housing support personnel | | |
| iv. Income <i>(“Enough money”)</i> | Lack of provision for the child e.g. use of income by parent on his/her own needs to detriment of child (whether or not due to addiction issues); Debt | Ability and willingness to work with financial and budgeting advice; Household income managed efficiently | | |

| 3. Family and Environmental Factors (continued) | | | | |
|---|--|--|---|--|
| Aspects to be considered | Examples of Weaknesses (risk/need factors) | Examples of Strengths (protective factors) | Examples relating particularly (but not exclusively) to risk of re-offending | Examples relating to other areas of concern regarding child |
| v. Family's social integration <i>("Belonging")</i> | Family are socially isolated; Family is seen by the rest of the neighbourhood as 'antisocial' or are scapegoated; Family the object of racial or other prejudice; Lack of acceptance of child by peer group and wider society | Family participate in neighbourhood events and organisations | | |
| vi. Community Resources <i>("Local resources"/"School")</i> | Area of high levels of poverty, drug abuse or poor housing; Area of high anti-social behaviour; School unable to meet specific educational needs | Parents seek to protect the child from the negative impact of the environment; Family makes use of local resources e.g. GP. Voluntary groups, library, SW; Child has access to other stimulating settings, eg day care, family centre, extended family | Lack of age-appropriate facilities in the area | |

Section C

Gravity of Incidents

At the stage of deciding on the initial action to be taken in relation to the referral of a child, the gravity of the referral incident is a relevant consideration. This section of the Framework for Decision Making provides direction on the assessment of the gravity of referral incidents.

It is important to note that the assessment of gravity relates only to a single incident, for example a single offence committed by a child or a single incident of domestic violence. Although recurring incidents may each be of “low gravity”, the fact that they are recurring will be a particularly relevant consideration in assessing the “extent of the concern regarding the child’s welfare” when at stage of deciding on initial action to taken and making the final decision about the child.

If a referral relates to an ongoing situation rather than a single incident (for example, a referral in terms of section 67(2)(a) or (m)), the reporter is to consider factors that make the referral more “serious” in the assessment of the “extent of concern regarding the child’s welfare”.

Gravity of Offences Committed by a Child

The following table is intended to provide examples of the types of offences that are to be presumed to be of high, moderate or low gravity.

Factors arising in relation to a particular offence in a referral may result in a reporter deciding that an offence should “move” between ratings of gravity – however only in exceptional circumstances would such a factor result in an offence moving from a “High” rating to a “Low” rating or vice versa. Factors that will always result in an increase in a gravity rating are:

- where the offence has a racial motivation (except an offence of racially aggravated behaviour in terms of section 50A(1)(b) and (5) of the Criminal Law (Consolidation) (Scotland) Act 1995 as it has such a motivation by definition);
- where the offence was directed at a vulnerable victim (for example an elderly person or repeat victim); and
- where the offence has a significant impact on the victim.

| GRAVITY | EXAMPLES |
|-----------------|---|
| High | <ul style="list-style-type: none"> • assault with a weapon (whether or not injury caused) • theft of motor vehicle/s 178 (1)(a) of Road Traffic Act 1988 • sexual offences involving coercive sexual behaviour • Misuse of Drugs Act 1971 - supply of drugs • intentional fireraising • robbery • Road Traffic Act 1988 offences – driving with no insurance, licence etc • Possession of knife or offensive weapon |
| Moderate | <ul style="list-style-type: none"> • assault resulting in injury, or assault on police officer • theft by housebreaking • Misuse of Drugs Act 1971 – possession of drug other than cannabis • racially aggravated behaviour (section 50A(1)(b) and (5) of Criminal Law (Consolidation) (Scotland) Act 1995) |
| Low | <ul style="list-style-type: none"> • theft by opening a lockfast place (from vehicle) • theft, including shoplifting • drinking alcohol in a public place (contrary to local byelaws) • vandalism • breach of the peace • assault with no or minor injury caused • Misuse of Drugs Act 1971 - possession of cannabis |

Gravity of Offences Committed Against Children

The following table is intended to provide examples of the types of offences that are to be presumed to be of high, moderate or low gravity.

Factors arising in relation to a particular offence in a referral may result in a reporter deciding that an offence should “move” between ratings of gravity – however only in exceptional circumstances would such a factor result in an offence moving from a “High” rating to a “Low” rating or vice versa. If a child is particularly vulnerable due to age, or other factors (e.g. learning difficulties), that should always result in an increase in a gravity rating.

| GRAVITY | EXAMPLES |
|-----------------|---|
| High | <ul style="list-style-type: none"> • evidence of deliberate intent to harm the child, physically or emotionally • physical abuse causing bruising in child aged under 4 • physical abuse causing fractures in any child • sexual offence involving coercive behaviour • sexual offence where victim not of similar age |
| Moderate | <ul style="list-style-type: none"> • physical abuse causing bruising (unless child aged under 4) • physical assault with implement, where no bruising or other injury caused • section 12 of Children and Young Persons (Scotland) Act 1937 involving child being left unattended • section 12 of Children and Young Persons (Scotland) Act 1937 involving child being cared for by person under the influence of alcohol • offence involving sexual exhibitionism |
| Low | <ul style="list-style-type: none"> • sexual offence committed by person of similar age and not involving coercive behaviour |

Gravity of Incidents of Domestic Abuse

The reporter is to consider the following factors in an assessment of the gravity of an incident of domestic abuse. As more than one of the factors could be present in a single incident, they are not presented in the form of a table of examples of high/moderate/low incidents.

| |
|---|
| Factors that give rise to an increase in the gravity of an incident: |
|---|

- | |
|---|
| <ul style="list-style-type: none">• child directly physically harmed during the incident• child used as a way to get at the other parent e.g. direct threats to harm the child• child showed extreme emotional distress during or after incident• incident involved the use of a weapon or other implement• incident involved credible threats of death• incident caused serious physical injuries or involved sexual violence• incident involved a violation of “no contact” interdict or bail condition |
|---|

Note that the presence or threat of violence can significantly impact on the whole of a child’s life, and this must be taken into consideration in assessing the “extent of the concern regarding the child’s welfare”.

Section D

Decisions about children who are subject to a compulsory supervision order

As with children referred to the reporter who are not subject to a CSO, the key outcome that the reporter's decision is seeking to achieve for every child referred is the enhancement of the child's welfare.

Before considering the reporter's role in making decisions on children referred who are subject to a CSO, it is important to consider the functions of the children's hearing where the child is subject to a CSO.

When a child is subject to a CSO the unique functions that the children's hearing performs are:

- To review the CSO and decide whether to continue, vary or terminate the order;
- To consider any statement of grounds and decide, amongst other things, whether to refer the grounds to the sheriff for proof;
- To provide advice to the court in relation to permanency plans or where the child has been prosecuted;
- To consider whether to impose duties on the local authority in the CSO and then directing that the National Convenor takes enforcement action where the duties have not been complied with.

These functions of the children's hearing can only be accessed through the reporter. In some situations this is through an administrative process (for example, arranging the review hearing when requested by the local authority, relevant person or child). However, where a child who is already subject to a CSO is referred to a children's hearing to consider a new statement of grounds (thus triggering a review of the CSO if the new grounds are accepted or established), it will be as a result of a discretionary decision of the reporter.

As with all referrals received by the reporter, the reporter must be satisfied that there is sufficient prima evidence for there to be a realistic prospect that a section 67 ground will be established

A reporter is only to refer a child subject to a CSO to a children's hearing to consider a new statement of grounds if:

1. The reporter is of the view that the child's welfare requires that a specific new statement of grounds is considered by the hearing; or
2. The reporter is of the view that the referral indicates that the child's welfare requires that his/her CSO is varied.

In assessing whether or not either of these situations applies, the reporter is to take into account the specific factors set out in the following table.

These factors are intended to assist reporters in assessing whether or not either of these situations applies. The factors should not be considered in isolation from each other.

The extent to which any of the factors applies in a particular case will be a matter for professional judgement in relation to the case.

The reporter is not to refer a child to a children’s hearing to consider a new statement of grounds simply on the basis that there is a review hearing already scheduled to take place for another reason.

Factors to be considered in decision where the child is subject to a CSO

| | |
|--|---|
| <p>The nature of the current referral</p> | <p>The reporter is always to consider whether there is a need for the drafting and establishment of any significant new statement of grounds.</p> <p>The higher the gravity of the incident the more likely it is that a further hearing will be needed.</p> <p>However, the reporter is to have regard to the nature of the previously established or accepted statement of grounds.</p> <p>The more similar the current referral is to the statement of grounds which have been established or accepted (especially in relation to patterns of behaviour such as lack of parental care or non school attendance) the less likely it is that the reporter will need to refer the child to a hearing.</p> |
| <p>The response and attitude of the carers and/or the child to the referral</p> | <p>Where there is an acceptance by the carers and, if applicable, the child, that the incident which led to the referral occurred and that something needs to be done about it, the less likely it is that the reporter will need to refer the child to a hearing.</p> |
| <p>The nature of the current CSO</p> | <p>Where there is an existing measure on the CSO that addresses the referral, the less likely it is that the reporter will need to refer the child to a hearing.</p> <p>If a measure on the CSO is not being complied with, the local authority have a duty to request a review of the CSO.</p> |

| | |
|---|---|
| <p>The co-operation with and progress of the current care plan</p> | <p>To assess this, the reporter is to have regard to the information that the reporter already has in relation to the child's case, for example:</p> <ul style="list-style-type: none"> • the recorded decision of the reporter to refer the child to a hearing; • reports from the local authority; • the referral history (including the recorded decisions by the reporter); and • the most recent Reasons for decision of the hearing. <p>The greater the levels of co-operation and the greater the progress in the care plan, the less likely it is that the reporter will need to refer the child to a hearing.</p> <p>In assessing the levels of cooperation and progress in the care plan, the reporter is to have regard not just to whether the family are making themselves available to services but the impact of the intervention in addressing the child's needs.</p> |
| <p>The length of time since the last hearing</p> | <p>The more recently that the child has attended a hearing, the less likely it is that the reporter will need to refer the child to a hearing. It takes time for care plans to achieve their aims.</p> <p>Full assessments in reports for children's hearings take a significant period of time for workers to complete, reducing the time they spend carrying out direct work.</p> <p>In relation to offence referrals received, reference should be made to Practice Direction on Offending Issues</p> |

Decision about initial action

At the stage of deciding on the initial action to be taken in relation to the referral of a child, if the reporter's assessment is "low" regarding the gravity of the incident that led to the referral and there are no other referrals under investigation, best practice for reporters is to telephone to speak to the allocated social worker to advise them of the referral and ascertain if there are any further concerns in respect of the child. If it is not possible to do this or no further concerns arise from the telephone call, there is a presumption that the reporter is to proceed immediately to make a final decision in relation to that referral and that the decision will be "not to arrange a children's hearing." Any departure from this presumption requires to be justified in the reasons recorded for the decision.

Where investigation is needed at this stage, the purpose of it is to obtain enough information to enable the reporter to make a final decision based on the factors specified in the table.

Final Decision Stage – options available

At the stage of making a final decision, the following options apply:

1. Not to arrange hearing – insufficient evidence.
2. Not to arrange a children's hearing – current measures. This applies where, taking into account the factors in the table, there is no need to refer the child to a hearing to consider a new statement of grounds.
3. Not to arrange a hearing – no action. This applies when the referral does not justify any action by virtue of its age, triviality or irrelevance
4. Arrange a children's hearing. This applies where, taking into account the factors in the table, there is a need to refer the child to a hearing to consider a new statement of grounds.

In all cases where a referral is received for a child subject to a CSO, the reporter is to notify the lead professional of the referral and the reporter's decision.

Section E

Recording of Reasons for Decisions

The extent to which the reporter is to refer to detail of the Framework in any particular case will be a matter for professional judgement in relation to that case.

However, the reasons recorded by the reporter:

- for a child who is not subject to a CSO, are to reflect the reporter's assessment of the principal factors in Section A;
- for a child who is subject to a CSO are to reflect the reporter's assessment of the principal factors in Section D.

The reporter's reasons are also to be relevant and sufficient, referring to relevant, reliable information, sufficient to justify the extent of intervention (including any investigation that the reporter has undertaken) and the decision.

Where the Framework provides for a particular presumption about a factor (e.g. an offence is low gravity), the reporter does not require to provide any reasons for following this presumption beyond noting that the Framework was followed. However, if the reporter does not follow any presumption (for example, considering a particular offence of vandalism to be moderate or high gravity), the reporter requires to explain the reasons for doing so.

Similarly, when the application of the Framework is tending to point towards a particular decision, but the reporter takes a different decision, the reporter requires to provide clear and robust reasons.

Detailed direction on the recording of reasons in CMS is provided in the appendix below.

Appendix –

Section E sets out the general requirements for reporters when recording decisions on children. This appendix provides more specific direction regarding what the reporter is to record in the various pages of the CMS when making a decision about a child.

- record your assessment of the level of concern for child’s welfare – high, moderate, low or no information
- the assessment is on the basis of the information available to you at the time of making the decision – it may change during the investigation
- record this when taking initial action about a referral *and* making the final decision

- record your assessment of the gravity of the incident – high, moderate, low or not applicable
- record this only at the stage of taking initial action about a referral – this factor is not relevant in itself at the stage of your final decision
- if more than one incident is being investigated, the assessment should relate to the most serious incident

The screenshot shows a web form with the following sections:

- Buttons: "No Current CSO" and "Current CSO"
- Dropdowns: "Level of Concern" and "Incident Nature"
- Text area: "Nature of Incident / Extent of Concern - (i) Child’s Development (ii) Parenting (iii) Family & Environmental Factors"
- Text area: "History of Co-operation / Impact of Intervention"
- Text area: "Current Motivation [n.b. Relevant to Final Decision but not Initial Action]"

Extent of Concern for Child’s Welfare

- record the key strengths and weaknesses in relation to the 3 aspects of the assessment triangle - (i) Child’s Development, (ii) Parenting, (iii) Family and Environmental Factors – and how they led to your assessment of the level of concern
- make it clear which aspect of the assessment triangle the strengths or weakness relate to
- the assessment is on the basis of the information available to you at the time of making the decision
- record only the relevant information at time of making the decision
- record this when taking initial action about a referral *and* making the final decision

Nature of Incident

- record the reasons for your assessment of the gravity of the incident
- record only when taking initial action, *not* when making the final decision

- record your assessment of the history of co-operation and your reasons for this
- on the basis of the information available to you at the time of making the decision
- record only the relevant information at time of making the decision
- record this when taking initial action about a referral *and* making the final decision

- record your assessment of the current motivation and your reasons for this
- the assessment is on the basis of the information available to you at the time of making the decision
- record only the relevant information at time of making the decision
- record this only when making final decision

- Record your assessment of the response and attitude of carers and/or child to the referral
- Record this on the basis of the information available to you at the time of making the decision
- Record only the relevant information at time of making the decision

- Record your assessment of the nature of the current compulsory supervision order
- Record only the relevant information at time of making the decision

No Current CSO | Current CSO

Response to Referral

Nature of Compulsory Supervision Order

Co-operation / Progress of Care Plan

Nature of Current Referral / Length of Time Since Last Hearing

- Record your assessment of the nature of the current referral and the length of time since last hearing
- On the basis of the information available to you at the time of making the decision
- Record only the relevant information at time of making the decision

- Record your assessment of the child and family's co-operation with and progress of care plan
- On the basis of the information available to you at the time of making the decision
- Record only the relevant information at time of making the decision

Reporter's Decision

Decision: 

- Select your final decision in relation to selected grounds

Reporter's Decision Details

- On the investigation page you will have recorded your conclusions and your reasons for those conclusions about:
 - the 3 principal factors at the final decision stage if the child is not subject to a supervision requirement
 - the 5 principal factors at the final decision stage if the child is subject to a supervision requirement
- Record in this box the reasons why those conclusions have led you to make the final decision
- You should not repeat conclusions that were explained on the investigation page

Saved Investigation Forms

Having completed an investigation form for a child, the reporter is to save the form. When an investigation form has previously been saved, the text from that previously saved form will be shown in CMS.

However, when recording a decision (whether that be in relation to a new referral or a final decision) the reporter is only to record the information **that is relevant at the time of making that decision**. The reporter is to delete from the investigation form any previously recorded information that is no longer relevant or accurate (in any event, it will still be available in the previously saved investigation form).

Response to Case Practice Enquiries Since Publication of Practice Direction

Insufficient Evidence and Voluntary Measures

Where the reporter decides on the basis of insufficient evidence not to arrange a hearing, the reporter may also refer the child to the local authority under section 68(5) for the provision of advice guidance and assistance to the child and family ('voluntary measures'). The 2011 Act is clear that the option for voluntary measures applies whether the reason for not arranging a hearing is that no ground applies or that a CSO is not necessary. A child may benefit from a service even if no ground applies. The acceptance of any help and support is voluntary, and there is no prejudice to the child or family in the reporter referring the child to the local authority. In addition, the reporter has corporate parenting duties in relation to some children who are referred and should be using the available mechanism of voluntary measures to help put support in place if support would be helpful. The same approach is appropriate for all referred children.

It is currently not possible to record on CMS both a 'no hearing – insufficient measures' decision *and* a voluntary measures decision. The decision to be recorded is the 'insufficient evidence' decision.