

Independent Significant Case Review

Commissioned by Edinburgh, the Lothians
and Scottish Borders MAPPA Strategic
Oversight Group

Relative to the Management of Person X

EXECUTIVE SUMMARY

Publication Date 28 October 2019

**INDEPENDENT SIGNIFICANT CASE REVIEW RELATIVE TO THE
MANAGEMENT OF PERSON X**

**Response on behalf of the Edinburgh, the Lothians and Scottish Borders
MAPPA Strategic Oversight Group**

As chair of the Edinburgh, the Lothians and Scottish Borders Multi Agency Public Protection Arrangements (MAPPA) Strategic Oversight Group (SOG) I wish to present the findings of this Significant Case Review relative to the management of Person X.

When an offender managed under MAPPA re-offends we are required to examine our arrangements to ensure that policies, processes and actions undertaken by agencies are robust and whether there are lessons to be learned in respect of our role in protecting the public in cases such as this one.

We therefore commissioned an independent Significant Case Review, to consider and report on the management of this offender. The aim of the review was to identify areas of good practice, and management practice or policy that could be improved, to better protect the public and to establish whether single or multi-agency working could have improved the risk management of the offender in respect of the risk of harm he presented.

It is critical that the details of the report are accurate, and that the analysis of the circumstances is based on fact and evidence, to ensure maximum learning opportunities and a relevant and effective improvement action plan. In respect of the independent report, several concerns relating to factual accuracy, emotive language and interpretation of circumstances have been highlighted by the SOG to the Independent Reviewing Officer during several meetings. The SOG came to the decision that rather than seeking to have the report amended in consultation with the reviewing officer and to ensure we maintained the integrity of the independent review we accepted the final report.

Despite the SOGs concerns regarding some of the analysis, language and accuracy of the report, our position was to accept recommendations 2 and 6 in so far as they apply to the responsible authorities within Edinburgh, the Lothians and Scottish

Borders SOG. Multi-agency partners are committed to learning from this review and we have already introduced improvements to our processes.

The remaining 5 recommendation (numbers; 1, 3 ,4, 5 and 7) pertain to national organisations, and as such we have shared the findings and recommendations with these key agencies and shared this Executive Summary and proposed improvement action plan. It will be for those agencies mentioned in these recommendations to take these recommendations forward at a national level.

I wish to highlight that there were several areas of good practice illustrated throughout the report especially in relation to the risk assessment, risk management practices and information sharing between agencies.

This executive summary and our response contain the conclusions and recommendations of the SCR relating to the management of Person X. In the interests of transparency, we have sought to disclose as much information as possible in accordance with General Data Protection Regulations and the Data Protection Act.

Extensive partnership working exists between agencies involved in managing high-risk sex offenders, and we are all committed to keeping our communities safe and will continue to work hard to protect the public.

Our thoughts are very much with Person A at this difficult time and we wish to acknowledge the dignity and courage she has demonstrated throughout the court proceedings and SCR process. Accompanied by a senior officer from Police Scotland I have met with Person A, shared the findings of the report and sought to answer all her questions.

Jackie Irvine, Chair, Edinburgh, the Lothians and Scottish Borders MAPPA SOG.

1. Introduction

- 1.1 At 08.00 hours on 30 October 2017 Person X, a Registered Sex Offender (RSO) called at the home of his neighbour Person A, who attempted to prevent entry but Person X presented a knife and forced entry to the home where he then committed a serious sexual assault. Person A fled the house pursued by Person X who then carried out a further physical assault. Neighbours intervened, contacted the police and Person X was detained and subsequently charged.
- 1.2. Person X subsequently pled guilty and in September 2019 he was made subject of an Order for Lifelong Restriction (OLR) with a punishment part of four years and three months imprisonment.
- 1.3 Person X had been managed under the Multi Agency Public Protection Arrangements (MAPPA) since 2008, following his release from prison for sexual offences.
- 1.4 Following an Initial Case Review (ICR) into the management of Person X, the Edinburgh, the Lothians and Scottish Borders Strategic Oversight Group (SOG) commissioned a Significant Case Review (SCR).
- 1.5. Mr Kenneth Dewar, was appointed as the Independent Reviewing Officer and was asked to examine the MAPPA in respect of the management of Person X, with a focus on the effectiveness of information sharing, risk assessment, and risk management.
- 1.6 The aim of the review was to identify areas of good practice, management or policy that can be improved to better protect the public, and to establish whether single and multi-agency working could have improved the risk management of the offender in respect of the risk of sexual violence he presented.

- 1.7 As agreed within the terms of reference the SOG will provide an executive summary, highlighting the key findings, and our response to the recommendations. The SOG will work with other agencies to deliver an action plan.
- 1.8 Person A also contributed to the review and raised the following concerns which should be considered as part of the review. The housing of Person X in a quiet street where it would have been easy to learn of the circumstances of local residents and monitor their movements. Person A was concerned that agencies considered his housing was appropriate given his offending history. Person A's view was that Person X should have been housed in accommodation that afforded CCTV and intercom entry system.

2. Background and Key Events

- 2.1 Person X has a long history of sexual offending which began as a teenager in 1978. His first offence was against a teenage girl and all subsequent offences have been against adult women. Person X is assessed as a serial rapist who has committed violent sexual offences throughout his adult life. Person X has been convicted on six occasions and been subject of three complaints of having committed violent sexual assaults on nine women including Person A. Alcohol has been a key trigger in much of his violence towards women and he has a pattern of heavy alcohol consumption, which has also impacted adversely on his health.
- 2.2 In 1998, Person X was convicted of the violent rape of a 17 year old girl and this resulted in him being sentenced to ten years imprisonment and placed on the sex offender register.
- 2.3 From 2008, Person X was managed under MAPPA and was subsequently subject of review at thirteen Risk Management Case Conferences (RMCC), six Level 2 and two Level 3 Meetings. The last Level 2 meeting took place in April 2017, where the risk assessment and risk management plan were approved by the Level 2 Panel and he was referred to Level 1.
- 2.4 In 2012, Person X was subject of a case consultation instigated by the police and by the NHS Lothian Serious Offender Liaison Service (SOLS) who

provide risk assessment and management advice to the police and criminal justice social work when they are working with concerning individuals. They concluded that given his pattern of offending, the nature and number of risk factors present, particularly sexual sadism and despite his age, he had to be considered to pose an ongoing risk of very serious sexual violence towards adult women. A future scenario of him committing a prolonged and violent sexual assault on a woman within his dwelling or another's dwelling where he feels comfortable was deemed highly likely and highly plausible.

- 2.5 In June 2013 the police sought, and the court granted a Sexual Offences Prevention Order, which required Person X to notify the police of any relationship, friendship or acquaintance he had with any female and to advise the police of the name and address of said female. The order required Person X to permit any constable access to his address. The order prohibited Person X from approaching or communicating with any adult female who was not known to him, where that female was not in the company of another adult person, excepting unavoidable or inadvertent contact. The order prohibited, Person X from being under the influence of alcohol in any public place and required him to provide a breath test using an approved device to a police officer at reasonable request. This order remains current and is still in place.
- 2.6 In 2014, a woman who was a stranger to Person X alighted from a bus and walked to her home. Person X attacked the woman who screamed for help and during the struggle she managed to break free as he appeared to be drunk and he then ran off. Person X was subsequently identified on CCTV and given his history of offending it is highly probable that should this woman not have escaped she would have been subjected to a violent sexual assault within her own home. The police asked the Procurator Fiscal to consider requesting as part of the sentencing disposal an OLR but it was deemed by the Crown Office and Procurator Fiscal Service (COPFS) and ultimately the sentencing judge that an OLR disposal was not required. Person X pled guilty to this offence and was sentenced to 24 months imprisonment. During this prison sentence Person X began a relationship with a woman whom he had not known in the community but who had been introduced by another RSO

and who began visiting him in prison. Prior to his release Person X informed officers of his intention to move into this woman's home on his release.

- 2.7 In light of the previous stranger attack, coupled with the new relationship with a woman who was known to be a previous victim of sexual and domestic violence, there were grave concerns for her safety. Person X was not subject to any legal requirement that dictated where he could reside. An initial Level 2 meeting was convened who recommended referral to MAPPA Level 3. An initial Level 3 Meeting was convened in 2015 in advance of his release from prison and it was agreed Person X presented a very high risk and this vulnerable woman was placing herself at serious risk of violent sexual abuse. A referral was made in terms of adult protection but there was no legal means to prevent them living together and even though a very detailed disclosure was made to this woman relative to the offending history of Person X she elected to invite him into her home. At a further Level 3 review meeting it was established that this relationship had ended, and Person X required to be re-housed from the housing stock available.
- 2.8 An Environmental Risk Assessment (ERA) is carried out by agencies to identify whether there are housing related risks. The initial ERA of Person X's proposed home address was undertaken and approved in 2015. This property was fully researched by all agencies including City of Edinburgh Council, Housing, Social Work and Police Scotland. It was noted there was a primary school nearby and Person A was identified as a neighbour. Person A was not considered to be a vulnerable person and it could not have been foreseen at that time that Person A would ultimately be targeted by Person X. Disclosure to immediate neighbours was considered by staff but was not considered proportionate. The issue of 'male only' accommodation was checked with housing who confirmed that male only bed and breakfast accommodation is available on a temporary basis and this was not deemed suitable for Person X at that time. In relation to adult only tower blocks in Edinburgh, although no children are accommodated, there are vulnerable women who are resident and again this accommodation was not deemed appropriate. Person X had no restrictions relative to where he could reside, and his tenancy rights were protected under housing legislation. Person X had been resident at this

property for approximately two and a half years without any adverse incidents being reported to any agency prior to his attack on Person A.

- 2.9 In 2016, Person X concealed a relationship with a woman in breach of his SOPO. The police report contained a very detailed offending history however did not specifically highlight consideration of an OLR to the Crown Office and Procurator Fiscal Service, as they believed a breach of SOPO was not an offence that could lead to the granting of an OLR. Person X was sentenced to two years imprisonment and was released in April 2017.
- 2.10 In March 2017, in advance of the release of Person X from prison an RMCC was convened to assess the risk and agree a risk management plan. In April 2017 in advance of his release from prison this plan was reviewed and ratified by the MAPPA Level 2 Panel who then referred the case to Level 1.
- 2.11 The Risk Management Plan was thereafter reviewed by the police on a three-monthly basis undertaking checks with all partners to ensure that all relevant information had been shared. The review did not identify any information that was not shared.
- 2.12 On his release from prison in April 2017, Person X was reminded of his SOPO conditions and was then subject of ten unannounced home visits by the police. The last visit took place on 26 October 2017, four days prior to the attack on Person A.

3 Key Findings and Recommendations

- 3.1 Due to Person X's extensive sexual offending history there were two opportunities to consider whether an OLR would have been an appropriate sentencing disposal in respect of the stranger attack in 2014 and the breach of SOPO in 2016. It is highly likely that if an OLR had been granted when initially requested in 2014 or latterly in 2016 then Person X would not have been at liberty and therefore not able to offend against Person A.
- 3.2 The RMA confirmed that there have been four occasions where a breach of SOPO has resulted in an OLR being granted.

Recommendation 1

It is recommended that the Scottish Government, in consultation with the RMA, Police Scotland, and the Crown Office and Procurator Fiscal Service, produce guidance to staff to increase awareness of the Order for Lifelong Restriction and the criteria and circumstances where this may be applicable, as well as detailing the process and procedures when seeking such an Order.

- 3.3 After the Level 2 meeting in April 2017, Person X was referred to Level 1. The Independent Reviewing Officer is of the opinion that such a high-risk offender should have been subject of regular multi-agency meetings over the ten months prior to re-offending and that this was a missed opportunity. The Reviewing Officer questions how MAPPA provides oversight and scrutiny of risk management plans, if no multi-agency meetings are scheduled to review the plan. However, the Reviewing Officer found the Risk Management Plan for Person X was being reviewed on a three monthly basis, in line with current national guidance, and there was consultation with partner agencies, and no new information came to light that impacted on his assessment of risk or MAPPA Level. The Reviewing Officer concludes there is no evidence to suggest the decision not to convene multi-agency meetings for a police only managed case contributed to Person X re-offending.

Recommendation 2

It is recommended that the Edinburgh, the Lothians and Scottish Borders SOG should ensure that the issues highlighted in relation to risk management and MAPPA management levels are disseminated to staff to apply any learning and ensuring its existing MAPPA process remains fit for purpose and in accordance with the standards identified as good practice within the 2015 HMICS and Care Inspectorate Thematic Review of MAPPA.

- 3.4 An Environmental Risk Assessment (ERA) is used to identify housing related risks and informs decisions on the most suitable property available at that time in which to house an offender that will seek to minimise any risk to their immediate neighbours or community. The assessment brings together

information on the offender, proposed property, location and immediate neighbours to enable a decision on housing an offender.

- 3.5 In February 2015, on his release from prison Person X was living with a vulnerable woman who was at serious risk of harm, the relationship had broken down and he required to be re-housed urgently. An initial property was risk assessed and declined as a vulnerable woman was living within the common stair. An ERA was completed for another property and this accommodation was approved. The ERA did identify Person A as a neighbour who was not considered a vulnerable person and staff took the decision that no disclosure would be made to immediate neighbours. In respect of Person X he had offended within a domestic relationship, against strangers' out with his home and had no known relationships with the individuals identified in the ERA. Given the circumstances known at that time disclosure would not have been considered appropriate. The ERA was reviewed in line with national guidance and did not identify any new information that identified any increased risk. While a primary school was located nearby Person X had no history of offending against children.
- 3.6 The Reviewing Officer has highlighted that ERA's are not routinely reviewed at MAPPAs Level 2/3 meetings and suggests this would be an area of good practice. The National Accommodation Strategy for Sex Offenders requires that ERAs are completed within set timescales to ensure proactive management of this process. However, whilst not in the guidance, oversight by a MAPPA Panel where an offender is managed at Level 2 or 3 would provide an additional layer of scrutiny.
- 3.7 The Independent Reviewing Officer highlights there was good communication between housing and police colleagues and their contribution to the ERA process was very informative. Housing representatives regularly attended MAPPA meetings and their input was valuable and again should be acknowledged as good practice.

Recommendation 3

The Scottish Government should review its national MAPPA Guidance to ensure that where appropriate, information is shared at MAPPA Level 2/3 meetings and decisions recorded as to the suitability or otherwise of environmentally risk assessed properties being allocated to RSOs.

- 3.8 Person X was not subject of statutory supervision and Police used the nationally accredited risk assessment tools in line with national guidance. In addition, the NHS Lothian Serious Offender Liaison Service (SOLS) undertook an assessment of Person X which positively contributed to the risk management plan. The assessment concluded that Person X posed an ongoing risk of serious sexual violence towards women. NHS Lothian staff attended all Level 2 and 3 meetings relative to Person X and this was a good example of multi-agency working going well beyond the statutory obligation of the case.
- 3.9 The Level of Service Case Management Inventory (LSCMI) tool is a nationally approved risk assessment tool used by Criminal Justice Social Work on offenders who are subject to statutory supervision. LSCMI was not applicable to Person X however given the risk he presented the Independent Reviewing Officer is of the view the use of this tool could have been considered. However, the Independent Reviewing Officer acknowledged that the SOLS assessment was a more meaningful assessment than that which would have resulted from a Risk of Serious Harm (RoSH) assessment, considering the first SOLS assessment was conducted in 2012, the same year LSCMI was introduced.

Recommendation 4

The Scottish Government should review the LSCMI Interim Guidance to include consideration of using this risk assessment tool on a case-by-case basis and applied, where relevant, if an offender presents as a non-statutory case but with a Very/High Risk Level along with well documented and enduring sexual tendencies and the risk management process would be enhanced by a RoSH assessment being undertaken.

- 3.10 Police Scotland were the lead responsible agency for the management of Person X. In April 2017 Person X was released from prison and returned to his home, where he had been resident from 2015. An ERA was again undertaken, and no additional risks were identified. Between his release and subsequent arrest on 30 October 2017 he had been subject of ten unannounced home visits by the police. There were also five unsuccessful visits where Person X was not at home, all of which were followed up successfully the next day or within three working days. The Independent Reviewing Officer is of the opinion that when unannounced visits went unanswered there were missed opportunities to make enquires with neighbours, local residents, shops and taxi firm, that might have identified evidence of a breach of SOPO. The last unannounced home visit by the police took place on 26 October 2017, four days prior to the attack on Person A. It was noted that Person X was drinking again which was a risk factor, but this was not out of character and had been a regular part of his lifestyle.
- 3.11 Person X had very little contact with City of Edinburgh Council Criminal Justice Social Work but there was involvement via voluntary through care provided by an organisation then known as Lifeline. Person X would engage with Lifeline as and when he needed some assistance with his alcohol addiction, and he had rejected all other forms of support. His contact was sporadic and only on his terms. The Independent Reviewing Officer highlights this arrangement as a good example of partnership working and the fact there was regular input from Lifeline staff at MAPPA meetings was good practice.
- 3.12 In October 2017 a representative from Lifeline had been calling Person X on his mobile phone but receiving no response. As they had not seen Person X for some weeks and were concerned regarding his heavy drinking they contacted the police. The police immediately telephoned the same mobile contact number and Person X answered providing his location and that it was his intention to return home. This information was fed back to the representative from Lifeline and a log entry was recorded on the Violent and Sex Offender Register (ViSOR). The Independent Reviewing Officer is of the opinion that Person X's whereabouts were only a matter of self-report and his exact whereabouts or physical condition were unknown and at the very least

the police should have instigated a visit to his home address. This suggests a lack of understanding of the risks posed by Person X and potential harm arising from this, particularly when there was evidence of disengagement and increased alcohol intake.

- 3.13 Although there is no direct correlation with Person X's subsequent offending some 10 days later, it is considered that this was a missed opportunity to intervene, according to the Independent Reviewing Officer.
- 3.14 The Independent Reviewing Officer is of the opinion that apart from asking Person X about his movements/travel, alcohol consumption or if he was involved with any unknown/undisclosed females there was no evidence of checks being made with neighbours, associates or family members either overtly or covertly to verify his account. With the existence of the SOPO conditions and the requirement for Police Scotland to evidence the policing of the conditions imposed, in light of the information known about Person X, it would appear there would be at least a prima facie case for the submission of surveillance application to support the policing plan. It is considered that this was a series of missed opportunities to intervene and demonstrates a lack of proactivity in this case.

Recommendation 5

It is recommended that Police Scotland consider issuing guidance and/or training to Offender Management Unit staff relative to the use of intelligence and surveillance as investigative tools in the pro-active management of Registered Sex Offenders and, where appropriate the testing of SOPO conditions.

Recommendation 6

It is recommended that Edinburgh Division of Police Scotland review the management of any Registered Sex Offender with an existing SOPO to ensure conditions attached to those Orders are being policed in accordance with the provisions contained within the Police Scotland Sexual Offences Prevention Order Guidance document.

- 3.15 The vast majority of Person X's time in prison was spent within HMP Edinburgh. In many respects Person X presented no major concerns or issues for SPS. Following an Integrated Case Management meeting prior to his release in April 2017 a MAPPA Level 2 Referral was submitted to the local MAPPA Co-ordinator, which subsequently led to a Level 2 meeting being convened as previously relayed. As Person X was a non-statutory case upon liberation HMP Edinburgh held a 'MAPPA Only' meeting which is an internal process for RSO's who are in custody for non-sexual offences. The Independent Reviewing Officer noted this as good practice and although not reflected in National MAPPA Guidance it would be beneficial if utilised by all establishments prior to liberating RSOs from prison under similar circumstances.

Recommendation 7

The Scottish Government and Scottish Prison Service should examine the pre-liberation practice, known as 'MAPPA Only', utilised within HMP Edinburgh for non-statutory cases involving Registered Sex Offenders to consider the use of this process more widely across all relevant SPS establishments.

4 Conclusion

- 4.1 It should be noted there are several areas of good practice highlighted throughout the report, especially in relation to risk management process and information sharing between agencies.
- 4.2 It should also be noted that Person X presented a long-standing and enduring high risk of harm when he was in the community. Staff from various agencies have commented that his risk was unmanageable in a community setting.
- 4.3 It is the view of the Independent Reviewing Officer that more could have been done to prevent those risks manifesting into some form of sexual and/or violent harm predominately towards females.
- 4.4 The recommendations made within this report seek to use the learning from this significant case review to improve the management process of high-risk offenders in a community setting.

5 List of Recommendations

Recommendation 1

It is recommended that the Scottish Government, in consultation with the RMA, Police Scotland, and the Crown Office and Procurator Fiscal Service, produce guidance to staff to increase awareness of the Order for Lifelong Restriction and the criteria and circumstances where this may be applicable, as well as detailing the process and procedures when seeking such an Order.

Recommendation 2

It is recommended that the Edinburgh, the Lothians and Scottish Borders SOG should ensure that the issues highlighted in relation to risk management and MAPPA management levels are disseminated to staff to apply any learning and ensuring its existing MAPPA process remains fit for purpose and in accordance with the standards identified as good practice within the 2015 HMICS and Care Inspectorate Thematic Review of MAPPA.

Recommendation 3

The Scottish Government should review its national MAPPA Guidance to ensure that where appropriate, information is shared at MAPPA Level 2/3 meetings and decisions recorded as to the suitability or otherwise of environmentally risk assessed properties being allocated to RSOs.

Recommendation 4

The Scottish Government should review the LSCMI Interim Guidance to include consideration of using this risk assessment tool on a case-by-case basis and applied, where relevant, if an offender presents as a non-statutory case but with a Very/High Risk Level along with well documented and enduring sexual tendencies and the risk management process would be enhanced by a RoSH assessment being undertaken.

Recommendation 5

It is recommended that Police Scotland consider issuing guidance and/or training to Offender Management Unit staff relative to the use of intelligence and surveillance as investigative tools in the pro-active management of Registered Sex Offenders and, where appropriate the testing of SOPO conditions.

Recommendation 6

It is recommended that Edinburgh Division of Police Scotland review the management of any Registered Sex Offender with an existing SOPO to ensure conditions attached to those Orders are being policed in accordance with the provisions contained within the Police Scotland Sexual Offences Prevention Order Guidance document.

Recommendation 7

The Scottish Government and Scottish Prison Service should examine the pre-liberation practice, known as 'MAPPA Only', utilised within HMP Edinburgh for non-statutory cases involving Registered Sex Offenders to consider the use of this process more widely across all relevant SPS establishments.

Edinburgh, the Lothians and Scottish Borders

MAPPA Strategic Oversight Group

Response to Person X Significant Case Review

1 Introduction

- 1.1 On 3 November 2017 Police Scotland as the 'responsible authority' reported the circumstances surrounding the rape of Person A on 30 October 2017 as required by MAPPA Guidance to the Edinburgh, the Lothians and Scottish Borders Strategic Oversight Group (SOG). The SOG when considering the complexities in the management of Person X, requested a full Initial Case Review (ICR) into the Multi Agency Public Protection Arrangements (MAPPA) for Person X's case. This initial local multi-agency review identified areas for improvement and in January 2018 the SOG began commissioning arrangements for a Significant Case Review (SCR). In April 2018 the SOG appointed an independent reviewing officer to undertake the SCR.
- 1.2 Local partner agencies are committed to learning from analysis of this review and to implement its recommendations to ensure best practice is promoted in the future. The SOG recognises the importance of this review to the responsible authorities, and in particular to Person A.
- 1.3 The two-year interval between the commissioning of the review and publication of the executive summary has seen changes and improvements implemented by the responsible authorities, based on the SOGs own analysis of the circumstances of the case and as a result of the findings from the ICR and SCR.
- 1.4 A first draft of the significant case review report was presented to the SOG SCR Management Group in August 2018. The final report was received in November 2018.
- 1.5 It is critical that the details of the report are accurate, and that the analysis of the circumstances is based on fact and evidence, to ensure maximum learning opportunities and relevant improvement action.

- 1.6 Several concerns relating to factual inaccuracy, emotive language and interpretation of the circumstances have been highlighted by the SOG SCR Management Group to the Independent Reviewing Officer during a number of meetings.
- 1.7 A copy of the final report was shared with senior representatives of Police Scotland, Crown and Procurator Fiscal Service and the Scottish Prison Service who were able to comment on the recommendations and to contribute to this response.

2 Recommendations

- 2.1 Despite the SOGs concerns regarding some of the analysis and language of the report, all of the recommendations, in so far as they apply to the responsible authorities, are accepted. However, we do not support some of the conclusions reached and we have provided additional comments to offer a rationale for our views.

2.2 Recommendation 1

“It is recommended that the Scottish Government, in consultation with the RMA, Police Scotland, and the Crown Office and Procurator Fiscal Service, produce guidance to staff to increase awareness of the Order for Lifelong Restriction and the criteria and circumstances where this may be applicable, as well as detailing the process and procedures when seeking such an Order.”

- 2.3 Although this recommendation is a matter for the Scottish Government in consultation with the Risk Management Authority it is fully supported by the SOG, Crown Office and Procurator Fiscal Service and Police Scotland.

2.4 Recommendation 2

“It is recommended that the Edinburgh, the Lothian and Scottish Borders SOG should ensure that the issues highlighted in relation to risk management and MAPPAs management levels are disseminated to staff to apply any learning and ensuring its existing MAPPAs process remains fit for purpose and in

accordance with the standards identified as good practice within the 2015 HMICS and Care Inspectorate Thematic Review of MAPPA.”

- 2.5 This recommendation is accepted and the SOG acknowledge their responsibility that MAPPA arrangements are kept under constant review ensuring any learning from Significant Case Reviews is disseminated to staff ensuring arrangements are in accordance with National MAPPA Guidance. This has been implemented and all personnel chairing MAPPA meetings at Level 1, 2 and 3 have been invited to attend a workshop to ensure any learning from SCRs is disseminated to staff.

2.6 **Recommendation 3**

“The Scottish Government should review its national MAPPA Guidance to ensure that where appropriate, information is shared at MAPPA Level 2/3 meetings and decisions recorded as to the suitability or otherwise of environmentally risk assessed properties being allocated to RSOs.”

- 2.7 Whilst this recommendation is for the Scottish Government, the principle is accepted by the SOG and the recommendation has already been implemented in Edinburgh, the Lothians and Scottish Borders.

2.8 **Recommendation 4**

“The Scottish Government should review the LSCMI Interim Guidance to include consideration of using this risk assessment tool on a case-by-case basis and applied, where relevant, if an offender presents as a non-statutory case but with a Very/High Risk Level along with well documented and enduring sexual tendencies and the risk management process would be enhanced by a RoSH assessment being undertaken.”

- 2.9 This recommendation is a matter for the Scottish Government. The SOG wish to highlight that the Independent Reviewing Officer is of the view that it is possible that even if LSCMI had been applied it would not have offered anything additional to the NHS Lothian Serious Offender Liaison Service (SOLS) risk assessment.

2.10 Recommendation 5

“It is recommended that Police Scotland consider issuing guidance and/or training to Offender Management Unit staff relative to the use of intelligence and surveillance as investigative tools in the pro-active management of Registered Sex Offenders and, where appropriate the testing of SOPO conditions.”

- 2.11 The principle of this recommendation is accepted and embedded in police practice. All Offender Management Unit staff have detailed guidance and specific training inputs relative to the use of intelligence and surveillance tools in the proactive management of offenders.
- 2.12 Person X was 59 years of age when he attacked Person A. He had significant alcohol problems, did not keep good health and had significant health issues in the six-month period following his release from prison in April 2017. This did not diminish the risk he presented, which was fully understood by staff who ensured the level of monitoring was maintained.
- 2.13 In relation to the telephone call to the police from a member of Lifeline who had a good relationship with Person X. This was a welfare call to the police as the staff member had not seen Person X for some time and there had been several unsuccessful calls to his mobile number which Person X had elected not to answer. An officer immediately made contact with Person X who elected to answer the call on his mobile. Person X informed the officer that he was well and provided his location, reason for being there and of his intention to return home later that day. Nothing was detected or suspected by the officer as Person X had previously informed the police of his connection to this location. The officer saw no reason to instigate an enquiry or undertake an immediate visit to Person X’s home and noted that a visit was due, and subsequently did take place. There was no evidence of disengagement and the circumstances support this was a concern for Person X’s welfare rather than evidence of heightened risk that required an immediate response. It is purely supposition that as no proactive investigation was taken in response to these circumstances that *‘this was a missed opportunity to intervene.’*

- 2.14 The SOG do not support there were missed opportunities and there is a great deal of presumption and the benefit of hindsight, by the Independent Reviewing Officer, in reaching this conclusion. Person X was subject of numerous unannounced visits. Information was gathered from various sources that ultimately informs or provides evidence to justify the need for further enquiry or use of covert policing methods. Person X was previously subject of covert police enquiries when intelligence was received that justified this course of action. No criminality or breach of SOPO conditions were detected. During the six-month period prior to the attack on Person A there was no new information or intelligence of note relative to Person X. When considering covert policing techniques, the test of necessity, proportionality and collateral intrusion must always be considered. In respect of Person X, information from home visits, checks of his mobile phone, and his interaction with Lifeline informed whether a more proactive approach was necessary. Whilst his risk was clearly acknowledged, the circumstances known at that time, did not justify a more intrusive approach.
- 2.15 During the unannounced home visit strategy, there were five unsuccessful visits to Person X and either the next day or within three days of each visit he was successfully visited by the police. There was no extended period of time when Person X was not seen by the police. RSOs do not stay at home 24 hours a day and therefore unsuccessful visits are expected and a regular occurrence. On undertaking an unsuccessful visit, it is not routine practice to consider the RSO missing nor necessitates making enquiries with neighbours, local shops or taxi firms.
- 2.16 The use of covert policing tactics to test compliance with SOPO conditions raises a number of ethical questions. In the absence of an intelligence case or suspected criminal conduct it is argued the use of covert tactics is not justified. It is insufficient to make a simple assertion or to say that the seriousness of potential crimes justifies any or every method of covert tactics.
- 2.17 Should an RSO who is subject of SOPO conditions be subject of covert policing tactics, due to the assessed risk they present or does the test of necessity, proportionality and collateral intrusion require supporting intelligence to justify

an operation. The SOG in discussion with Police Scotland are of the view that this is a matter for further discussion with Police Scotland Force Authorising Officers who are responsible for authorising applications in respect of all covert policing techniques

This issue will be taken forward by Police Scotland.

2.18 **Recommendation 6**

“It is recommended that Edinburgh Division of Police Scotland review the management of any Registered Sex Offender with an existing SOPO to ensure conditions attached to those Orders are being policed in accordance with the provisions contained within the Police Scotland Sexual Offences Prevention Order Guidance document.”

2.19 The principle of this recommendation is accepted and embedded in police practice. This recommendation references the Police Scotland Sexual Offences Prevention Order Guidance document. Police Scotland do not have such a document and it is asserted the Independent Reviewing Officer is referencing Police Circular No: 2/2012 issued by the Scottish Government on 19 September 2012 and entitled ‘Sexual Offences Prevention Orders Guidance’. Edinburgh Offender Management Unit have a specific SOPO testing document which they used during the management of Person X in conjunction with the offender risk management plan. All RSOs with an existing SOPO are subject of review, which ensures there is a clear audit trail of decision making relative to the proactive policing and testing of SOPOs.

2.20 **Recommendation 7**

“The Scottish Government and Scottish Prison Service should examine the pre-liberation practice, known as ‘MAPPA Only’, utilised within HMP Edinburgh for non-statutory cases involving Registered Sex Offenders to consider the use of this process more widely across all relevant SPS establishments.”

2.21 Although this recommendation is also for the consideration of the Scottish Government, the Scottish Prison Service have undertaken to fully consider

the 'MAPPA' only practice currently operated within HMP Edinburgh and whether this should be implemented more widely across all relevant prisons.

3 Conclusions

- 3.1 We acknowledge there have been several areas of good practice highlighted throughout the report especially in relation to the risk assessment, risk management practices and information sharing between agencies.
- 3.2 The SCR has highlighted the long standing and enduring risk of sexual violence that Person X presented and that he could not be safely managed in a community setting.
- 3.3 The Edinburgh, the Lothians and Scottish Borders SOG members would like to express their thanks and appreciation to Person A for their assistance and engagement with the SCR process.
- 3.4 Person X's offending history clearly evidenced that he presented a risk to all women living in our communities and there is no accommodation that would not have women living nearby.
- 3.5 Although the SOG continues to have concerns regarding a number of factual inaccuracies and some of the opinions expressed in the report, the recommendations, in so far as they apply to the responsible authorities are accepted. We wish to re-state our full commitment to addressing areas for improvement, some of which are already in place. We are currently working to address the issues raised and an action plan will be implemented to ensure learning from this event is implemented and scrutinised on a regular basis.
- 3.6 If an OLR assessment had been considered in 2014 or latterly in 2016 it could have meant that Person X may not have been at liberty to offend against Person A.
- 3.7 From the information provided the offending by Person X could have been reasonably predicted, however it could not have realistically been prevented.

4 Glossary of Terms

COPFS: Crown Office and Procurator Fiscal Service

ERA: Environmental Risk Assessment

ICR: Initial Case Review

LSCMI: Level of Service Case Management Inventory

MAPPA: Multi-Agency Public Protection Arrangements

OLR: Order for Lifelong Restriction

OMU: Offender Management Unit

RMA: Risk Management Authority

RMCC: Risk Management Case Conference

RoSH: Risk of Serious Harm

RSO: Registered Sex Offender

SCR: Significant Case Review

SOG: Strategic Oversight Group

SOLS: Serious Offender Liaison Service

SOPO: Sexual Offences Prevention Order

ViSOR: Violent and Sex Offender Register