

## **Minimum Age of Criminal Responsibility Advisory Group**

### **Case Studies**

**March 2016**

**Disclaimer: The following “case studies” are for illustrative purposes only, and have of necessity been abridged and simplified. These list the key stages and probable outcomes for the child in each ‘snapshot’ scenario. There is no direct link to any actual individual or live case.**

## Case Study 1: Damage to Property or Housebreaking or Theft

### Background

John is 10 years of age and lives with his parents and a younger brother and sister, aged 7 and 1 respectively. His family have never had Social Work or other support and is not known to Police. His father is a shift worker, while his mother is currently not in employment.

John has recently been disruptive at school and his behaviour has become increasingly challenging for staff. His parents have attended a meeting with school management to discuss this. They explained that they have become concerned about the friendships he has developed outwith school recently. He is associating with a group of older boys from the local community, and he appears to be heavily influenced by them. His parents have tried to stop these friendships, and that has caused arguments with John.

### Circumstances

Police receive an anonymous report of a group of 'youths' acting suspiciously near the local primary school. Officers attend and find a fire escape door to have been forced open at the school and the sound of a disturbance coming from within.

On entering the school, officers trace John and two older boys to an office. They have opened a filing cabinet and forced open a petty cash box, the older boys have a sum of money in their possession and John has a bank money bag containing £20 in pound coins which he cannot account for.

Current Action	WITH proposed safeguards
<ul style="list-style-type: none"> <li>• Police record the incident as a crime</li> </ul>	<ul style="list-style-type: none"> <li>• Police Record the incident as a crime</li> </ul>
<ul style="list-style-type: none"> <li>• Police gather evidence and take statements from witnesses</li> </ul>	<ul style="list-style-type: none"> <li>• Police gather evidence and take statements from witnesses</li> </ul>
<ul style="list-style-type: none"> <li>• Police detain John<sup>1 2 3</sup></li> <li>• Interview<sup>4</sup> John – voluntarily at home or at police station if detained<sup>5 6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Police can detain and interview John if co-operation is withheld, and they make an application to the Sheriff under e.g. a new, augmented Child Assessment Order.</li> <li>• Police can Interview John – voluntarily at home or at police station if under extended Child Assessment Order.</li> </ul>

<ul style="list-style-type: none"> <li>• John would be afforded access to a solicitor ( DUTY SCHEME or Children’s Legal Assistance Scheme)</li> </ul>	<ul style="list-style-type: none"> <li>• John would be afforded access to a solicitor ( DUTY SCHEME or Children’s Legal Assistance Scheme)</li> </ul>
<ul style="list-style-type: none"> <li>• Police can take forensic samples</li> </ul>	<ul style="list-style-type: none"> <li>• Police can take forensic samples - if they apply to the Sheriff for authority</li> </ul>
<ul style="list-style-type: none"> <li>• Police can seek a warrant to obtain further samples from John</li> </ul>	<ul style="list-style-type: none"> <li>• Police can seek a warrant to obtain further samples from John</li> </ul>
<ul style="list-style-type: none"> <li>• Forensic samples can be obtained but not retained<sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Forensic samples can be obtained but not retained</li> </ul>
<ul style="list-style-type: none"> <li>• Police can refer John to the Children’s Reporter on offence grounds</li> </ul>	<ul style="list-style-type: none"> <li>• Police can refer John to the Children’s Reporter, who would proceed on non-offence grounds</li> </ul>
<ul style="list-style-type: none"> <li>• Police record John<sup>8</sup> on the Criminal History System (CHS)<sup>9</sup> and record placed on the Interim Vulnerable Persons Database (IVPD) as a Common Concern</li> </ul>	<ul style="list-style-type: none"> <li>• Police record John and the incident on the IVPD</li> </ul>
<ul style="list-style-type: none"> <li>• Police can share wellbeing concerns with other agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Police can share wellbeing concerns with other agencies</li> </ul>
<ul style="list-style-type: none"> <li>• Police can inform the victim of the outcome of the police investigation<sup>10</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>• Police can inform the victim of the outcome of the police investigation</li> </ul>
<ul style="list-style-type: none"> <li>• Police can refer the victim (or a victims’ representative) to service to provide support to the victim</li> </ul>	<ul style="list-style-type: none"> <li>• Police can refer the victim (or a victims’ representative) to service to provide support to the victim</li> </ul>
<ul style="list-style-type: none"> <li>• Reporter can convene children’s hearing on offence grounds</li> </ul>	<ul style="list-style-type: none"> <li>• Reporter can convene children’s hearing on non-offence grounds</li> </ul>
<ul style="list-style-type: none"> <li>• Children’s hearing may impose compulsory measures of supervision</li> </ul>	<ul style="list-style-type: none"> <li>• Children’s hearing may impose compulsory measures of supervision</li> </ul>
<ul style="list-style-type: none"> <li>• Risk Management</li> </ul> <p>Normal interagency information-sharing and risk management arrangements apply while John is on compulsory measures of supervision.</p>	<ul style="list-style-type: none"> <li>• Risk Management</li> </ul> <p>Normal interagency information-sharing and risk management arrangements apply while John is on compulsory measures of supervision.</p>

<ul style="list-style-type: none"> <li>• State Disclosure</li> </ul> <p>If the outcome of any children’s hearing was a discharge, the discharge would become spent after 6 months. Therefore no State Disclosure on any type of disclosure after that 6 month period has elapsed<sup>11</sup>.</p> <p>If the outcome of any children’s hearing was a CSO, disclosure would be for a period of 7½ years from the date of conviction provided the conviction was included in a higher level disclosure<sup>12</sup>.</p>	<ul style="list-style-type: none"> <li>• State Disclosure</li> </ul> <p>No disclosure.</p> <p>Other Relevant Information could be released on the agreement of an independent authority. Unlikely in John’s case.</p>
<ul style="list-style-type: none"> <li>• Self-Disclosure</li> </ul> <p>Under Rehabilitation of Offenders Act 1974 – If a discharge was the outcome of the children’s hearing, there would be no obligation to disclose after 6 months as the discharge would have become spent.</p> <p>If a CSO was the outcome of the children’s hearing and as the offence of theft is on the ‘Disclose subject to Rules List’, John would be obliged to disclose the conviction for either 1 year from the date of conviction or for the life of the CSO whichever is the longer, in other words, until it becomes spent.</p> <p>Further, once a CSO for an offence on the ‘Disclose subject to Rules List’ is spent an obligation to self-disclose does not arise unless the conviction is included in a higher level disclosure issued by Disclosure Scotland to the person who countersigned the higher level disclosure application.</p>	<ul style="list-style-type: none"> <li>• Self-Disclosure</li> </ul> <p>No self-disclosure as non-offence ground</p>

## Case Study 2: Serious Violent/Sexualised Conduct

### Background

Tony is 11 years of age and lives with his father after his parents separated 18 months ago. His mother's alcohol abuse was the main reason for the marriage breaking down. She has no contact with Tony and has not sought any in over a year.

Tony has been previously assessed by mental health professionals owing to concerns about his behaviour since an early age. However, he has not been diagnosed with a specific condition. There are concerns over aspects of his development and personality consistent with several conditions and as having complex needs. He is described as intelligent but emotionally remote and detached, with an inability to recognise the hurt and harm his actions can cause.

His behaviour has deteriorated significantly in the last year since his mother left, with increasingly sexualised comments being made to staff and pupils at school. The comments relate to committing violent sexual acts. However, when challenged he has dismissed this conduct as a 'joke'. Multi-agency discussions have been held about his behaviour and a targeted intervention is being considered, involving health and social work. He is not under compulsory measures of supervision and has not come to the attention of local police.

His father is keen to access the right support, admitting that he struggles to cope with Tony and feels that he does not know how to relate to him. Tony refuses to discuss his mother and becomes aggressive and defensive if she is mentioned.

### Circumstances

On a Saturday afternoon, Tony leaves his home and meets a local girl who is 10 - in the year below him at school. He has just had a row with his father as they have received a letter from his mother requesting contact. He was angry and agitated when leaving the house.

Tony engages the girl in conversation and asks where she is going. She says she is going to the park to meet friends. He walks with her and, when in a quiet area of the park, he attacks and rapes her. He leaves and returns home. While Tony is quiet and withdrawn, his father is unaware of what has taken place.

The girl returns home and informs her parents who contact the police and make a complaint.

Current Action	WITH proposed safeguards
<ul style="list-style-type: none"><li>Police Record the incident as a crime</li></ul>	<ul style="list-style-type: none"><li>Police Record the incident as a crime</li></ul>

<ul style="list-style-type: none"> <li>• Police gather evidence and take statements from witnesses</li> </ul>	<ul style="list-style-type: none"> <li>• Police gather evidence and take statements from witnesses</li> </ul>
<ul style="list-style-type: none"> <li>• Police can detain Tony</li> <li>• Police Interview Tony – voluntarily at home or at police station if detained (see endnotes 4, 5 &amp; 6)</li> </ul>	<ul style="list-style-type: none"> <li>• Police interview Tony – voluntarily at home or at police station if application made under extended Child Assessment Order</li> <li>• Legal representation, advocacy or other support may be available for Tony</li> </ul>
<ul style="list-style-type: none"> <li>• Tony would be afforded access to a solicitor ( DUTY SCHEME or Children’s Legal Assistance Scheme)</li> </ul>	<ul style="list-style-type: none"> <li>• Tony would be afforded access to a solicitor ( DUTY SCHEME or Children’s Legal Assistance Scheme)</li> </ul>
<ul style="list-style-type: none"> <li>• Police can take forensic samples from Tony</li> <li>• Police can seek a warrant to obtain further samples from Tony</li> <li>• Police can retain forensic samples for 3 years<sup>13</sup>, and apply to the Sheriff to retain them for longer</li> </ul>	<ul style="list-style-type: none"> <li>• Police can apply to Sheriff to take and retain forensic samples</li> </ul>
<ul style="list-style-type: none"> <li>• Police record Tony on the Criminal History System (CHS)<sup>14</sup> and recorded on the Interim Vulnerable Persons Database (IVPD) as a Wellbeing Concern</li> <li>• If sufficient evidence is obtained, he will be cautioned and charged and released from custody, pending referral to the Children’s Reporter for consideration of convening a children’s hearing to look at Compulsory Measures of Supervision. Tony cannot be prosecuted. Early contact would be expected between the Senior Investigating Officer and the Principal Reporter to discuss his case.</li> </ul>	<ul style="list-style-type: none"> <li>• Police record Tony’s case on the IVPD as a Wellbeing Concern</li> </ul>
<ul style="list-style-type: none"> <li>• Police can share wellbeing concerns with other agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Police can share wellbeing concerns with other agencies</li> </ul>

<ul style="list-style-type: none"> <li>Police can refer Tony to the Children's Reporter on offence grounds</li> </ul>	<ul style="list-style-type: none"> <li>Police can refer Tony to the Children's Reporter, who will proceed on non-offence grounds</li> </ul>
<ul style="list-style-type: none"> <li>Police can inform the victim of the outcome of the police investigation, and refer the victim to service to provide support</li> <li>The girl will be afforded access to a trained SOLO – Sexual Offences Liaison Officer.</li> </ul>	<ul style="list-style-type: none"> <li>Police can inform the victim of the outcome of the police investigation, and refer the victim to service to provide support</li> <li>The girl will be afforded access to a trained SOLO – Sexual Offences Liaison Officer.</li> </ul>
<ul style="list-style-type: none"> <li>Reporter can convene a Children's Hearing on offence grounds</li> </ul>	<ul style="list-style-type: none"> <li>Reporter can convene a Children's Hearing on non-offence grounds</li> </ul>
<ul style="list-style-type: none"> <li>If Tony or his father do not accept the grounds of referral this may go to a proof hearing under whichever non-offence ground(s) that have been identified. This carries a criminal standard of proof (beyond all reasonable doubt).</li> </ul>	<ul style="list-style-type: none"> <li>If Tony or his father do not accept the grounds of referral this may go to a proof hearing under whichever non-offence ground(s) that have been identified. This carries a civil burden of proof (balance of probabilities).</li> </ul>
<ul style="list-style-type: none"> <li>Children's Hearing can impose CSO with wide discretion to impose particular measures, up to and including authorisation to place Tony in secure care.</li> </ul>	<ul style="list-style-type: none"> <li>Children's Hearing can impose CSO with wide discretion to impose particular measures, up to and including authorisation to place Tony in secure care.</li> </ul>
<ul style="list-style-type: none"> <li>Risk Management</li> </ul> <p>Normal interagency information-sharing and risk management arrangements apply while John is on compulsory measures of supervision.</p>	<ul style="list-style-type: none"> <li>Risk Management</li> </ul> <p>Normal interagency information-sharing and risk management arrangements apply while John is on compulsory measures of supervision.</p>
<ul style="list-style-type: none"> <li>State Disclosure</li> </ul> <p>The conviction would be disclosable for life on all types of disclosure.</p>	<ul style="list-style-type: none"> <li>State Disclosure</li> </ul> <p>No disclosure.</p> <p>Other Relevant Information could be released on the agreement of an independent authority.</p>
<ul style="list-style-type: none"> <li>Self-Disclosure</li> </ul> <p>Obligated to self-disclose for life.</p>	<ul style="list-style-type: none"> <li>Self-Disclosure</li> </ul> <p>Not applicable as non-offence ground</p>

## Conclusion

The above cases were prepared to test and demonstrate the current procedures that apply where (i) a child is involved in offending behaviour 'typical' of the 8-11 age group, and (ii) a child between 8-11 commits a crime of particular seriousness. The scenarios also show how the same cases could be treated under new safeguards proposed after any change to the minimum age of criminal responsibility.

While the investigatory stages will remain in a similar form, the outcomes for the child are significantly different.

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<sup>1</sup> This power is not unique to children and can be used for any person suspected of committing a crime.

<sup>2</sup> These powers are contained in Section 14 of the Criminal Procedure (Scotland) Act 1995.

<sup>3</sup> Section 15 of the Criminal Procedure (Scotland) Act 1995 - This includes intimation to a solicitor and to one other person reasonably named by them. In the case of children (under 16 years of age) the other person notified must be the child's parent or guardian. The child's parent or guardian also has the right of access to the child unless specific reasons apply where this may not be appropriate. In such cases another person will be contacted to support the child at the police office e.g. a representative from the local Social Work Department.

<sup>4</sup> See Police Service of Scotland Solicitor Access Guidance sections 1, 13, and 16 -

[http://www.scotland.police.uk/assets/pdf/151934/184779/psos\\_solicitor\\_access\\_guidance\\_document\\_ver\\_1.00.pdf?view=Standard](http://www.scotland.police.uk/assets/pdf/151934/184779/psos_solicitor_access_guidance_document_ver_1.00.pdf?view=Standard)

<sup>5</sup> Section 15A of the Criminal Procedure (Scotland) Act 1995 sets out the right of suspects to have access to a solicitor. It is current police procedure not to allow children to waive these rights, they must be provided access to a solicitor (Section 33 of the Criminal Justice (Scotland) Act 2016 refers regarding the forthcoming duties to provide access to a Solicitor – there are differing provisions for those under 16 years of age or 16 & 17 year olds who are subject to compulsory measures of supervision from those other children aged 16 and 17 years of age who have a greater degree of self-determination).

<sup>6</sup> Such local multi-agency groups operate under different names across the country.

<sup>7</sup> See Section 18E of the Criminal Procedure (Scotland) Act 1995.

<sup>8</sup> Only if charged or cautioned

<sup>9</sup> There are changes pending in Sections 187 and 188 of the Children's Hearing (Scotland) Act 2011 which will change how Children's Hearings decisions are recorded.

<sup>10</sup> For example, during a criminal investigation into an offence, officers must ensure:

- statements are taken without undue delay;
- the number of relevant interviews to take a statement are kept to a minimum;
- statement taking is only carried out where strictly necessary, for the purposes of the criminal investigation;
- victims are permitted to be accompanied by their chosen legal representative and a person of their choice, unless a reasoned decision to the contrary is made;
- medical examinations of the victim are kept to a minimum and are carried out only where strictly necessary for the purposes of the investigation.

<sup>11</sup> The basic disclosure, standard disclosure and enhanced disclosure under the Police Act 1997; and the PVG scheme record show information about unspent convictions. Once a conviction is spent, it will no longer be shown on a basic disclosure. Once a conviction is spent and if the disposal is a discharge from a Children's Hearing, the conviction will become a protected conviction, and as such it will no longer be shown on a higher level disclosure (namely, standard disclosure, enhanced disclosure and PVG scheme record))

<sup>12</sup> If a conviction (the meaning of which includes a CSO from a Children's Hearing) is for an offence such as theft, which is on the **Disclose subject to Rules List**, consideration will be given to the age of the conviction and the age of the person at the time of conviction in determining whether the conviction will be disclosed on a higher level disclosure. Information about the conviction will not be disclosed after 7.5 years for people aged less than 18 years when convicted. The period of years of disclosure is counted from the date of conviction.

<sup>13</sup> Only if the offence ground has been accepted or established

<sup>14</sup> Only if cautioned and charged