

INFORMATION SHARING PROTOCOL

Between

The Probation Board for Northern Ireland

(PBNI)

&

The Probation Service (Ireland)

In respect of

The Management of Sex Offender and

Offenders assessed as Significant Risk of

Serious Harm to Others



An tSeirbhís Phromhaidh
The Probation Service

March 2022

**MEMORANDUM OF UNDERSTANDING ON THE SHARING OF INFORMATION
RELATING TO INDIVIDUALS CONVICTED OF SEXUAL OFFENCES AND
INDIVIDUALS ASSESSED AS PRESENTING A SIGNIFICANT RISK OF SERIOUS
HARM BETWEEN THE PROBATION BOARD FOR NORTHERN IRELAND AND
THE IRISH PROBATION SERVICE**

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| 1. | Parties to the Memorandum of Understanding | |
| | Probation Board for Northern Ireland (PBNI) 80-90 North Street Belfast BT1 1LD | Probation Service (Ireland) (PS) 9 Haymarket Smithfield Dublin 7 D07 WT27 |
| 2. | <p>Introduction</p> <p>The purpose of this memorandum is to assist PBNI and PS in the protection of the public in Northern Ireland and Republic of Ireland from sex offenders and offenders assessed as presenting a significant risk of serious harm (SRoSH) who move between jurisdictions by:</p> <ul style="list-style-type: none"> • Providing a framework for the secure and confidential sharing of information (personal and non-personal) between the Probation Board for Northern Ireland, hereafter, referred to as PBNI, and the Probation Service, (Ireland), hereafter referred to as PS. • Co-ordinating and strengthening the supervision and management of sex offenders and offenders assessed as Significant Risk of Serious Harm, in the community in both jurisdictions. <p>For the purpose of this agreement:</p> <p>a) A sex offender is an individual who has been convicted of a sex offence as defined by the Sexual Offences Act 2003 as applied to Northern Ireland and the Sex Offenders Act 2001 (Ireland).</p> <p>b) An offender assessed as presenting a Significant Risk of Serious Harm is defined as follows:</p> <p>PBNI:</p> <p>When there is a high likelihood that a service user will commit a further offence, causing serious harm. (PBNI SRoSH Policy 2021).</p> | |

Serious harm is defined in the Criminal Justice (Northern Ireland) Order 2008 as 'death or serious personal injury, whether physical or psychological'.

PS:

Serious harm is defined as "personal, physical or psychological harm which is life threatening and/or traumatic and from which recovery is usually difficult or incomplete". (PSROSH Guidance Document January 2012)

The purpose of this memorandum is to set out each of the Parties' expectations of the other in connection with the data protection procedures which shall apply where the personal data collected by one party is made available to the other party.

This memorandum does not purport to alter the responsibilities which the Parties each have under the relevant data protection legislation but rather seeks to clarify how their responsibilities may be met where personal data is shared.

3.

Purpose for sharing

Both parties to this memorandum have statutory or common law duties to supervise, monitor and manage adjudicated offenders including responsibilities in relation to the protection of the public.

The sharing of information under this memorandum is designed to allow both Probation Services to agree voluntary arrangements for community sentences, post custodial support etc. with regard to offenders as defined in section 2.

Data sharing is necessary to enhance public protection in both jurisdictions in circumstances where sex offenders or offenders assessed as presenting a Significant Risk of Serious Harm to Others are moving between respective jurisdictions.

The parties agree that the personal sensitive data obtained through the protocol shall not be used for any purpose other than that specified herein and shall not be shared with any other individual or group, with the exception that:

- Where there is a clearly identified risk to the public in Northern Ireland, PBNI will share information on an individual Sex/SRoSH Offender with Police Service for Northern Ireland (PSNI) and/or Health & Social Care Trusts in accordance with current Public Protection Arrangements for Northern Ireland (PPANI) and PBNI Child Protection procedures.

Or

- Where there is a clearly identified risk to the public in Republic of Ireland, the Probation Service will share information on an individual Sex/SRoSH Offender with the Garda Síochána and/or Child and Family Agency in accordance with the Sex Offender Risk Assessment and Management (SORAM) Procedures / Children First Act 2015

The sharing of information under this memorandum is necessary and proportionate. It will benefit defendants, courts, sentencers, victims and the wider public. It will ensure the fair and effective administration of Justice.

4. Legal Basis for Data Sharing

The Probation Service is an agency of the Department of Justice. The Minister for Justice has responsibility for the protection of life and property and the prevention and detection of crime.

On behalf of the Minister for Justice and in conjunction with the Courts Service, the Irish Prison Service, An Garda Síochána and the wider community, the Probation Service provides high quality assessment of offenders and a professional and effective management of services and supports to bring about positive change in the behaviour of offenders.

The primary legal basis for the Probation Service holding the data to be shared with the PBNI is on the basis of Ministerial Function. The function is underpinned by Article 28.12 of the Constitution, together with the Ministers and Secretaries Act 1924, as amended. Article 6 (1) (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and acting on the order of a Court.

In respect of PBNI, under the Data Protection Act 2018, the use of data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.

PBNI's lawful purposes are provided by the provisions of the Probation Board (NI) Order 1982, the Criminal Justice Order (NI) 1996 and the Criminal Justice Order (NI) 2008. PBNI has a statutory obligation to prepare reports for courts to assist the courts in determining the offender's suitability for any community order. PBNI supervises sentences being serviced in the community and works in prisons preparing prisoners for release.

Each jurisdiction has enacted data protection legislation (the Data Protection Act 2018). Under these Acts there is provision for the processing of personal data for 'law enforcement purposes'. This covers

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| | <p>provisions for processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offence.</p> <p>Under these Acts the PS and the PBNI are considered to be 'competent authorities', i.e. they are a public authority who carry out functions relevant to these law enforcement purposes. The Acts also include provisions for the sharing of personal data between 'competent authorities'.</p> <p>Under these Acts, PS and PBNI are considered to be joint controllers of the personal data being exchanged as they have jointly determined the purpose and means of processing of the data being exchanged.</p> |
| <p>5.</p> | <p>Organisations Involved</p> <p>Probation Board Northern Ireland (PBNI) and the Probation Service (PS)</p> |
| <p>6.</p> | <p>Data to be Shared</p> <p>In the case of an offender proposing to move, or reported to have moved, residence (to the other jurisdiction), the following information can be shared.</p> <ul style="list-style-type: none"> • Name/Alias/Date of Birth/Current address. • Current/previous offence. • Type of order/licence including details of restrictions and/or requirements. • Existence of any other court orders. • Summary of Criminal Record (The Criminal Record must not be attached). • Most recent work plan and summary of Risk Management Meeting where applicable and where available the RM2000 and SA07 and PSROSH/PSROSH (SO) assessment outcomes, or equivalent. • Response to supervision. • Current social circumstances for example, employment/accommodation/lifestyle/associates. Any known supports. • Any information about proposed address. • Length of proposed stay, if known. • Particular areas of concern. <p>Where appropriate, any or all of these specific data items will be provided.</p> <p>The information to be shared includes personal/sensitive personal data.</p> |

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| <p>7.</p> | <p>Information use</p> <p>The Data shared under this agreement will be shared on a case by case basis. Both parties will ensure the information shared under the agreement will only be used for the specific purpose set out in Section 3.</p> <p>Information provided by one party to the other will not be released to a third party without obtaining the express written authority of the partner who provided the information.</p> |
| <p>8.</p> | <p>Requests for information</p> <p>If there are any requests for information under the applicable Data Protection Acts/ Freedom of Information Acts PBNI and PS will consult with each other before consideration of release.</p> <p>Each Party will be separately responsible for responding to requests from data subjects for the exercise of their rights in connection with the processing of the personal data, e.g. requests for confirmation of processing, access, copies of the data, rectification, erasure, and restriction of processing and to any objection raised to processing by the data, the subject of this agreement.</p> <p>The parties agree to give each other whatever technical assistance is required to allow the other to respond to a data subject request.</p> |
| <p>9.</p> | <p>Responsibilities of each party</p> <p>This agreement does not give unrestricted access to information. The information is only shared in relevant cases where an offender as described moves between the two jurisdictions.</p> <p>Each party shall in its privacy notice make clear that information may be shared under this agreement.</p> <p>PBNI and PS are responsible for ensuring they have organisational and security measures in place to protect any information shared. Both must ensure a reasonable level of security for supplied information, personal or non-personal, and process the information in compliance with Data Protection Legislation.</p> |

PBNI and PS will comply with the Principles and requirements in terms of data subject rights of their respective Data Protection Acts in all their processing of the data being shared.

PBNI and PS are responsible for ensuring they meet the conditions set out in the applicable Data Protection Act when processing personal information.

Each will ensure that the additional conditions required for processing information classed as sensitive personal data, for example medical information, are met to ensure the information is used and disclosed lawfully.

Each party will ensure that staff are only given access to the data shared where it is necessary for them to perform their duties in connection with the delivery of this service.

Each party is responsible for ensuring that any members of staff accessing shared information under this agreement are trained and fully aware of their responsibilities under the applicable Data Protection Act to maintain the security and confidentiality of personal information.

Each party must ensure that all staff accessing shared information follow the procedures and standards that have been agreed and incorporated within this agreement.

Before sharing personal data, the party providing the information will ensure it is accurate and up to date. Particular care will be taken with sensitive data where inaccuracies could cause harm or distress to data subjects.

The party originally supplying the information must be notified immediately of any breach of confidentiality or incident involving a risk or breach of the security of information.

Neither party should assume that any non-personal information can be freely shared. The originating partner should be contacted before any further sharing takes place.

Each party will upon request provide to the other party any evidence which it may require to demonstrate compliance with the requirements set out herein.

Each party will share with the other party the outcome of any audits or reviews that have been carried out on its activities relevant to this memorandum.

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| <p>10.</p> | <p>Security</p> <p>Both parties will take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss to, destruction of, or damage to, personal data.</p> <p>Both parties to this agreement are responsible for ensuring that they have appropriate security arrangements in place. They will consider how the relevant data will be stored, accessed and transmitted. Each party will ensure that adequate steps are taken to prevent:</p> <ul style="list-style-type: none"> a) accidental or deliberate destruction of the data; b) accidental or deliberate modification of the data; c) deliberate and unauthorised unavailability of the data; d) unauthorised access to information to any computer system containing the data; e) misuse of the data <p>The information to be shared will be protectively marked under respective government protective marking schemes.</p> <p>Personal and sensitive personal information, if sent electronically, will only be sent to a secure email address. Additional security, such as password encryption will be applied where appropriate.</p> <p>Where material is being posted appropriate measures, for example use of registered post, double enveloping, will be used.</p> <p>Information will be sent or provided to relevant individuals agreed by each organisation and confirmation of receipt will be provided.</p> |
| <p>11.</p> | <p>Retention and disposal</p> <p>Both parties will retain the personal data being exchanged for no longer than is necessary for the purposes stated in this Memorandum of Understanding.</p> <p>Both parties will retain information shared in accordance with their retention and disposal policy.</p> |
| <p>12.</p> | <p>Security incidents or data breaches</p> |

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| | <p>Each party will adhere to their respective organisation's data handling policies and procedures – e.g. Records Management, Management of Information, and Security.</p> <p>If there is a data breach or suspected data breach involving any of the information shared in this agreement immediate steps must be taken by each organisation to remedy the breach or suspected breach.</p> <p>There is a requirement that the relevant independent supervisory authority (the Information Commissioner's Office NI/the Data Protection Commission Ireland) should be notified in certain instances without undue delay and that notification where feasible and in such circumstances must take place within 72 hours.</p> <p>It will be the responsibility of the Party where the breach occurs to notify the relevant supervisory authority and, where the breach is deemed to be either high or significant, the data subject(s). In case of any doubt about whether a breach is likely to result in a high risk to the rights and freedoms of natural persons the party responsible for notifying the breach shall consult with the other Party.</p> <p>The data loss/incident response plan for the party responsible for the breach must be engaged and the Single Point of Contact for each party must be informed without undue delay. Relevant line management must also be informed.</p> <p>Both parties must be fully engaged in the resolution of an incident by assisting in the investigation being carried out by the responsible partner.</p> |
| 13. | <p>Review/Termination of Memorandum of Understanding</p> <p>This Memorandum of Understanding will be reviewed in 3 years after its signature and every 3 years thereafter.</p> <p>If any significant change takes place which means the agreement becomes an unreliable reference point, the agreement will be updated as needed and a new version circulated to replace it. Either signatory to this agreement can request an extraordinary review at any time.</p> <p>Should any party wish to terminate the agreement the signatories must notify the other signatories immediately and ensure the secure deletion or disposal of all shared data.</p> |
| 14. | <p>Indemnity</p> |

In the event of a breach of this agreement which results in a financial penalty, claim or proceedings, the parties agree to co-operate to identify and apportion responsibility for the breach and the defaulting party will accept responsibility for any such claim.

15.

Signatures

I have read, understood and agree to abide by the terms and conditions of this agreement. All information received will only be used for the purpose defined and listed in the agreement.

Signed on behalf of PBNI

Amanda Stewart

Name (block capitals): Amanda Stewart, CEO

Date: 1st March 2022

Signed on behalf of Probation Service (Ireland)

Mark Wilson

Name (block capitals): Mark Wilson, Director

Date: 1st March 2022

