

Practice Direction 32

Information for Victims of Children's Conduct

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SUMMARY

Victims of offences committed by children aged 12 or over

- Where it relates to the conduct of children aged 12 or over, a victim is a person against whom an offence appears to have been committed. This is to be interpreted in a liberal manner, recognising that an offence can be committed against a person even though they are not named in the formal charge.
- The power to provide information to a victim arises when the reporter has received either:
 - a referral that suggests a child has committed an offence, or
 - a remit of a case from the criminal court and is required to arrange a children's hearing to dispose of a child's case where they have pled guilty to or been found guilty of an offence.
- The Principal Reporter can provide information to a victim about the outcome of the referral (so far as it relates to the victim's offence). When such a referral is received:
 - The Victim Information Service (VIS) is to identify the victim from information received from Police Scotland or the Scottish Courts and Tribunal Service.
 - In writing advising of the receipt of the referral to the child who has been referred and any relevant persons, the reporter is to include in the letter the standard paragraph that informs them that SCRA usually writes to the victim offering them the option to be told the Reporter's decision.
- In situations where the Principal Reporter may provide information to the victim about the action taken in relation to the offence, the VIS is to write to the victim to give them an opportunity to request information about the action taken in relation to the offence. The VIS is only to do so if satisfied that:
 - It would not be detrimental to the best interests of the referred child to do so, or
 - It is appropriate to do so in the circumstances of the case.
- The Principal Reporter can provide to a victim information about:
 - the reporter's final decision on whether or to arrange a children's hearing, and
 - the final outcome when a children's hearing is arranged.

In practice this will be done by the VIS.

Victims of the conduct or behaviour of children aged under 12

- Where it relates to the conduct of children aged under 12, a victim means anyone who has been harmed by the behaviour of such a child if that behaviour is:
 - Physically violent,
 - Sexually violent or sexually coercive,

- Dangerous, threatening or abusive.
- In some situations when a child aged under 12 has caused harm to someone and has been referred to the reporter, the Principal Reporter can provide information to the victim about the outcome of the referral (in so far as it relates to the behaviour that harmed the victim).
- The Principal Reporter can provide to a victim information about:
 - the reporter's final decision on whether or to arrange a children's hearing, and
 - the final outcome when a children's hearing is arranged.

In practice this will be done by the VIS.

- The decision on whether to provide that information in any case involves the Principal Reporter making 3 separate decisions:
 - **Decision 1**
Whether the Principal Reporter has a referral that includes information that the child under 12 acted or behaved in a way that is:
 - physically violent,
 - sexually violent or sexually coercive, or
 - dangerous, threatening or abusive, *and* causes harm to another person (i.e. the victim).
 - **Decision 2**
Whether the Principal Reporter is satisfied it would not be detrimental to the best interests of the child (or any other child) to provide the information to the victim.
 - **Decision 3**
Whether the Principal Reporter is satisfied it would be appropriate in the circumstances of the case to provide the information (in deciding this, the Principal Reporter is to consider factors including the seriousness of the action or behaviour, and the effect that the action or behaviour had on the victim).
- Unlike the decisions in relation to victims of the offences of children aged 12 or over, it is the reporter considering the referral of the child who will make these 3 decisions. The reporter is to make Decision 1 when deciding what initial action to take in relation to the referral, but is to make Decisions 2 and 3 when making a final decision. In making Decisions 2 and 3, the reporter is to make them in consultation with a Senior Practitioner or Locality Reporter Manager.
- In making all 3 decisions, the reporter is take into account the information available through the 'normal' decision making process for the child referred. The

reporter is not to carry out any investigation in order to obtain information to make the 3 decisions about victim information.

- Although the reporter is to make these 3 decisions, the Victim Information Service and not the reporter is to write to the victim. This includes writing to the victim to give them an opportunity to opt in to receive information about the outcome and then writing to them to provide that information.

Obligation to notify a victim under section 68

- When the reporter makes a decision not to arrange a children's hearing for a child, the reporter to notify various people of that decision, including the person who referred the child to the reporter. Therefore, where a victim (or their parent) referred the child, the reporter has an obligation to notify the victim of any decision not to arrange a children's hearing.
- Where someone refers a child to the reporter and the referral relates to them (or their child) being the victim of alleged conduct by the child, the reporter is to contact the Practice Team to agree (along with the Victim Information Service) how best to meet the Principal Reporter's obligations to communicate with the referrer under both section 68 and the victim information provisions.

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1. Introduction

- 1.1 This practice direction provides direction to reporters and SCRA's Victim Information Service about providing information to victims of the conduct and behaviour of children and young people.
- 1.2 The power to provide information to a victim is contained in sections 179A to 179C of the Children's Hearings (Scotland) Act 2011 (the 2011 Act). It was inserted by section 27 of the Age of Criminal Responsibility (Scotland) Act 2019.(the "ACR Act"). The legislation "seeks to balance the best interests of victims (including child victims) and the best interests of the child responsible for the harm, who remains the focus of the referral to the children's hearings system."¹

2. Victims of Offences Committed by Children aged 12 or over

- 2.1 In this section of the practice direction, any reference to a victim means "any person against whom an offence appears to have been committed"². However, where that person is a child³, "victim" also includes any relevant person⁴ in relation to the child. "Any person against whom the offence is committed" is to be interpreted in a liberal manner, recognising that an offence can be committed against a person even though they are not named in the formal charge. For example, where a child is charged with an offence of breach of the peace involving threats aimed at an identifiable person, that person is to be treated as the victim.
- 2.2 There is no requirement that an offence has to have been proved to have occurred before a person can be considered to be a victim. Therefore, a person can be identified as the victim from a police report for the purposes of this section of the practice direction, even when subsequently the reporter's final decision is not to arrange a children's hearing due to there being insufficient evidence of the offence.
- 2.3 The power to provide information to a victim arises when the reporter has received either:
 - a referral that suggests a child has committed an offence, or
 - a remit of a case from the criminal court and is required to arrange a children's hearing to dispose of a child's case where they have pled guilty to or been found guilty of an offence⁵.

¹ Paragraph 121 of the Policy Memorandum on the Age of Criminal Responsibility (Scotland) Bill.

² Section 179A(4)(a)

³ Section 179A(c). A "child" is as defined in the 2011 Act – see appendix 2 of Practice Direction 5 on the Receipt and Registration of Referrals and Receipt of References and Remits

⁴ A "relevant person" is as defined in the 2011 Act – see Practice Direction 3 on Relevant Persons

⁵ Section 179A(1)(a)(i) and (b).

- 2.4 In situations when a child aged 12 or over has allegedly committed an offence, the Principal Reporter can provide information to the victim of the offence about the outcome of the referral or remit (so far as it relates to the victim's offence). When such a referral or remit is received:
- The Victim Information Service (VIS) is to identify the victim from information received from Police Scotland or the Scottish Courts and Tribunal Service.
 - In writing advising of the receipt of the referral to the child who has been referred and any relevant persons, the reporter is to include in the letter the standard paragraph that informs them that SCRA usually writes to the victim offering them the option to be told the Reporter's decision.
- 2.5 If either of the situations in paragraph 2.3 applies, where the victim has requested it, the Principal Reporter may provide information to the victim about the action taken in relation to the offence. The VIS is to write to the victim to give them an opportunity to request information about the action taken in relation to the offence, if satisfied that:
- It would not be detrimental to the best interests of the referred child to do so, or
 - It is appropriate to do so in the circumstances of the case⁶.
- 2.6 The information about the action taken in relation to the offence that the Principal Reporter can provide to a victim is:
- Whether or not a children's hearing was arranged in relation to the offence,
 - If a hearing was not arranged, information about the reporter's final decision in relation to the offence, in particular:
 - whether there was insufficient evidence of the offence,
 - whether a compulsory supervision order was not considered necessary, and
 - whether the child's case was referred to the local authority.
 - If a hearing was arranged, information about the final outcome in relation to the offence, in particular:
 - Whether or not the child is subject to a CSO following a children's hearing that considered the offence in accepted or established grounds,
 - If the referral in relation to the offence was discharged, how it was discharged (whether it was discharged by a children's hearing following the grounds being not accepted, or accepted or established, or whether it was discharged by the sheriff).

⁶ See paragraphs 2.7 – 2.8.

2.7 The Principal Reporter has a discretion about what information to provide to the victim and is able to refuse to provide information where it would be inappropriate to do so. “This enables the Principal Reporter to ensure that any decision to disclose under the statutory provisions balances the needs of the victim and the interests of the child involved.”⁷ In particular, the Principal Reporter may only provide information to a victim if satisfied that:

- To do so would not be detrimental to the best interests of any child, and
- It is appropriate to do so in the circumstances of the case, having regard to:
 - The age of the referred child,
 - The seriousness of the offence,
 - The circumstances in which the offence took place,
 - Any information available on the effect the offence had on the victim, and
 - Any other factors the Principal Reporter considers appropriate.

2.8 Any factor known to the Principal Reporter about the case may be relevant to the decision about whether it is appropriate to provide the information to the victim. It is *always* a relevant factor where the victim is:

- A police officer in the execution of their duty;
- Someone with whom the referred child lives;
- Employed in the residential establishment in which the referred child lives; or
- An organisation or corporate body and not an individual.

In any of these situations, the VIS is to presume it is not appropriate in the circumstances of the case to provide information.

2.9 Where a victim has opted in to receive information, the VIS is to consider the factors in paragraphs 2.7 – 2.8 and decide whether to provide information to a victim about the action taken in relation to the offence.

The VIS will write to the victim to either:

- provide the information in paragraph 2.6, or
- notify the victim that a decision has been made not to provide the information.

2.10 Prior to the final disposal of the referral in relation to the offence⁸, the reporter dealing with the referral is to contact the VIS if they are aware of any information that indicates:

- it would be detrimental to any child to provide the victim with information, or

⁷ Paragraph 121 of the Policy Memorandum on the Age of Criminal Responsibility (Scotland) Bill.

⁸ Whether that be a decision not to arrange a hearing by the reporter or a final disposal by the children’s hearing or sheriff.

- it would not be appropriate in the circumstances of the case to provide the victim with information.

3. Victims of the Conduct or Behaviour of Children aged under 12

3.1 Although the Age of Criminal Responsibility (Scotland) Act 2019 has the result that no child under 12 can commit an offence⁹, the Act recognises that there will still be victims of the conduct of children aged under 12. In so far as it relates to the conduct of children under 12, the policy objective of section 27 of the ACR Act (which inserted the new sections 179A - 179C of the 2011 Act) is “is to ensure that victims of seriously harmful behaviour by those children are still able to receive support and information.”¹⁰ Although it is primarily for other services to ensure such victims receive support, it is the Principal Reporter (through SCRA’s Victim Information Service) that provides information to victims.

3.2 In this section of the practice direction, any reference to a victim means anyone who has been harmed by the behaviour of a child under 12 if it is:

- Physically violent,
- Sexually violent or sexually coercive,
- Dangerous, threatening or abusive¹¹.

However, where that person is a child¹², “victim” also includes any relevant person¹³ in relation to the child victim.

3.3 There is no requirement that the behaviour has to have been proved to have occurred before a person can be considered to be a victim. Therefore, a person can be identified as the victim from for the purposes of this section of the practice direction, even when subsequently the reporter’s final decision is not to arrange a children’s hearing due to there being insufficient evidence of the behaviour.

3.4 In some situations when a child aged under 12 has caused harm to someone and has been referred to the reporter, the Principal Reporter can provide information to the victim about the outcome of the referral (in so far as it relates to the behaviour that harmed the victim).

3.5 The information about the action taken in relation to the behaviour that the Principal Reporter can provide to a victim is the same as can be provided in relation to an offence committed by a child aged over 12:

⁹ Until section 1 of the ACR Act is commenced, a child under 12 can still commit an offence. However, the reporter is not able to arrange a children’s hearing for the child on section 67(2)(j) grounds.

¹⁰ Paragraph 111 of the Policy Memorandum on the Age of Criminal Responsibility (Scotland) Bill.

¹¹ Section 179A(4)(b).

¹² Section 179A(c). A “child” is as defined in the 2011 Act – see appendix 2 of Practice Direction 5 on the Receipt and Registration of Referrals and Receipt of References and Remits

¹³ A “relevant person” is as defined in the 2011 Act – see Practice Direction 3 on Relevant Persons

- Whether or not a children's hearing was arranged in relation to the behaviour,
- If a hearing was not arranged, information about the reporter's final decision in relation to the behaviour, in particular:
 - whether there was insufficient evidence of a section 67 ground relating to the behaviour,
 - whether a compulsory supervision order was considered not necessary, or
 - whether to refer the child's case to the local authority.
- If a hearing was arranged, information about the final outcome in relation to the behaviour, in particular:
 - Whether or not the child is subject to a CSO following a children's hearing that considered the behaviour in accepted or established grounds,
- If the referral in relation to the behaviour was discharged, how it was discharged (whether it was discharged by a children's hearing following the grounds being not accepted, or accepted or established, or whether it was discharged by the sheriff).

- 3.6 Sections 179A – 179C give the Principal Reporter a power to provide the information in paragraph [14] to a victim of the harmful behaviour of a child under 12. The decision on whether to provide that information in any case involves the Principal Reporter making 3 separate decisions:

Decision 1

Whether the Principal Reporter has a referral that includes information that the child under 12 acted or behaved in a way that is:

- physically violent,
 - sexually violent or sexually coercive, or
 - dangerous, threatening or abusive,
- and* causes harm to another person (i.e. the victim).

Decision 2

Whether the Principal Reporter is satisfied it would not be detrimental to the best interests of the child (or any other child) to provide the information to the victim.

Decision 3

Whether the Principal Reporter is satisfied it would be appropriate in the circumstances of the case to provide the information (in deciding this, the Principal Reporter is to consider factors including the seriousness of the action or behaviour, and the effect that the action or behaviour had on the victim).

- 3.7 The reporter considering the referral of the child will make these 3 decisions. The reporter is to make Decision 1 when deciding what initial

action to take in relation to the referral, but is to make Decisions 2 and 3 when making a final decision. In making Decisions 2 and 3, the reporter is to make them in consultation with a Senior Practitioner or Locality Reporter Manager.

- 3.8 In making all 3 decisions, the reporter is take into account the information available through the 'normal' decision making process for the child referred. The reporter is not to carry out any investigation in order to obtain information to make the 3 decisions about victim information.
- 3.9 The Victim Information Service and not the reporter is to write to the victim. This includes writing to the victim to give them an opportunity to opt in to receive information about the outcome and then writing to them to provide that information.
- 3.10 Appendix 1 outlines the process to be followed in relation to children under 12.

Decision 1: Whether the Principal Reporter has a referral that includes information that the child under 12 acted or behaved in a way that is:

- physically violent,
- sexually violent or sexually coercive, or
- dangerous, threatening or abusive,
and causes harm to another person.

- 3.11 In making decision 1, the reporter is to apply the plain meaning of the words involved. The harm caused need not be physical harm.
- 3.12 Although the information about the child's behaviour is likely to have come in a referral from the police, it need not do so. Accordingly if it appears from information received in a referral from any source that the child has caused harm to another person, the reporter is to consider this decision.
- 3.13 If the reporter decides that the child has behaved in one of these ways and has caused harm to another person:
 - The reporter is to notify the Victim Information Service of the referral (the name, date of birth and child ID number of the referred child) including the name, age (if a child) and address of the identified victim (victiminformation@scra.gov.uk). If the child was referred by the victim (or the victim's parent), the reporter is also to notify the Victim Information Service of this (see section 4 below).
 - The reporter is to record in the case notes of the referred child that they have identified a victim and notified the Victim Information Service.

- The Victim Information Service is to record the case in the Service's own records.
- In writing advising of the receipt of the referral to the child who has been referred and any relevant persons, the reporter is to include in the letter the standard paragraph that informs them that SCRA usually writes to the victim offering them the option to be told the Reporter's decision.

Decisions 2 and 3: Whether it would be detrimental to the best interests of the child (or any other child) to provide the information to the victim, and whether it would be appropriate in the circumstances of the case to provide the information

- 3.14 Once the reporter makes a final decision in relation to the referral of the child responsible for the harm, the reporter is to make Decisions 2 and 3 in consultation with a Senior Practitioner or Locality Reporter Manager¹⁴.
- 3.15 The reporter may only decide it would be detrimental to the best interests of the child (or any other child) to provide the information to the victim if there is reliable information that suggests this will be the case. The reporter is not to decide it would be detrimental simply for the reason that the victim will be told the outcome of the referral.
- 3.16 Section 179C(1)(b) says that, in deciding whether it is appropriate in all the circumstances of the case to provide the information to the victim, the Principal Reporter must have regard to:
- the age of the child referred,
 - the seriousness of the child's behaviour towards the victim,
 - the circumstances in which the behaviour took place,
 - the effect that the behaviour has had on the victim and
 - any other factors as the Principal Reporter considers appropriate.
- 3.17 In considering some of these factors:
- The younger the age of the child, the less likely it will be appropriate to provide information to the victim,
 - The more serious the child's behaviour, the more likely it will be appropriate to provide information to the victim, and
 - The more serious the effect of the child's behaviour on the victim, the more harm will be caused to the victim, and therefore the more likely it will be appropriate to provide information to the victim¹⁵.

¹⁴ The Victim Information Team will contact the reporter to remind them to make Decisions 2 and 3 once the final decision is made.

¹⁵ This separate factor recognises that, whilst a child's behaviour towards a victim may be less serious, it can still have a serious effect on a victim. Therefore it may be appropriate in all the circumstances of the case to provide information to such a victim of seriously harmful behaviour by a child, even if the actual behaviour was not so serious.

- 3.18 Any factor known to the reporter about the case may be relevant to the decision about whether it is appropriate to provide the information to the victim. It is *always* a relevant factor where the victim is:
- A police officer in the execution of their duty;
 - Someone with whom the referred child lives;
 - Employed in the residential establishment in which the referred child lives; or
 - An organisation or corporate body and not an individual.

In any of these situations, the VIS is to presume it is not appropriate in the circumstances of the case to provide information.

- 3.19 Having considered all of the relevant factors in paragraph 3.16 – 3.18, the reporter is only to decide it is appropriate in all the circumstances of the case to provide the information to the victim where the person is a victim of seriously harmful behaviour¹⁶.
- 3.20 Once the reporter has made Decisions 2 and 3 in relation to the referral:
- the reporter is to notify the Victim Information Service of these decisions and the reasons for them (victiminformation@scra.gov.uk),
 - The Victim Information Service is to record the decisions and reporter's reasons in the team's own records. No decision or reasons is to be recorded in the case file of the referred child.
- 3.21 Where the reporter has decided that it is appropriate in the circumstances of the case to provide information to the victim, the Victim Information Service is to write to the victim to give them an opportunity to opt in to request the information about the case.
- 3.22 Where a victim has opted in to receive information, the Victim Information Service is to write to the victim to provide the information in paragraph 3.5.
- 3.23 Where the reporter's decision was to arrange a children's hearing in relation to the child's behaviour towards the victim (whether on its own or amongst other factors), there will likely be a delay before the outcome of the children's hearings process is known. Therefore there will likely be a delay in providing the information about the outcome to the victim. As a result, before providing this information to the victim, the Victim Information Team is to contact the reporter to ask whether there is any change in the reporter's view in relation to Decisions 2 and 3. For example, the reporter's view may have changed as a result of information that came to light in the course of proof proceedings in relation to the child's behaviour or at the children's hearing. If the

¹⁶ This recognises the policy objective in paragraph 111 of the Policy Memorandum on the Age of Criminal Responsibility (Scotland) Bill.

reporter's view has changed and, as a result, the Principal Reporter will not provide any information to the victim, the Victim Information Service is to write to the victim to inform them of this.

4. Obligation to Notify a Victim Under Section 68

- 4.1 When the reporter makes a decision not to arrange a children's hearing for a child, section 68(3)(a) requires the reporter to notify various people of that decision (listed in subsection (4)). This list includes the person who referred the child to the reporter. Therefore, where a victim (or their parent) referred the child, the reporter has an obligation under section 68(3)(a) to notify the victim of any decision not to arrange a children's hearing. However, the obligation is only to notify them of the decision *not* to arrange a hearing. Where the decision is to arrange a hearing, there is no power or duty to provide any information to such a referrer.
- 4.2 Where someone refers a child to the reporter and the referral relates to them (or their child) being the victim of alleged conduct by the child, the reporter is to contact the Practice Team to agree (along with the Victim Information Service) how best to meet the Principal Reporter's obligations to communicate with the referrer under both section 68(3)(a) and sections 179A-C.

5. Writing to Victims Where the Victim is a Child

- 5.1 As stated in paragraphs 2.1 and 3.2 above, where a victim is a child¹⁷, the definition of "victim" also includes any relevant person¹⁸ in relation to the child victim. In identifying who the VIS will write to, the following presumptions apply:
- Where the child victim is aged under 12, the VIS will write only to the child's relevant persons with whom the child lives.
 - Where the child victim is aged 12 or over, the VIS will write to the child and the child's relevant persons with whom the child lives.
 - The VIS will identify the child's relevant person solely from the information provided by the person who made the referral to the reporter.

¹⁷ A "child" is as defined in the 2011 Act – see appendix 2 of Practice Direction 5 on the Receipt and Registration of Referrals and Receipt of References and Remits

¹⁸ A "relevant person" is as defined in the 2011 Act – see Practice Direction 3 on Relevant Persons

Appendix 1: Process for information for victims of the conduct or behaviour of children aged under 12

