



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 5

Receipt and Registration of Referrals and Receipt of References for Advice and Remits for Disposal

Date Issued:	21 June 2013
Date Implemented:	24 June 2013
Date Last Revised:	18 January 2021

Summary

- Section 66(1) sets out the triggers which constitute a referral. A referral requires the reporter to determine whether a ground applies and if so whether a compulsory supervision order is necessary.
- Section 66(1)(a) referrals are primarily:
 - a referral from the local authority, police or other person
 - notice of the making of a child protection order
 - a decision that reporter to deal with child in custody
 - a referral from civil proceedings.
- Section 66(1)(b) enables the reporter to treat other information as a referral. It is to be used on receipt of notice of: a justice of the peace order, police removal of the child to a place of safety or an exclusion order. It is to be used in other circumstances only where it appears to the reporter that:
 - the child might be in need of protection, guidance, treatment or control **and**
 - it might be necessary to make a CSO **and**
 - either no referral from another source will be forthcoming or there is an urgent need for the reporter to act.
- Certain 'pre-conditions' apply before receipt of information is a referral.
 - The information must relate to a 'child'. Appendix 2 provides information about definition of a child.
 - The Children's Hearings System must have, or possibly have, jurisdiction in relation to the child. If there is any doubt about jurisdiction the reporter is immediately to inform his/her Senior Practitioner or Locality Reporter Manager and contact the Practice Team for advice. Appendix 3 provides information about jurisdiction.
 - For 'standard' referrals from the police, local authority or another person the person/agency providing the information must intend to refer the child through having applied the statutory criteria. These are that the referrer considers that the child is in need of protection, guidance, treatment or control **and** that a compulsory supervision order might be necessary. If the reporter has any doubt about whether these statutory tests have been applied the reporter is to check.
- Registration of a referral involves identifying the appropriate category of referral on CSAS. Other than for offence grounds, the identification of the appropriate section 67 ground or grounds will be done when making a final decision.
- A presumption applies that the child (if of understanding) and relevant persons should be informed of a referral. However, there are circumstances where a letter is not to be sent: where the reporter is proceeding immediately to a final decision or where receipt of the letter would likely cause a risk of harm to any person. In other circumstances, various factors require to be considered and balanced in deciding whether to send a receipt of referral letter. The content of any letter requires consideration with reference to the same factors.

- If not sending a letter to a child aged 8 or over or to a relevant person, the reporter is to be alert to promoting the individual being told about the referral by an appropriate person, and is to inform the social worker that a letter has not been sent.
- If not sending a letter to a relevant person or a child aged 8 or over, the reporter is to record this in the Additional Information tab on the investigation form along with reasons for the decision and any other action taken eg agreeing with the social worker that the social worker will tell the individual.
- References or remits under the Criminal Procedure (Scotland) Act 1995 (child offender) or the Antisocial Behaviour etc. (Scotland) Act 2004 or are not referrals under section 66. Where there is a remit, a hearing is arranged either as a 'grounds established' hearing under section 119 (for a child not subject to a CSO) or a review hearing under section 137 (for a child who is subject to a CSO). Where there is a reference for advice, an advice hearing is arranged.

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1. Introduction

- 1.1 This Practice Direction identifies what constitutes a referral to the reporter under section [66](#) of the [Children's Hearings \(Scotland\) Act 2011](#) and sets out the action a reporter is to take on receipt of a referral. It also addresses remits and references under the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) and the [Criminal Procedure \(Scotland\) Act 1995](#).
- 1.2 The reporter may engage in pre-referral discussion about a case in order to assist the person or agency to decide whether to refer the child to the reporter. Further information about this is contained in Appendix 1.
- 1.3 The sections of the Children's Hearings (Scotland) Act 2011 most relevant to receipt of information and registration of referrals are sections [66](#), [69](#) and [89](#).

2. What is a Referral – Section 66

- 2.1 Section 66(1) sets out the triggers which require the reporter to determine whether he considers that a section 67 ground applies in relation to a child and, if so, whether the reporter considers that a compulsory supervision order is necessary. The following circumstances constitute a referral for the purposes of this Practice Direction (provided any pre-conditions are met. See Section 3 of the Practice Direction):
 - the receipt of any information about a child of the type listed in section 66(1)(a)
 - the application of section 66(1)(b) by the reporter in relation to a child.
- 2.2 Section 66(1)(a) specifies the following information:
 - (i) notice under section 43 of the making of a child protection order,
 - (ii) information from a local authority under section 60,
 - (iii) information or a report from a constable under section 61,
 - (iv) a section 62 statement,
 - (v) evidence under section 63,
 - (vi) information from a person under section 64,
 - (vii) information from a constable under section 53 of the Criminal Justice (Scotland) Act 2016
 - (viii) a reference from a court under section 48(1) of the Criminal Procedure (Scotland) Act 1995
- 2.3 Section 66(1)(b) enables the reporter to in effect create a referral. The reporter's duty to decide whether a ground applies and, if so, whether a compulsory supervision order is necessary is triggered if it appears to the reporter that a child might be in need of protection, guidance, treatment or control. Given the potential breadth of this provision and the significance

of the consequences, Section 5 of this Practice Direction sets out how section 66(1)(b) is to be applied by the reporter.

3. Referral and 'Pre-conditions

Certain 'pre-conditions' require to be met before information received can be treated as a referral.

3.1 Child

- A referral must be about a child. If the person about whom information is received does not come within the definition of 'child', the information does **not** constitute a referral. The reporter is to tell the person providing the information that the information is not being treated as a referral.
- Further information about the definition of a 'child' is provided in Appendix 2 of this Practice Direction. Appendix 2 also addresses particular situations for children who have been jointly reported or children referred to a hearing on the basis of a section 67(2)(o) 'non-attendance') ground.

3.2 Jurisdiction

- The Children's Hearings System must have jurisdiction, or possibly have jurisdiction, in relation to the child. If it is clear when information is received (and after seeking advice from the Practice Team as appropriate) that the Children's Hearings System does not have jurisdiction, the information does **not** constitute a referral. The reporter is to tell the person providing the information the information is not being treated as a referral.
- If during the course of the reporter's investigation, it becomes apparent that the children's hearing would not have jurisdiction, the reporter is to record a decision not to arrange a children's hearing.¹ The reporter is not to refer the child for voluntary advice, guidance or assistance under section 68.
- Further information about jurisdiction is provided in Appendix 3. If a reporter has a case where there is any doubt over the jurisdiction of the Children's Hearing System, the reporter is immediately to inform his/her Senior Practitioner or Locality Reporter Manager and contact the Practice Team for advice.
- Where questions about jurisdiction arise in relation to another state it may be appropriate for there to be contact with staff from the embassy

¹ Select the 'No jurisdiction' option from the drop-down list of reasons for not arranging a children's hearing.

or consulate for that state. This contact will be made by a member of the Practice Team and will normally only take place where there is consent from the child and/or relevant person (e.g. in the form of written mandate obtained by the embassy or consulate).

3.3 *Intention to refer*

- For referrals under section 60, 61 or 64 ('standard' referrals from the police, local authority or another person) it is necessary that the person/agency providing the information intends to refer the child. Intention to refer requires there to have been application of the statutory criteria (see paragraph 4.1). Where the reporter has any doubt as to whether the person providing the information has applied the statutory criteria, the reporter must check that with the person. If the person providing the information has not applied the statutory test, the information is **not** to be treated as a referral.
- For other referrals under section 66(1)(a), intention to refer is not relevant.
- Checking the intention to refer of a person may be done verbally, but a record of the conversation must be made in a note in the 'Additional Information' tab related to the referral. Where intention to refer requires to be clarified the date of receipt of the referral is the date intention becomes clear. There should be no delay in seeking clarification.

Provided information received by the reporter meets these 'pre-conditions', the reporter is to record the information as a referral. The reporter is to do so regardless of whether the same information has been provided by another agency², or whether the same agency has provided similar information recently³.

4. Referral under Section 66(1)(a)

Receipt of Information from local authority, police or other person

4.1 A referral from a local authority, the police or any other person requires the referrer to have applied the statutory test. The test is set out in sections 60, 61 and 64 respectively but is the same in each case. It is that:

- the referrer must consider that the child is in need of protection, guidance, treatment or control **and**
- the referrer must consider that it might be necessary for a compulsory supervision order to be made.

² For example, if both the police and the social worker refer a child as a result of the same child protection incident, the reporter is to register both as standard referrals.

³ For example, if the police refer a child as a result of an incident of domestic abuse in the child's household, and then 2 weeks later send a separate referral as a result of a further incident, the reporter is to register both as standard referrals.

If the person providing the information has **not** applied the statutory test then the information is **not** to be treated as received under section 60, 61 or 64 and therefore does not constitute a referral under any of those sub-sections.

- 4.2 Referrals from the local authority, police or other agency should be in writing. Where a member of the public refers a child the reporter is to encourage that person to make the referral in writing. However, the reporter may accept a verbal referral from a member of the public.

If the referrer's details are known, the reporter must immediately confirm in writing to the referrer the information which has been received and that it is being treated as a referral.

Making of Child Protection Order

- 4.3 Section 43 requires the applicant for a Child Protection Order to give notice of the making of the Order to the reporter. Receipt of this notice is a referral.

Referral from Civil Court Proceedings

- 4.4 Section 62 provides that where a court dealing with relevant civil proceedings considers that a section 67 ground might apply in relation to a child, the court may refer the matter to the reporter. The court may not refer on the basis of a section 67(2)(j) ground – offence by the child. The court must provide a 'section 62 statement' which specifies which of the section 67 grounds the court considers might apply, the reasons for so considering and any other relevant information about the child.

- 4.5 The relevant civil proceedings are listed in section 62(5) and include actions in relation to divorce, separation, declarator of marriage or nullity of marriage, equivalent actions in relation to civil partnerships, declarator of parentage or non-parentage, parental responsibilities or rights, adoption, permanence order (where child not subject to a compulsory supervision order) and the [Education \(Scotland\) Act 1980](#).

Receipt of Evidence from Lord Advocate

- 4.6 Section 63 provides that the Lord Advocate may direct that in any specified case or class of case evidence must be given to the reporter (whether or not the reporter has requested it). Receipt of such evidence constitutes a referral. At present, no such directions have been made by the Lord Advocate.

Custody

- 4.7 Communication of the decision by COPFS that the reporter is to deal with a child who has been detained in a place of safety.

Reference under section 48 of the Criminal Procedure (Scotland) Act 1995 (child victim)

- 4.8 A reference under section 48 of the Criminal Procedure (Scotland) Act 1995 (CP(S)A) of a child victim (or member of the same household)

constitutes a referral. If arranging a hearing on the basis of the referral, the reporter arranges a grounds hearing. However, in terms of section 48 of the CP(S)A the offence is treated as a ground established.

5. Reporter Generated Referral under Section 66(1)(b)

5.1 Section 66(1)(b) triggers decision-making by the reporter where it appears to the reporter that a child might be in need of protection, guidance, treatment or control. Section 66(1)(b) is to be interpreted and applied as follows:

- It is to be read as if it contained the words ‘and it appears to the reporter that it might be necessary to make a compulsory supervision order’.
- It is to be taken to apply where notice is received of: the making of a Justice of the Peace Order (section 55), police removal of a child to a place of safety (section 56) or the making of an exclusion order under the Children (Scotland) Act 1995 .
- It is to be applied in other situations only where the available information does not constitute a referral under any other section 66(1) trigger and only if the approach set out in paragraph 5.2 is adopted.

5.2 Other than the situations specified in paragraph 5.1, section 66(1)(b) is to be used only as a measure of last resort where no other agency appears likely to refer or there is a need to act urgently in the interests of the child. The reporter is to apply the following approach.

- Where the available information constitutes a referral under any other section 66(1) trigger, that is the referral category which is to be applied.
- Where the information cannot be treated as a referral under section 66(1)(a) and the reporter considers that section 66(1)(b) might apply, the reporter is to contact the lead agency for the child. This is to ascertain whether the agency thinks the test for referral by the agency is met. If there is no lead agency, the reporter must bring the child to the attention of the most appropriate agency and ascertain its position on referral.
- The reporter must take into account the view of the agency and any intended action by the agency, including referral to the reporter, before deciding whether to act under section 66(1)(b).
- The reporter may act under section 66(1)(b) where it continues to appear to the reporter that:
 - the child might be in need of protection, guidance, treatment or control,
 - it might be necessary for a compulsory supervision order to be made **and**
 - either no referral from another source will be forthcoming or there is an urgent need for the reporter to act under section 66(1)(b),

- In terms of the [Casework Scheme of Delegation](#) the reporter is to consult with the Locality Reporter Manager or Senior Practitioner wherever practicable before acting under section 66(1)(b).

6. Specific Referral Situations

- 6.1 If the police or other person submit a report about an adult offending against a child, the reporter is to treat the child as referred under section 60/61/64. The reporter is to treat any child who is or is likely to have a close connection with the adult offender, or who is or is likely to become a member of the same household as the child victim, as referred only if this is the clear intention of the referrer (through the application of the statutory test).
- 6.2 If the police or other person report a child who has allegedly committed an offence, and the victim of the offence is a child, the reporter is to treat only the alleged offender as being referred under sections 60/61/64 unless it is clear that the referrer intends to also refer the victim.
- 6.3 The reporter is to treat Information received from the police regarding a child who has been reported as a missing person or an absconder as a referral under section 61 only if that is the clear intention of the police.
- 6.4 Where the police submit a standard prosecution report (SPR) in relation to a child and an adult and mark it as “Both”, the reporter is to treat this as a referral of the child⁴. (In practice, CSAS will record the referral of the child on such a report). The police have submitted the report to both the PF (in relation to the adult co-accused) and the reporter (in relation to the child) for both agencies to take action in terms of their respective powers.
- 6.5 Where the police submit a SPR in relation to a child and mark it as “Joint”, the reporter is to register the report as a jointly reported case⁵ (in practice, this will be done by CSAS) and contact the Crown Office and Procurator Fiscal Service (COPFS) regarding the case⁶. The reporter is only to treat the report as being a referral of the child, and proceed to make a decision in terms of section 66, when COPFS has confirmed that the reporter is to deal with the case. If COPFS make it clear that the child is being referred to the reporter in relation to a lesser offence than that stated in the SPR due to an insufficiency of evidence in relation to the more serious offence, the reporter is to record this in the notes on the ‘Additional Information’

⁴ To be registered as “referral – standard”.

⁵ To be registered as “Joint Report”.

⁶ Reference should be made to the [Practice Note on Jointly Reported Cases](#) and the joint agreement with COPFS regarding “[Decision making in cases of children jointly reported to the Procurator Fiscal and Children’s Reporter](#)”. The Practice Note (at paragraph 8) refers to an [email template](#) (which can be created in CSAS) for the reporter to use for the initial provision of information to the COPFS.

See paragraph 14 of the joint agreement for an exception to this in a situation where it is clear that to the reporter that the police have incorrectly jointly reported a child under 16 who is charged with an adult, when the police should have marked the report as having been reported to ‘Both’.

screen for the Joint/Custody Report (note that it is not possible to amend the charge code on the SPR)⁷.

- 6.6 Where information is received in the form of case conference minutes and the decision of the case conference was to refer the child, then this is a referral. However, no referral can be made, nor investigation undertaken, before the child is born. Where the decision of the case conference was not to refer the child, receipt of the minutes is not a referral. An invitation to attend a case conference is not a referral.
- 6.7 In any of these situations, and others, where there is no referral under section 66(1)(a) the reporter may consider the application of section 66(1)(b) by applying the approach set out in paragraphs 5.1 – 5.2.

7. Registration of Referral and Ground(s)

- 7.1 When a referral is received under section 66(1)(a), or a referral is created by the reporter under section 66(1)(b), it must be registered on CSAS. The reporter is to identify the Referral Category⁸ but is not to record a section 67 ground. Note that a section 67 ground is not recorded at this point other than when the police refer a child by submitting an SPR – in that situation CSAS will record a section 67(2)(j) ground. Reference should be made to Practice Direction 7 in relation to recording grounds when making a final decision on referrals.
- 7.2 The reporter is to record the appropriate Referral Category for the referral:
- Standard – this applies to all referrals unless one of the more specialised categories below applies
 - CPO – this applies where the referral is as a result of a Child Protection Order – see paragraph 4.2 above
 - s48 Criminal Procedure (S) Act – this applies where the referral is made by a criminal court with the grounds certified as established in terms of section 48 of the Criminal Procedure (Scotland) Act 1995 – see paragraph 4.7 above
 - s62 Children’s Hearings (S) Act – this applies where a court dealing with certain family proceedings has referred the child in terms of section 62 of the 2011 Act – see paragraphs 4.3 and 4.4 above
 - Secure Admission–not on CSO – this applies where the referral is as a result of the Chief Social Work Officer using their powers under The Secure Accommodation (Scotland) Regulations 2013 to move a child into secure accommodation when the child is subject to a permanence order or accommodated by the local authority under section 25 of the Children (Scotland) Act 1995⁹

⁷ See paragraph 36 of the joint agreement with COPFS regarding “[Decision making in cases of children jointly reported to the Procurator Fiscal and Children’s Reporter](#)”.

⁸ In practice, it may be a member of support staff who identifies the Referral Category with this later being checked by the reporter.

⁹ See sections 5.6 – 5.8 of [Practice Direction 20 on Secure Accommodation](#).

- EPA – this applies where the referral is as a result of the police having used their emergency protection powers in section 56 of the 2011 Act
- Custody Report to Reporter – this applies where the child has been kept in custody by the police, and COPFS has decided the reporter is to deal with the case (in practice this category will be set by CSAS when the reporter records this decision by COPFS)
- Joint Report to Reporter - this applies where the police have jointly reported the case, and COPFS decided the reporter is to deal with the case (in practice this category will be set by CSAS when the reporter records this decision by COPFS)¹⁰.

7.3 Provided information received by the reporter meets the 3 ‘pre-conditions’ in section 3 above, the reporter is to record the information as a referral. The reporter is to do so regardless of whether the same information has been provided by another agency¹¹, or whether the same agency has provided similar information recently¹². There are no referral categories of ‘Duplicate’ or ‘Additional’.

7.4 Having received information that is registered as a referral, the reporter must make and record a decision in terms of section 66(2) in relation to that referral¹³. Where the reporter receives a further referral having already commenced an investigation into an earlier referral, the reporter is to take into account the new information and consider:

- how it impacts on any current assessment, investigation and decision making for the child,
- whether the contents of the new information should be passed to any other agency, such as those who are providing reports,
- whether to advise the child and family of the new referral¹⁴.

¹⁰ Although CSAS also has registration categories of Custody Report and Joint Report, these are not to be used by reporters.

¹¹ For example, if both the police and the social worker refer a child as a result of the same child protection incident, the reporter is to register both as standard referrals.

¹² For example, if the police refer a child as a result of an incident of domestic abuse in the child’s household, and then 2 weeks later send a separate referral as a result of a further incident, the reporter is to register both as standard referrals.

¹³ To decide:

(a) whether the reporter considers that a section 67 ground applies in relation to the child, and
 (b) if so, whether the reporter considers that it is necessary for a CSO to be made in respect of the child.

Reference should be made to [Practice Direction 6 the Framework for Decision Making by Reporters](#) and [Practice Direction 7 on the Statement of Grounds](#).

¹⁴ See Section 8 below.

8. Letters to Children and Relevant Persons on Receipt of Referral

- 8.1 This section sets out the circumstances in which the reporter is to inform the child and/or relevant persons that a referral has been received and what to include in such a letter.
- 8.2 There is no express duty under the 2011 Act to inform the child and relevant persons that a referral has been received. Nor is there a duty under data protection legislation to do so.¹⁵ However, the Principal Reporter may do anything he considers appropriate for the purposes of or in connection with the functions conferred on him by the 2011 Act or any other enactment.¹⁶
- 8.3 The decisions about whether to send a letter and, if so, the content are to be made by the reporter at the point of initial decision-making. The decisions are to be made separately for each individual child and relevant person.
- 8.4 Examples of the application of this section are contained in Appendix 4.

Whether to send a letter

- 8.5 There is a presumption that it is appropriate to inform the child and relevant persons¹⁷ of a referral. This is because:
- The child and relevant persons require to be told the reporter's final decision.¹⁸
 - Other agencies may have contact with the child and relevant persons where the reporter is making any investigation.
 - The child and relevant persons may have information relevant to the reporter's task, or questions about the reporter's task, which they wish to address directly to the reporter.
 - We should be appropriately open and transparent and support the understanding of those involved in the Children's Hearings System.
- 8.6 However, a receipt of referral letter is not to be sent:
- to the child where the child would not be capable of understanding the content of the letter¹⁹,

¹⁵ Generally under data protection obligations there is a duty to tell data subjects that personal information has been obtained or is being processed, but an exemption applies where the obtaining or disclosure of information is laid down in law and the law provides appropriate protection of the data subject's interests. GDPR Article 14 (5) (c). The 2011 Act addresses the obtaining and disclosure of information by the Principal Reporter and provides appropriate protection for data subjects' interests, therefore the exemption applies.

¹⁶ 2011 Act Schedule 3, paragraph 9

¹⁷ Where the child is not already subject to proceedings within the hearings system and is being looked after full-time by someone who is not a relevant person, it would be appropriate to write to that person in the same way as if they were a relevant person.

¹⁸ By a 'no hearing' letter or by notification of a hearing.

¹⁹ The presumption is that a child from age 8 will understand. Whether the child has direct knowledge of the incidents or concerns in the referral will be a factor in considering the child's understanding.

- to the child or relevant persons where the reporter considers it appropriate to proceed direct to a final decision with no or only minimal (and immediate) investigation²⁰ without giving the child or relevant persons an opportunity to contact the reporter, and
- to a child or a particular relevant person where receipt of the letter by the individual would be likely to create a risk of harm²¹ to any person. However, the individual will require to be informed of the reporter's final decision (unless, exceptionally, to do so would be likely to cause someone significant harm) and so the reporter should be alert to promoting the individual being told about the referral by an appropriate person.

8.7 Beyond the situations in paragraph 8.6, in deciding whether to send a 'receipt of referral' letter to a particular relevant person the reporter is to consider the following factors and their interaction:

- The extent of involvement of the relevant person in the life of the child. The less the involvement, the less likely a letter should be sent to them.
- The extent of likely direct knowledge of the issues and concerns identified in the referral or in the reporter's initial decision-making. The less the likely direct knowledge, the less likely a letter should be sent to them.
- The extent of investigation being made by the reporter and the likelihood of another agency contacting the relevant person as part of the investigation. The less likely the person is to be contacted by an agency as part of the investigation, the less likely a letter should be sent to them.
- The age of the child. This does not apply as a stand-alone reason but in consideration alongside other factors. The older the child the less likely a letter should be sent to the relevant person.
- The sensitivity of the information in the referral. This does not apply as a stand-alone reason but may be relevant alongside other factors. The more sensitive the information, the less likely a letter should be sent to the relevant person.

These need to be balanced against the factors that support sending a letter, as set out in paragraph 8.5.

Content of letter

8.8 If sending a receipt of referral letter, it should generally contain:

- A broad description of the incidents or concerns that are causing the reporter to investigate. Where the police have referred the child on the basis of an offence, this includes a broad description of the offence(s) with which the child has been charged and the date(s) of the offence(s).

²⁰ Eg only a phone call to a social worker already involved with the child

²¹ Note that because there is not an obligation to tell the child or relevant persons the test to apply is that of 'harm' rather than 'significant harm'.

- The source of the referral if it is an agency. If the referral is anonymous, the letter should explain this.
- The extent of the reporter's initial investigation.

8.9 There are circumstances where it is appropriate to include only more limited information for a relevant person or the child. The same factors as in paragraph 8.7 apply when deciding on the extent of information to include.

8.10 Where a letter is being sent to the child, the extent of information provided and the language used should be appropriate to the age and understanding of the child.

Recording

8.11 If deciding not to send a receipt of referral letter to a child aged 8 or more or to a relevant person, the reporter is to record this on the Additional Information on the investigation form along with reasons for the decision and any other action taken eg agreeing with the social worker that the social worker will tell the individual.

Other issues

8.12 If the reporter decides to investigate through asking for a social work or multi-agency report, and does not send a receipt of referral letter to a child aged 8 or more or a relevant person, the reporter is always to inform the social worker of this.

8.13 When sending notification under section 68 to the child or a relevant person that no hearing will be arranged, and deciding what extent of detail about the referral to include, the reporter is to take account of whether a receipt of referral letter was sent and the content of that letter.

9. Recording Information that is not a Referral

9.1 Where information is received, which is not a referral as defined in this Practice Direction nor connected with a current investigation or other statutory function of the reporter, receipt of the information must not be recorded in the child's record (or a child record created). Such information and any related correspondence must be dealt with in the same way as general correspondence and stored in accordance with information security requirements.

10. References for Advice and Remits for Disposal (Child Offender/ASB)

10.1 A reference for advice or remit for disposal under the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) or the Antisocial Behaviour etc. (Scotland) Act 2004 is not a referral under section 66. Appendix 5 contains 2 flowcharts that describe the procedural options in relation to references and remits under the 1995 Act.

Criminal Procedure (Scotland) Act 1995

- 10.2 Where a court remits a case for disposal under section 49 of the 1995 Act, and the child is **not** subject to a compulsory supervision requirement, section 71 of the 2011 Act requires the reporter to arrange a hearing under section 119 as if a section 67(2)(j) ground had been established.
- 10.3 Where a court remits a case for disposal under section 49 of the 1995 Act, and the child **is** subject to a compulsory supervision requirement, section 130 of the 2011 Act requires the reporter to arrange a review hearing under section 137. The remitted offence is treated as an established section 67(2)(j) ground – section 130(4).
- 10.4 Where a court requires a children’s hearing to provide advice under sections 49(1)(b), (3) or (6) of the 1995 Act, the reporter must arrange an advice hearing. There is no express provision within the 2011 Act, but rules 44 and 75 address procedural issues.

Antisocial Behaviour etc. (Scotland) Act 2004

- 10.5 Where the sheriff requires the reporter to arrange a children’s hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child is **not** subject to a compulsory supervision requirement, section 70 (of the 2011 Act) requires the reporter to arrange a hearing under section 119 as if a section 67 ground had been established. The sheriff must provide a ‘section 12 statement’ specifying which section 67 ground the sheriff considers to apply (and the reasons and any other relevant information). The specified ground is treated as the ground established.
- 10.6 Where the sheriff requires the reporter to arrange a children’s hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child **is** subject to a compulsory supervision requirement, section 129 (of the 2011 Act) requires the reporter to arrange a review hearing under section 137. The sheriff does not provide a ‘section 12 statement’ in these circumstances.
- 10.7 Where the sheriff requires under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 that a children’s hearing provide advice, the reporter is to arrange a hearing for this purpose. There is no express provision within the 2011 Act or the Rules but the reporter is to borrow procedure from rules 44 and 75.

Appendix 1

Pre-referral Discussion

1. The reporter may engage in pre-referral discussion about a case in order to assist the other person or persons to decide whether to refer the child to the reporter. The reporter can neither prevent nor require a referral.
2. The reporter must not give any undertaking or expectation about what specific action will be taken in relation to the case if a referral is made.
3. Where the child under consideration is not yet born, neither referral nor investigation can take place before the child is born.
4. If attending a case conference, the reporter is not a member of the case conference and must not express a view as to whether the child should be placed on the Child Protection Register. The reporter must not take part in voting on this issue nor on referral to the reporter. The reporter must ensure that the reporter's status at the case conference is accurately reflected in the minutes.
5. Disclosure of case related personal data during pre-referral discussion must only take place for the purpose of assisting the person or persons to whom it is disclosed to decide on whether to refer the child to the reporter. The recipient must use the information only for this purpose and must comply with all other aspects of the Data Protection Act in relation to the information. The reporter may provide such information only to representatives of agencies with statutory responsibilities in relation to children (or to individuals with a right to receive such information). The content of any disclosure must be proportionate to the aim pursued in order to be compliant with ECHR and Data Protection requirements.
6. Information received during a pre-referral discussion may form the basis for a reporter generated referral under section 66(1)(b) but the approach set out in Section 4 of the Practice Direction must be applied.

Definition of 'Child'

1. Information received under section 66(1)(a) must relate to a child as defined in section 199. Similarly, the reporter can only apply section 66(1)(b) in relation to a child as defined in that section.
2. Anyone under 16 years of age is a child (section 199(1)).
3. Any young person aged 16 or 17 years is a child if:
 - (a) the young person was referred prior to their 16th birthday (i.e. section 66 applied to them) but there is no final outcome to that referral²² (section 199(3) – (5));
 - (b) the young person is subject to a CSO (section 199(6)); or
 - (c) the young person's case has been remitted to a children's hearing for disposal under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995 and there is no final decision by the children's hearing²³ (section 199(8) and (9)); or
 - (d) the young person was referred by the Chief Social Work Officer under regulation 10 of The Secure Accommodation (Scotland) Regulations 2013, after they moved the young person into secure accommodation under regulation 9²⁴.
4. No one over 18 years of age can be a child for the purposes of section 199 and the Act in general.

Joint Reports

5. When someone is jointly reported by the police to the PF and reporter, section 66 applies to them from when the jointly reported case is received. However, in practice, the reporter is to take no action in relation to the case until the PF has made a decision about whether the PF or reporter is to deal with the case²⁵.

²² The final outcome is referred to as a 'relevant event' in section 199(5) and includes:

- The making of a CSO,
- The reporter notifying a decision not to arrange a children's hearing in relation to the referral, and
- The discharge of the referral by either a children's hearing or sheriff.

If the final outcome is that the young person is made the subject of a CSO, they will become a 'child' by virtue of being subject to a CSO.

²³ If the final outcome is that the young person is made the subject of a CSO, they will become a 'child' by virtue of being subject to a CSO.

²⁴ The 2011 Act does not include this category of young person in the definition of a child (in section 199 or anywhere else). However, for the purposes of The Secure Accommodation (Scotland) Regulations 2013, the definition of a child is anyone under the age of 18 (sections 75 and 93(2)(b) of the Children (Scotland) Act 1995). The regulations enable the Chief Social Work Officer to transfer someone under 18 into secure accommodation (provided certain conditions are met) and then refer them to the reporter. The 2011 Act must be read in such a way as to include these young people within the definition of a 'child'.

²⁵ See the [joint agreement with COPFS in relation to Decision making in cases of children jointly reported to the Procurator Fiscal and Children's Reporter](#).

If the police jointly report someone under the age of 16 but they have their 16th birthday prior to the PF making a decision, the young person will remain a 'child' until either:

- The PF decides they will deal with the case, or
- The PF decides the reporter is to deal with the case and there is a final outcome to that referral (see paragraph 3(a) above)²⁶.

The PF may decide that the reporter is to deal with the case even though the young person is now 16.

Section 67(2)(o) Ground

6. For the purposes of the ground in section 67(2)(o)²⁷ and other provisions of the act as they apply in relation to that ground, a young person aged 16 can also be a 'child' if they remain of school age²⁸. Therefore, the reporter can receive a referral about a 16 year old who remains of school age (who is not otherwise a 'child' for the purposes of the Act) and arrange a children's hearing with the ground being section 67(2)(o). In practice, this is situation is unlikely to arise - although the reporter might arrange a children's hearing after the young person's 16th birthday, it is more likely that the referral will have been received prior to their birthday and therefore the young person will remain a 'child' by virtue of section 199.

²⁶ If the final outcome is that the young person is made the subject of a CSO, they will become a 'child' by virtue of being subject to a CSO.

²⁷ The section 67 ground that "the child has failed without reasonable excuse to attend regularly at school".

²⁸ 'School age' is defined in sections 31 – 33 of the Education (Scotland) Act 1980: a young person aged 16 remains of 'school age' until their relevant school leaving date (either in May or December – see section 33 of the Education (Scotland) Act 1980).

Jurisdiction

Introduction

1. For most children referred to the reporter no question of jurisdiction arises. This appendix addresses questions that may occur if there are doubts as to whether the Children's Hearings System has jurisdiction for any reason. This includes situations where the child has connections with another part of the UK, the child has connections with another state or the child has committed an offence outwith Scotland (not under Scots law).
2. If a reporter has a case where there is any doubt over the jurisdiction of the Children's Hearings System, he/she should immediately inform a Senior Practitioner or Locality Reporter Manager in the locality and contact a member of the Practice Team.
3. The general position for cases **other than offending by the child** is that jurisdiction follows the habitual residence of the child²⁹.
4. 'Habitual residence' is generally described as a question of fact, to be determined on a consideration of all the circumstances of the case. It is the place which reflects some degree of integration by the child in a social and family environment in the country concerned. No one factor is necessarily determinative. There are no prescriptive rules concerning, for example, the attitude of a parent, or the length of time spent by the child in the new environment.³⁰
5. In urgent cases, other than offending by the child, a children's hearing has jurisdiction to take protective measures in relation to the child even if the child is not habitually resident in Scotland.
6. Different rules apply depending on whether the question relates to:
 - another part of the UK;
 - a state that is a party to the [Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) (the "Hague Convention");
 - any other state.

In addition, where the question relates to an EU state and proceedings commenced (normally a grounds hearing was notified) prior to 1 January 2021,

²⁹ If however the child is not present in Scotland at the time of referral to the children's hearing for any reason other than a clear short-term absence (eg holiday), contact your Senior Practitioner and the Practice Team as additional considerations may apply.

³⁰ A v A and another [2013] UKSC 60 and CM v ER [2017] CSIH 18.

EU legislation will continue to apply ([Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility](#) (known as “Brussels IIa”)). Contact the Practice Team if any questions arise regarding jurisdiction involving an EU state for a case that commenced prior to 1 January 2021.

Questions about jurisdiction involving other parts of the UK (non-offence by the child)

7. Where a child is habitually resident in another part of the UK, or it is not clear in which particular part of the UK the child is habitually resident, the children’s hearing has jurisdiction if:
 - the child is within Scotland at the time the reporter referred the child to the children’s hearing; or
 - the child is already subject to a compulsory supervision order.
8. Following the decision of the Court of Session in [Mitchell v S 2000 SLT 524](#)³¹, a children’s hearing will have jurisdiction over a child who is in Scotland at the time the reporter referred the child to a children’s hearing. The presence of the child in Scotland is sufficient; the child does not require to be normally or habitually resident in Scotland.
9. If the child is subject to a compulsory supervision order but is ordinarily resident outwith Scotland and is outwith Scotland at the time of the referral to a children’s hearing, the children’s hearing will also have jurisdiction (see [C v Walker \(No 1\) 2003 SLT \(Sh Ct\) 31](#)). Although both *Mitchell v S* and *C v Walker (No 1)* relate to the Children (Scotland) Act 1995, there are no substantive changes to the provisions on jurisdiction in the Children’s Hearings (Scotland) Act 2011 and therefore they remain authoritative.
10. Following *Mitchell v S*, if a child is present in Scotland and immediate, protective measures are required for the child then the children’s hearing will have jurisdiction. However, where a child is normally resident in another part of the UK, the fact that a children’s hearing will have jurisdiction in such circumstances may not prevent the authorities from the child’s place of habitual residence also commencing proceedings for the protection of the child. The reporter is to generally promote the position that the authorities in the child’s place of habitual residence should take action and the reporter should then take that action into account in deciding on the need to continue with proceedings within the children’s hearing system.

³¹ Also reported as *Mitchell v H 2000 SC 334*

Questions about jurisdiction involving a state in which the Hague Convention for Children 1996 is in force (non-offence by the child)

11. Where there is a question of jurisdiction involving a state in which the Hague Convention is in force the convention applies³². The Hague Convention expressly does not apply to measures taken as a result of criminal offences committed by children.³³
12. A children's hearing will have substantive jurisdiction if:
 - the child is habitually resident in Scotland at the time the reporter referred the child to a children's hearing (Article 5), provided there are no ongoing court proceedings in another country relating to parental responsibilities, or
 - the child is present in Scotland but it is not clear where the child's habitual residence is or if the child is a refugee or displaced child (Article 6).

See paragraph 4 for a broad outline of habitual residence. Habitual residence is not defined in the Hague Convention.
13. Even where a children's hearing does not have substantive jurisdiction for one of the reasons in paragraph 12, in an urgent case a children's hearing may still take any necessary measures of protection in relation to the child (Article 11). The measures of protection are likely to include the making of a CSO³⁴. However, any such urgent measures taken by a children's hearing shall lapse when the authorities of the child's habitual residence have taken the measures required by the situation.
14. Contact the Practice Team if there is:
 - any doubt that the child is habitually resident in Scotland,
 - information that suggests that there are ongoing court proceedings in relation to parental responsibilities in another country, or
 - although the child is habitually resident in Scotland, they are not subject to a CSO and are not present in Scotland.³⁵
15. Where a child is wrongfully removed or retained away from their home country, the courts and tribunals of their home country retain jurisdiction. A court in another country can only acquire jurisdiction when certain strict conditions are met (Article 7).

³² A table showing cases where the Hague Convention for Children 1996 is in force is available [here](#).

³³ see Article 4(i)

³⁴ In *Principal Reporter v LZ* 2017 SLT 961, the Court of Session considered a similar provision to Article 11 in Brussels IIa. The court held that the provisional measures authorised by Brussels IIa include the making of a CSO. Although that decision related to EU legislation, it is likely to support the making of a CSO where the Hague Convention is applicable.

³⁵ Other than clear short term absence eg holiday.

16. In some situations a children's hearing may have to decide the basis on which it has jurisdiction³⁶. The Practice Team will assist in identifying what decisions, if any, the children's hearing will require to consider.

Question about jurisdiction involving any other state

17. A question of jurisdiction may arise involving a state that is not a party to the Hague Convention for Children 1996. In such a situation contact the Practice Team if there is:

- any doubt that the child is habitually resident in Scotland,
- information that suggests that there are ongoing court proceedings in relation to parental responsibilities in another country, or
- although the child is habitually resident in Scotland, they are not subject to a CSO and are not present in Scotland.

Offences committed by child

18. The Hague Convention for Children 1996 expressly do not apply to measures taken as a result of criminal offences committed by children.

Offences contrary to Scots law

19. When a child is referred to the reporter as a result of allegedly committing an offence contrary to Scots law, a children's hearing will have jurisdiction if:

- the child is habitually resident in Scotland³⁷;
- the child is within Scotland at the time the reporter referred the child to a children's hearing ([Mitchell v S 2000 SLT 524](#)); or
- the child is already subject to a compulsory supervision order ([C v Walker \(No 1\) 2003 SLT \(Sh Ct\) 31](#)).

20. Most offences contrary to Scots law are offences that take place in Scotland. However, some legislation creates an offence under Scots law where the behaviour took place outside of Scotland³⁸.

21. It would appear likely that a children's hearing will have jurisdiction in relation to a child who is in Scotland by virtue of an order made by a court outwith

³⁶ For example, whether it is because it is under Article 5 of the Hague Convention as it considers the child is habitually resident in Scotland or under Article 11 as it is taking provisional measures for a child habitually resident in another state.

³⁷ If however the child is not present in Scotland at the time of referral to the children's hearing for any reason other than a clear short-term absence (eg holiday), contact your Senior Practitioner and the Practice Team.

³⁸ See for example an offence under section 1(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (read along with section 10 of that Act) and section 55(1) of the Sexual Offences (Scotland) act 2009.

Scotland³⁹, if the child is within Scotland at the time the reporter referred the child to a children's hearing ([Mitchell v S 2000 SLT 524](#)). However, it is very unlikely that any CSO made by a children's hearing will be able to be transferred to a local authority in England, Wales or Northern Ireland (see [Practice Direction 27 on Cross Border Issues](#)). The reporter is to take this into account when deciding whether to refer the child to a children's hearing.

22. If the children's hearing does not have jurisdiction in relation to a child who has allegedly committed an offence contrary to Scots law, the child could be prosecuted in Scotland⁴⁰.

Offences not contrary to Scots law

23. A children's hearing does **not** have jurisdiction to deal with an offence that is committed outwith Scotland and which is not an offence under Scots Law⁴¹. It is likely that it will be possible to prosecute the child in the jurisdiction in which the alleged offence was committed.
24. There may be circumstances where it would be appropriate for the reporter to refer the child to a hearing on other grounds. The reporter should always involve the Senior Practitioner and Practice Team in any such consideration.

³⁹ For example, a child from England who has been placed by an English court at a residential unit in Scotland.

⁴⁰ Provided the alleged offence was committed when the child was aged 12 years or more.

⁴¹ For example, a child resident at a residential unit or on holiday in England commits an offence of assault there.

Examples of the Application of Section 8 of this Practice Direction – Receipt of Referral Letters

1. **Alisha**, aged 8, is referred by the police because of concerns relating to her parents' behaviour. Alisha and her parents reside together. The reporter decides to carry out further investigation.

The reporter should inform Alisha (assuming she would understand) and each of her parents that the referral has been received. None of the factors that might indicate a letter should not be sent, or that the content of the letter to either relevant should be limited, applies. The content of the letter to Alisha should be appropriate to her age and understanding.

2. **Kash**, aged 14, is referred by the police on the basis of an offence of theft. Kash is subject to a CSO and a review hearing took place three months ago. The reporter has an immediate phone discussion with the social worker and decides it is not necessary to arrange a grounds hearing.

There is no need to send a receipt of referral letter to Kash or his parents as a final decision has been made with minimal and immediate investigation. The final decision letters, sent without delay, will be sufficient.

If however the reporter decided to carry out further investigation the content of the letters to Kash and his parents should be along the lines of:

- I have been told by the police that that you/Kash committed an alleged offence of theft on x date.

3. **Jess**, aged 15, is referred on the basis that a sexual assault has been committed against her. Jess resides with her mother. Her father is a relevant person but neither she nor her mother has had any contact with him since Jess was 11. The reporter decides to investigate further.

The reporter should inform Jess and her mother of the referral. Given the sensitivity of the information, the reporter should not include any detail of the sexual offence in the letter. [It may be appropriate to not include that the offence was a sexual one.]

Given that Jess's father has not been involved in her life for a long while, has no direct knowledge of the issues, appears to have limited relevance to the investigation and Jess's age, it would be appropriate not to inform her father. The reporter is to tell the social worker that the father has not been informed.

If the reporter's final decision is that a hearing is not to be arranged, the final decision letter to the father should not give any details of the basis of the referral⁴².

The content of the letters to Jess and her mother should be along the lines of:

- I have been told by the police that a sexual offence was committed against you/Jess on x date.

4. **Matt**, aged 3, is referred by the local authority following his mother being admitted to hospital with mental health difficulties and concerns arising over his father's ability to care for him. The social worker has indicated that the mother would be extremely upset about the referral and knowledge of it would be likely to disrupt her progress in hospital. The reporter decides to investigate.

Matt should not be informed about the referral as he would not be able to understand it. The father should be informed.

Given the indication that the mother is likely to suffer harm if she receives a letter, it would be appropriate not to send a letter. However, as the mother should be involved in the investigation to an appropriate degree and will almost certainly require to be told about the reporter's final decision, the reporter should promote the mother being told about the referral by an appropriate person in a way that would best minimise any harm to the mother. The reporter must inform the social worker that a letter has not been sent to the mother.

The content of the letter to Matt's father should be along the lines of:

- I have been told by x local authority social work department that there are concerns about the care that Matt is receiving.

5. **Ranvir**, aged 11, is referred by the police after several incidents of domestic abuse by Ranvir's father against her mother. The family live together.

Ranvir should be told about the referral, unless there is information indicating she would not be able to understand, or receipt of a letter would likely cause a risk of harm to her or another person. For example, the father opening her mail and reacting in a way that would put Ranvir and her mother at risk of harm.

Ranvir's mother should be told of the referral unless a letter to her would be likely to cause a risk of harm to her or another person, as with Ranvir.

Ranvir's father should be told of the referral unless receipt of a letter by him would be likely to cause a risk of harm to any person. However, Ranvir's father will require to be involved in the investigation and be informed of the reporter's final decision so, if deciding not to send a letter, the reporter should be alert to

⁴² Further, if informing the father of the decision is likely to cause significant harm to Jess or another person, the reporter is not to inform the father despite the reporter's statutory duty to do so. However, this is a high test.

promoting the father being told about the referral by an appropriate person (such as the social worker) in a way that reduces the risk.

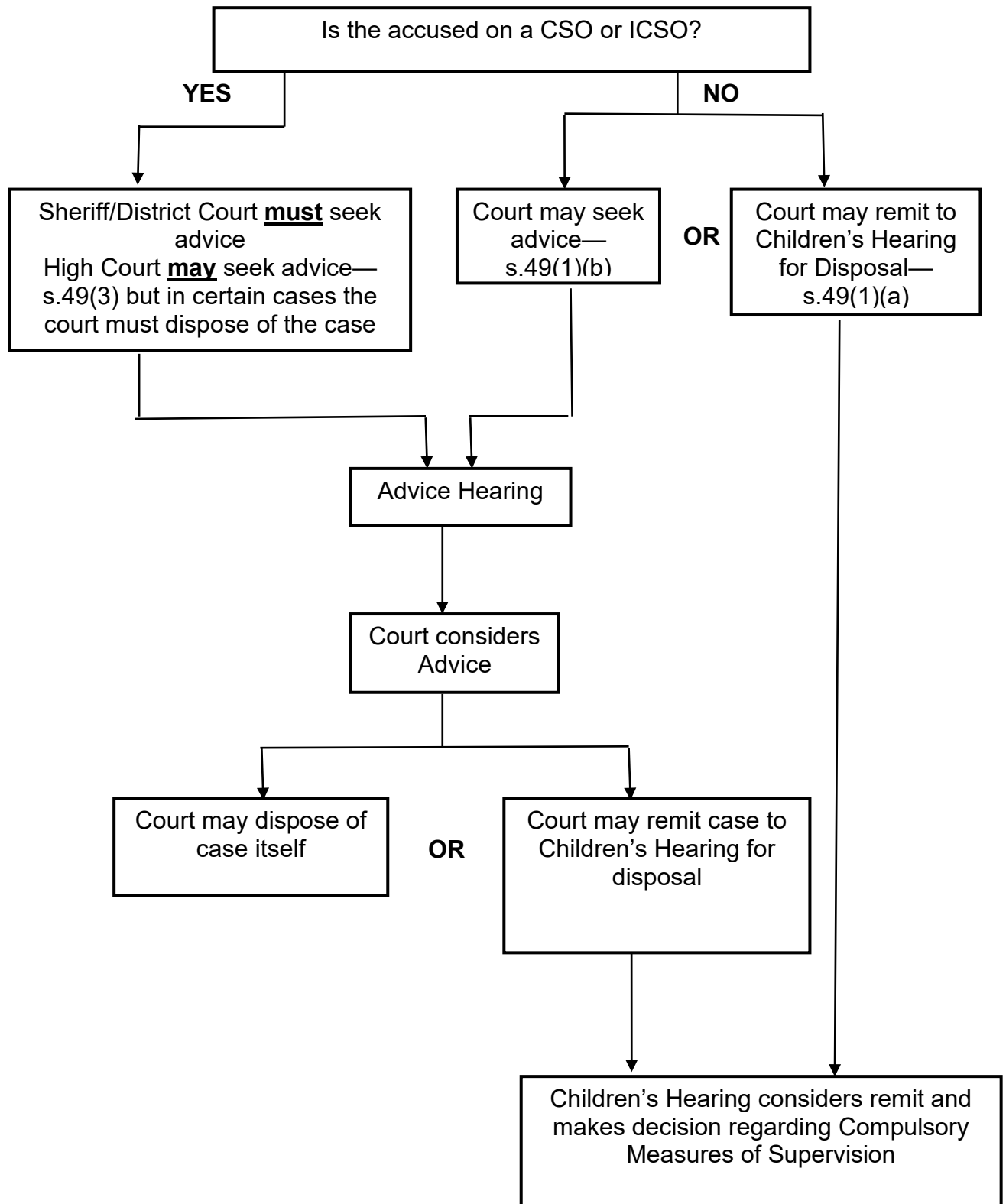
If not sending a letter to Ranvir or her mother, again the reporter should promote their being told by an appropriate person in an appropriate way.

If not sending a letter to Ranvir or either parent, the reporter is to inform the social worker.

The content of the letter to Ranvir and her parents (if sending) should be along the lines of:

- I have been told by the police about incidents on x dates that appear to be domestic abuse.

Responsibilities and Options in relation to Children’s Hearings for accused persons under 16 in terms of s.49 of the Criminal Procedure (Scotland) Act 1995



Responsibilities and Options in relation to Children’s Hearings for accused persons over 16 in terms of s.49 of the Criminal Procedure (Scotland) Act 1995

