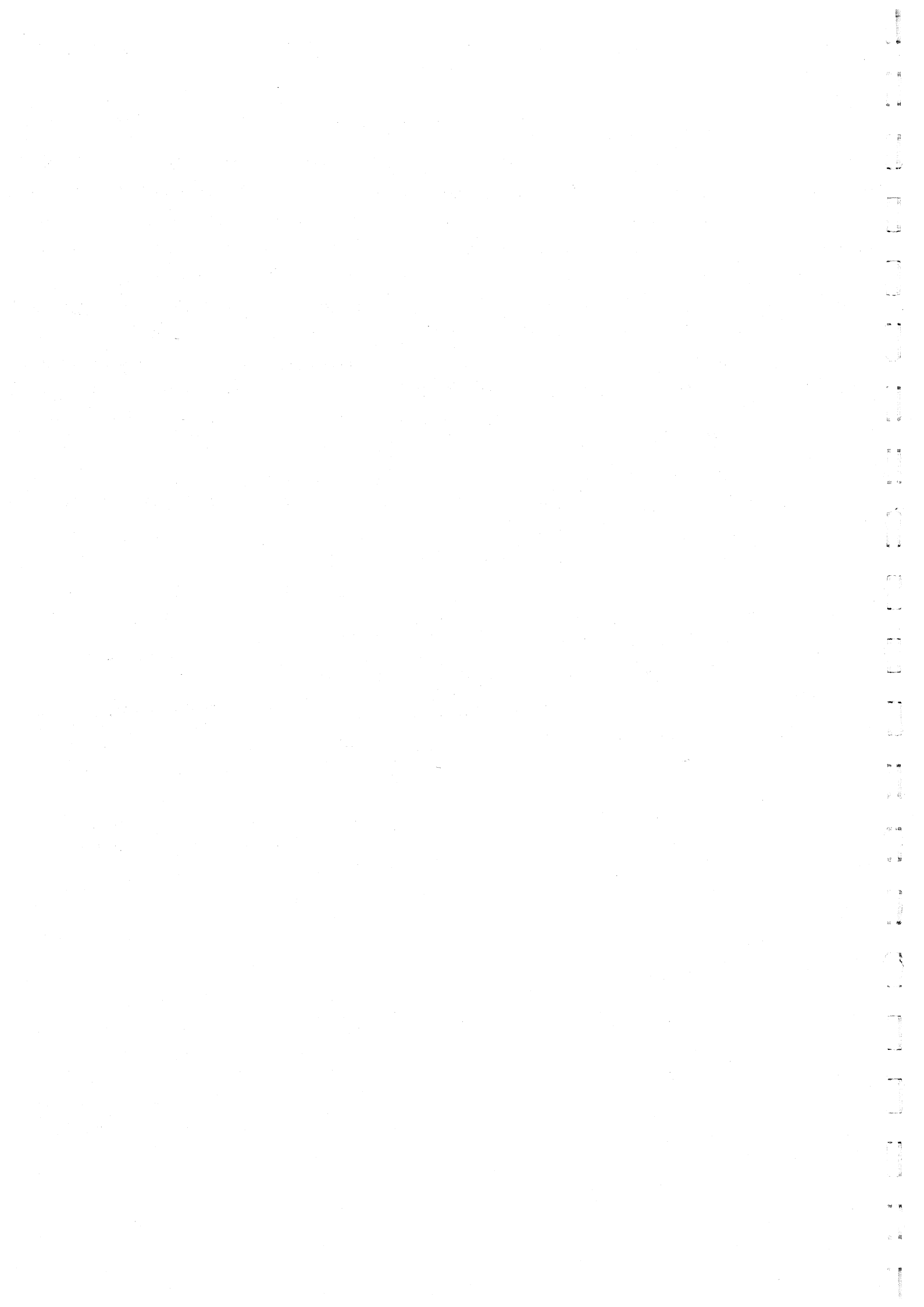


INDEPENDENT MULTI - AGENCY  
SIGNIFICANT CASE REVIEW

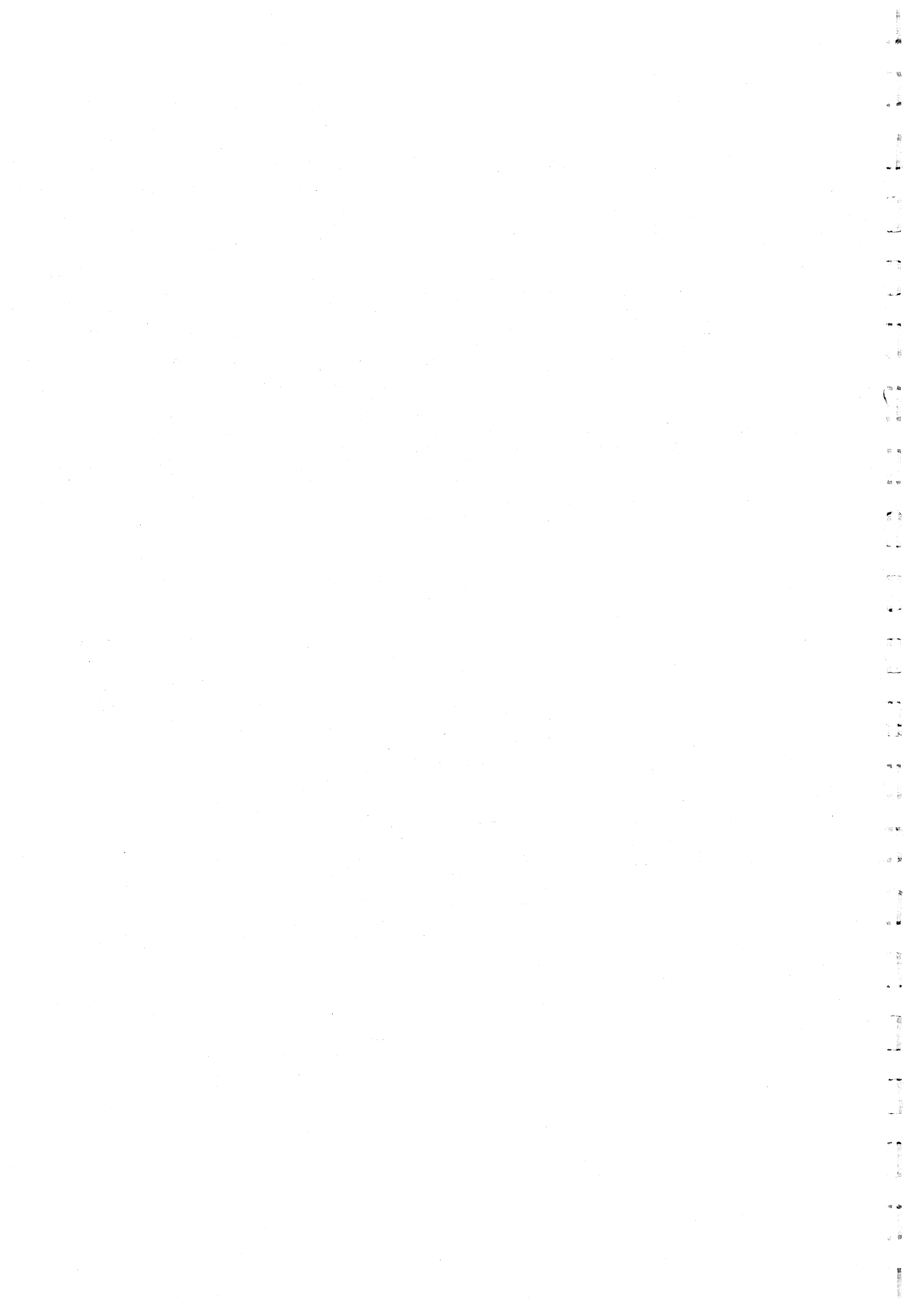
RELATIVE TO THE MANAGEMENT OF  
THOMAS BENNIE SMITH  
REGISTERED SEX OFFENDER  
CONVICTED ON 5<sup>TH</sup> FEBRUARY, 2010  
OF THE MURDER  
OF DIANE AND HOLLY FALLON

Independent Reviewing Officer  
Mr Robert Thomson  
MAPPA Co-ordinator  
Lothian and Borders  
Community Justice Authority



**CONTENTS**

1.	Introduction and summary	Page 3
2.	Terms of Reference and Methodology	Page 4
3.	Victims	Page 6
4.	Risk Assessment	Page 8
5.	Risk Management	Page 19
6.	Child Protection Issues	Page 34
7.	Legislative – Police Powers	Page 36
8.	Police Training	Page 41
9.	Police Resources – Performance Management	Page 43
10.	MAPPA Level 1 Management	Page 46
11.	Conclusion	Page 49
12.	Recommendations for action	Page 52
13.	Glossary	Page 58



**Introduction and summary by  
Robert Thomson, Independent Reviewing Officer.**

1. On 5 February 2010, Thomas Bennie Smith (TBS) was convicted of the murder of Diane Fallon, then aged 43 years and her daughter Holly Fallon, then aged 10 years. He was sentenced to life imprisonment with a recommendation that he serve 32 years imprisonment, before being considered eligible for parole.

2. On sentencing Lord Turnbull made the following statement in court:

" You have chosen not say what you did to this mother and daughter. You have also chosen not to say why you did these terrible things. The consequence is that their friends and family members will be ever left with the torment of imagining what could have happened to cause such appalling injuries and in what order the various events took place."

3. TBS alone was responsible for these most awful murders. TBS also chose to deceive the police as to his lifestyle and relationships.

4. It is difficult to exaggerate the trauma and horror these murders caused the family of Diane and Holly Fallon or to begin to imagine the grief they feel. The family have contributed to the review process, conducting themselves with courage and dignity.

5. Following the conviction of TBS, South West Scotland Community Justice Authority, Strategic Oversight Group commissioned a Significant Case Review (SCR) to be undertaken in three parts. Stage one, Strathclyde Police, East Ayrshire Council and NHS Ayrshire and Arran to report on their involvement with TBS. Stage two for a Multi-Agency Public Protection Arrangements (MAPPA) Significant Case Review to be undertaken. Finally stage three, to commission an independent reviewing officer from outwith South West Scotland to review the findings, recommendations and action plan, contained within the aforementioned reports. This officer may involve other professionals from within his own community justice authority area for advice and information concerning their specialist knowledge as necessary.

6. On 11<sup>th</sup> October 2010 I was appointed as the independent reviewing officer, and throughout the review I have continued to fully discharge my current role. I involved the following professionals to help me consider and analyse the content of these reports:

Dr Rajan Darjee, a consultant forensic psychiatrist with NHS Lothian.

Jo MacPherson, a children's services group manager with West Lothian Council.

Harry Robertson, a service manager for criminal justice social work, City of Edinburgh Council.

Karen Allan, a policy and performance manager, housing and re-generation services, City of Edinburgh Council.

Robert Paterson, a detective sergeant with specific responsibility for offender management, Crime Policy Department, Lothian and Borders Police.

Lesley Boal, a detective superintendent and lead officer for public protection in Lothian and Borders Police.

7. These individuals gave advice on matters within their areas of specialism throughout the review, as they balanced their commitment in fulfilling their respective roles and willingly taking part in this important work.

8. The detailed facts and findings are set out in the three single agency reports and the MAPPA SCR Multi Agency Report previously commissioned by South West Scotland Strategic Oversight Group. I do not therefore intend to repeat the facts of this case, but to comment on the findings, recommendations and action plan of these reports along with the additional information gathered during the process of this review. As a result of issues raised by the police officers I have also considered, police powers under the current legislation, as well as considering issues relative to training, resources and the MAPPA Level 1 process adopted in the relevant policing area.

### **Terms of Reference and Methodology**

9. The aim of this independent significant case review is to examine the management of TBS, registered sex offender from his initial registration on 6<sup>th</sup> May, 2006 until his arrest on 8<sup>th</sup> April, 2009, with a specific focus on information sharing, risk assessment, risk management and links with child protection.

10. Detailed within the MAPPA SCR Multi Agency Report, page 17 paragraphs 6.1 to 6.1.6 there is reference to the work undertaken by South Ayrshire Council, East Ayrshire Council and Strathclyde Police prior to his conviction. This proactive work undertaken by the two local authorities and Strathclyde Police relative to visiting the offender and child protection actions, are to be commended.

11. The single agency reports and MAPPA SCR Multi Agency Report were subsequently shared with the professionals acknowledged above, who were asked to consider, what additional questions or supporting information they would need to be able to comment on the findings and recommendations contained therein. As a result, three separate requests for information were prepared for each of these agencies. This process was managed through the chair of South West Scotland Strategic Oversight Group. As a consequence, updates were received from these agencies who delivered copies of all documents, which related to their involvement with TBS. These included, health, social work, housing, education and police records. In particular, I requested that Strathclyde Police conduct a number of interviews and subsequently sixteen police officers and three civilians were interviewed and statements provided.

12. A key source of information was the Violent and Sex Offenders Register (VISOR), Scottish Intelligence Database (SID) and the hardcopy offender management file for TBS.

13. Accompanied by Detective Sergeant Robert Paterson I also visited the small hamlet of Cronberry, East Ayrshire comprising of approximately 30 homes, which are all privately owned or let. This is a small isolated row of renovated railway cottages, 19.5 miles from Kilmarnock Police Station, with an average car journey taking approximately 30 minutes. The nearest police station is in Cumnock, a distance of 4 miles, with an average car journey taking approximately 7 minutes. On the day of our visit, there were no signs of a trampoline, highlighted by the victims family, however there were clearly signs of children being resident in the area. With the differing time periods, this in itself is not significant, but we are both of the opinion, that regardless of toys being evident in the gardens, it should have been a reasonable assumption that children would have been likely to be resident or to have frequented the area given the number of homes. Being such a small isolated community, it could also have been reasonably assumed, that interaction between neighbours may have been more likely than in a town or city.

14. On 5<sup>th</sup> November, 2010 along with Geri Watt, who held the post of Ayrshire Area Procurator Fiscal at the time of the murders, Tom Dysart Ayrshire Area Procurator Fiscal and Claire Giltinan, VIA Officer, Kilmarnock I met with the following members of the Fallon family. [REDACTED]  
[REDACTED]  
[REDACTED]

15. During the course of this meeting, the Fallon family raised the following concerns, which they wished considered, during the course of this review.

- Police management of TBS with specific regard to home visits.
- Members of the public should be proactively informed of the presence of a sex offender in their community.
- Report to identify individuals or agencies failings.
- Cuts in Government spending may have a negative effect on the resources deployed relative to the management of sex offenders.
- TBS being allowed to reside in such a small hamlet, as there were children resident there.
- All family members expressed their view that sex offenders being managed in the community should be more closely monitored, with the housing of sex offenders and disclosure being keys issues. They feel that sex offenders should require their home address to be approved.

### **Victims**

16. Holly Fallon's name was placed on the Child Protection register at birth. This registration ended on 3<sup>rd</sup> April, 2000.

17. On 4<sup>th</sup> November, 2002 Holly's name was again placed on the Child Protection Register. This period of registration was continued at review case conferences until de-registration on 16<sup>th</sup> June, 2003.

18. It is noted that Diane Fallon made contact with social services in August 2005 over an incident she was concerned about. It is stated that a Housing Association advised Hertfordshire Council social services of Ms Fallon's intended move to Scotland. Social Work Services in Scotland were not contacted.

19. In 2005 Diane and Holly Fallon relocated to a local authority tenancy in Auchinleck, East Ayrshire. Subsequently in May 2007 they relocated to privately let accommodation in Cronberry, East Ayrshire.

20. In response to the review of the case by social work services in Scotland after the murder of Holly and Diane Fallon, Hertfordshire social services and education service were contacted and undertook to review Holly's case to ascertain the



circumstances surrounding the transfer of information to Scotland. It would not have been standard practice to share child protection information on a case that was no longer open to social work. Hertfordshire reported they intended action to ensure that staff, were reminded of their duty to forward information held by social services to colleagues in other areas.

21. Education records transferred from Hertfordshire in respect of Holly Fallon did not contain reference to past child protection registrations or periods of placement away from home.

22. There is a requirement to transfer school safeguarding records under the Education (Pupil Information) Regulations 2005. In this case there was an acceptance by Hertfordshire Council of their failure to follow procedure in respect of full transfer of education records. Hertfordshire Council advised of the actions they intended to take to address these issues.

23. The Social Work Inspection Agency (SWIA) inspection into the care and protection of children in "Eilean Siar" recommended that all local authorities should make sure that when a child known to them moves to a different authority with their family, all files or copies of the files are transferred immediately. This SWIA inspection was published in 2005 and concerned children who had lived in England, prior to a move to the Western Isles of Scotland.

24. Had these child protection matters held by social services in respect of Holly Fallon and family been transferred to Scotland then a likely consequence would have been a record being created for Holly on the East Ayrshire Council 'SWIFT' social work computer system, which would have recorded these historical concerns. However, the system would have recorded the address in Auchinleck and not Cronberry. Therefore research of SWIFT by East Ayrshire Council social work staff in advance of TBS's MAPPA Level 1 Review meetings would not have alerted Strathclyde Police to Diane and Holly Fallon being a close neighbour.

25. On arriving in East Ayrshire, Holly was enrolled at St Patrick's Primary School in Auchinleck in October 2005. As a consequence of the house move from Auchinleck to Cronberry, Holly transferred to St John's Primary School, Cumnock. Had the full educational records been transferred from Hertfordshire, then these schools would have been aware of the historical child protection concerns. It is

not current practice for education to update their children and families social work services as to any historical child protection concerns.

26. Undercurrent legislation, information detailing past child protection concerns around Holly should have been passed via Education records to the local authority in Scotland. The questions posed are whether receiving schools routinely inform child services of historical child protection concerns and the child's current address and whether such good practice should be a requirement.

#### Recommendation 1

It is recommended that the Scottish Government in consultation with the Association of Directors of Social Work (ADSW) review arrangements for the cross border transfer of social work records.

#### Recommendation 2

It is recommended that the Scottish Government and Association of Directors of Education Services (ADES) consider whether local authority education services, on receipt of information that a pupil had previously been subject of child protection concerns, should be required to inform their children services.

27. It must be acknowledged that these child protection concerns were historical and there had been no active social work involvement in recent years. Holly was a bright girl who was achieving at school, approaching her work with enthusiasm. She was encouraged and supported by her mother and there were absolutely no concerns about her care.

#### **Risk Assessment**

28. I have considered the information that was available to Strathclyde Police, at the point of his release from prison on 1<sup>st</sup> September 2006, which included the Social Enquiry Report (SER), OASys2 sentence management dossier, police charge reports, statements, and tape recorded interviews of TBS, that would have allowed the managing officers to make an informed assessment of the risk he presented.

29. The SER written by criminal justice social work services, South Ayrshire Council has significant weaknesses. The report reads as a plea of mitigation, and while it is acknowledged it is difficult to write a report on a sex offender who

totally denies the offence, there is no indication in the report that the author has challenged TBS's version of events. Under the heading "Current Offence" the author merely repeats TBS's version of events word for word, including his statement that "he did not touch the child in an inappropriate manner". There is no exploration of his sexual history or beliefs. There is a section headed "Future Risk Assessment" that acknowledges the use of RA3 and RM2000 tools that result in a "moderate" risk of future offending. The report then relays "neither of these models are particularly comprehensive". Such a comment, in my opinion, immediately detracts from the level of risk. The report makes a very strong plea for a probation order but offers no plan other than a "focus on victim empathy and anger management", while noting that there would be no focus on "sexually inappropriate behaviour" due to TBS's denial of such behaviour. The last paragraph of the report lays great stress on TBS's exemplary behaviour to date and his very positive character references, but makes no reference to the fact he has just been convicted of a sexual offence against a child. The SER author was faced with time and information constraints that are acknowledged in the conclusion to the report and also an absolute denial from the offender. This does make offence and risk analysis challenging.

30. The guidance at the time (section 5.5 of the National Standards for Social Enquiry and related Reports) relays: *"the objective in writing reports is to provide the court, as far as possible, with impartial information and advice. This means avoiding any form of special pleading on behalf of the offender and making sure the seriousness of the offence and its impact are not in any way minimised or explained away. This is greatly assisted where full information about the offence from a source other than the offender is available"*.

31. Since October 2010 all court reports are required to be written to a national template and guidance was issued by the Scottish Government (Criminal Justice Social Work Reports and Court Based Services Practice Guidance 2010). Section 6.15 of that guidance is entitled "offending analysis" and states *"This section is not a descriptive account of the offence(s) or an opportunity for the individual to justify his actions or make a plea in mitigation"*. There is helpful guidance in this section on context, responsibility, level of planning, attitude seriousness and insight into the offence, and recognition of the impact/consequences of the offence on the victim/community. If the SER had even made comment under these headings it would have been a more credible read.

Recommendation 3

It is recommended that all local authorities in consultation with the Association of Directors of Social Work (ADSW) ensure that criminal justice social work report authors are aware of, trained in, and following the practice contained within the Criminal Justice Social Work Reports and Court Based Services Practice Guidance 2010.

32. Paragraph 6.1.8 of the MAPPA Report relays that the OASys 2, risk assessment undertaken by prison social work staff while TBS was incarcerated within HMP Holme House, was not shared with Strathclyde Police, until the subsequent murder investigation.

33. This may not be accurate; an examination of the hard copy of the offender management file held by Strathclyde Police in respect of TBS reveals a thirty-six-page OASys 2 risk assessment. It is contained within the rear of the file, sandwiched between a print out of his previous convictions dated 29.08.06 and a fax dated 09.10.06 relative to his certificate of conviction. The front page of the document is stamped "Received Social Work Department". It therefore appears that Strathclyde Police did possess this risk assessment. However, there is no record in the file or on ViSOR as to when this document was received, so this is by no means certain.

Recommendation 4

It is recommended that Strathclyde Police issue an instruction to Offender Managements Units, to ensure that documentation is evidenced and receipted on ViSOR, conforming to the ViSOR Data Standards Manual.

34. The tenor of the SER is continued in the OASys 2 assessment, with large parts of this document being a straight lift from the SER. This assessment has been completed using TBS's version of events and accepting the information provided by him at face value, including his account that he was distraught at not being allowed compassionate leave, he merely reacted to something being thrown at his car and only grabbed the girl by the arm. The report records TBS's risk of re-conviction as low, his risk to children as medium and his risk to the public as low.

35. It is unclear why TBS offended on that particular day, on 16<sup>th</sup> July 2005. He reported anger, in that his grandmother was ill and he was unable to visit her. He

has continually claimed the Army refused him permission for compassionate leave, but this is not true, in that he never sought permission. He appears to have been determined to commit a sex offence against a girl that day. He may have been driving around looking for opportunities and appears to have been sexually preoccupied at the time. His offending against the girls was opportunistic. He only used the force required and was frightened off quite easily by the first victim. The second attack was more determined, confident, and reckless in that a friend accompanied the victim. The reaction of adults, victim and friends shouting at him appeared to be enough to make him run. As might be expected for a first time offender, he took few precautions to prevent detection. It should be noted the victims were random strangers. From TBS's point of view, this was an unsuccessful day; his modus operandi did not work. He wanted to commit contact sexual offences against girls, but his intentions were thwarted. There were two sexual attacks in one day, one in the afternoon, and the other in the evening. He used his vehicle as a mode of transport and to affect his escape from the scene. The sexual offences happened in the general area of his residence. All the information to build up the picture presented in this paragraph was available at the time; the various assessments of risk were undertaken subsequently.

36. With the information known at that time, sexual homicide or sexual offending involving serious violence would not have been considered a plausible future scenario. However, it is rarely reported, that we have an offender who perpetrates two sexual assaults on different stranger children in different episodes on the same day.

37. It is acknowledged in the MAPPAs SCR Multi Agency Report that Strathclyde Police rightly assessed TBS as presenting a "high risk" but the reasons for this are not articulated or analysed, in any of the risk management plans or MAPPAs Level 1 minutes.

38. Based on his previous offending a plausible scenario should have clearly been recorded within the risk assessment section that TBS presented a risk to young girls, most likely strangers to him, he may use his vehicle and the offences may occur in the general vicinity of his home. This would not exclude him presenting a risk to young girls who were known to him.

39. As a result of the murder investigation, the police learned of his deviant sexual practices, intimate partner violence and anger problems. Had these

matters been known earlier then this would have made sexual offending involving serious violence a more plausible risk scenario.

#### Recommendation 5

It is recommended that ACPOS ensure that in all future risk assessments undertaken by the police for registered sex offenders, there is an understanding about objective and informed assessment of offending behaviour, risk and protective factors and reference is made to:

- the likelihood of them committing further offences.
- the types of offences they might commit.
- the circumstances under which they might commit offences
- who might be at risk from them
- the potential seriousness of future offending and
- how that risk should be managed.

40. This should be based on an *objective* assessment of offending behaviour (grounded in knowledge of the offending patterns of sexual offenders) and *objective* assessment of risk and protective factors (applying appropriate risk assessment tools). All police officers who work in offender management units must have some training and knowledge of these, their practice in these areas should be supervised by suitably competent individuals, and where cases are difficult or complex there should be access to appropriate expertise to provide advice and guidance.

41. A common feature of the Strathclyde Police risk management plans is to relay TBS's version of events relative to his conviction. The following is recorded. *"The subject strenuously denies his offence. He states that on the day in question his gran was ill and that he had requested home leave in order to visit her. The subjects leave request was refused which led to the subject being in a foul mood. The subject states that he then went for a drive in his car to clear his head and whilst driving he passed a girl in the street who threw something which hit his car. Angry at her actions the subject jumped out of the car and grabbed the girl by the shoulders, asking her why she had thrown something at his vehicle. The girl being frightened by his actions ran away. The subject denies sexually touching the victim."*

42. Whilst it should be recorded that he denies his offending, I do not think it is helpful or necessary to record a plausible version of events relayed by the

offender that may distract the managing officers from the risk the offender presents.

43. The general nature of the offending is recorded within the risk management plan, but there could have been a more detailed description of these incidents, that would have given the managing police officers a clearer picture of the risk TBS presented. Strathclyde Police did receive a brief description of his offending, from North Yorkshire Police; however, this information was not fully transferred from the hard copy file to ViSOR. A request for a copy of the police report, statements and tape transcript of the police interview should have been made. The detective sergeant in charge of the unit from June 2007 until January 2010 offered the view " *I am aware that there is information about his index offence recorded on ViSOR, and if any further detail was required for the benefit of our OMU then we could have applied to that prosecuting force. I would only have directed that action if I felt that it was critical to his management.*"

#### Recommendation 6

It is recommended that Strathclyde Police issue an instruction to all Offender Management Units to ensure that a copy of the police report, key statements, particularly those of the victim and any other relevant information is collated to allow their officers to make a fully informed assessment of the risk an offender presents.

#### Recommendation 7

It is recommended that the Association of Chief Police Officers Scotland ACPOS consider the issue of information gathering relative to the index offence committed by an offender, so as to fully inform risk assessment with a view to ensuring this issue is re-enforced to officers attending the national Offender Management Course at the Scottish Police College.

#### Recommendation 8.

It is recommended that ACPOS consider the issue of continually repeating the offender's version of events within the risk management plan, which unless directly affecting the assessment of risk is not helpful or necessarily good practice. The national course should be reviewed to ensure that it sufficiently covers characteristics, offending patterns, risk and protective factors for sexual offenders.

44. Environmental scanning of an offender's home address was not a term used by offender management unit officers during the time TBS was managed in the community.

45. We therefore have to consider what was general practice during the period from September 2006 until April 2009. ACPOS guidance at that time relayed: *"As soon as possible after the initial registration an unannounced home visit should be made in order to confirm that the offender resides at the address they have given and to assess the wider suitability of that address. This will also provide information on their lifestyle and any potential risks in the area i.e. children in household, single woman with 2 children living next door, primary school directly opposite house etc. Any risks identified should be addressed immediately and appropriate action taken and recorded i.e. Submission of a Child Protection Referral, Disclosure to individual at risk etc."* This process would also apply to any notified change of address.

46. Paragraph 9.1.4 of the MAPPA SCR Multi Agency Report relays that a formal risk assessment (known as an environmental scan) of TBS's address was not conducted when he moved into Cronberry on 15<sup>th</sup> February 2008. It relays that practice at that time was for officers to conduct cursory physical checks, such as looking for toys around the surrounding houses or children's clothes on washing lines. It would appear that under the ACPOS guidance there would have been an expectation of an attempt to ascertain his immediate neighbours.

47. All officers based within the offender management unit who are recorded on ViSOR as having been involved in the management of TBS were interviewed relative to carrying out a risk assessment of his Cronberry address. The officers managing TBS pre and post this address change, both claim they were not his manager on that date and therefore they did not undertake any risk assessment relative to this address. ViSOR does not record who was the managing officer at this time.

48. On 25<sup>th</sup> April 2008 a Level 1 MAPPA meeting was convened at Ayr Police Station. Present were the detective inspector and four detective constables from the Offender Management Unit, which included his managing officer. During the discussion relative to TBS the police relayed that he had moved to 3 Riverside Gardens, Cronberry, just over a month ago, he was residing alone and had been fully compliant since his move.



49. Clearly these officers' should have been aware that TBS had not been seen by an officer from the unit since 24<sup>th</sup> September 2007. No risk assessment had been undertaken as to the suitability of the address and they were making an assumption that he was living alone, which we now know was not the case.

50. On 22<sup>nd</sup> April, and 2<sup>nd</sup> May 2008 there were two unsuccessful home visits. The first officer from the offender management unit to gain entry to the Cronberry residence did so on the 13<sup>th</sup> May, 2008, 3 months after he had taken up residence. The officer relays that he did not manage TBS when he took up residence; therefore he is unaware of what checks were undertaken and did not carry out an environmental scan of this address. This officer does relay that he asked TBS how he got on with his neighbours, but this question seems to have been deflected, with TBS preferring to disclose information about a relationship with a woman with children from Kilmarnock. This disclosure will be addressed later in the review (page 31 paragraph 118).

51. This issue highlights a lack of supervision within the offender management unit, in that TBS moved residence and a risk assessment was not undertaken as to the suitability of his new residence as per the ACPOS Guidance of that time.

52. ACPOS Guidance 2010 on Protecting the Public: Managing Sexual Offenders, Potentially Dangerous Persons and Restricted Patients, relays the following:

- *The frequency of home visits should be determined by regular assessment and review of risk in each individual case and recorded in the risk management plan. There is currently no multi-agency minimum standards stipulating how often visits should take place.*
- *Irrespective of the risk posed the minimum requirement is that every offender must be visited at least once at their home address and one written assessment completed in any 12 month period. The minimum requirement does not preclude officers from submitting additional assessments/risk management plans or from carrying out more frequent visits if the individuals risk dictates or the need arises.*

- *The following guidance should be complied with as a minimum standard in relation to meetings with managed offenders and must be documented within their risk management plans:*
- **Very High/High Risk** – *Risk Assessment/Management Plan reviewed every 3 months and home visits a minimum of once every 3 months. Review to be documented and recorded on ViSOR.*
- **Medium Risk** – *Risk Assessment/Management Plan reviewed every 6 months and home visits a minimum of once every 6 months. Review to be documented and recorded on ViSOR.*
- **Low Risk** – *Risk Assessment/Management Plan reviewed every 12 months and home visits a minimum of once every 12 months. Review to be documented and recorded on ViSOR.*
- *Newly registered RSO – Newly registered RSO's must be visited within three months of initial registration.*

#### Recommendation 9

It is recommended that Strathclyde Police ensure that all officers posted within offender management units are aware of, trained in, and follow the practice within the ACPOS 2010 guidance and associated Strathclyde Police Standard Operating Procedures.

53. In Scotland, many local authorities have a smaller proportion of social housing compared with the private sector. Registered sex offenders reside in all forms of tenure in both public and private housing, owner occupied, private and social rented sectors. The complexity of managing the accommodation of sex offenders in the community has increased as a result of the greater diversity of housing providers and housing responsibilities at local levels.

54. The National Accommodation Strategy for Sex Offenders in Scotland, Draft Guidance Consultation (December 2010 Version) is still under consideration. This document is welcomed as it outlines the important role of housing in the management of offenders subject to the sex offender notification requirements. The process suggested for the environmental risk assessment is resource intensive for all agencies involved in the management of these offenders, but primarily this Guidance concentrates on social housing. TBS resided in privately owned accommodation.

55. East Ayrshire Housing Services have robust arrangements for managing the accommodation of sex offenders in their community. However, during the course of the review it was noted that the housing SOLO, does not have direct access to Benefits records, which would have enhanced their ability to undertake environmental scanning research, being able to ascertain household composition of private housing.

Recommendation 10

It is recommended that East Ayrshire Council consider, whether Housing or another nominated department of the council have direct access to Benefits records that will assist environmental scanning research with a view to identifying the composition of tenants in private housing.

Recommendation 11

It is recommended the Scottish Government consider, whether Housing or another nominated department in all local authorities have direct access to Benefits records that will assist environmental scanning research with a view to identifying the composition of tenants in private housing.

56. In considering the information held by NHS, which may have changed the assessment of the risk that TBS presented, the two pieces of information of relevance are: (1) his request to see a female GP about a groin rash, and (2) his requests for help with anger issues. Specifically on two occasions, in the latter half of 2008, where TBS contacted his GP seeking help to manage his inability to control his anger. Understanding this to be a consequence of his army service, his GP therefore referred him to a representative of 'Combat Stress', an ex-services mental welfare society.

57. The first request to see a female GP may have been indicative of his more general sexual deviance and/or sexual pre-occupation (given what was discovered about him subsequently), and the second may have been indicative of emotional collapse, resentment and anger at the consequences for him of his conviction, and/or his more general propensity to anger/aggression (given what was discovered about him being violent to partners).

58. In themselves they would not have indicated that he was about to commit very serious sexual offences, but they may have prompted further consideration of these areas of risk. In this case it would have been useful if those assessing

and managing risk knew about these two things, given his lack of co-operation and unwillingness to be open about what was really going on. The question as to whether the sharing of this information would have led to the more pro-active policing, which would have been required to discover his contact with the two murder victims and the other concerning information which did not come to light until after the murders is a legitimate one. In answer, there are too many unknowns to reach a clear conclusion.

59. Therefore, what should the process be for information sharing between the NHS and other 'responsible authorities' and 'duty to co-operate agencies' within MAPPA?

60. Firstly, I wish to emphasise that NHS Ayrshire and Arran had no knowledge of the status of TBS as an RSO and therefore had no reason to have undertaken any research of their IT systems or share information. In fact, across Scotland most general practitioners will be unaware that an RSO is attending their medical practice. Only where the RSO is assessed as presenting a serious risk of harm to other members of the public in a health setting or NHS staff, is it likely that information has been shared with the GP. It is simply not common practice.

61. Within NHS Ayrshire and Arran, robust arrangements are in place to allow for effective information sharing, but only when that information is specifically requested from them, or where they are aware of the offender.

62. Health are a 'responsible authority' in respect of restricted patients, but their duty to co-operate extends to all registered sex offenders, not just mentally disordered offenders.

63. Section 1(2) of the Management of Offenders Act, 2005 defines "co-operate" to include the exchange of information. Co-operation is understood to include management of information, searching records for any involvement with named offenders and contributing, participating and adhering to a risk management plan.

64. Therefore, what should the process be, for information sharing between the NHS and the other 'responsible authorities' and 'duty to co-operate agencies' engaged in the management of registered sex offenders?

65. Given the nature of this case, there is an argument for all NHS services having alerts or flags about RSO's, so that if concerning behaviour arises, information can be shared with other agencies, in real time. On two occasions TBS contacted his GP seeking help to manage his inability to control his anger. It is recognised that behavioural changes are important when undertaking an informed risk assessment. However, we currently have a system, where for example, issues of anger, mental health, abuse of alcohol or drugs are unlikely to be proactively shared with other agencies, as 'health' are unaware the patient is a registered sex offender, and that these changes are important in undertaking an informed risk assessment. The purpose of managing risk is to ensure that all reasonable measures are taken to minimise risk and it is not the sole responsibility of any one agency. It demands a co-ordinated approach, involving highly effective communication and consistent responses across agency and professional boundaries.

66. Experience shows that placing flags and alerts on health systems is not a straight forward or fail safe process; managing sensitive information about a person's status as an RSO in general practice and other health settings creates a number of challenges; health staff need to have appropriate training, awareness and attitudes to deal with information about RSOs'; and routes to senior support, consultation and advice within the NHS and out with would have to be in place and known to all staff.

#### Recommendation 12

It is recommended that the Scottish Government in consultation with NHS Health Boards undertake to examine the feasibility of an alert system for the NHS in Scotland, allowing for pro-active, real time information sharing with the other 'responsible authorities' and 'duty to co-operate agencies' responsible for the management of sex offenders.


#### **Risk Management**

67. On 4<sup>th</sup> May 2006 TBS was convicted at Teeside Crown Court and released on bail pending sentence. On 6<sup>th</sup> May, 2006 whilst residing in the South Ayrshire Local Authority area with his girlfriend, a mother to three children and pregnant with his child, he attended at the local Police Station where he completed his notification requirements.

68. On 6<sup>th</sup> June 2006 he re-appeared at Teeside Crown Court where he was sentenced to 6 months imprisonment and incarcerated within HMP Holme House. This conviction was reported in a local Ayrshire newspaper.

69. On 29<sup>th</sup> August 2006 South Ayrshire Council Children and Families Services convened a child protection case discussion in advance of TBS release from prison on 1<sup>st</sup> September 2006. Two officers from the police offender management unit attended this meeting, though neither was later to be allocated as his manager.

70. The agencies agreed that considering the potential reaction within the community, and the unqualified and unknown risk to her three children, it would be appropriate if TBS were to find alternative accommodation. It was agreed that this decision should be relayed to social work staff at HMP Holme House to pass to TBS.

71. Recorded in the minute of this discussion, one of the police officer's present relayed that all TBS is required to do is register with the police and the police have no rights to go into his house etc. The issue of TBS's possible employment  was also raised by the police, the officer went on to explain that " *It is not, however, considered appropriate for offenders to go into people's houses, and they are generally steered away from such areas of risk.*"

72. Strathclyde Police were clearly aware of TBS's impending release and the current child protection concerns surrounding his accommodation. An officer should have been appointed as his manager in advance of his release to ensure that his accommodation, registration and child protection concerns were being proactively managed.

73. The Strathclyde Police single agency report and therefore the MAPPA SCR Multi Agency Report, contend that TBS on his release from prison completed his registration requirements within 3 days of his release on the 1<sup>st</sup> September 2006. These reports also relay there was no contact with TBS until 8<sup>th</sup> October 2006. Both these statements on closer examination were found to be inaccurate.

74. In summing these issues, there would appear to been no active management of TBS on his release from prison, even when a child protection discussion attended by officers from the OMU had been held 3 days in advance of his release. The failure to allocate a managing officer until October, 2006, coupled

with what appears to be some degree of chance in discovering he had not completed his notification requirements. These findings have been subject of a separate confidential report to Strathclyde Police.

#### Recommendation 13

It is recommended that Strathclyde Police consider the issues detailed within the confidential report and conduct an investigation relative to the procedural irregularities surrounding the recording of TBS's notification requirements.

75. Interrogation of ViSOR, records an entry on 3<sup>rd</sup> October, 2007 by the detective chief inspector, then responsible for management of the OMU, noting approval of the Risk Management Plan, but highlights the importance of the offender's profile being circulated to encourage local officers to submit SID logs to assist his lifestyle profile. It is clear this officer recognises the risk TBS presents the lack of lifestyle information and is requesting proactive tasking of local officers in Cumnock.

76. On 9<sup>th</sup> October 2007, a ViSOR entry records, endorsement of this course of action by the Kilmarnock based uniform chief inspector. It emphasises that TBS must be considered a potential threat to young girls, and as such: the community police officer should be made aware and TBS's offender profile be added to the sub divisional e-briefing site.

77. It is clear that these senior officers recognised the risk TBS presented, they acknowledged the lack of lifestyle information and are requesting proactive tasking of local officers in Cumnock. However, this pro-active tasking takes place over a year after his release from prison. TBS was resident in Auchinleck at this time, though the same police office also covers Cronberry.

78. It has not been possible to determine whether TBS featured on the sub divisional e-briefing site, due to an inability to historically research this information technology site. Prior to electronic briefings, hard copy files of sex offender profiles were sent to the local police office. They would be retained within a safe and taken out for briefing purposes.

79. A search of the safe at Cumnock Police Station, revealed a folder for TBS, which contained copies of his sex offender's annual notification and change of

address notification form. There was no trace of any offender profile or briefing note that would have informed officers of the risk he presented.

80. Paragraphs 6.3.5, 6.3.6 and 6.37 within the Strathclyde Police single agency report relate to the issue of local officers stationed at Cumnock being aware of TBS's presence in Cronberry. This report relays that *"in May, 2008 it has been confirmed, an Officer from the OMU circulated a risk management plan to the local community officer covering Cronberry, area. It is recorded that the risk management plan was to be used to electronically brief officers working in the Cronberry area, in order to make them aware of Smith's presence. In addition, it has been confirmed that on three occasions Smith visited Cumnock Police Office, which covers the Cronberry area, in order to comply with the statutory obligations placed upon him as a registered Sex Offender. As such, it is clear that local officers were aware of Smith's presence at 3 Riverside Gardens, Cronberry, and of his status as a Registered Sex Offender."*

81. The community officer stationed at Cronberry during the material time has subsequently been interviewed and he states he had never heard of TBS prior to his arrest for murder, and that he had at no time been briefed relative to his residence in Cronberry. The offender management unit officer who completed the risk management plan, dated 2<sup>nd</sup> May, 2008 relays that he did not personally brief local officers regarding TBS's presence in Cronberry. He notes there is an entry on the Risk Management Plan that the local community officer has been informed, the community officer does not support this.

82. The six officers based at Cumnock Police Office involved in the notification process have been interviewed. All state, they had not been briefed relative to TBS's presence in Cronberry and it would appear that they solely completed his notification requirements as an administrative function. They did not brief their colleagues as to his presence, nor did they personally take any pro-active action to gain intelligence or visit the area of his home address with the purpose of gathering information.

83. It would appear that local officers covering Cronberry, other than those involved in the notification process, were not aware of TBS's presence in their community. Neither was there any pro-active tasking of the local officers or community officer who may have been able to provide a more accurate picture of his lifestyle.



84. It is acknowledged that Strathclyde Police have since published a Standard Operating Procedure for the management of offenders, which promotes the active involvement of community-based officers.

Recommendation 14

It is recommended that Strathclyde Police ensure there is ongoing active engagement between officers within the OMU's and community-based police officers, relative to their collective responsibility for the management of offenders in the community.

Recommendation 15

It is recommended that ACPOS ensure the importance of ongoing active engagement between officers within OMU's and community based police officers, forms an integral part of the national Offender Management Course, delivered at the Scottish Police College.

Recommendation 16

It is recommended that ACPOS ensure the importance of ongoing active engagement between officers within OMU's and community based police officers, forms an integral part of the national probationer, supervisory and leadership courses, delivered at the Scottish Police College.

85. An audit of Strathclyde Police STORM records, revealed there were thirty-eight incidents, in the general area of Cronberry during the timeframe of TBS's residence. There were no calls to his address or that of the victims, but there were a number of opportunities for local officers to have given attention to the home address of TBS, that may have informed the risk he presented.

86. Paragraph 6.3.4 of the Strathclyde Police single agency report relays that officers from the OMU in Ayrshire division routinely recorded appropriate information about TBS onto the ViSOR system.

87. It is clear from an examination of ViSOR that various fields were not updated when the information was available, including but not restricted to appearance, photograph, tattoo, education, employment, habits and health. Additionally, personal details were not completed in respect of his national insurance number, marital status and sexuality, and his passport details were incomplete.

88. There were also inconsistencies in the frequency and quality of recording information in the appropriate fields. One of which, may have led to a failure to identify a child protection concern (page 29 paragraph 109).

89. It is acknowledged within the Strathclyde Police single agency report that there is currently no method of automatically transferring information recorded on ViSOR to the Scottish Intelligence Database (SID).

90. However, examination of SID, records only three entries relative to TBS prior to April 2009. The first entry is July 2005 relative to the index offence, and TBS's release on bail. The second entry is in December 2005, again relative to his index offence and a change to his bail address. The third entry is in August 2006 and refers to his conviction and sentencing. Of greater concern, since his release from prison and throughout his time in community his address on SID is recorded as being resident at a specified address within the South Ayrshire Local Authority area, which was never accurate.

91. There are forty-two ViSOR activity logs recorded on TBS's nominal record between 2006 and 1<sup>st</sup> April 2009. Paragraph 6.3.4 of the Strathclyde Police single agency report relays "that it is now evident that much of this information had not been disseminated on to SID where it would have been available to all officers." However, it is clear that there is no recorded information on SID since his release from custody until the reported disappearance of Diane and Holly Fallon.

92. An audit of the SID nominal for TBS from the 1<sup>st</sup> September 2006 until the reported disappearance of Diane and Holly Fallon reveals that his record was viewed on twenty-eight occasions. The audit also records four transaction updates, which should evidence new information being recorded but there is no updated information recorded in the log.

93. It should also be of note that one of his managing officer's clearly states that he submitted an intelligence log for SID, during his management of TBS requesting details of his vehicle be placed on the ANPR system.

94. An audit of Strathclyde crime recording system, revealed that on 3<sup>rd</sup> December, 2007 TBS was stopped and charged with speeding and driving a vehicle without a current MOT, which subsequently led to him being disqualified from driving. The crime report details that the officers had viewed his SID

nominal and that a relevant SID log had been submitted. While the audit of SID confirms the log was viewed, there is no record of an update relative to these offences.

95. While not referred to within the Strathclyde Police single agency report, it is of particular relevance, given TBS was driving a vehicle that, he had not disclosed to his managing officers. Enquiry would have revealed that he was not only 'driving' the vehicle, he had been the keeper of the vehicle since the 23<sup>rd</sup> August, 2007, albeit it was, registered to him [REDACTED]. It should also be noted that he was also using his Renault Clio, motor car, which he had disclosed to the police. This was clearly an overt act on his part to deceive the police as to his use of transport.

96. Although there are no intelligence logs recorded it would appear from the statement of an officer and entries in a crime report that officers were submitting SID logs, but either due to human error or an information technology fault, these were not being updated onto SID.

97. This also resulted in the known vehicle, namely the Renault Clio used by TBS, not being updated onto the ANPR system, as this requires a SID log to instigate the update onto that system. Recorded within the risk management plans it is detailed the managing officers will submit a SID log with details of any vehicles the subject may have access to and request these details be forwarded to ANPR.

98. An audit of the Criminal History System (CHS) records that there were one hundred and three enquiries relative to TBS between 25<sup>th</sup> September 2006 and 25<sup>th</sup> March 2009. Of these, his managing officer undertook three of these enquiries. The 1<sup>st</sup> being on the 26<sup>th</sup> January, 2007, 2<sup>nd</sup> on the 5<sup>th</sup> December, 2007 and the 3<sup>rd</sup> and final check being undertaken on the 23<sup>rd</sup> October, 2008. This audit does not allow me to consider, why his nominal was being viewed, sixty-seven enquiries appear to be undertaken in respect of administration and speculative searches. However, there are enquiries being undertaken by operational officers, but again there are no relevant SID logs from any of this activity.

#### Recommendation 17

It is recommended that Strathclyde Police re-enforce the importance of conforming to the ViSOR Data Standards Manual and ensuring important information is input as soon as reasonably practicable.

Recommendation 18

It is recommended that Strathclyde Police re-issue an instruction to all OMU officers, that key information contained within ViSOR is replicated on SID to allow wider dissemination of pertinent information.

Recommendation 19

It is recommended that Strathclyde Police, in light of a statement from an officer and the crime report that intelligence was submitted for dissemination onto SID; they investigate why this did not occur, possibly through human error and a training issue, or an information technology fault.

Recommendation 20

It is recommended that ACPOS prioritise the delivery of the phased transfer of information between ViSOR and SID.

99. All officers based within the OMU who engaged with TBS during his time in the community were asked to provide their police notebooks or other written records relative to their engagement with him. All officers relayed that no entries had been recorded within their official police notebooks. Notes had been taken either on a piece of paper or on a personal notepad, all of which have subsequently been destroyed.

100. While engaged in the management of sex offenders, then evidentially it would be best practice to record specific information within official police notebooks as subsequent investigations, risk assessments, applications for civil orders or warrants, could not be easily evidenced otherwise.

101. Whilst it is acknowledged that in some circumstances a police notebook may not be the most appropriate recording mechanism, there clearly has to be a written record, of important facts.

Recommendation 21

It is recommended that Strathclyde Police introduce a process to ensure that key information that may be required as evidence is recorded and retained relative to engagement with a registered sex offender.

Recommendation 22

It is recommended that ACPOS advise all Scottish Police Forces to introduce a process to ensure that key information that may be required as evidence is recorded and retained relative to engagement with a registered sex offender.

102. Paragraph 7.2.2 of the Strathclyde Police Review, highlights the lack of supervisory scrutiny of the various risk management plans, lack of pro-active management and no instructions being given to the managing officers to progress enquiries relative to information known and lack of engagement. I feel these issues need to be fully considered.

103. In particular, TBS had made disclosures relating to two relationships with adult women. Both these disclosures were made to the same officer, who was only meeting TBS for the first time, having taken over management in April, 2008 and then for only a brief period. On 2<sup>nd</sup> May 2008, the officer called at TBS's address in Cronberry, but received no reply. TBS telephoned him later that day, claiming he was in the bathroom and the police had departed before he could answer the door. Later that day, TBS attended at a local police station where he made the disclosure relative to a relationship with a girl having recently ended. On 13<sup>th</sup> May 2008 this officer carried out a home visit at the Cronberry address, where the second disclosure as to the relationship with a woman with three children was made.

104. The risk management plan dated 2<sup>nd</sup> of May 2008 records that TBS informed his managing officer that he was not in a relationship at present, although he had recently split up from a girl he had been seeing. This information is recorded in the "activity log" section of ViSOR.

105. In considering whether this disclosure should have been pursued further, we have to consider, that the previous risk management plans had all relayed his compliance and co-operation with the police. There was however a lack of lifestyle information, in that the police knew very little about how TBS spent his time. Yes, it would have been best practice to have enquired as to her identity, but I am convinced that had this question been posed it is highly unlikely that TBS would have been forthcoming. However, his unwillingness to reveal her identity should have informed their risk assessment. Examination of TBS's mobile phone may have proved even more fruitful.

106. As a consequence of the murder investigation, this young woman has been identified. It appears she met TBS through an internet chat site when she was 16 years of age. The timeline as to when she met and separated from TBS is somewhat confusing. However, it would appear that they were in a relationship from September, 2006 until March or April, 2008. They resided at her parents' home in Irvine, potentially in breach of his notification requirements. She was aware of his conviction but believed his version of events. This young woman also resided with TBS, when he moved into his new home in February, 2008 at 3 Riverside Drive, Cronberry. This young woman was prevented by TBS from having contact with her friends, not allowed to phone her mother, to answer the front door, in fact, she was locked in, when TBS ever left the house. TBS had taken precautions to ensure this relationship would not be easily known. She had no contact with neighbours and never met Diane or Holly Fallon.

107. During their relationship, she was the subject of several violent assaults perpetrated by TBS, while resident in Cronberry. All evidence his inability to control his anger. While none of the violent episodes were reported to the police, his then partner advised him to seek medical assistance, which he did. The relationship ended due to his violent behaviour. She also states that TBS had been disqualified from driving for a period of six months, and that he had continued to drive his motor vehicle throughout that time and drove mostly at night to avoid police detection.

108. As a result of the forgoing information, TBS had a great deal to lose by divulging the identity of this young woman.

109. On 13<sup>th</sup> May 2008, the same officer who visited on the 2<sup>nd</sup> May 2008 called at TBS home in Cronberry. The officer did check all rooms and there were no obvious signs of any other persons being resident other than TBS. During this visit, TBS intimated that he was about to start a relationship with a woman who had three children and resided in Kilmarnock. He only knew her first name and had not been to her home or had contact with her children. This is correctly recorded with the "Visits" section of ViSOR. However, all positive visits and information were recorded generally on the "activity log" section of ViSOR and I am concerned the new managers may have overlooked this entry.

110. As a consequence of the murder investigation, this woman was traced and stated that TBS spent weekends at her home, potentially in breach of his

Notification Requirements. This woman also described his anger management issues and that TBS had attended his GP seeking help. She was aware of his conviction but again as in the previous relationship, she believed his version of events. More significantly, she had met both Diane and Holly Fallon within TBS's home. She was also the mother of a [REDACTED] girl, which was within his previous victim profile.

111. It would appear both these women were in a relationship with TBS for an overlapping period of time. Both recall him being disqualified from driving and in particular, the woman with three children had accompanied him to the court on the 18<sup>th</sup> February 2008 when he was disqualified from driving for a period of six months.

112. The disclosure of this developing relationship should clearly have been followed up by the police, however, as highlighted there was a further change in his managing officer. Having been seen in May, 2008, the next home visit should have been conducted on or about 13<sup>th</sup> August, 2008. His managers conducted a period of sustained police activity with four unsuccessful visits taking place in August, 2008 including unsuccessful attempts to contact TBS by telephone. TBS did respond by telephoning the police and on 21<sup>st</sup> August 2008 he independently attended at Cumnock Police Station, where he completed his annual notification requirements, which was the only physical contact with the police, at that time.

113. In October 2008 there is further police activity by his managing officers' to trace TBS with a telephone call on the 14<sup>th</sup> October 2008 and a further unsuccessful home visit on the 15<sup>th</sup> October 2008, where a warning letter was left. This letter informed TBS of their concern that they have been unable to trace him at home or contact him by telephone. The officers' explain that they do not possess either a mobile or landline telephone number to contact him, and TBS is asked to contact the police as soon as possible to avoid them having to trace him at his place of work or through family members. On 16<sup>th</sup> October, 2008 a telephone call to the father of TBS had met with an undertaking he would ask his son to contact the police. His father also relayed that TBS had lost his driving licence due to a speeding charge and was no longer working. He was attending a computing course at Cumnock College during the week and visiting friends in Irvine at weekend. There was no response until a telephone call from TBS to the police on 21<sup>st</sup> October 2008, when an appointment is arranged for a home visit.

114. Having undertaken five unsuccessful visits and several phone calls without success, should the officers have considered undertaking some discreet enquires with neighbours with a view to gathering information, as to his whereabouts, lifestyle or associations?

115. This question was posed to the officers who responded by stating that they had considered discreet enquiry with neighbours, however they considered the dilemma between their duty of care to RSO's and the possibility of disclosure to the community lead them not to progress this course of action. They also felt that TBS had made some response, albeit limited, to the contact cards and they had received a positive response from his father, that he would arrange for TBS to contact them.

116. In my view the officers should have conducted discreet door to door enquires at the three homes in the block of four occupied by TBS. Officers in offenders management units are dressed very casually and any number of excuses could have been used, in an attempt to gather information as to his whereabouts or lifestyle. We will never know what this would have revealed, but it was a missed investigative opportunity, that may have revealed his acquaintance with Diane and Holly Fallon.

117. The very evident omission is however, the pro-active tasking of local officers. That said, the officers did believe from previous risk management plans that local officers were aware of his presence in the community. However, in the circumstances, I would have expected local officers to have been tasked with periodically checking the address, for signs of lights on at night and his vehicle being present at that location. Specifically as they were now aware from his father that he was disqualified from driving, local officers should have been made aware. There had been no sign of his vehicle during August 2008 at Cronberry but it was present during the visit of October of that year. This may have led to a reasonable conclusion that he had been driving his vehicle while disqualified. The managing officers were undertaking a one hour return car journey to and from their office, with in the main, little success, where local officers could have undertaken proactive work as part of any free patrol time. The officers have responded to the issue by stating that this was not undertaken as TBS was not a priority at this time and the officers were managing a number of more serious offenders. This is a crucial point as again, we return to the issue of the initial assessment of risk TBS presented. I would have expected the officers to have



either attended at Cumnock Police Station or telephoned to brief the local officers as to their concerns.

118. On 23<sup>rd</sup> October 2008 by prior arrangement, officers from the OMU attended at the home address of TBS. A priority of this visit should have been to question TBS as to his relationship with the woman with 3 children, disclosed at the previous visit. ViSOR records, "The subject says that he does not have a girlfriend." but there is no specific reference to the relationship with the woman or of him being asked about this issue. As previously highlighted if the officers had not opened the "visit" section of ViSOR and viewed the log of the 13<sup>th</sup> May, 2008, they would have been unaware of this information. The other issue would have been to check if his vehicle was there since on their previous visits it had not been evident.

119. Officers relay in their statements that during this visit TBS was extremely reluctant to answer any questions put to him and his responses were guarded. As a result of his father's information about spending time with a friend in Irvine, the officers' questioned him as to this relationship. TBS then disclosed his friendship with a family who had a young girl. He described the father as his "best friend", who was aware of his offence and never left him alone with his child. A Child Protection Referral was submitted relative to this disclosure. The ViSOR entry is concluded, " The subject answered all questions put to him", which is at odds with the officers' statements.

120. However, while the two women previously highlighted, had never been identified, we now have the name and address of his best friend and a good legitimate reason for a police visit. This was a clear investigative opportunity to gain information on TBS as to his lifestyle and relationships, which the police clearly lacked. Both officers relay, they considered this was not necessary as they had made a child protection referral, which would be followed up by children and families. The officers offered their personal opinion that this would not have been normal practice, as workload would have prevented them from being proactive. It is also highlighted that the address of the family in question was in North Ayrshire, outwith their area of responsibility. This should have been proactively managed and there was an opportunity for this to have been managed in partnership with North Ayrshire Council.

121. The role of children and families was to make an assessment of the risk to this child and of the abilities of these parents to protect their child not gain intelligence on the lifestyle, associations and relationships of TBS.

122. While this will be further discussed later in the report under "child protection issues", these concerns were dealt with in good time by North Ayrshire Council, but a ViSOR entry dated 1<sup>st</sup> December, 2008 relays *"that the information was received some time ago from children and families and TBS will no longer be welcome at this home."* This does not record the full information that North Ayrshire Council, Children and Families had passed to the police.

123. In a letter dated 28<sup>th</sup> July, 2009, the Head of Service for North Ayrshire Council, Children and Families Services relays that the father of the child was aware that TBS had spent time in prison, but TBS had claimed this was in relation to anger issues and holding someone hostage. The family concerned are advised that TBS should not be staying overnight and should not be left alone with their daughter. This was fed back to the police, in that TBS had not been open and honest with the family and that the mother of the child indicated TBS was having contact with another family who had a [REDACTED] boy. There is no record of this information on ViSOR. This may be due to the delay between the information being received and the entry being placed on ViSOR approximately five weeks later.

124. It is recorded within the Police risk management plan dated 24<sup>th</sup> October, 2008 *"Subject is currently unemployed but had been working for [REDACTED] until he lost his Licence in February 2008 due to speeding. Subject is due to get his licence back on 27th November 2008. Subject is believed to still be driving but claims to be using public transport or his bike."* The detective sergeant in charge of the unit chairs this meeting and while he should have been aware of the foregoing, there appears to be no evident change in the assessment of risk, taking into consideration the offender has lost his job, mention of two relationships and contact with another child and that he may be driving while disqualified.

125. On 13<sup>th</sup> February 2009 at the final police home visit, before the reported disappearance of Diane and Holly Fallon, TBS advised the police that his driving ban was no longer in force and [REDACTED] had casually employed him as a delivery driver. This is a company that delivers furniture to private dwellings,

where children may at times be reasonably expected to be present. There was also a suggestion that he gained casual employment with [REDACTED] [REDACTED] which would again have provided access to private dwellings. The Level 1 Minute dated 17<sup>th</sup> February, 2009, records that he had applied to an agency for driving work, which may have resulted in him working for differing employers and having access to numerous vehicles.

126. On 29<sup>th</sup> August 2006 as previously highlighted within this report (page 20 paragraph 69), a child protection case discussion was convened relative to the children of his then partner. At this meeting, the police raised the issue of TBS's possible employment [REDACTED] the police offender management officer went on to explain that as a sex offender, it would not really be appropriate for TBS to go into people's homes, which is at odds with the decision taken by their colleagues.

127. The managing officers were asked to consider the issue of disclosure to employers of TBS known to Strathclyde Police. In considering a disclosure to [REDACTED] [REDACTED] the officers maintained that due to the nature of the job, TBS would make a delivery and leave, this was not considered an occupation with obvious child protection concerns. Due to the fact that [REDACTED] was fully sighted on these matters (conviction) they were satisfied; he was working in a controlled environment. They did not obtain details of the vehicles used on these jobs as this appeared to be casual employment and not a permanent position of employment.

128. It is my opinion, the officers should have been obtaining details of this casual employment and obtaining the make, model and registration numbers of the vehicles TBS was having access too. As to casual employment with [REDACTED] [REDACTED] then clearly a consideration of a disclosure to the firm should have been considered. It may not have been necessary to end any causal employment, but there should be a clear understanding that, while in private dwellings, TBS would have been supervised by an appropriate member of staff. As to working with [REDACTED] [REDACTED] then again his risk should have been re-enforced. We return to the initial assessment of risk and a failure to understand, that he offended against young girls who were strangers to him and that he used a motor vehicle to attend and flee the scene.

129. On 17<sup>th</sup> February 2007 at the Level 1 MAPPA Meeting attended by the detective inspector, detective sergeant and both his managing officers it is detailed within the minute that his offender profile has been circulated force wide. This action would appear not to have been completed.

### **Child Protection Issues**

130. Three days prior to his release from prison, on 29<sup>th</sup> August 2006, a child protection case discussion was held concerning the three children of TBS's current partner and their unborn baby. The meeting made a number of decisions including the following: TBS should **not** return to live with this woman and the three children, no unsupervised contact should take place between TBS and the children, a referral to the Children's Reporter was to be made and appropriate information was to be shared and discussed with the children, involving their mother. It was further agreed that if there was any indication of non compliance with the agreed plan, or any other factor indicating increased risk, then a Child Protection Case Conference was to be convened. Two police officers from the offender management unit attended this case discussion.

131. It should be noted, that a recommendation was made for TBS to be offered voluntary contact by criminal justice social work to address his anger management issues. TBS declined this voluntary throughcare support.

132. The recommendation contained in the social worker's report to the Children's Reporter dated 12/12/2006 was to take no further action in relation to the three children. The basis of the recommendation was the relationship between TBS and this woman had ended and that arrangements were in place involving her family to supervise any contact between TBS and his child, as then unborn.

133. On 10<sup>th</sup> October, 2006 the police made a child protection referral to East Ayrshire Social Work Services in respect of TBS living [REDACTED] [REDACTED] child. TBS had been resident at this address from the point of his release from prison on 1<sup>st</sup> September 2006.

134. Despite a clear assessment by South Ayrshire Council and confirmed at a multi agency child protection case discussion held on 29/8/2006 that TBS should not reside in the same household as children, no timely referral appears to have

been made regarding his residence in the same household as a [REDACTED] boy. We are aware that this was due, to TBS not being seen by the police until the 10<sup>th</sup> October 2006 and though the officer submitted the referral, that day, this was some 5 weeks after his release.

135. It is acknowledged in the East Ayrshire single agency report, the response of social work services to the police referral concerning this child was not adequate. East Ayrshire Council note similar issues were identified through external inspection and action plans implemented to ensure service improvement.

136. On 24<sup>th</sup> October, 2008 the police made a further child protection referral in respect of the child of a man described as the "best friend" of TBS to Social Work Services, North Ayrshire Council. Social Work Services visited the family on the 28<sup>th</sup> October 2008.

137. During the assessment visit, social work services did not divulge the reasons for TBS conviction and imprisonment. It is stated however that they did advise the parents of the child that she should not be left in the sole company of the offender nor should he stay over at their home. It was assessed that the child's parents were protective of her and that there was no need for any further social work intervention. (Source: - letter from Head of Service, Children, Families and Criminal Justice, North Ayrshire Council 28/7/2009)

138. The above communication states that a team leader fed back the outcome of this assessment visit to Strathclyde Police including the observation that TBS had not been honest with the family about his conviction and that the mother of this child had indicated the offender was in contact with another family with a [REDACTED] boy.

139. The single agency investigation carried out by East Ayrshire Council established that there was conflicting information in that North Ayrshire Council were certain the information had been communicated to police during a specific time however Strathclyde police were equally certain that the information was not received by them as outlined.

140. It does not appear that the wellbeing and protection of this second child, details unknown, was investigated by Social Work and Police services, as it should have been. There is no record on Strathclyde Police systems that they were

aware of this child protection issue, however information was not updated on ViSOR until December 2008, some weeks after the information had been passed by social work.

Recommendation 23

It is recommended that North Ayrshire Council, Social Services ensure that children and families social workers are aware of, trained in, and following the practice within their Child Protection Procedures.

141. As previously documented on 13<sup>th</sup> May, 2008 during a police home visit TBS disclosed that he might be about to start a relationship with a female with three children, but this issue was not proactively investigated and the identity of this woman and children was not known until after the reported disappearance of Diane and Holly Fallon. On 1<sup>st</sup> April 2009, the police submitted a child protection referral concerning TBS contact with the three children of this woman. The police referral states that TBS stays over at the household of this woman where the children are present. All three children were subsequently joint-interviewed and there were no disclosures of inappropriate contact with TBS.

**Legislative - Police Powers**

142. There is no general legal obligation for an RSO to allow police officers access to their homes, or to participate in any interview or risk assessment process unless this is a condition of their statutory license conditions. If the offender decides to refuse entry, unless the offender has refused entry on a previous occasion, they have no power to force entry.

143. The only legal requirement placed on registered sex offenders is to comply with the registration process. Having been convicted at court or released from prison for a relevant offence, an offender must attend personally at a prescribed police station and supply specific information. Failure to make an initial or annual notification or comply with the requirements without reasonable excuse is an offence.

144. The notification requirements of Part 2 of the Sexual Offences Act, 2003 require an offender who has received a conviction or finding for certain sexual offences (Schedule 3 of the Sexual Offences Act 2003, list the specific sexual offences) to register as a Register Sex Offender.

145. Thereafter, an offender must within 3 days of having been convicted at court or released from prison for a relevant offence, attend at a prescribed police station and supply to the police the following details:

- *Date of birth*
- *National Insurance Number*
- *Name and any other names used on the date of the conviction and on the date of the notification*
- *Home address on the date of the conviction and on the date of the notification (this means the offenders sole or main residence in the UK, or where the offender has no such residence, the location of a place in the UK where he can regularly be found and if there is more than one such place, such one of those places as the person may select, and*
- *The address of any other premises in the UK which, at the time of notification, they regularly reside or stay at for a 'qualifying period' (this is a period of seven days or two or more periods in any 12 months which taken together amount to seven days)*
- *In addition to supplying the above details, an offender will be fingerprinted and photographed. An officer in addition to taking a facial photograph of an offender can also photograph any part of an offender i.e. photographs of marks, scars or tattoos. Also an officer may take a DNA sample (mouth swab only) if any previous sample has not been taken, lost, destroyed or is insufficient for analysis*
- *Passport details if passport held*
- *Financial details*

146. Section 96A of the Sexual Offences Act, 2003 provides for the granting of a warrant to force entry to and examination of, the address of an RSO. The warrant is granted to gain entry to access the risk of an offender committing a further sexual offence. A sheriff grants the warrant, and a senior officer holding the rank of superintendent or above must make the application. This officer must assert that on one or more occasions police officers were refused entry.

147. The fact that application has to be made by a police superintendent or above, clearly suggests this application is deemed as requiring oversight at a very senior level and will most likely require the personal attendance of the superintendent at the court. There have been relatively few applications under

this legislation and all pertain to an offender refusing police officers access to their home on one or more occasions. It would be easier to gain a warrant to search for a firearm or explosives than to progress a warrant to search a RSO's home to assess his risk.

148. Section 104 and 105 of the Sexual Offences Act, 2003 provided for the granting of Sexual Offences Prevention Orders (SOPO's). Before granting any SOPO the sheriff must be satisfied that an order is necessary to protect the public or any particular members of the public from serious sexual harm. A SOPO was not granted at the point of TBS conviction. Therefore, a SOPO could only be sought on application by the chief constable.

149. The act requires, where an offender is behaving in a way that suggests they might commit a sexual offence then the police must actively consider whether to apply for an order. The police must demonstrate two things to the court in order to make a valid application:

- *that the person is a "relevant offender"; and*
- *that, since the date of his first conviction for a "relevant offence" he has acted in such a way as to give reasonable cause to believe that an order is necessary to protect the public, or any member of the public, from serious sexual harm from him.*

150. The introduction of the Criminal Justice and Licensing (Scotland) Act 2010, will provide greater powers conferred under subsection (2)(c) and inserts a new section 111A into the Sexual Offences Act 2003. New subsections 111A(2)-(3) have the effect of extending the permitted content of a SOPO, and an interim SOPO, so that the court can impose requirements as well as such other terms in the order, whether prohibitions, restrictions, or other terms, as it considers appropriate so as to protect the public by preventing, restricting or disrupting the involvement of the subject of the order in sexual crime.

151. Subsection (2)(d) amends section 112 of the Sexual Offences Act 2003 to provide that a SOPO may be made at the instance of the court or on the motion of the prosecutor.

152. Officers within the offender management unit did not possess information relative to TBS that gave them reasonable cause to believe that an order was necessary to protect the public. Is that however due to poor management, information sharing, lack of proactive lifestyle checks or a combination?



153. Best police practise dictates that visits should take place within the RSO's home address. Unannounced home visits are key to gathering as much information about the offender as possible. Most offenders are compliant and will allow police officers into their home, but that visit may be confined to one room and it is not common practice for officers to search that room or more unlikely other parts of the house. Therefore the level of compliance by RSO's in allowing police officers to search their home with a view to assessing their risk is not known.

154. TBS did not refuse entry to his home therefore it is my opinion there would be no justification for Strathclyde Police to consider whether there were grounds to apply for such a warrant to search his home.

155. It is evident from the interviews of the officers who managed TBS that they did not attempt to search his home during any of the successful home visits, with a view to assessing his risk. Relative to visits to the Cronberry address, one officer did walk round all rooms, while during the two subsequent visits; the only room not visited was the bedroom.

156. All Strathclyde Police offender management unit officers interviewed during the course of this review, expressed their collective view that their police powers are very limited in managing registered sex offenders and they had no lawful authority to search his home, therefore permission was never sought from TBS. It most certainly would have been good practice to ask for permission to search and this should form part of any training delivered to offender management units and be contained within the police operating procedures for the management of offenders.

157. There is no general legal obligation for an RSO to allow police officers to examine their mobile phone. However, mobile phones are now part of daily life and are a key source of information relative to family, friends and associations. The officers managing TBS did not ask to examine his mobile phone with a view to identifying contacts, texts or messages that may have given a clearer picture of his associations.

158. All the offender management unit officers interviewed expressed their collective view that they had no lawful authority to examine his mobile phone. If

these proactive tasks been undertaken then it may have been discovered that he was in a relationship with two women and of his contact with Diane and Holly Fallon. The officers should have asked TBS for permission to examine his mobile phone. This would have been proactive management of this offender, but the issue remains that TBS had no lawful requirement to comply.

159. The Human Rights Act 1998 gives further legal effect in the UK to the fundamental rights and freedoms contained in the European Convention on Human Rights. The right to respect for private and family life, the right to peaceful enjoyment of your property. MAPPA acknowledges the complexity of the principles of necessity and proportionality rooted within the Human Rights Act and why this may conflict with managing RSO's who pose a serious risk of harm.

160. While there is a difficult balance to be struck between the rights of registered sex offenders and the need to protect the community, in my view the police are hampered by the lack of police powers in respect of searching an RSO's home and examination of their mobile telephone, both with a view to assessing risk. Not only do we need to protect the wider community – the principles and values set out by the UN Convention on the Rights of the Child must be considered, the most relevant elements being:

- The child or young person's welfare or 'best interest' is the paramount consideration (Article 3)
- Children and young people should be able to voice their opinions (Article 12)
- Children and young people should be protected from harm (Article 19)
- Children and young people should be protected from sexual abuse (Article 34), which includes all forms of sexual exploitation involving inducement or coercion.

#### Recommendation 24

It is recommended that the Scottish Government consider proposing an amendment to the Sex Offenders Act 2003, giving power to search an offenders home, for the assessment of risk and to require an offender to produce his mobile phone for examination if so requested by a police officer. This however, could be a two-tier system, identified at the point of conviction by the sentencing judge. For those offenders who are considered not to present a serious risk of harm, they would continue to be subject to the current legislation, but those offenders

considered to present a serious risk of harm, could be managed under the proposed enhanced powers.

161. Keeping Children Safe (The Sex Offenders Disclosure Scheme) was adopted across Scotland as of 31st March 2011. This scheme will allow members of the public to register a child protection interest in respect of a named individual and request information. If the individual has convictions for sexual offences against children and/or poses a risk of causing serious harm to the child concerned then there is a presumption that this information will be disclosed to a parent, guardian or carer of a child under 18 years of age. This scheme may have allowed Diane Fallon to registered a child protection interest in respect of TBS, but based on what is known she may have not deemed this necessary.

### **Police Training**

162. Between 10<sup>th</sup> October 2006 and April 2008 TBS would appear to have been managed by one officer. There is a change of manager in April, 2008 until June of 2008. Thereafter, two officers are allocated to manage all registered sex offenders resident in East Ayrshire and manage TBS from June, 2008 until his arrest for murder.

163. From TBS's release from prison until his arrest, there were several changes of line management responsibility for the offender management unit. There were two changes of the detective sergeant responsible for the day to day management of the unit, three changes of the detective inspector with responsibility for overall performance of the unit and three changes of detective chief inspector who had overall managerial responsibility for criminal investigation within 'U' Division, Strathclyde Police. While there is no direct evidence of a negative impact on the management of TBS due to these changes, there is clearly an issue of how the police develop and strengthen their partnership working when key personnel are being re-deployed on a regular basis. This is not an issue unique to Strathclyde Police and is worthy of further consideration.

### **Recommendation 25**

It is recommended that ACPOS consider the issue of the re-deployment of police officers from key public protection posts and the impact on partnership working.

164. Attendance at training courses, relevant to the management of registered sex offenders was ascertained.

165. Following his release from prison, TBS's initial managing officer had received training in respect of ViSOR and attended the national offender management course at the Scottish Police College during July 2006.

166. Of the other three officers, subsequently involved in the management of TBS, all received ViSOR training prior to their engagement with him. One of these officers managed him for a period of 5 months from June 2008 until November 2008 without having attended the national offender management-training course at the Scottish Police College. The Strathclyde Police, offender management course did not commence until October, 2008.

167. The other two officers involved in his management did not attend either the Strathclyde Police or national Scottish Police College Offender Management training courses until the beginning of 2009.

168. The detective sergeant with immediate line management responsibility for the unit was appointed in June 2007 and remained in post until January 2010. Although initially trained in the use of ViSOR, he did not attend the Strathclyde Police offender management course until January 2009. He did not attend the national offender management course, during this posting. In his statement he relays " I was simply appointed to the role within the OMU by the division."

169. The detective sergeant who managed the unit prior to June 2007 is still to be interviewed by Strathclyde Police, therefore I am not able to relay what training he had received.

170. Of the senior divisional officers interviewed, all had been trained in the use of ViSOR but acknowledged they had no previous experience in the management of sex offenders, nor did they attend either the local or national offender management courses.

#### Recommendation 26

It is recommended that Strathclyde Police consider succession planning in relation to the training of identified officers prior to or as soon as reasonably practicable after the commencement of their role within the offender management unit.

Recommendation 27

It is recommended that Strathclyde Police ensure that the selection of the detective sergeant post within an offender management unit is subject to a robust selection process. This is a key post in line managing and providing specialist advice and support to all officers and staff within the OMU and other divisional officers. It is imperative that this officer has the relevant skills and background to effectively discharge this role, and has access to relevant training as a priority on appointment.

Recommendation 28

It is recommended that Strathclyde Police ensure that all detective inspectors with responsibility for oversight of Offender Management Units are required to attend the national offender management course at the Scottish Police College.

**Police Resources – Performance Management**

171. The sub divisional commander, detective chief inspector, detective inspector, detective sergeant and detective/police constables based within 'U' Division, were responsible for the policing and management of sex offenders within the East, North and South Ayrshire council areas covering a geographical area of 1300 square miles.

172. Between 4<sup>th</sup> October 2007 and 14<sup>th</sup> January 2008, the detective sergeant in charge of the unit expressed his opinion that the unit was under resourced, and requested additional officers, administrative support and motor vehicles submitting two separate memoranda in support of this request.

173. At this time, the unit was staffed by one detective sergeant and six full time detective/police constables, however any abstractions i.e. maternity leave, secondment to major investigations, had to be managed within the unit.

174. The unit on average managed a total of 210 offenders, which effectively meant that each officer was managing 35 offenders. Based on these memoranda, it would appear that in comparison to all other divisions within the Strathclyde police area, 'U' division proportionately managed the highest number of offenders per officer.

175. All offender management unit officers interviewed expressed their belief that they were under resourced, there was no coverage relative to abstractions, and only two VISOR terminals were available to the seven officers based within that unit. Prior to February 2008, there was also only one police vehicle available to the unit, although they could attempt to borrow police vehicles from other departments. All officers expressed the view that due to their workload they had to prioritise the offenders who they considered presented the highest risk, which did not allow for a great deal of proactive investigatory work.

176. As a result of these memoranda, the matter was progressed through the divisional command team, and the DCI restructured the management of the unit in an effort to deliver a more robust structure by:

- appointing a detective inspector to have specific line management responsibility for the unit,
- the creation of a divisional public protection unit, and
- the addition of a further motor vehicle

177. Two officers were therefore allocated to manage all RSO's, within each of the three local authority areas, however, dedicated vehicles were allocated to North and South Ayrshire, leaving the officers covering East Ayrshire not having a dedicated police vehicle at their disposal. It should be noted that Cronberry is in East Ayrshire. This may have had a detrimental effect, but that said, not having a dedicated vehicle does not mean that officers are incapable of undertaking their role.

178. In August 2008 in a further memorandum submitted by the detective inspector, he offers the opinion "*there is a clear and pressing need for a review of staff levels.*" The memorandum highlights, in detail, the challenges being faced by the officers within the unit and suggests that the appointment of a support staff member could alleviate the time spent by officers undertaking administration tasks and another police officer would allow more realistic offender supervision. The detective inspector concludes his argument for additional resources in the following terms "*Measures already taken to improve effectiveness across the departmental core business, as previously detailed, will, in my opinion, be productive, but in the face of growing demands, as stated, I am in no doubt they will not fully address the needs of the department, nor allow full confidence that it can manage this high risk control strategy, priority area.*"

179. During periods of leave, sickness or abstraction, one officer alluded in their statement to being responsible for the management of eighty registered sex offenders. The memorandi and all of the officers interviewed were under the belief that ACPOS guidance stipulated a maximum ratio of twenty-five offenders per officer. This was not the case and ACPOS confirmed no such guidance relative to the ratio between offenders and officers has ever been agreed, however this may have further re-enforced the officers' anxiety that the OMU was under resourced.

180. It would appear that the unit was under resourced, in that officers were absent from the OMU either through long-term absence or being deployed to other duties or seconded to the investigation of serious crimes but there appears to have been a lack of managerial oversight as to the day-to-day resources deployed. I understand Strathclyde Police have responded to this resource issue.

#### Recommendation 29

It is recommended that Strathclyde Police advise Divisional Commanders to continually review resilience within their offender management units, to ensure sufficient trained resources are in place to effectively manage sex offenders.

#### Recommendation 30

It is recommended that ACPOS consider providing guidance to all forces regarding the ratio of offenders that could reasonably be managed an officer, any guidance must take into consideration the risk each offender presents, as this will dictate the level of engagement by the officer.

181. As part of the review process, I requested that Strathclyde Police provide me with any performance management information that was being collated at that time relevant to the performance of this offender management unit. Strathclyde Police did not have a process in place at that time to collate performance management information relative to the OMU.

182. It would seem reasonable to expect monthly performance management information to have included, the number of sex offenders being managed in the community, their respective risk levels, the number of officers and the number of offenders per officer, number of home visits and more importantly the number of home visits that are outstanding.

183. This would have afforded the force executive and divisional command team comparison information between divisions and whether ACPOS Guidance relative to home visits was being adhered to relative to the offender's risk. It would also highlight, that 'U' Division was managing the highest number of sex offenders within the force area, with the highest proportion of offenders per officer. For the operational staff, based within the unit, the collation of this information would have readily identified those offenders that had not been visited at home, within the risk management plan review timescales, which would have clearly identified issues with the management of TBS.

#### Recommendation 31

It is recommended that Strathclyde Police introduce a process for gathering performance management information relative to the management of registered sex offenders.

#### **MAPPA Level 1 Management**

184. A MAPPA Level 1 multi-agency process was introduced in 'U' Police Division, Strathclyde Police in July 2008. The detective sergeant from the divisional offender management chairs the meetings and other attendees include the detective inspector, detectives/police constables from the unit, service manager criminal justice social work, team manager criminal justice, team manager children and families, housing SOLO and if involved in direct care of an offender, a representative of NHS Ayrshire and Arran. This appears to reflect what should be management at MAPPA Level 2. The health representative did not attend any discussions relative to TBS. These meetings were convened to ensure information sharing, assess the risk of harm an offender presents and agree a risk management plan to reduce the risk of harm.

185. On 24th October 2008, TBS was one of 16 registered sex offenders who were subject of a MAPPA Level 1 multi-agency discussion. On 17<sup>th</sup> February 2009, TBS was one of 20 offenders subject of a further Level 1 multi-agency review discussion. In my opinion the large number of offenders being discussed during one meeting effectively prohibits any in depth discussion. It is also my opinion, that TBS was correctly assessed as requiring management at MAPPA Level 1, with the information known to the police at that time. Had they learned of his intimate partner violence, anger management problems and contact with children, then he should have been managed at MAPPA Level 2.



186. All attendees had been given advance notice of the individuals to be discussed and were asked to research their respective IT systems. The representatives from the other agencies had no active involvement and no information to share in respect of TBS.

187. East Ayrshire Council, criminal justice social work services did not at that time (unless a sex offender was being managed by Criminal Justice Social Work), automatically place a flag/alert on their SWIFT computer system. However, doing so would immediately alert an enquiry to a single point of contact within their organisation.

188. It is my view a registered sex offender's personal details should be clearly flagged on the I.T. systems of the 'responsible authorities' to ensure that any information which directly affects the risk an offender presents is reacted to in a timely and efficient manner.

#### Recommendation 32

It is recommended that ADSW consider advising all local authorities, to place an alert on their SWIFT or other equivalent computer system, relative to all registered sex offenders resident within their local authority.

189. MAPPA provides a framework for information sharing and risk management, however the management of the offender remains the duty of the 'responsible authority' in accordance with their statutory responsibility.

190. National MAPPA Guidance clearly states "*multi agency risk management is an expensive resource and should only be used where it is necessary to manage the risk of serious harm in a collaborative and co-ordinated manner.*" It is therefore my opinion that since only the police were engaged with TBS and the other agencies had no information to share, or active participation with the offender, then this meeting and subsequent meetings diverted the officers from their primary role of managing the offenders. This process of convening Level 1 meetings, when advance research has established the other agencies have no information to share and have no active involvement or management of the offender diverts the time and resources of the police and representatives from the other 'responsible authorities'.

191. From my own experience of the operation of the MAPPA in Scotland, there is an inconsistency in delivery, particularly in terms of how offenders are managed at both Levels 1 and 2.

192. Currently, the following guidance is available relative to the management of sex offenders:

- Version 4 MAPPA guidance, including
- National Concordat on Information Sharing for sex offenders
- National Accommodation Strategy for Sex Offenders
- 2010 ACPOS Guidance on Protecting the Public: Managing Sexual Offenders, Potentially Dangerous Persons and Restricted Patients
- National Objectives and Standards for Criminal Justice Social Work

193. Whilst it is acknowledged that the Scottish Government have produced national MAPPA guidance, which is currently under review, it is clearly the remit of the 'responsible authorities' within each CJA area to manage registered sex offenders in the community and work collectively to reduce the risk of harm presented by these individuals. Within each CJA the 'responsible authorities' have established local Strategic Oversight Groups to oversee the performance management and quality of local MAPPA operations and plan for the future improvement and development of the system. In my opinion, the existing advice and guidance, is however subject to local interpretation and leaves scope for confusion and an inconsistency of practice. I would therefore suggest the MAPPA in Scotland would benefit from a health check, which would allow us to share and build on good practice.

#### Recommendation 33

It is recommended that South West Scotland Strategic Oversight Group consider reviewing the current MAPPA Level 1 process for managing registered sex offenders, where the risk posed by the offender can be managed by one agency, without actively or significantly involving other agencies.

#### Recommendation 34

As we pass the fourth anniversary of MAPPA in Scotland, it is recommended that the Scottish Government consider an independent review of MAPPA, which could identify and promote best practice, to better inform Community Justice Authority Strategic Oversight Groups.

**Conclusion**

194. I have primarily concentrated on the actions of Strathclyde Police as the 'Responsible Authority' during this Significant Case Review. There are recommendations, which relate to the local authorities within South West Scotland Community Justice Authority area, however their overall involvement in the management of TBS was minimal and is detailed within the previous MAPPA SCR Multi Agency Report.

195. The recommendation relative to the cross border transfer of child protection social work records is necessary for the protection of children and I would advocate this issue be progressed within a reasonable timescale.

196. One of the key recommendations is for the NHS in Scotland to explore the feasibility of introducing an alert system to their I.T. systems. It is acknowledged that this will be a challenge to the NHS, taking into consideration current differences in their I.T. not only across regional Health Boards but also within each Health Board area. There will be additional challenges to be overcome by Health in relation to this issue but to allow this recognised gap in information sharing to continue is not defensible.

197. There is and should be a growing culture within the police of ensuring compliance to process and procedure within the available legislative framework, which is to be commended. While many officers do take a very pro-active management approach when dealing with their offenders, they are well aware that technically without the offender's permission or other legal authority, their police powers are limited.

198. However, RSO's are increasingly aware of their rights and the limited powers the police have in relation to their management. Officers are personally discouraged from taking innovative action and are less likely to push the boundaries of their police powers in the established climate of litigation and complaint. This is clearly evidenced in the actions of all of the officers interviewed as a result of this review.

199. Therefore the recommendation for the Scottish Government to consider an amendment to the Sex Offenders Act 2003 to enhance the powers of the police is not only desirable but also necessary. The introduction of the Stable and Acute

2007 risk assessment tool further highlights the need for officers to gain access to the offenders' homes to allow for an informed risk assessment to be undertaken.

200. Risk assessment is the first step in risk management. Risk management is the process by which the likelihood of an adverse event is reduced.

201. From his conviction, as evidenced by the SER, Oasys2 assessment through the risk management plans the tone was set that appeared to diminish the risk that TBS presented. It is rare for an offender to perpetrate two separate sexual assaults on different stranger children, in different episodes, on the same day. While Strathclyde Police correctly assessed that he presented a high risk of harm, and the risk management plans outlined how he was to be managed, the reality is that closer adherence to their own plans may have identified the escalating risks.

202. This review has confirmed this was an offender management unit with resource and work pressures, and police staff struggling to proactively manage the RSO's resident in their area with little managerial direction. Not surprisingly Strathclyde Police have substantially increased the resources within the unit and taken steps to address these failings.

203. There was a lack of audit or performance management information, monitoring arrangements, training not delivered prior to or within a reasonable timescale of performing this most demanding role. Intelligence is at the heart of policing and the failure to update SID and ViSOR with key information, from the time of TBS's release from prison until the disappearance of Diane and Holly Fallon is of great concern.

204. The impact of these murders will clearly have affected each of these officers. We must also acknowledge, they were managing another 209 registered sex offenders during this period.

205. The following quote from the Bichard Inquiry is clearly relevant:

*" For those agencies whose job it is to protect children and vulnerable people, the harsh reality is that if a sufficiently devious person is determined to seek out opportunities to work their evil, no one can guarantee they can be stopped. Our task is to make it as difficult as possible for them to succeed."*

206. In my opinion more robust management of TBS could have identified his increasing risk but I cannot say that it would have prevented the murder of Diane and Holly Fallon, but potentially he may not have been in a position to commit these murders at that point in time. There were several missed investigative opportunities that should have resulted in TBS being subjected to greater police scrutiny, which may have resulted in a return to custody.

*Robert Thomson*  
MAPPA Co-ordinator  
Lothian and Borders  
Community Justice Authority  
21<sup>st</sup> June 2011

## Recommendations for action

### Recommendation 1

It is recommended that the Scottish Government in consultation with the Association of Directors of Social Work (ADSW) review arrangements for the cross border transfer of social work records (page 8).

### Recommendation 2

It is recommended that the Scottish Government and Association of Directors of Education Services (ADES) consider whether local authority education services, on receipt of information that a pupil had previously been subject of child protection concerns, should be required to inform their children services (page 8).

### Recommendation 3

It is recommended that all local authorities in consultation with the Association of Directors of Social Work (ADSW) ensure that criminal justice social work report authors are aware of, trained in, and following the practice contained within the Criminal Justice Social Work Reports and Court Based Services Practice Guidance 2010 (page 10).

### Recommendation 4

It is recommended that Strathclyde Police issue an instruction to Offender Managements Units, to ensure that documentation is evidenced and receipted on ViSOR, conforming to the ViSOR Data Standards Manual (page 10).

### Recommendation 5

It is recommended that ACPOS ensure that in all future risk assessments undertaken by the police for registered sex offenders, there is an understanding about objective and informed assessment of offending behaviour, risk and protective factors and reference is made to:

- the likelihood of them committing further offences.
- the types of offences they might commit.
- the circumstances under which they might commit offences
- who might be at risk from them
- the potential seriousness of future offending and
- how that risk should be managed (page 12).

Recommendation 6

It is recommended that Strathclyde Police issue an instruction to all Offender Management Units to ensure that a copy of the police report, key statements, particularly those of the victim and any other relevant information is collated to allow their officers to make a fully informed assessment of the risk an offender presents (page 13).

Recommendation 7

It is recommended that the Association of Chief Police Officers Scotland ACPOS consider the issue of information gathering relative to the index offence committed by an offender, so as to fully inform risk assessment with a view to ensuring this issue is re-enforced to officers attending the national Offender Management Course at the Scottish Police College (page 13).

Recommendation 8.

It is recommended that ACPOS consider the issue of continually repeating the offender's version of events within the risk management plan, which unless directly affecting the assessment of risk is not helpful or necessarily good practice. The national course should be reviewed to ensure that it sufficiently covers characteristics, offending patterns, risk and protective factors for sexual offenders (page 14).

Recommendation 9

It is recommended that Strathclyde Police ensure that all officers posted within offender management units are aware of, trained in, and follow the practice within the ACPOS 2010 guidance and associated Strathclyde Police Standard Operating Procedures (page 16).

Recommendation 10

It is recommended that East Ayrshire Council consider, whether Housing or another nominated department of the council have direct access to Benefits records that will assist environmental scanning research with a view to identifying the composition of tenants in private housing (page 17).

Recommendation 11

It is recommended the Scottish Government consider, whether Housing or another nominated department in all local authorities have direct access to

Benefits records that will assist environmental scanning research with a view to identifying the composition of tenants in private housing (page 17).

Recommendation 12

It is recommended that the Scottish Government in consultation with NHS Health Boards undertake to examine the feasibility of an alert system for the NHS in Scotland, allowing for pro-active, real time information sharing with the other 'responsible authorities' and 'duty to co-operate agencies' responsible for the management of sex offenders (page 19).

Recommendation 13

It is recommended that Strathclyde Police consider the issues detailed within the confidential report and conduct an investigation relative to the procedural irregularities surrounding the recording of TBS's notification requirements (page 21).

Recommendation 14

It is recommended that Strathclyde Police ensure there is ongoing active engagement between officers within the OMU's and community-based police officers, relative to their collective responsibility for the management of offenders in the community (page 23).

Recommendation 15

It is recommended that ACPOS ensure the importance of ongoing active engagement between officers within OMU's and community based police officers, forms an integral part of the national Offender Management Course, delivered at the Scottish Police College (page 23).

Recommendation 16

It is recommended that ACPOS ensure the importance of ongoing active engagement between officers within OMU's and community based police officers, forms an integral part of the national probationer, supervisory and leadership courses, delivered at the Scottish Police College (page 23).

Recommendation 17

It is recommended that Strathclyde Police re-enforce the importance of conforming to the ViSOR Data Standards Manual and ensuring important information is input as soon as reasonably practicable (page 26).



Recommendation 18

It is recommended that Strathclyde Police re-issue an instruction to all OMU officers, that key information contained within ViSOR is replicated on SID to allow wider dissemination of pertinent information (page 26).

Recommendation 19

It is recommended that Strathclyde Police, in light of a statement from an officer and the crime report that intelligence was submitted for dissemination onto SID; they investigate why this did not occur, possibly through human error and a training issue, or an information technology fault (page 26).

Recommendation 20

It is recommended that ACPOS prioritise the delivery of the phased transfer of information between ViSOR and SID (page 26).

Recommendation 21

It is recommended that Strathclyde Police introduce a process to ensure that key information that may be required as evidence is recorded and retained relative to engagement with a registered sex offender (page 27).

Recommendation 22

It is recommended that ACPOS advise all Scottish Police Forces to introduce a process to ensure that key information that may be required as evidence is recorded and retained relative to engagement with a registered sex offender (page 27).

Recommendation 23

It is recommended that North Ayrshire Council, Social Services ensure that children and families social workers are aware of, trained in, and following the practice within their Child Protection Procedures (page 36).

Recommendation 24

It is recommended that the Scottish Government consider proposing an amendment to the Sex Offenders Act 2003, giving power to search an offenders home, for the assessment of risk and to require an offender to produce his mobile phone for examination if so requested by a police officer. This however, could be a two-tier system, identified at the point of conviction by the sentencing judge. For those offenders who are considered not to present a serious risk of harm,

they would continue to be subject to the current legislation, but those offenders considered to present a serious risk of harm, could be managed under the proposed enhanced powers (page 41).

Recommendation 25

It is recommended that ACPOS consider the issue of the re-deployment of police officers from key public protection posts and the impact on partnership working (page 42).

Recommendation 26

It is recommended that Strathclyde Police consider succession planning in relation to the training of identified officers prior to or as soon as reasonably practicable after the commencement of their role within the offender management unit (page 43).

Recommendation 27

It is recommended that Strathclyde Police ensure that the selection of the detective sergeant post within an offender management unit is subject to a robust selection process. This is a key post in line managing and providing specialist advice and support to all officers and staff within the OMU and other divisional officers. It is imperative that this officer has the relevant skills and background to effectively discharge this role, and has access to relevant training as a priority on appointment (page 43).

Recommendation 28

It is recommended that Strathclyde Police ensure that all detective inspectors with responsibility for oversight of Offender Management Units are required to attend the national offender management course at the Scottish Police College (page 43).

Recommendation 29

It is recommended that Strathclyde Police advise Divisional Commanders to continually review resilience within their offender management units, to ensure sufficient trained resources are in place to effectively manage sex offenders (page 45).

Recommendation 30

It is recommended that ACPOS consider providing guidance to all forces regarding the ratio of offenders that could reasonably be managed an officer, any guidance must take into consideration the risk each offender presents, as this will dictate the level of engagement by the officer (page 45).

Recommendation 31

It is recommended that Strathclyde Police introduce a process for gathering performance management information relative to the management of registered sex offenders (page 46).

Recommendation 32

It is recommended that ADSW consider advising all local authorities, to place an alert on their SWIFT or other equivalent computer system, relative to all registered sex offenders resident within their local authority (page 47).

Recommendation 33

It is recommended that South West Scotland Strategic Oversight Group consider reviewing the current MAPPA Level 1 process for managing registered sex offenders, where the risk posed by the offender can be managed by one agency, without actively or significantly involving other agencies (page 49).

Recommendation 34

As we pass the fourth anniversary of MAPPA in Scotland, it is recommended that the Scottish Government consider an independent review of MAPPA, which could identify and promote best practice, to better inform Community Justice Authority Strategic Oversight Groups (page 49).

## Glossary

### A

ACPOS – Association of Chief Police Officers Scotland – the professional body of chief police officers. Its core activity is developing policing policy.

ADES - Association of Directors of Education Service – the professional body representing directors of education in Scotland.

ADSW – Association of Directors of Social Work – the professional body representing directors of social work in Scotland.

ANPR – Automatic Number Plate Recognition – a UK wide CCTV network that allows the police to track car movements.

### C

CJA - Community Justice Authority – Creates safer communities through a reduction in re-offending, by providing appropriate and timely services to offenders at all stages of the criminal justice process.

CJSW - Criminal Justice Social Work - Criminal Justice Social Work services are provided by local authorities and are responsible for the statutory supervision of sex offenders who are in, or have been released from, custody (on licence) or who have been placed on supervision in the community by a court.

### D

Disclosure - Disclosure should be seen as part of an overall plan for managing the risk posed by an individual offender and the need to protect a child, a group of children or other vulnerable persons. Prior to any formal disclosure taking place all other options should be considered and attempted in order to reduce the risk posed. On all occasions, the offender should be given the opportunity to reduce or remove himself or herself from the perceived risk or given the opportunity to self disclose to the relevant parties. If a decision is made to formally disclose, then a letter of disclosure will be drafted on behalf of the Deputy or Assistant Chief Constable.

Duty to co-operate agencies – Section 10(3) and (4) of the Management of Offenders (Scotland) Act, 2005 provide that in establishing and implementing the

joint arrangements, the responsible authorities must act in co-operation with such persons as Scottish Ministers specify by this order. Duty to co-operate is reciprocal and requires agencies to co-operate with each other, which includes the exchange of information.

**H**

Housing SOLO - Housing Officer engaged in the management of sex offenders.

**M**

MAPPA - Multi-Agency Public Protection Arrangements - The Management of Offenders etc (Scotland) Act 2005 places a duty on the Police, Local Authorities, Prison Service and Health (the Responsible Authorities), to establish joint arrangements for the assessment and management of risk posed by certain offenders.

MAPPA Level 1 - Ordinary Management - The identified risk can be managed by one agency without the significant active involvement of other agencies. There is still an expectation that information will be shared and there will be joint working and collaboration between agencies.

MAPPA Level 2 - Inter-agency Management - should be used where the active involvement of more than one agency is required but where either the level of risk or the complexity of managing the risk is not so great as to require to Level 3.

**O**

OASys 2 - Offender Assessment System - used in the England and Wales by Her Majesty's Prison Service and the National Probation Service from 2002 to measure the risks and needs of criminal offenders under their supervision.

OMU - Offender Management Unit - police unit responsible for the management of registered sex offenders.

**R**

RA3 - social work risk of harm assessment - Screens the key factors known to be associated with serious harm and records the evidence sources consulted. Results in a provisional judgement of low, medium or high risk of harm.

## RESTRICTED

RM2000 – Risk Matrix 2000 is a statistically derived risk classification process intended for males aged at least 18 years who have been convicted of a sex offence.

RSO - Registered Sex Offender – This is an offender convicted of an offence specified in Schedule 3 of the Sexual Offences Act 2003 and therefore subject to the notification requirements of this act.

Responsible Authority – defined by section 10(7) of the Management of Offenders Etc. (Scotland) Act 2005 are the Chief Constable, the local authority (primarily, though not exclusively the Chief Social Work Officer), the Health Board and the Scottish Prison Service.

Restricted Patient – A mentally disordered offender subject to a Compulsion order and a Restriction Order (either in hospital or conditionally discharged to the community), a Hospital Direction or a Transfer for Treatment Direction.

### **S**

SER – Social Enquiry Report – prepared by CJSW in advance of an offender being sentenced by a judge.

SID – Scottish Intelligence Database.

SOPO - Sexual Offences Prevention Order - A court may make a SOPO at the time of dealing with certain sexual offenders or when the police make a special application on account of the offender's behaviour in the community. A SOPO will require the subject to register as a sexual offender and can include conditions, for example to prevent the offender loitering near schools or playgrounds. If the offender fails to comply with (i.e. breaches) the requirements of the order, he can be taken back to court and may be liable to up to 5 years' imprisonment.

STORM - Command and Control computer system used by the Scottish Police Service.

SWIA – Social Work Inspection Agency.

SWIFT – Social Work computer system.

**V**

VIA - Victim Information and Advice – Crown Office and Procurator Fiscal Service which offers help to certain victims, witnesses and bereaved nearest relatives affected by crime.

ViSOR - Violent and Sex Offenders Register - Provides a national database, accessible by a number of public protection agencies across the UK, of violent and sexual offenders managed within the Multi-Agency Public Protection Arrangements (MAPPA). It also contains details of other persons who may not have a conviction for a violent or sexual offence, or indeed any criminal offence, but are assessed as posing a risk of serious harm to the public.

