

**AGREEMENT ON THE SHARING OF
EVIDENCE AND INFORMATION
BETWEEN THE
SCOTTISH CHILDREN'S REPORTER
ADMINISTRATION
THE
CROWN OFFICE AND PROCURATOR
FISCAL SERVICE
AND THE
POLICE SERVICE OF SCOTLAND**



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION



**POLICE
SCOTLAND**

Keeping people safe

INTRODUCTION

1. This Agreement is between the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Children's Reporter Administration (SCRA) and the Police Service of Scotland (the Police).
2. Part 1 sets out the guidance which must be followed in any request from COPFS for information from SCRA.
3. Part 2 sets out the guidance which must be followed in any request from SCRA for information from COPFS.
4. Part 3 of the Agreement sets out guidance which must be followed in any request by SCRA for information from the Police when the Principal Reporter has received a referral of a child. As COPFS often also have an interest in that information, this guidance has been included in this Agreement to which COPFS are also a party. For the avoidance of any doubt, this Agreement does not relate to:
 - The provision of information by the Police to SCRA when referring a child to reporter.
 - Any provision of information by SCRA to the Police.
 - Any exchange of information between COPFS and the Police.
5. This Agreement is intended to enable decisions to be taken at a local level, where possible. Before information is shared by any party, they must be satisfied that the information requested falls within the terms of this Agreement. Any difficulties with the operation of this Agreement which cannot be resolved at a local level or are considered to have implications for national practice should be referred to the Crown Office Policy Division, the SCRA Head of Practice and Policy and/or National Child Protection Policy Support in Police Scotland.

ROLE OF SCRA, THE PRINCIPAL REPORTER AND THE CHILDREN'S HEARINGS SYSTEM

6. SCRA is a national body focused on children most at risk. SCRA was formed under the Local Government (Scotland) Act 1994 and was preserved under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). Their main responsibilities are:
 - to assist and facilitate the work of the Principal Reporter
 - to deploy and manage staff to carry out that work; and
 - to provide suitable accommodation for Children's Hearings
7. The Principal Reporter exercises professional functions in respect of the children's reporter service, matters relating to the referral of children to hearings, organising hearings and responding to appeals before the Sheriff. The functions of the Principal Reporter can be delegated to authorised employees of SCRA and it is this that allows Reporters to act in the name of the Principal Reporter across Scotland.

8. The principal purpose of proceedings in the Children's Hearings System (both in a children's hearing and related court proceedings) is to ascertain what measures of compulsory supervision are necessary in the interests of the child¹. A central element is the participation of the child, their parents and any other adults involved in the child's life ('relevant persons'²).
9. Children's Hearings are conducted in private, with only certain persons (including the child, and 'relevant persons') having a right to attend. Other persons (including professionals working with the family) may be admitted to the hearing at the discretion of the chairing member.
10. Section 179 of the Children's Hearings (Scotland) Act 2011 states that in particular circumstances, the Principal Reporter must provide certain information to COPFS.
11. Section 172 of the Children's Hearings (Scotland) Act 2011 provides a statutory framework for the provision of evidence by the Procurator Fiscal to the Principal Reporter. Section 172(4) of the 2011 Act allows for the prosecutor to refuse to provide the Principal Reporter with the information if it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime, whether the proceedings have been, or are still to be, commenced.
12. When a child is referred to the Principal Reporter, the Police will often have information that is relevant to the referral of the child. This will include situations where the child was referred by the Police as well as situations where the child was referred by someone other than the Police.

PART 1 – REQUEST FOR INFORMATION FROM COPFS TO SCRA

13. This is governed by section 179 of the Children's Hearings (Scotland) Act 2011.

Section 179

(1) *This section applies where:*

- (a) *by virtue of this Act, the Principal Reporter, a children's hearing or the sheriff has determined, is determining or is to determine any matter relating to a child,*
- (b) *criminal proceedings have been commenced against an accused,*
- (c) *the proceedings have not yet been concluded, and*

¹ For example, in the case of *W v Kennedy* 1988 SLT 583, the Inner House of the Court of Session said that "proceedings in front of the sheriff on referral are self-contained civil proceedings sui generis in which it must be borne in mind at all times that the principal purpose is to ascertain what is necessary to be done in the interests of the child".

² As defined in sections 81(3) and 200 of the Children's Hearings (Scotland) Act 2011

(d) the child is connected in any way with the circumstances that gave rise to the proceedings, the accused or any other person connected in any way with those circumstances.

(2) The Principal Reporter must make available to the Crown Office and Procurator Fiscal Service any information held by the Principal Reporter relating to the prosecution which the Service requests for the purpose of -

- (a) the prevention or detection of crime, or*
- (b) the apprehension or prosecution of offenders*

Paragraphs 14 – 33 provide further information on the provisions of section 179.

“The Principal Reporter, a children’s hearing or the sheriff has determined, is determining or is to determine any matter relating to a child”

14. The matters which may be determined include:

- (i) Proceedings in relation to Child Assessment Orders and Child Protection Orders under Part 5
- (ii) Investigation and Referral to a Children’s Hearing by the Principal Reporter under Part 6
- (iii) Pre-hearing Panel determinations under Part 8
- (iv) Determinations of Children’s Hearings under Parts 9, 11, 12 and 13
- (v) Proceedings before a Sheriff under Part 10
- (vi) Appeals under Part 15.

The matters which may be determined can include past situations (including proceedings under the Children (Scotland) Act 1995), for example where the sheriff found the grounds for referral not to be established and the child is not subject to any order.

“Criminal proceedings have been commenced against an accused”

15. Criminal proceedings can relate to both summary and solemn prosecutions.

16. Summary proceedings will normally commence on the service of a citation or the calling of the complaint

17. In cases where an initiating warrant is obtained under section 136 of the Criminal Procedure (Scotland) Act 1995, proceedings are deemed to have commenced on the date the warrant to apprehend or to cite the accused is granted, provided the warrant is executed without undue delay.

18. Solemn proceedings normally commence on the date of whichever of the following happens first:
- (i) the grant of the petition warrant to arrest and commit the accused;
 - (ii) the intimation of a petition; or
 - (iii) service of an indictment

“The proceedings have not yet been concluded”

19. Proceedings will be deemed to be concluded on any of the following events:
- (i) a plea of guilty is recorded against the accused;
 - (ii) the accused is acquitted and all appeals are exhausted;
 - (iii) the proceedings against the accused are deserted simpliciter³;
 - (iv) the accused is convicted and all appeals are exhausted;
 - (v) the proceedings are deserted pro loco et tempore⁴ and a decision is taken that no further proceedings are appropriate;
 - (vi) for any reason and no further trial diet is appointed; or
 - (vii) the indictment or the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation

“The child is connected in any way with the circumstances that gave rise to the proceedings, the accused or any other person connected with those circumstances”

20. This is a broad provision and will include situations where the child is a witness in any criminal prosecution. It will also cover situations where the child is not a witness, but is otherwise connected to the circumstances which give rise to the prosecution. This will include situations where the child was involved in the commission of the offence, including when they are an accused.

21. The provision will also apply where the child is not a witness, nor connected to the circumstances of the case, but is connected to the accused or any other person involved in the case (including any other person on the list of witnesses). This is not restricted to situations where the child is related to the accused or other person.

“Any information held by the Principal Reporter”

³ To bring prosecution for a crime or offence on indictment or summary complaint to an end without the facts being determined.

⁴ Without place and time.

22. Section 179(2) of the 2011 Act applies to information that is held by the Principal Reporter. The Principal Reporter holds information about a child that relates to the investigation of the referral of the child, any children's hearing for the child and any proof and appeal proceedings in relation to the child.
23. Although records of proceedings of a children's hearing are made, these only record basic details about who attended, the responses to the statement of grounds, the purpose of the hearing and the hearing's decision – these are not formal minutes of the hearing. Proof proceedings are similar to summary criminal procedure in nature and are only recorded and transcribed in very limited circumstances. Furthermore, case information will normally be destroyed when the child reaches 18 years old.
24. Some of the information held by the Principal Reporter may be relevant to the prosecution of an individual. Examples of such information include:
- information about particular vulnerabilities of a witness;
 - details of expert witnesses who have provided reports obtained by the reporter during the investigation of the referral, a children's hearing or proof proceedings;
 - lines of argument used by agents acting for the relevant person, where that person is also the accused in related criminal proceedings;
 - a precognition of a child witness;
 - information about any significant events relating to evidence in the proof proceedings where the evidence was provided by COPFS in terms of section 172 of the Children's Hearings (Scotland) Act 2011 (e.g. if the accused denied that an article of clothing belonged to them, or challenged a document);
 - information about the relevant person in the event of a prosecution under section 73(4) of the Children's Hearings (Scotland) Act 2011 – failure to attend at a hearing.

This is not an exhaustive list.

“For the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders”

When will the Reporter routinely provide the information requested?

25. Although section 179 provides a duty on the Principal Reporter to provide information to COPFS in these circumstances, there is the danger that if evidence of what has occurred during the proceedings under the 2011 Act is to be routinely made available and used in subsequent prosecutions, then there will be significant implications for the participation of the child, their parents and other relevant persons. The information available to Children's Hearings and the quality of the

families' engagement with the process may be affected, resulting in a less effective outcome for the child.

26. Therefore, before any information is provided under this Agreement, it must be established why the information is being requested. In every request for information the prosecutor should clearly specify:

- the type of information being sought (e.g. witness statement of 'X', details of the expert who provided a report on the child 'Y' etc.);
- the reason(s) why the information is being sought, including reference to how it will assist in the prevention or detection of crime or the apprehension or prosecution of offenders; and
- whether there are any implications for the rights of the child or others under the European Convention of Human Rights (for example, the right to respect for private and family life under Article 8); and
- why the provision of information is necessary in the public interest.

A style form for the request of such information is attached at Annex A.

27. It is envisaged that the information sought will be specific information to assist with the preparation of criminal trials and inform the decision making of the prosecutor. This may include the following:

- to obtain information about the vulnerability of witnesses, to establish whether the use of special measures may be appropriate;
- to establish whether appropriate measures are now in place to protect a child;
- to facilitate enquiries with expert witnesses on a particular line of evidence;
- to establish whether there are any further lines of enquiry that should be pursued by the police;

Again, this list is not exhaustive. However, prosecutors must be aware of the rule against hearsay which would render statements by witnesses inadmissible.

28. Particular caution must be exercised in the request for any information about what was said at a Children's Hearing for the purposes of using it as evidence in a criminal prosecution. This includes any statement by a potential accused, which might otherwise be admissible as a statement against interest. As a general rule, it is not desirable that evidence of what was said at a Children's Hearing should be utilised in a criminal trial, unless there are exceptional circumstances. The same concerns arise in relation to an acceptance of a statement of grounds prior to any proof proceedings. Any requests for such information should be submitted to Policy Division at Crown Office and thereafter Crown Counsel's Instructions will be obtained.

29. When the prosecutor requests any information, the reporter must consider why the information is being requested. This will include consideration of the factors referred to in paragraph 26 above. If the reporter considers that the implications for the Convention rights of the child or others, or the implications for engagement in the hearings process, are such that they outweigh the reasons why the information is sought, then the matter should be referred to the Crown Office Policy Division and/or the SCRA Head of Practice and Policy. However, unless there are exceptional circumstances, the information set out in paragraph 24 should normally be provided.
30. If the information sought is about a named individual, the material may be redacted by the reporter to remove details about a third party where the information about the third party is not relevant to the request by COPFS.

Requests from Defence

31. The Crown has a legislative duty to disclose to the defence all material information for or against an accused. This means the Crown must consider for disclosure *all* relevant information obtained in the course of an investigation and any criminal proceedings and ensure that all material information, namely information which:

- (a) would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused,
- (b) would materially strengthen the accused's case, or
- (c) is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused⁵,

is disclosed to the defence.

32. For disclosure purposes, 'information' means material of any kind **given to or obtained by the prosecutor** in connection with the proceedings. In appellate proceedings the definition of 'information' includes material given to or obtained by the prosecutor in connection with the appellate proceedings and the earlier proceedings to which the appellate proceedings relate. There may be situations where the accused believes that the reporter holds information, which they would wish to use for the purposes of preparing their defence. If the prosecutor already has this information, (whether through section 179 or otherwise), then the Crown's disclosure obligations must be considered in relation to that information. This will include a consideration of the materiality test, referred to above.

⁵ Section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010

33. If the prosecutor is **not** in possession of this information, there should be an assessment as to whether or not the information requested is relevant and material. If the information is relevant and material and is held by SCRA, the prosecutor is to request it in terms of this Agreement. If the information is not relevant and material there is no obligation on the prosecutor to obtain this from the reporter. A robust approach should be adopted by COPFS in relation to defence requests for information, to avoid inappropriate use of section 179. The correct procedure is for the defence to apply to the Court for an order granting commission and diligence or an order for the recovery of documents.

PART 2 - REQUEST FOR INFORMATION FROM SCRA TO COPFS

34. Section 172 of the Children's Hearings (Scotland) Act 2011 states:

Section 172

(1) *This section applies where an application is made to the sheriff-*

- (a) *to determine whether a section 67 ground is established, or*
- (b) *to review a grounds determination.*

(2) *The Principal Reporter may request a prosecutor to give the Principal Reporter evidence held by the prosecutor in connection with the investigation of a crime or suspected crime if the Principal Reporter considers that the evidence might assist the sheriff in determining the application.*

(3) *The request may relate only to evidence lawfully obtained in the course of the investigation.*

(4) *The prosecutor may refuse to comply with the request if the prosecutor reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime (whether or not the proceedings have already commenced)*

When does section 172 apply?

35. Section 172(1) provides that where an application has been made to the sheriff by the Principal Reporter under section 67 of the Act ("proof proceedings"), or an application has been made to review any grounds determination under section 110 of the Act (a "section 110 application"), the Principal Reporter may request any prosecutor to supply evidence held by them. Section 172 does not, therefore, apply at the investigative stage of proceedings by the reporter. Section 63 of the Act also states that the Lord Advocate may direct the prosecutor to provide information to the Reporter, even when a request for information has not been made.

What does 'evidence' mean?

36. Section 172 refers to evidence lawfully obtained in the course of, and held by the prosecutor in connection with, the investigation of a crime or suspected crime. The evidence is 'held by the prosecutor' once a report has been submitted to the prosecutor even if it is not physically in the possession of the prosecutor. Although evidence held by the police before a report has been submitted to the prosecutor is not covered by section 172 it is addressed in this Agreement in paragraphs 45 and 70. 'Evidence' in a general legal context means the testimony of witnesses, and documents and articles which go to proving alleged facts. The most common types of evidence likely to be the subject of section 172 requests are;

- medical and forensic science reports
- articles of clothing
- weapons
- plans and maps
- birth certificates
- recorded confessions

37. Where a statement is recorded in writing, DVD or in a media file, these sources and oral evidence from the interviewer are equally primary evidence. In addition to the name of the relevant police officer, copies of recorded police interviews with the accused will be made available by prosecutors to reporters, provided they contain relevant material e.g. incriminating statements, or details of a substantive defence. If the recording has been transcribed, a copy of the transcript will also be provided. Copies of witness statements taken by the police and copies of DVD or media file recordings of joint investigative interviews of witnesses will not normally be supplied by the prosecutor, as these will be provided by the police directly to the reporter in terms of Part 3 of this Agreement⁶. It will always be open to the reporter to cite the relevant witness to give oral evidence.

38. Evidence does not include precognitions which are confidentially held by the prosecutor and which are generally not admissible in criminal proceedings. It has been agreed, however, that copy precognitions of child victims will normally be made available on a confidential basis. It must be stressed that **no attempt should be made by reporters to lodge precognitions as productions in proceedings before the sheriff**. Although proof proceedings and a section 110 application come within the meaning of civil proceedings for the purposes of the Civil Evidence (Scotland) Act 1988, the definition of a statement **does not** extend to a statement in precognition form and, accordingly, precognitions are not admissible as hearsay evidence in the proceedings in terms of Part 10 of the above act.

Are there any qualifications as to the nature of the evidence which can be supplied?

39. The evidence must be evidence which might assist the sheriff in determining an application to determine whether section 67 is established or to review a ground. It will be for the reporter to make that preliminary assessment. Prosecutors should also have regard to this test when considering requests. The fact that a reporter has not requested a specific piece of evidence (of which the reporter may have no knowledge) should not prevent a prosecutor alerting the reporter to the existence of evidence which may, in their judgement, assist the sheriff in proceedings under the 2011 Act.

⁶ In relation to the joint investigative interviews of children see the Scottish Government's "[Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland](#)".

40. The request by the reporter must be made in writing and must confirm that an application has been made to the sheriff. To ensure that all relevant factors are covered, a style request is attached at Annex B. This will also be used as a receipt and will specify the date by which the items must be returned.

How should the prosecutor deal with a request under section 172?

41. The prosecutor should comply with such a request **unless** it is reasonably believed that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime. Proceedings need not have been commenced to justify refusal, but a decision should have been made to proceed. It will be reasonable for the prosecutor to retain evidence where:

- a trial is due to commence imminently
- evidence requires to be forensically or otherwise examined, analysed or inspected
- evidence is required for precognition purposes
- releasing it would create a risk to the public, or to the security or integrity of the evidence
- releasing it would prejudice the accused's right to inspect the evidence (section 68 of the Criminal Procedure (Scotland) Act 1995)
- the accused is to examine the productions as part of the Crown's disclosure obligations

This list is not exhaustive.

42. In most situations, proof proceedings will take place prior to a criminal trial in relation to the same subject matter. The authority for this is summarised in annex E. Evidence should not be withheld by the prosecutor purely to prevent this from occurring.

43. In most proof proceedings and section 110 applications, a copy of the evidence or a photograph will be sufficient for the reporter's purposes. If the reporter requests copies or photographs of the evidence, the prosecutor will provide them to the reporter, unless the prosecutor considers that doing so may be prejudicial to an ongoing investigation. If the copies or photographs are not provided to the reporter by the prosecutor, the matter should be referred immediately to the Crown Office Policy Division and the SCRA Head of Practice and Policy.

What happens when the evidence is returned to the prosecutor?

44. The prosecutor should acknowledge receipt of the evidence. If the items handed over have been altered in any way, the reporter must bring this to the attention of the prosecutor, explain how it occurred and give details of any relevant witnesses.

What happens in cases which fall outwith the terms of section 172?

Before the case has been reported to the prosecutor

45. Where evidence is being held by the police in connection with the investigation of a crime which has not yet been reported to the prosecutor, any request for access to such evidence should be intimated to the police **and** the prosecutor. The police should then provide the prosecutor with an interim report containing such information about the investigation and the evidence as will enable the prosecutor to decide whether section 172 is likely to apply in the future, and what should be done with the request in the interim. If the police are likely to report the matter to the prosecutor procedures similar to those detailed above in paragraphs 35-44 should be applied. Where proceedings are not likely, the prosecutor can authorise the police to deliver the productions to the reporter. However, this paragraph will not apply where copies or photographs of the evidence will be sufficient for the reporter's purposes. In these situations the reporter should request the copies and/or photographs from the police in terms of Part 3 of this Agreement without intimating the request to the prosecutor.

Before an application has been made to the sheriff

46. Request for evidence by the reporter before an application to the sheriff (i.e. at the investigative stage of proceedings by the reporter) should be dealt with on a case by case basis by the local prosecutor. In most situations it should be sufficient for the reporter to have access to the evidence at the Procurator Fiscal's Office, without it being physically handed to them. However, this paragraph will not apply where copies or photographs of the evidence will be sufficient for the reporter's purposes. In these situations the reporter should request the copies and/or photographs from the police in terms Part 3 of this Agreement without intimating the request to the prosecutor.

After the conclusion of a case reported to the prosecutor

47. A request for access to evidence in cases that have been marked by the prosecutor for a non-court disposal, or where the criminal proceedings have concluded⁷, should be made to the prosecutor to enable the prosecutor to issue the necessary authorisation to the

⁷ This is only likely to arise where the criminal proceedings have not resulted in a guilty verdict.

police. It should be borne in mind that the police may dispose of evidence, or return it to its owner, upon the non-court decision being made by the prosecutor or the conclusion of criminal proceedings. In order to prevent this disposal of the evidence when it may still be required by the reporter, the procedure in paragraph 82 is to be followed. Evidence will be retained where cases are marked 'no action meantime', a common marking in uncorroborated child abuse cases. However, this paragraph will not apply where copies or photographs of the evidence will be sufficient for the reporter's purposes. In these situations the reporter should request the copies and/or photographs from the police in terms of Part 3 of this Agreement without contacting the prosecutor.

Evidence lodged with the Sheriff Clerk or Clerk of Justiciary

48. Requests for evidence which have been lodged with the court by the prosecutor in anticipation of a trial are unlikely to be granted. However, if access to the evidence is considered essential, the matter should be discussed with the prosecutor in order that consideration may be given to an application to the court for temporary release of the evidence. Where the trial has been concluded and the productions are still held by the Court, requests should be made to the relevant clerk of court.

Evidence of a child or vulnerable witness taken by a commissioner

49. In relation to a trial, the evidence of a vulnerable witness (whether or not they are a child witness) may be taken by a commissioner as a special measure. The recording of this evidence is not "evidence held by the prosecutor" in terms of section 172 and so cannot be provided to the reporter by the prosecutor. Any request by the reporter for a copy of the recording should be made to the court hearing the trial. Before contacting the court, the reporter should contact the prosecutor to make them aware of the reporter's request. The prosecutor should support the reporter's request unless there are particular reasons in the circumstances of the case why they should not do so.

Security of the evidence and Disclosure

50. When the reporter has received evidence from the prosecutor, the reporter must:

- comply with any conditions set out by the prosecutor in Annex B,
- ensure the evidence is not altered, contaminated or damaged, and
- retain the evidence securely until it is lodged in court.

Although the reporter may provide copies of items in terms of their disclosure requirements (see paragraph 51 below), the reporter must not provide the principal evidence to any party or their representative or to any expert instructed by the reporter or any party. The reporter may only disclose such evidence, and may only provide it to any expert, by

providing access to it whilst retaining it in the reporter's possession. If a party or expert requires custody of the evidence in order to carry out further investigations, the reporter is to refer this request to the prosecutor.

51. In terms of their disclosure requirements, the reporter may be required to disclose the evidence to other parties. This includes both physical evidence and the evidence contained in copies of statements and other documents. The reporter may disclose the evidence either by providing a copy of the evidence or providing access to it. Whether or not such evidence is disclosed, and the manner in which it will be disclosed, will normally be a matter for the reporter (subject to paragraph 50 above). However, in exceptional circumstances where such an approach may not be appropriate (for example, where there is the possibility that disclosure may prejudice an ongoing investigation or prosecution), the prosecutor, Police and reporter are to meet at an operational level to agree the approach to be taken.

PART 3: REQUEST FOR INFORMATION FROM SCRA TO THE POLICE

Relevant Law

52. Sections 61 and 66 of the Children's Hearings (Scotland) Act 2011 provide the authority for the Police to provide information to the reporter.

53. Section 61 states:

Section 61

(1) This section applies where a constable considers—

(a) that a child is in need of protection, guidance, treatment or control, and

(b) that it might be necessary for a compulsory supervision order to be made in relation to the child.

(2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.

54. Section 66 states:

Section 66

(1) This section applies where –

(a) the Principal Reporter receives [information about a child from various sources], or

(b) it appears to the Principal Reporter that a child might be in need of protection, guidance, treatment or control.

(2) The Principal Reporter must determine—

(a) whether the Principal Reporter considers that a section 67 ground applies in relation to the child, and

(b) if so, whether the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.

...

(3) The Principal Reporter may make any further investigations relating to the child that the Principal Reporter considers necessary.

Situations where the reporter may require information from the Police

55. When a child is referred to the reporter, there are 4 principal situations when the reporter may require information from the Police.

56. Situation 1: when the Police have referred a child to the reporter as a result of the child allegedly committing an offence and have submitted a standard prosecution report. In this situation, the reporter may

require principal copies of witness statements and other productions referred to in the standard prosecution report⁸.

57. Situation 2: when the reporter has received a referral of a child and the prosecutor has, or is likely to have, an interest in the case in relation to an accused person. This will be as a result of the Police having reported an accused person to the prosecutor (whether or the not the case has been concluded) or the Police being likely to report an accused person to the prosecutor but having not yet done so. In this situation the reporter may require copies of witness statements and copies or photographs of other evidence.⁹ There may be occasions where a photograph or copy of other evidence is not sufficient, in which case the reporter will require to make the request to COPFS and Part 2 of this Agreement will apply.

58. Situation 3: When the reporter has received a referral of a child following an investigation by the Police but there is no report to the prosecutor and is not likely to be one. This may be because no accused has been identified or no crime has been identified. In this situation the reporter may require copies of witness statements and copies or photographs of other evidence¹⁰. There may also be occasions where a photograph or copy of other evidence is not sufficient.

59. Situation 4: When the reporter has received a referral of a child and requires information held by the police that is relevant to the referral of the child. Examples of this may be previous Child Concern Reports in relation to a child, previous standard prosecution reports in relation to an adult who has contact with the child, previous convictions for offences such as schedule 1 offences or domestic abuse offences of an adult who has contact with the child.

Situation 1 – Child accused reported to Reporter as a result of committing offence

60. The reporter must make any request to the Police in writing. To ensure that all relevant factors are covered, a style request is attached at Annex C.

⁸ In such a situation, the criminal rules of evidence and the criminal standard of proof apply to the reporter's decision on whether a section 67(2)(j) ground applies in relation to the child.

⁹ In such a situation the civil rules of evidence and the civil standard of proof apply to the reporter's decision on whether a section 67 ground applies in relation to the child.

¹⁰ In such a situation the civil rules of evidence and the civil standard of proof apply to the reporter's decision on whether a section 67 ground applies in relation to the child.

61. If the prosecutor has no involvement in the case as there are no adult co-accused, the Police will provide to the reporter any witness statements, productions or other relevant information requested.
62. If the prosecutor has an involvement in the case as there is an adult co-accused, the Police will provide to the reporter copies of any witness statements or other relevant information and photographs of any production as requested by the reporter. If copies are not sufficient, the reporter is to address any request for the evidence to the prosecutor under Part 2 of this Agreement.
63. Prior to any proof hearing taking place, the reporter and the Police may agree that the Police will retain possession of any particular production and will provide appropriate access to the reporter. If the solicitor for a party to the proof requires access to a production, the solicitor is to contact the reporter who will arrange with the Police for the solicitor to have access to the production.
64. If the reporter requires a transcript of an interview of a child accused, this will be prepared by SCRA. The reporter will return the draft transcript to the reporting officer who will confirm the accuracy of the transcript prior to returning it to the reporter.
65. If the reporter requires a transcript of a visually recorded interview of a witness, the reporter will request this from the Police. The Police will prepare this at the request of the reporter.
66. If the reporter requires any evidence to be forensically analysed, the reporter will contact the reporting officer and request that the item/s concerned is forwarded for forensic analysis. Where there is an associated prosecution, for example proceedings against an adult co-accused, the prosecutor will arrange forensic analysis of evidence as deemed appropriate and the results will be shared with the reporter. Should the prosecutor not require to analyse specific evidence for the purposes of the associated prosecution but the reporter considers it necessary to do so, the reporter will contact the prosecutor and request that the item/s concerned be forwarded for forensic analysis.
67. When the reporter requires a production for a proof hearing, the reporter is to agree with the Police the required arrangements. These may take the form of either:
- The Police retain possession of the production and the relevant police officer brings the production to court when cited to attend the proof hearing as a witness, or
 - The Police provide the reporter with the production in advance of the proof hearing and the reporter transports the production to court for the proof hearing.

In all situations the production must be kept securely, with its integrity being maintained. Nothing should be done to alter, contaminate or damage the evidence. At the conclusion of the proceedings, the reporter will return the production to the Police who will dispose of it in terms of the Joint Protocol between Police Scotland and SCRA on the Disposal of productions in cases reported to the Children's Reporter.

Situation 2 - Accused reported to the prosecutor (or the Police are likely to do so)

68. The reporter must make any request to the Police in writing and must send a copy to the prosecutor. To ensure that all relevant factors are covered, a style request is attached at Annex C.
69. If the Police have reported the case to the prosecutor and the Police investigation is concluded, the Police will provide to the reporter any copies of standard prosecution reports, witness statements and copies or photographs of any productions or other relevant information that are requested by the reporter. In an exceptional or sensitive case, if the Police consider that a copy or photograph of any item should not be provided to the reporter, the Police may consult the prosecutor prior to doing so. The matter is to be referred immediately to the Crown Office Policy Division, the Head of Practice and Policy at SCRA and the National Child Protection Policy Support at Police Scotland (who will liaise with the relevant Divisional Public Protection Unit lead) if the Police do not provide an item to the reporter (whether as a result of the Police consulting with the prosecutor or the prosecutor having received a copy of the reporter's request).
70. If the Police have not yet reported the case to the prosecutor, or have reported the case but the Police investigation is not concluded, the Police will provide to the reporter any copies or photographs of witness statements, productions, or other relevant information that are requested by the reporter, unless the police consider that doing so may be prejudicial to an ongoing investigation. In considering the request from the reporter, the Police may consult with the prosecutor. The matter is to be referred immediately to the Crown Office Policy Division, the Head of Practice and Policy at SCRA and the National Child Protection Policy Support at Police Scotland (who will liaise with the relevant Divisional Public Protection Unit lead) if the Police do not provide an item to the reporter (whether as a result of the Police consulting with the prosecutor or the prosecutor having received a copy of the reporter's request).
71. If the Police have reported the case to the prosecutor, and the proceedings have concluded, the Police will provide to the reporter any copies or photographs of witness statements, productions, or other relevant information that are requested by the reporter.

72. If the reporter requires a transcript of a visually recorded interview of a witness, the reporter will request this from the Police. The Police will prepare this at the request of the reporter.
73. If the reporter requires the principal of any production after the Police have reported the case to the prosecutor, the reporter is to address any request for the evidence to the prosecutor under Part 2 of this Agreement.
74. If the reporter requires the principal of any production and the Police have not yet reported the case to the prosecutor, the reporter is to intimate the request to the police and PF in terms of paragraph 45 in Part 2 of this Agreement.
75. If the reporter requires the principal of any production and the proceedings have concluded, the reporter is to address any request for the evidence to the prosecutor under paragraph 47 of Part 2 of this Agreement.
76. If the reporter requires any evidence to be forensically analysed, the reporter must inform the prosecutor of this in writing before contacting the reporting officer and requesting that the item concerned forensically analysed. This is to enable the prosecutor to consider whether there are any issues relating to the request for analysis that may impact upon a prosecution and to discuss accordingly with the Reporter.

Situation 3 - No report to the prosecutor (and the Police are not likely to do so)

77. The reporter must make any request to the Police in writing. To ensure that all relevant factors are covered, a style request is attached at Annex C.
78. The Police will provide to the reporter any witness statements, productions or other relevant information requested by the reporter.
79. If the reporter requires any evidence to be forensically analysed, the reporter will contact the reporting officer and request that the item/s concerned is forwarded for forensic analysis.
80. If the reporter requires a transcript of a visually recorded interview of a witness, the reporter will request this from the Police. The Police will prepare this at the request of the reporter.

Situation 4 - Reporter requesting information relevant to referral of child

81. The reporter must make any request to the Police in writing. In making the request, the reporter is to explain why the information is being sought and why the reporter considers it is relevant and proportionate for the reporter to obtain it. To ensure that all relevant factors are covered, a style request is attached at Annex C.

82. If the Police consider that the information sought is relevant and proportionate, the Police will provide the information to the reporter. The Police will only provide information that could potentially be led as evidence in court proceedings by the reporter. The Police and the reporter may engage in discussion regarding whether the information sought is relevant and proportionate. If there is disagreement regarding this, the matter is to be referred to Head of Practice and Policy at SCRA and the National Child Protection Policy Lead at Police Scotland.

Reporter's interest in evidence after the conclusion of a case reported to the prosecutor

83. When a case reported to the prosecutor is concluded, the prosecutor will normally instruct the Police to dispose of the evidence in the case. Where the reporter also had an interest in the case (for example because a child victim of the accused has been referred to the reporter), the reporter may require the evidence at some stage in the reporter's proceedings. In order to prevent the disposal of the evidence when it may still be required by the reporter, the reporter should complete the form in Annex D. This form should be forwarded to the reporting officer in the case. On being notified of the reporter's interest in the evidence, the reporting officer will liaise with the relevant Productions Department to ensure that the evidence is held accordingly and not destroyed or disposed of. If not already recorded as such the item(s) concerned should be listed as a production on the relevant Police Scotland system highlighting that the item(s) relates to a SCRA request.

Security of the evidence and Disclosure

84. Paragraphs 85 and 86 apply where the prosecutor has an interest in the case for any reason. If the prosecutor does not have any interest in the case, the reporter will deal with the evidence in accordance with their own Practice Direction.

85. When the reporter has received evidence from the police, the reporter must:

- ensure the evidence is not altered, contaminated or damaged, and
- retain the evidence securely until it is lodged in court.

Although the reporter may provide copies of items in terms of their disclosure requirements (see paragraph 85 below), the reporter must not provide the principal evidence to any party or their representative or to any expert instructed by the reporter or any party. The reporter may only

disclose such evidence, and may only provide it to any expert, by providing access to it whilst retaining it in the reporter's possession. If a party or expert requires further access to the evidence, the reporter is to refer this request to the prosecutor.

86. In terms of their disclosure requirements, the reporter may be required to disclose the evidence to other parties. This includes both physical evidence and the evidence contained in copies of statements and other documents. The reporter may disclose the evidence either by providing a copy of the evidence or providing access to it. Whether or not such evidence is disclosed, and the way in which it will be disclosed, will normally be a matter for the reporter (subject to paragraph 84 above). However, in exceptional circumstances where such an approach may not be appropriate (for example, where there is the possibility that disclosure may prejudice an ongoing investigation or prosecution), the prosecutor, Police and reporter are to meet at an operational level to agree the approach to be taken. The actions outlined in paragraphs 50, 51, 84 and 85 of this agreement ensure the duties placed on the reporter, in terms of evidence provided, are the same regardless of the source, i.e. the police or the prosecutor.

PART 4: GENERAL PROVISIONS

87. The three parties to the Agreement will follow existing internal / external procedures for the storage, transfer and disposal of information / productions.

Breaches of security

88. It is a criminal offence to knowingly or recklessly and without the consent of the data controller:

- obtain
- disclose or
- procure the disclosure

of personal data, or to sell or offer to sell personal data obtained in the above manner.

89. All known or suspected breaches of security in relation to information shared or created under this agreement - such as misuse or abuse of the system, misuse or abuse of information, loss of data, unauthorised processing of data, unauthorised disclosure of information, malicious software attack, denial of service attack - are to be reported to the officers or staff identified in the Breach/Incident Management Policy or procedure of the identifying organisation, who will notify the affected organisation's Information Security Officer, Data Protection Officer or equivalent as soon as possible. Once notified of a breach of security the relevant officers and staff and the respective Information Assurance Officers, Data Protection Officers or equivalent will undertake an investigation to identify, where possible, who carried out the breach, what information has been compromised, whether the integrity of the system has been compromised.
90. Partners should be provided with a full report of the circumstances and, if relevant, the data affected along with sufficient details to enable them to retain assurance in the confidentiality, integrity and availability of the information and the processes supporting information exchange, and to undertake their own risk assessments.
91. Where any breach of security may amount to criminal activity, this must be reported to Police Scotland, which will investigate the matter and, where appropriate, report the circumstances to the relevant authorities.
92. Where the breach meets the relevant conditions for reporting, the Information Commissioner's Office (ICO) will also be notified. The ICO must be informed of notifiable breaches within 72 hours of a data controller becoming aware of the breach. If a notification is made to the ICO, any affected partners to this agreement will be informed. Partners will also consider on a case by case basis whether to notify

any affected individuals of the breach, and if so, this should be done as soon as possible.

93. Disclosure of data to persons or agencies outwith the duties and responsibilities laid down within this agreement will constitute a breach unless a clear, legal justification and evidence can be provided to support the disclosure. (This might be a subject access request or a court order, or where disclosure was required for the protection of children or vulnerable adults from harm).

Legal rights of access to information

94. Access to information held by the partners to this agreement may be available either under subject access rights, as described in the Data Protection Act 2018 (Section 45) and Article 15 of the General Data Protection Regulation, or the Freedom of Information (Scotland) Act 2002 (FOI). Where access to such information is requested, advice must be sought from the originating organisation (i.e. Freedom of Information or Data Protection Officer) prior to making any disclosure. The ultimate decision as to whether to disclose the information lies with the organisation that received the request; however, the originator of the information will be given the opportunity to ensure that Data Protection exemptions are suitably applied, or if the request is made under FOI, to provide their views with regards to any potential harm in disclosure
95. Complaints from data subjects, or their representatives, about information held by the partner organisations will be investigated by the organisation receiving the complaint; although the other partner will be notified as soon as possible and preferably within 24 hours. Action that affects any of the signatories will not be taken without the consent of all relevant parties.

Management and review of the agreement

96. Each partner should identify a point of contact who will have the responsibility for compliance with this agreement within their organisation. This should be the person will take part in the annual review of the agreement and act as a contact if there are any issues with it.
97. The agreement, and the process to which it refers, will be reviewed annually by the points of contact. However, where there is change of law, or practice, the review should take place as soon as possible.
98. The reviewers will consider whether:

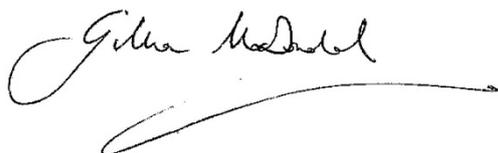
- the ISA is achieving its purpose
- information sharing is operating smoothly
- any amendments are required
- contact details require updating

Where necessary, any changes will be reflected in a revision of the Information Sharing Agreement, and details recorded in the version control table.

99. This agreement may be varied only by the written agreement of the Partners.
100. Any partner may withdraw from this agreement at any time before the expiry date. This will result in no further information being supplied to that organisation.
101. The role titles and names of the individuals who are the points of contact for the agreement are given at Annex F.

Signatures

102. By signing this agreement, the signatories accept responsibility for its execution and agree to ensure that staff are trained so that standards of information and any associated process of sharing is sufficient to meet the purpose of this agreement.



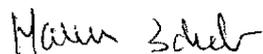
Gillian MacDonald
[ACC Crime and Protection]
On behalf of the Police Service of Scotland

Date: 27 May 2019



Anthony McGeehan
Head of Policy and Engagement Division
On behalf of Crown Office and Procurator Fiscal Service

Date: 30 May 2019



Malcolm Schaffer
Head of practice and policy
On behalf of Scottish Children's Reporter Administration

Date: 29 May 2019

ANNEX A

**PRO FORMA
REQUEST FROM COPFS FOR INFORMATION FROM SCRA**

DATE:

Name of Procurator Fiscal:	Name of Reporter:
Address:	Address:
Tel No:	Tel No:
Email address:	Email address:

Name of Accused:	Date of Birth (dd/mm/yyyy)
Police Ref. No.	PF Ref. No.
Date criminal proceedings commenced:	Stage of criminal proceedings:
List of charges:	Forum (Summary, Sheriff & Jury or High Court)

Name of Child (if different from accused):	Date of birth (if different from accused)	Address (if different from accused):
Child's connection to the criminal	Accused <input type="checkbox"/>	Witness <input type="checkbox"/>
		Other (please specify):-

proceedings:			
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Information/documentation sought:																													
Reason(s) why the above is being sought: (including reference to how it will assist in the prevention or detection of crime or the apprehension or prosecution of offenders, and why it is necessary in the public interest):																													
Date approval from Crown Counsel obtained:																													
Are there implications for the rights of the child or others under the ECHR?	<table style="width: 100%; border-collapse: collapse;"> <tr><td>No</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 2 right to life</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 3 prohibition of torture/degrading treatment</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 4 prohibition of slavery/servitude</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 5 right to liberty and security of person</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 6 right to fair and public hearing</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 7 no punishment without law</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 8 right to private and family life</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 9 right to freedom of thought/conscience/religion</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 10 right to freedom of expression</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 11 right to freedom of peaceful assembly/association</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 12 right to marry and found a family</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 13 right to remedy upon violation of rights</td><td style="text-align: right;"><input type="checkbox"/></td></tr> <tr><td>Article 14 right to enjoyment of rights without discrimination</td><td style="text-align: right;"><input type="checkbox"/></td></tr> </table>	No	<input type="checkbox"/>	Article 2 right to life	<input type="checkbox"/>	Article 3 prohibition of torture/degrading treatment	<input type="checkbox"/>	Article 4 prohibition of slavery/servitude	<input type="checkbox"/>	Article 5 right to liberty and security of person	<input type="checkbox"/>	Article 6 right to fair and public hearing	<input type="checkbox"/>	Article 7 no punishment without law	<input type="checkbox"/>	Article 8 right to private and family life	<input type="checkbox"/>	Article 9 right to freedom of thought/conscience/religion	<input type="checkbox"/>	Article 10 right to freedom of expression	<input type="checkbox"/>	Article 11 right to freedom of peaceful assembly/association	<input type="checkbox"/>	Article 12 right to marry and found a family	<input type="checkbox"/>	Article 13 right to remedy upon violation of rights	<input type="checkbox"/>	Article 14 right to enjoyment of rights without discrimination	<input type="checkbox"/>
No	<input type="checkbox"/>																												
Article 2 right to life	<input type="checkbox"/>																												
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Article 9 right to freedom of thought/conscience/religion	<input type="checkbox"/>																												
Article 10 right to freedom of expression	<input type="checkbox"/>																												
Article 11 right to freedom of peaceful assembly/association	<input type="checkbox"/>																												
Article 12 right to marry and found a family	<input type="checkbox"/>																												
Article 13 right to remedy upon violation of rights	<input type="checkbox"/>																												
Article 14 right to enjoyment of rights without discrimination	<input type="checkbox"/>																												
Please explain the implications even if the “No” box is ticked:																													

**PRO FORMA
REQUEST FROM SCRA FOR THE PROVISION OF EVIDENCE FROM
COPFS**

DATE:	
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Name of Reporter:		Name of Procurator Fiscal:	
Address:		Address:	
Tel No:		Tel No:	
Email address:		Email address:	

Name of Child :		Date of birth:		CMS ref no:	
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Name of Accused:		Date of Birth (dd/mm/yyyy)	
Police Ref. No.		PF Ref. No.	

Date of proof application:		Sheriff Court:	
Date proof commences (or date of next calling if no date for proof set):		Estimated duration (if no date for proof has been set, include estimate of proof start date):	

Brief summary of the statement of grounds:	
Details of evidence requested:	
Reasons why the evidence is required:	

I hereby **agree** to release the above items to the Reporter on condition
(i) that the evidence is returned to me by _____ or earlier if so requested¹¹.
(ii) any other specific condition specified by the prosecutor

(Signed): Procurator Fiscal

The Procurator Fiscal is **unable to comply** with the above request and the above items are unable to be released to the Reporter on the basis that it is necessary to retain the evidence for the purposes of proceedings (which may have commenced or may be in contemplation).

If any court dates have been assigned, please include them below:

(Signed): Procurator Fiscal

TO BE GIVEN / SENT TO PROCURATOR FISCAL UPON RECEIPT OF ITEMS

I acknowledge **receipt** of the undernoted items and I undertake to keep them secure and return the items to the Procurator Fiscal on the above date or earlier if so requested.

- 1.
- 2.
- 3.

Date: _____ (Signed): Reporter

TO BE GIVEN / SENT TO REPORTER UPON RECEIPT OF RETURNED OF ITEMS

I acknowledge **return** of the undernoted items:

- 1.
- 2.
- 3.

Date: _____ (Signed): Procurator Fiscal

¹¹ This statement and the undernoted acknowledgements of receipt may be communicated by e-mail as an alternative to transmitting a hard copy of this form.

ANNEX C

Form for requests by the reporter for information from Police Scotland [Form should be sent to the reporting officer/officer dealing with the case. If the reporter is requesting information in Situation 2 below, the reporter is also to send a copy of the form to COPFS].

Child's name	
Child's date of birth	
Child's address	

With reference to paragraphs 55 – 59 of the Agreement on the Sharing of Evidence and Information between SCRA, the COPFS and Police Scotland, this request for information is made in relation to the following situation [delete as appropriate]:

- Situation 1: the Police have referred a child to the reporter as a result of the child allegedly committing an offence and have submitted a standard prosecution report
- Situation 2: the reporter has received a referral of a child and the prosecutor has, or is likely to have, an interest in the case in relation to an accused person
- Situation 3: the reporter has received a referral of a child following an investigation by the Police but there is no report to the prosecutor and is not likely to be one.
- Situation 4: the reporter has received a referral of a child and requires information held by the police that is relevant to the referral of the child

Reporter to complete the following details as appropriate to the situation:

Situation 1: when the Police have referred a child to the reporter as a result of the child allegedly committing an offence and have submitted a standard prosecution report (refer to paragraphs 60–67 of the Agreement)	
SPR number	
Is there an adult co-accused?	
Information requested	

Situation 2: when the reporter has received a referral of a child and the prosecutor has, or is likely to have, an interest in the case in relation to an accused person (refer to paragraphs 68 –75 of the Agreement)	
SPR number (if any)	
Name of adult accused (if known)	
Information requested	

NB: if the reporter is requesting information from the Police in Situation 2, the reporter is to send a copy of this request to COPFS

Situation 3: When the reporter has received a referral of a child following an investigation by the Police but there is no report to the prosecutor and is not likely to be one (refer to paragraphs 76 –79 of the Agreement)

Police reference number (if known)	
Brief details of the case (to enable police to identify it)	
Information requested	

Situation 4: When the reporter has received a referral of a child and requires information held by the police that is relevant to the referral of the child (refer to paragraphs 80 –81 of the Agreement)

Information requested	
Reasons why it is relevant and proportionate for the reporter to obtain this information	

Name of Reporter:

Address:

Tel No:

Email address:

ANNEX D

Form for Reporter intimating an interest in evidence relating to the case against an adult accused
[Form should be sent to the reporting officer/officer dealing with the case]

Child's name	
Child's date of birth	
Child's address	
SPR number	
Name of adult accused	

With reference to paragraph 82 of the Agreement on the Sharing of Evidence and Information between SCRA, the COPFS and Police Scotland, the Reporter hereby intimates an interest in the evidence in relation to the above case.

Note for Reporting Officer: as required by paragraph 82 of the above Agreement on the Sharing of Evidence and Information, the reporting officer is to liaise with the relevant Productions Department to ensure that the evidence is held accordingly and not destroyed or disposed of. If not already recorded as such the item(s) concerned should be listed as a production on the relevant Police Scotland system highlighting that the item(s) relates to a SCRA request.

Name of Reporter:
Address:
Tel No:
Email address:

Authority for Children's Hearings proof proceedings taking place prior to a related criminal trial

It is common for children's hearings proof proceedings to relate to the same subject matter as a criminal trial. For example, the reporter may have referred a child to a children's hearing on the ground that they were the victim of a schedule 1 offence committed by their father, and the prosecutor has prosecuted the father for the same offence.

There are 2 principal authorities relating to concurrent criminal trial and proof proceedings (*Ferguson v P* 1989 SC 231 and *P v Kennedy* 1995 SC 47). These recognise that it is routine for children's hearings proof proceedings to take place before a criminal trial and that only in very special and extraordinary circumstances would a proof prior to a related criminal trial be likely to give rise to prejudice.

In *Ferguson v P*, a sheriff granted a motion to adjourn the proof pending the outcome of any criminal proceedings in respect of the same subject matter as the proof. The sheriff did so on the basis that there would be a considerable risk of grave prejudice to any criminal trial were the sheriff to have what would amount to a full rehearsal of the evidence prior to any trial.

The reporter appealed to the Court of Session against the sheriff's decision. In finding that the sheriff erred in granting the motion, the court said: "There is, however, a more important ground for concluding that the sheriff erred in granting the adjournment. In his note the sheriff refers more than once to the case of *Humphries* [*Humphries v. X and Y*, 1982 S.C. 79]. He states that he took particular note that the court in *Humphries* had regarded the circumstances of that case as being highly special. Despite that, however, the learned sheriff does not identify any circumstances in the present case which he regarded as highly special. What appears to have weighed with the sheriff was the consideration that it would be highly undesirable for the evidence to be rehearsed before the sheriff before being presented in any criminal trial of P. That, however, is not a highly special circumstance. It is a circumstance which must be present in every case where the ground of referral is made under section 32(2)(dd) [of the Social Work (Scotland) Act 1968] and where criminal charges have been brought against the person concerned. Far from being a special situation, this is a situation which is not unusual. We were informed that in practice children's hearings frequently take place before the trial of persons in the same position as P. This certainly accords with our own understanding of the position."

"In the normal case there is no reason why such an application to the sheriff should not be disposed of finally prior to the hearing of any such criminal proceedings. Disposal of such an application by a sheriff does not mean that a parent facing criminal charges will not receive a fair trial. An application to the sheriff is heard in chambers, and although the press may be present, they are not able to report the proceedings in such a way as to lead to identification

of the parties concerned. More importantly, the Crown are not represented at the hearing of the application by the sheriff in chambers. In these circumstances we are not satisfied that it would be prejudicial to a criminal trial if evidence had been led before the sheriff in relation to the referral. It is only in very special and extraordinary circumstances that proof before the sheriff prior to a criminal trial of a parent would be likely to give rise to prejudice.”

In *P v Kennedy*, the sheriff refused a motion in a proof to exclude the evidence of 4 witnesses who were due to give evidence against the children’s father and stepfather in a related criminal trial. The father and stepfather appealed this decision to the Court of Session.

In refusing the appeals, the Court said:

“Underlying the appellant’s submissions in regard to the first and second questions of law [that related to whether the sheriff was entitled to refuse the motion] there appears to be an assumption that criminal proceedings against a parent should take precedence over referral proceedings in respect of children arising out of the same circumstances. The case of *Ferguson v P* refutes this assumption.”

These decisions relate to the Social Work (Scotland) Act 1968, the principal statute applicable to children’s hearings at the time. Although the Children’s Hearings (Scotland) Act 2011 is now the relevant legislation, the principles expounded by the Court of Session in *Ferguson v P* and *P v Kennedy* remain valid:

- Criminal proceedings do not take precedence over related children’s hearings proof proceedings.
- In the normal case there is no reason why proof proceedings not be disposed of prior to the hearing of any related criminal proceedings. It does not mean that the person facing criminal charges will not receive a fair trial.
- It is only in very special and extraordinary circumstances that a proof prior to a related criminal trial would be likely to give rise to prejudice.

Annex F

Single Points of Contact

Detective Chief Inspector, National Child Protection Policy Lead in Police Scotland.

Head of Policy and Engagement Division, Crown Office and Procurator Fiscal Service.