

## Fact Sheet 17: Decision Making and Time Scales in Jointly Reported Cases.

Offences which are required to be jointly reported to the Procurator Fiscal (PF) and the Children's Reporter can be found [here](#). In deciding whether to prosecute a child who has been jointly reported, COPFS (Crown Office and Procurator Fiscal Service) will liaise with the Children's Reporter (as per their joint [agreement](#)) and will take into account a number of factors including for example sufficiency of evidence, the offending history of the accused, the severity of the offence and the public interest.

- If the child is under 16 years, the presumption is that the Children's Reporter will deal with the offence, but if the child is over 16 years the presumption is that the PF will deal with it. In either case the presumption can be overridden based on the gravity and pattern of offending, current and future service offered within the Children's Hearing System, victim perspective, and health & development issues of the child.
- In cases where the child is on a Compulsory Supervision Order (CSO), the offence is retained by the PF and the child pleads guilty or is found guilty of an offence, s49 ([Criminal Procedure \(Scotland\) Act 1995](#)) allows the Court to remit the case to a Children's Hearing for disposal. If the child is not on a CSO, the Court may request a Children's Hearing to be arranged for the purpose of advice to the Court and may either dispose of the case itself or remit the case back to the Hearing for disposal. COPFS and social workers should remind the Court of this [provision](#) when dealing with children under 18 years.
- When a joint and final decision has been made that the child will be referred to the Children's Reporter, the PF cannot subsequently decide to prosecute the child in relation to that offence. However if the PF initially decides to investigate or prosecute the child, it is open to COPFS to reconsider this at a later date and may subsequently refer the child to the Reporter.
- If the decision of COPFS is that there is insufficient evidence of **any** offence then the case **cannot** be referred to the Reporter. However if there is insufficient evidence of a serious offence but sufficient evidence of a lesser offence then the case can be referred to the Reporter in relation to the lesser offence. The Reporter may also consider that a different ground of referral is more appropriate in terms of addressing the most significant concerns for the child.
- The timescales for deciding which agency will take forward a case is 10 working days. If the PF requires Crown Counsel's involvement (for serious offences which will appear on indictment) this decision could take up to 45 working days due to the processes involved in examining evidence and statements. In exceptional circumstances the decision may take longer than 45 days due to full investigation being undertaken prior to a decision being made. This is more common in sexual offences and violent offences committed by children towards other children.
- The 2010 [Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice](#) note that *'In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.'* If practitioners have concerns about delayed decision making in a case they can contact the Victim and Witnesses Policy team at Crown Office or the Practice and Policy team at SCRA for assistance. Representatives of SCRA and COPFS are in regular contact in relation to cases where significant delay is an issue.

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