



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Decision making in cases of children jointly reported to the Procurator Fiscal and Children's Reporter

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Introduction

1. To respond appropriately to allegations of crime which are jointly reported to both the Crown Office and Procurator Fiscal Service (COPFS) and Scottish Children's Reporter Administration (SCRA) there must be clear communication between those considering the allegation, a common understanding of how such cases can be dealt with and the timescales involved. When considering allegations of crime committed by children, it is essential that both the Procurator Fiscal and Children's Reporter involved in the case understand the role of each organisation, the options available and steps required to appropriately deal with the allegations made.
2. This Agreement is binding for those in COPFS and the SCRA who are involved in decision making regarding children who are jointly reported by the police. The Agreement is also for police officers involved in decision making regarding the reporting of children who have committed offences.
3. The purpose of this Agreement is to ensure appropriate support and information exchange and consistent decision making for children who offend who are in both the children's and the adult systems or are transferring between them. The Agreement is also of relevance to those within a local authority who are working with children involved in offending behaviour.

Scope of this Agreement

4. Where a child's case is jointly reported, this Agreement will apply to the consideration of the case by those in COPFS and the SCRA.
5. Although regular contact should take place between Procurators Fiscal and Children's Reporters in which they will discuss cases where an adult has been charged with an offence *against* a child, this Agreement is not applicable to those cases.
6. To ensure decisions taken in relation to jointly reported cases are fully informed and appropriate, there will be clear communication between the Procurator Fiscal considering the case and the relevant Children's Reporter. The level of communication may vary depending on the circumstances of the case under consideration but must ensure that the minimum standards stated in this Agreement are adhered to.

Legal Context

7. Section 42(1) of the Criminal Procedure (Scotland) Act 1995 states that "*No child under the age of 16 years shall be prosecuted for any offence except on the*

instructions of the Lord Advocate, or at his instance; and no court other than the High Court and the sheriff court shall have jurisdiction over a child under the age of 16 years for an offence."

8. For the purposes of this Agreement a "child" is as defined in section 307 of the Criminal Procedure (Scotland) Act 1995 and section 199 of the Children's Hearings (Scotland) Act 2011, namely:
- A person under the age of 16 years; or
 - A person aged 16 and 17 years who is subject to a compulsory supervision order; or
 - A person over the age of 16 years whose case has been remitted to the Principal Reporter under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995 to arrange a Children's Hearing for the disposal of the case by a Children's Hearing; or
 - A person over the age of 16 years who was referred to the Principal Reporter before they turned 16, but a 'relevant event' has not yet occurred. (This includes a situation where the Principal Reporter received the jointly reported case in relation to the child prior to their 16th birthday, but the decision that the Principal Reporter is to deal with the case was not made until after the birthday).

A 'relevant event' is defined as being:

- The making of a Compulsory Supervision Order;
 - The notification to the person that the question of whether a Compulsory Supervision Order should be made will not be referred to a Children's Hearing'; or
 - The discharge of the referral to the Principal Reporter.
9. In terms of the United Nations Convention of the Rights of the Child (UNCRC), the best interests of a child who is jointly reported in terms of this Agreement will be treated as a primary consideration. The views of the child, where known, will be given due weight in accordance with the age and maturity of the child, along with other relevant considerations. In addition, as a child charged with an offence has the right to have the matter determined without delay, any delay in making a decision will be minimised.

Jointly Reported Cases

10. The Lord Advocate has issued guidelines to the Chief Constable regarding the reporting to Procurators Fiscal of offences alleged to have been committed by children (the "Lord Advocate's Guidelines"). It is the responsibility of the police, following the Lord Advocate's Guidelines, to decide to whom an offence shall be reported. A case is "jointly reported" for the purposes of this Agreement, where it is reported by the police to the Procurator Fiscal and the Children's Reporter in terms of the Lord Advocate's Guidelines.

11. Where a child is charged along with an adult by the police, with an offence that does not fall within the Lord Advocate's Guidelines, the child's case should not be jointly reported.
12. Unless an offence alleged to have been committed by the child is to be jointly reported by the police in terms of the Lord Advocate's Guidelines, the child:
 - cannot be kept by the police in a place of safety (whether or not it is a police station) in order to be brought before a court (in terms of sections 21 and 22 of the Criminal Justice (Scotland) Act 2016); and
 - cannot be released on an undertaking to appear at court (in terms of sections 26 of the Criminal Justice (Scotland) Act 2016).
13. In exceptional circumstances, a Children's Reporter may be of the opinion that the case of a child that has *not* been jointly reported, should have been as the offence comes within the terms of the Lord Advocate's Guidelines. In such circumstances, the Children's Reporter shall ask the police to jointly report the case. However, it will be the responsibility of the police to decide whether the case should be jointly reported, and if so, to provide a copy of the report to the Procurator Fiscal.
14. In cases involving children under 16 who are charged along with an adult and where it is clear to the Children's Reporter that such a case has been jointly reported as the result of an incorrect marking by the police, the Children's Reporter shall treat that report as being a referral of the child to the Children's Reporter only and shall proceed to deal with that referral.

Outcomes for Jointly Reported Cases

15. When a child's case is jointly reported, the possible outcomes are:

If the child is under the age of 16 years:

- The child will be referred to the Children's Reporter in relation to the offence;
- The Procurator Fiscal will retain the case and proceed as appropriate without the instructions of Crown Counsel (this will only arise if the offence is within Category 2 of the Lord Advocate's Guidelines); or
- The Procurator Fiscal will retain the case and proceed as appropriate having first obtained the instructions of Crown Counsel.

If the child is aged 16 or 17 years:

- The child will be referred to the Children's Reporter in relation to the offence; or
- The Procurator Fiscal will retain the case and proceed as appropriate

– this could involve either the prosecution of the child or an alternative to prosecution (e.g., warning letter or Fiscal Fine).

16. A flowchart showing the process of this decision making is in **Appendix 1** to this Agreement. Additional information on decision making options for the Children's Reporter and Children's Hearings is attached at **Appendix 3**.
17. The Standard Prosecution Report that is the basis of the jointly reported case may contain more than one charge. When it does so, and there is insufficient evidence for some of the charges listed, the Procurator Fiscal may decide to refer the child to the Children's Reporter in respect of only those charges for which there is sufficient evidence.

The Children's Reporter should not inform the child that there are to be no proceedings taken in respect of any other charges.
18. A decision to conduct a pre-petition investigation may be taken by the Procurator Fiscal before submission of the case for final consideration by Crown Counsel. A decision to proceed this way may arise where the case is of a sensitive or sexual nature. When the Procurator Fiscal decides to conduct a pre-petition investigation, the case shall be treated as one in which no decision has been made until the Procurator Fiscal has sufficient information to decide whether to deal with the case or refer the child to the Children's Reporter.
19. Although the decision regarding the jointly reported case is for the Procurator Fiscal, such a decision shall not be taken until the Children's Reporter has provided relevant information (as described below) and views regarding the most appropriate decision.
20. When the outcome of the consideration of a jointly reported case is that the child will be referred to the Children's Reporter in relation to the offence, that decision cannot be reconsidered. Once the child has been referred to the Children's Reporter in relation to the offence, the Procurator Fiscal shall not decide subsequently to prosecute the child in relation to that offence.
21. When the outcome of the consideration of a jointly reported case is that the Procurator Fiscal will deal with the offence, it is open to the Procurator Fiscal to reconsider that decision at a later date. In doing so, the Procurator Fiscal may refer the child to the Children's Reporter in relation to the offence as an alternative to proceeding with the prosecution of the child. For example, on further investigation of the offence, the Procurator Fiscal may decide that there is insufficient evidence of an offence that should be prosecuted on indictment but there is sufficient evidence for a lesser offence. The longer the time since an offence took place, the more difficult it will be for the Children's Hearings System to take meaningful action in relation to the offence. Therefore, before any such decision to refer the child to the Children's Reporter, the Procurator

Fiscal must obtain the Children's Reporter's view on whether, taking into account any delay, the needs and behaviour of the child can be addressed within the Children's Hearings system more appropriately and effectively than the criminal justice system.

22. If the decision of the Procurator Fiscal is that there is insufficient evidence for an offence that should be prosecuted on indictment or for an offence that is likely to result in a disqualification from driving, but there is sufficient evidence of a lesser offence, the child may be referred to the Children's Reporter in relation to the lesser offence.
23. The Procurator Fiscal shall make it clear that the child is being referred to the Children's Reporter in relation to the lesser offence due to an insufficiency of evidence in relation to the more serious offence.
24. The Procurator Fiscal shall communicate any decision in relation to the jointly reported case to the Children's Reporter in writing.

Timescales for Decision Making

25. Action in relation to children who offend should be timely, appropriate, and proportionate. Any delay in proceedings involving children should be minimised and children's cases should be dealt with as efficiently and effectively as possible to comply with their rights under the UNCRC. To achieve this, efforts will be made by both agencies to meet the timescales as set out below:

For the Procurator Fiscal to make an initial decision, following discussion of the case with the Children's Reporter, within 10 working days of the case being reported to the Procurator Fiscal and Children's Reporter. An initial decision in these circumstances is the decision regarding whether:

- The child will be referred to the Children's Reporter in relation to the offence.
- The Procurator Fiscal will retain the case.
- The Procurator Fiscal will decide to obtain witness statements or more information from the police before making a decision to refer the case to the Children's Reporter or retain the case.

Placing the child on petition represents a decision that the Procurator Fiscal will retain the case.

In exceptional cases, the decision as to whether the Procurator Fiscal will retain or refer the case to the Children's Reporter may remain outstanding 45 working days after the case is reported. In those exceptional cases, the Procurator

Fiscal shall provide the Children's Reporter with periodic updates and explain the reasons for the delay. To comply with a child's UNCRC rights, such decisions must be made with minimal delay.

Information Sharing to Assist Decision Making

26. In order to assist the making of a decision regarding a jointly reported case, the Children's Reporter shall provide the Procurator Fiscal with information regarding the child. Although the Children's Reporter shall provide the Procurator Fiscal with information, this sharing of information will be in accordance with the Children's Reporter's power to share information. In particular:

- The information will be shared for the purpose of assisting the making of a decision regarding a jointly reported case;
- The information shared is to be proportionate and necessary to inform decision making between the Children's Reporter and Procurator Fiscal (or by Crown Counsel as the case may be).

27. Subject to the terms of the paragraph above, when necessary to inform decision making, the Children's Reporter shall provide to the Procurator Fiscal information regarding:

- The terms of any current compulsory supervision order in relation to the child;
- The date and purpose of any children's hearing already arranged for the child;
- The nature of any referral of the child in relation to which the Children's Reporter has not made a decision;
- The contact details of the child's social worker or "lead professional";
- The details of any services that are currently working with the child in relation to the child's offending behaviour and offending related needs, and the extent of the child's engagement with those services;;
- Any other relevant information about the child, such as the context of the offence or the background of the child, if relevant to an appropriate decision regarding the jointly reported case;
- Any view expressed by the child, where known, where it appears to the Children's Reporter to be relevant to the consideration of the most appropriate decision regarding the jointly reported case;
- The Reporter's view (with brief reasons for that view) on whether the needs and behaviour of the child can be addressed within the Children's Hearing System more appropriately and effectively than in the criminal justice system.

28. To further assist the Procurator Fiscal with decision making in a jointly reported case, the Children's Reporter will also provide the Procurator Fiscal with

information as to:

- the available options for action and possible outcomes of the case if it were to be referred to the Children's Reporter,
- possible additional services or programs that may become involved with the child and possible decisions that a Children's Hearing may make.
- Where this information is not known to the Children's Reporter, the Children's Reporter shall seek this information from the local authority and provide the Procurator Fiscal with an indication of intended action.
- Where possible, information will be provided as to potential timescales for the Children's Reporter taking action in relation to the case, should it be referred to them.

29. When a case is jointly reported, the Children's Reporter will send the Procurator Fiscal the "Initial Information Sharing Template" form contained in **Appendix 4**. The Children's Reporter will provide the information within 5 working days of receipt of the joint report.

30. When a case is to be reported to Crown Counsel, the Procurator Fiscal will request that the Children's Reporter provides the information in the paragraphs above using the "Information Sharing Template" form in **Appendix 5**. The Children's Reporter will provide the information within 5 working days of the request.

31. In providing information regarding possible outcomes of the case if it were to be referred to the Children's Reporter (as described above), the Children's Reporter shall not give any assurances that any particular outcome will result if the case is referred to the Children's Reporter.

32. Where a case is retained by the Procurator Fiscal, they may seek an update in relation to any change in the child's circumstances, or additional information that has come to light since the original decision was taken. This information is necessary for the Procurator Fiscal as it might impact on the decision to prosecute the child. If the Procurator Fiscal seeks such an update, the Children's Reporter will comply with the request where possible.

Criteria for Decisions Regarding Jointly Reported Cases

33. In deciding whether to prosecute a child who has been jointly reported, the overriding consideration for COPFS is whether it is in the public interest to prosecute the child (if there is sufficient evidence to do so). Such decisions will be made in line with:

- The Prosecution Code, and any other relevant prosecutorial instructions in place at the time; and

- The UNCRC. Procurators Fiscal must consider the best interests of the child as a primary consideration, which is to be given appropriate weight along with other relevant considerations, as well as any known views of the child, when determining what prosecutorial action is appropriate in the public interest.

34. No child under 16 years will be prosecuted in summary proceedings unless the Lord Advocate has instructed the prosecution.

35. The Lord Advocate has instructed that children aged 15 years (and over) may be prosecuted on summary complaint without specific instruction for the prosecution being sought where an offence is committed for which a disqualification from driving is likely to be the disposal of the court.

General Presumption

36. In relation to any child who has been jointly reported, there is a presumption that the child will be referred to the Children's Reporter in relation to the jointly reported offence. In assessing whether this presumption should be overridden because it is considered to be in the public interest to prosecute the child, COPFS shall take into account the following factors:

Where the child is aged 15 years or over, the offence is such that a disqualification from driving is likely to be the disposal of the court.

In all cases:

- the best interests of the child should be treated as a primary consideration;
- whether the gravity of the offence is such that the child should be prosecuted on indictment;
- whether there is a pattern of serious offending by the child;
- whether there are services within the Children's Hearing system that are currently working with the child in relation to the child's offending behaviour and offending related needs, and/or any programmes that the child is involved in that are addressing such behaviour or needs and the extent of the child's engagement with those services;
- whether any such services within the Children's Hearing system could become involved in working with the child in relation to his/her offending behaviour or offending related needs;
- whether any possible decision open to the Children's Reporter or a Children's Hearing is likely to suitably address the child's needs and behaviour and any risk that the child may present;
- the views of the child, where known;
- whether there is likely to be an adverse effect on the victim if the child were to be prosecuted; and
- any health or development issues (e.g., that the child has ADHD or learning difficulties) that may indicate that the child's needs and behaviour would be best addressed within the Children's Hearing system.

37. The assessment of the gravity of the offence will include a consideration of the impact of the offence on the victim, and any available information indicating the views of the victim (who may also be a child), amongst other factors. Reference should be made to paragraphs 1-3 of the Explanatory Notes to the Lord Advocate's Guidelines for further guidance as to what offences are normally prosecuted on indictment.
38. Where the Procurator Fiscal decides to deal with the jointly reported offence it would not then generally be appropriate for the case to be diverted from prosecution to a diversion programme. If the child requires services in relation to his/her offending behaviour or offending related needs, the assumption is that these should be accessed through the child being referred to the Children's Reporter rather than being diverted from prosecution to a diversion programme. However, in exceptional cases it may be that diversion is the best option for a jointly reported child.
39. If the decision of the Procurator Fiscal is that there is insufficient evidence of *any* offence, the child's case shall not be referred to the Children's Reporter. In the absence of a sufficiency of evidence, the Children's Reporter is not able to take any action in relation to the offence. It is essential to remember that when a child is referred to the Children's Reporter as a result of allegedly committing an offence, the standard of proof and rules of evidence to be applied are those applicable to criminal proceedings.
40. However, if the decision of the Procurator Fiscal is that there is insufficient evidence of an offence that should be prosecuted on indictment or an offence that is likely to result in a disqualification from driving, but there is sufficient evidence of a lesser offence, the child may be referred to the Children's Reporter in relation to the lesser offence. For example, where there is insufficient evidence of an offence of rape of a 15 year old girl contrary to section 1 of the Sexual Offences (Scotland) Act 2009, but sufficient evidence of an older child engaging in sexual conduct contrary to section 37 of that Act. The Procurator Fiscal shall make it clear that the child is being referred to the Children's Reporter in relation to the lesser offence due to an insufficiency of evidence in relation to the more serious offence.
41. If the decision of the Procurator Fiscal is that there is insufficient evidence of *any* offence, the Procurator Fiscal may decide having regard to the best interests of the child, that it is appropriate to refer the child to the Children's Reporter for reasons other than that the child has allegedly committed an offence. The potential grounds for such a referral are set out in **Appendix 2** to this agreement. The Procurator Fiscal may only make such a referral if:
- (a) the reasons for the referral are wider than the allegation that the child has committed any offence; and
 - (b) the Procurator Fiscal considers that it might be necessary for a compulsory supervision order to be made in relation to the child.

Having made this decision, the Procurator Fiscal shall refer the child to the Children's Reporter in writing making it clear why (a) and (b) apply.

42. In making this decision the Procurator Fiscal will record that the Procurator Fiscal has dealt with the offence and has taken no action due to there being insufficient evidence.

Sexual Offences and Category 1 Offences

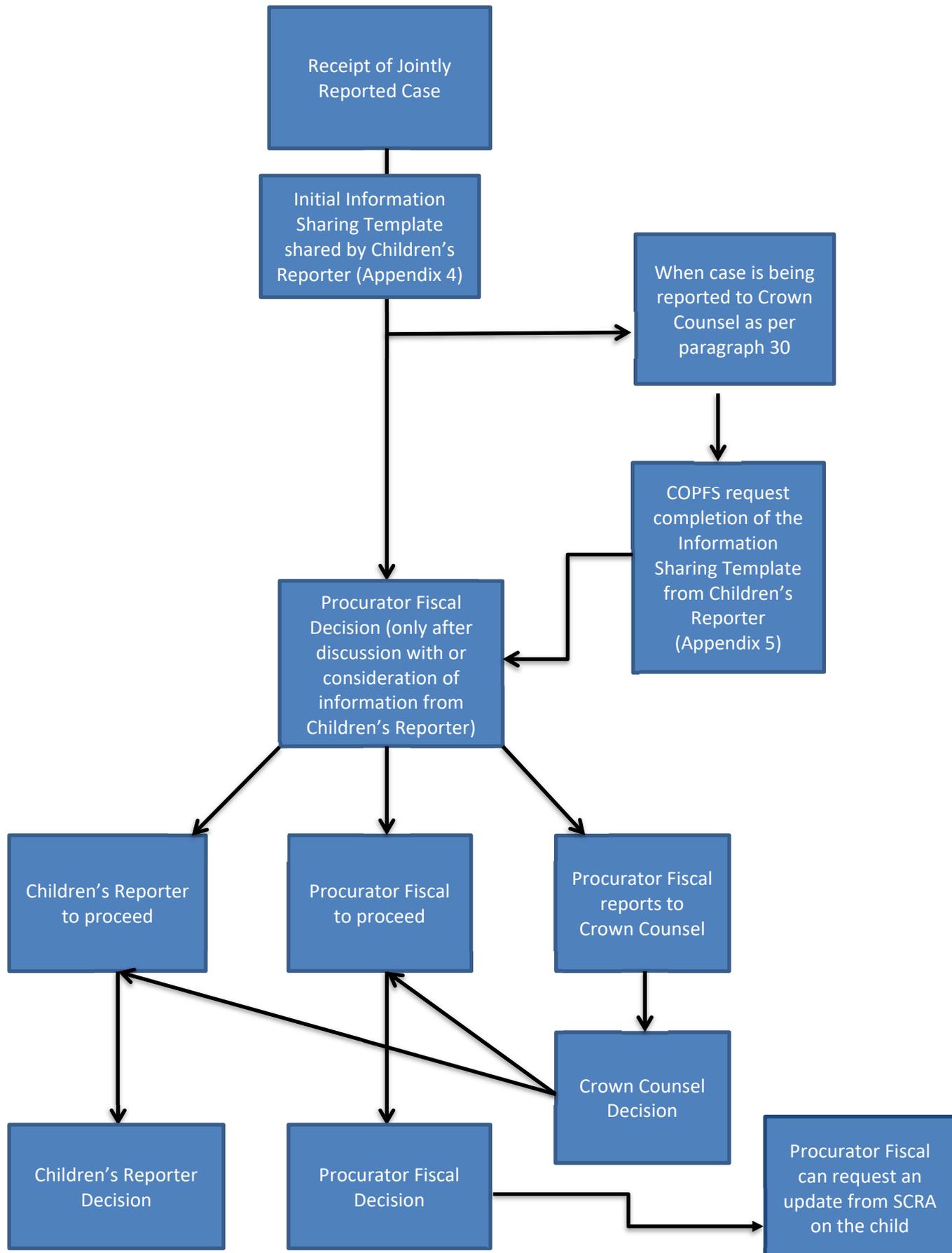
43. In jointly reported cases involving Sexual Offences and offences defined within Category 1 of the Lord Advocate Guidelines, both the Children's Reporter and Procurator Fiscal will make contact at the earliest stage of proceedings to obtain the necessary information required regarding the child. The Procurator Fiscal will request that the Children's Reporter provides the information in paragraphs 27 and 28 using the form in Appendix 5. The Children's Reporter will provide the information within 5 working days of the request.

Monitoring and Review of this Agreement

44. The operation of this Agreement will be monitored by the Head of Policy Division, Crown Office and the Head of Practice and Policy, SCRA.

45. Where there are exceptional circumstances in respect of jointly reported cases which are not covered by the terms of the Agreement resolution of the matter should be discussed between the appropriate Procurator Fiscal and the Reporter. Where that does not result in resolution of the issue or it is felt that the issue is of wider application and significant importance the matter should be referred to the Head of Practice and Policy of SCRA and the Head of Policy Division, Crown Office.

FLOWCHART SHOWING THE PROCESS OF DECISION MAKING IN JOINTLY REPORTED CASES



Other grounds of referral to the Children's Reporter available to the Procurator Fiscal where there is insufficient evidence of an Offence

1. The range of grounds on which a child can be referred to the Children's Reporter is in section 67(2) of the Children's Hearings (Scotland) Act 2011 (the section 67 grounds).
2. The grounds most likely to be relevant are:
 - (m) the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person; and
 - (n) the child is beyond the control of a relevant person,
3. In relation to all grounds other than that the child has committed an offence (the non-offence grounds), the standard of proof is the balance of probabilities and the civil rules of evidence apply.
4. In *Constanda v M 1997 SLT 1396* the Court of Session held that where "the whole substratum of the grounds is that the child has committed certain offences" it will not be appropriate to proceed on the basis of non-offence grounds. Therefore, the reasons for the referral must go beyond the allegation that the child has committed any offence.

Children's Hearings (Scotland) Act 2011 – Section 67 Grounds/ the Statement of Grounds

5. The Children's Hearings (Scotland) Act 2011 came into force on 24th June 2013. The section 67 grounds replace the Section 52(2) grounds for referral that appeared in the Children (Scotland) Act 1995 (as the Children's Hearings (Scotland) Act 2011 replaces much of the Children (Scotland) Act 1995).
6. The previously used terminology of 'conditions' and 'grounds for referral' is not used in the Children's Hearings (Scotland) 2011 Act. Instead, the term 'section 67 ground' is used – it is defined (in Section 67) as any of the grounds set out in section 67(2) of the Children's Hearings (Scotland) 2011 Act.
7. The Reporter prepares a 'statement of grounds' which sets out the section 67 ground or grounds the reporter believes applies in relation to the child and the supporting facts. There are 17 section 67 grounds.

Section 67 Grounds:

- a. the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,

- b. a schedule 1 offence has been committed in respect of the child,
- c. the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence,
- d. the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed,
- e. the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that-
 - i. the child will be abused or harmed, or
 - ii. the child's health, safety or development will be seriously adversely affected,
- f. the child has, or is likely to have, a close connection with a person who has carried out domestic abuse,
- g. the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9),
- h. the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child,
- i. a permanence order is in force in respect of the child and special measures are needed to support the child,
- j. the child has committed an offence,
- k. the child has misused alcohol,
- l. the child has misused a drug (whether or not a controlled drug),
- m. the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
- n. the child is beyond the control of a relevant person,
- o. the child has failed without reasonable excuse to attend regularly at school,
- p. the child-
 - i. has been, is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership; or
 - ii. is, or is likely to become, a member of the same household as such a child,
- q. the child-
 - i. has been, is being, or is likely to be, forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 or,
 - ii. is, or is likely to become, a member of the same household as such a child.

Decision making options for the Children's Reporter and Children's Hearing

Decision making by the Children's Reporter

1. After investigation of the referral (normally by obtaining information from the social work department and school, amongst others), the Children's Reporter's options are:
 - a. To arrange a children's hearing to consider whether a compulsory supervision order (CSO) should be made (a grounds hearing).
 - b. Not to arrange a children's hearing and to refer the child to the local authority for it to provide a service on a voluntary basis;
 - c. Not to arrange a children's hearing on the basis that there is insufficient evidence to proceed;
 - d. Not to arrange a children's hearing as measures are already in place;
 - e. Not to arrange a children's hearing as the family have taken action;
 - f. Not to arrange a children's hearing with a diversion to other measures;
 - g. Not to arrange a children's hearing as there is no indication of a need for compulsory measures.
2. If the Children's Reporter makes a decision not to arrange a children's hearing, an intervention may still be provided by the local authority or other service provider that will address the child's offending behaviour.
3. The Children's Reporter must arrange a grounds hearing, and can only do so, 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.
4. 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.¹
5. When arranging a grounds hearing for a child, the Children's Reporter will draft a statement of grounds. This states which of the section 67 grounds the reporter believes applies in relation to the child and the supporting facts on which that belief is based. Where the statement of grounds includes a ground mentioned in section 67(2)(j) (that the child has committed an

¹ In doing so, the Children's Reporter will be applying different standards of proof and rules of evidence:

- Where the section 67 ground is section 67(2)(j) (that the child has committed an offence), the standard of proof and rules of evidence are those applicable to criminal proceedings.
- Where the section 67 ground is one of the other non-offence grounds, the standard of proof and rules of evidence are those applicable to civil proceedings.

offence), the supporting facts must have the same degree of specification as is required by section 138(4) of, and Schedule 3 to, the Criminal Procedure (Scotland) Act 1995.

6. In deciding whether it is necessary for a CSO to be made in respect of the child, the Children's Reporter will consider:

- the extent of concern regarding the child's welfare;
- the history of co-operation with previous interventions by the child and family and the impact of any previous intervention; and
- the current motivation to change of the child and family, and their willingness to cooperate with any intervention.

7. If the child is already the subject of a CSO, the Children's Reporter will consider whether:

- The Children's 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 Children's Reporter is of the view that the referral indicates that the child's welfare requires that his/her order is varied².

Decision making by the Children's Hearing

8. A children's hearing is an independent and impartial tribunal, independent from *inter alia* the Children's Reporter, the local authority and Police Scotland.

9. When the statement of grounds drafted by the reporter is accepted or found to be established by the sheriff, the children's hearing may:

- Make the child subject to a CSO,
- Discharge the referral, or
- Defer a decision until a subsequent children's hearing.

10. There are three overarching principles which apply when a children's hearing is making a decision about a child:

- The need to safeguard and promote the welfare of the child throughout their childhood is the paramount consideration.
- The child must be given an opportunity to express a view and this view must be taken into account in line with the child's age and maturity.
- An order is only to be made if it is considered better for the child than if no order was made.

There is an exception to the first principle about the welfare of the child being the paramount consideration. This is where the children's hearing considers

² More information about the Children's Reporter's decision making is available in the Practice Direction on the Framework for Decision Making by Reporters.

that it is necessary that a decision be made for the purposes of protecting members of the public from serious harm (whether physical or not) - in this situation the welfare of the child is a primary, as opposed to the paramount, consideration.

11. A CSO must include one or more of the following measures:

- a. a requirement that the child reside at a specified place,
- b. a direction authorising the person who is in charge of a place specified under paragraph (a) to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order,
- c. a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
- d. a movement restriction condition,
- e. a secure accommodation authorisation,
- f. subject to section 186, a requirement that the implementation authority arrange:
- g. a specified medical or other examination of the child, or
- h. specified medical or other treatment for the child,
- i. a direction regulating contact between the child and a specified person or class of person,
- j. a requirement that the child comply with any other specified condition,
- k. a requirement that the implementation authority carry out specified duties in relation to the child.

12. A measure requiring the child to comply with a specified condition may relate to the child's involvement with an intervention (provided by the local authority or other service provider) that will address the child's offending behaviour.

13. A Children's Hearing will review the child's Compulsory Supervision Order no later than 12 months after it was made. When reviewing the order, the children's hearing may:

- Terminate the CSO,
- Vary the CSO,
- Continue the CSO, with or without variation, for a period not exceeding one year, or
- Defer making a decision until a subsequent children's hearing.

Children subject to a compulsory supervision order

14. A Children's Reporter is only to refer a child who is subject to a Compulsory Supervision Order to a Children's Hearing to consider a new statement of grounds if:
- The Children's 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 Children's Reporter is of the view that the referral indicates that the child's welfare requires that his/her Compulsory Supervision Order is varied.
15. 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.
16. The Children's 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.
17. The reasons for decision recorded by the Children's 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.

Gravity of Incidents

18. 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.
19. 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.
20. 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 Children's Reporter is to consider factors that make the referral more "serious" in the assessment of the "extent of concern regarding the child's welfare".

Jointly Reported Case – Initial Information Sharing Template

Section 1: Case details – to be completed by either COPFS or SCRA

Name of Child	
Age of Child at Date of Report	
Date of birth	
Charges	
Date Joint Report Received	
Agency Reference number (i.e., SPR number)	

Section 2: to be completed by COPFS

PF reference number	
COPFS Point of Contact	
Telephone	
Email mailbox address	

<p>Have the best interests of the child been considered, identified and recorded in accordance with the UNCRC?</p> <p>If not, these must be considered, identified and recorded in the case directory immediately.</p>	Yes/No
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Section 3: to be completed by SCRA

SCRA Point of Contact	
Telephone	
Email mailbox address	
SCRA Child ID number	
Is the child currently on a Compulsory Supervision Order? (include brief outline of measures)	
If the child has a social worker or lead professional, please provide their name, email address and phone number.	
Is the Children's Reporter aware of any view(s) expressed by the child about this joint report? If so, please outline those views. (NB: The Reporter should not seek the child's views)	
Can the needs and behaviour of the child be addressed within the	

<p>Children’s Hearing System more appropriately and effectively than in the Criminal Justice System?</p> <p>(Outline brief reasons – less justification is required if the presumption that the child is to be referred to the Reporter is followed)</p>	
<p>Does the reporter request a telephone discussion? Provide brief reason if answer is yes.</p>	<p>YES/NO</p>

Notes:

1. This template for sharing information in a jointly reported case is designed to be used by both COPFS and SCRA, regardless of which agency completes it first.
2. Whichever agency receives the template, they should complete their own section and return it to the other within 5 working days.
3. **When COPFS decides which agency should deal with the jointly reported case, this decision must be communicated to SCRA in writing.**

Jointly Reported Case – Information Sharing Template Form

Once the Prosecutor Fiscal has made a final decision in relation to the case, they **MUST** inform SCRA of the final decision, **in writing**, or keep SCRA updated if there is a delay over 45 days.

Section 1: Case details – to be completed by either COPFS or SCRA

Name of Child	
Age of Child at Date of Report	
Date of birth	
Charges	
Date Joint Report Received	
Agency Reference (i.e., SPR number)	
PF Reference number	

Section 2: to be completed by COPFS

PF Reference number	
COPFS Point of Contact	
Telephone	
Email mailbox address	
Have the best interests of the child in terms of the UNCRC rights been considered, identified and recorded? Yes/No	
If not, these must be considered, identified and recorded in the case.	

Section 3: To be completed by the Reporter and returned within 5 working days of receipt:

SCRA Point of Contact	
Telephone	
Email mailbox address	
SCRA Child ID number	
Questions to be answered (or N/A where they do not apply)	Name and date
1. Is the child currently on a supervision order? If so, what are the terms and the current end date of the order?	
2. Is there an upcoming Children's Hearing arranged for the child? If so, what is the purpose of the hearing?	

3. Is there an open referral to the Children's Reporter where a decision has not yet been made? If so, what is the nature of that referral?	
4. If the child has a social worker or lead professional, please provide their name, email address and phone number.	
5. Are any services currently working with the child in relation to the child's offending behaviour and offending related needs? If so, advise the extent of the child's engagement with such services.	
6. Details of any additional services or programmes that may become involved with the child in relation to the alleged offending behaviour.	
7. Details of possible decisions that a Children's Hearing may make (if one is arranged): [NB this is in addition to the general decision-making powers described in section 2 of Appendix 3 of the Joint Agreement]	
8. Any other relevant information about the child (such as any context to the alleged offence and background of the child):	
9. Can the needs and behaviour of the child be addressed within the Children's Hearing system more appropriately and effectively than in the criminal justice system? Please outline the reasons for this.	

<p>10. Is the Children's Reporter aware of any view(s) expressed by the child about this joint report? If so, please outline those views. (NB: The Reporter should not approach the child seeking their views)</p>	
<p>11. If this case is referred to the Children's Reporter:</p> <ul style="list-style-type: none"> • Anticipated timescale for a decision on whether to arrange a Children's Hearing; • Anticipated timescale for a Children's Hearing if one is arranged. 	
<p>12. Does the Reporter request a telephone discussion with the Procurator Fiscal? Provide brief reason if the answer is yes. .</p>	