POLICY NOTE

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 7 AND TRANSITIONAL PROVISIONS) ORDER 2020

SSI 2020/405 (C. 34)

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (SUPPLEMENTARY PROVISIONS) ORDER 2021

SSI 2021/XXX

THE ENFORCEMENT OF FINES (RELEVANT PENALTY) (SCOTLAND) ORDER 2020

SSI 2020/406

THE RESTITUTION FUND (SCOTLAND) ORDER 2021

SSI 2021/XXX

THE SERIOUS CRIME ACT 2015 (COMMENCEMENT NO. 3) (SCOTLAND) REGULATIONS 2020

SSI 2020/407 (C. 35)

The purpose of these instruments is to implement section 25 of the Victims and Witnesses (Scotland) Act 2014. This will introduce a new financial penalty of a restitution order to be used for the offence of assault on police or police staff. Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault.

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 is made in exercise of the powers conferred by section 34(2) and (3) of the Victims and Witnesses (Scotland) Act 2014**.**

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 is made in exercise of the powers conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014 and is subject to affirmative procedure.

The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 is made in exercise of the powers conferred by section 226I(1) of the Criminal Procedure (Scotland) Act 1995 and is subject to negative procedure.

The Restitution Fund (Scotland) Order 2021 is made in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995 and is subject to affirmative procedure.

The Serious Crime Act 2015 (Commencement No. 3) (Scotland) Regulations 2020 are made in exercise of the powers conferred by section 88(2) of the Serious Crime Act 2015.

Purpose of Each Instrument

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 – This Commencement Order brings the section 25 of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") fully into force and provides that restitution orders only apply to offences committed on or after the commencement date.

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 - This Order makes a number of supplementary changes to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Firstly, it provides that compensation requirements imposed as part of a CPO are to be preferred to a restitution order when it comes to sentencing and that compensation requirements take precedence over both a restitution order and a victim surcharge when payments are received from an offender. Secondly, it clarifies that restitution orders are a sentence for the purpose of appeal so that an appeal against sentence alone could be taken without requiring an appeal against conviction. Thirdly, it ensures that enforcement of a restitution order and the victim surcharge would be placed on hold pending an appeal. Fourthly, it clarifies that the victim surcharge and a restitution order cannot be imposed for either the same offence or for different offences in the same proceedings. Finally, it amends the definition of "fine" to clarify that restitution orders are a completely separate penalty.

The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 – This Order specifies that restitution orders are a "relevant penalty" for the purposes of the fine enforcement rules in section 226A to 226I of the 1995 Act. This enables the appointment of fine enforcement officers and an application by the court to the DWP for a deduction from benefits order.

The Restitution Fund (Scotland) Order 2021 -This Order makes provision for the general operation of the Restitution Fund. Firstly, it provides for the delegation of the Fund to the Scottish Police Benevolent Fund. Secondly, it makes provision for the administration of the Fund including the issuing of guidance by Ministers; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

The Serious Crime Act 2015 (Commencement No. 3) (Scotland) Regulations 2020 – These Regulations commence the parts of the 2015 Act which ensure that the court can give restitution orders priority over a confiscation order when an individual subject to both orders makes a payment. In accordance with section 88(2) of Serious Crime Act 2015, the Scottish Ministers have consulted with the Secretary of State.

Policy Objectives

The Victims and Witnesses (Scotland) Act 2014 ('the 2014 Act') introduced various measures to improve the support and information available to victims and witnesses of crime. This included provisions to introduce a new financial penalty of a restitution order to be available to the courts for those convicted of assault on police or police staff (under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act")). These five

instruments enable the implementation of restitution orders as provided for in section 25 of the 2014 Act.

Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault. The Fund will be used to support both physical and mental health and wellbeing. It should be noted that, the monies paid in respect of a restitution order imposed on an offender are not for the sole benefit of the victim of the individual offence, they will be paid into the restitution fund for the benefit of all victims of this offence in general.

The policy aim is that those who are convicted of the section 90(1) offence, will make a contribution towards support services for victims of this offence in general. In addition there is an intention to give a clear message that assault on police officers and staff is unacceptable.

Police officers and staff who are victims of assault can currently access support services, for example through the Police Treatment Centres, or through Police Scotland's occupational health and employee assistance. The creation of the Restitution Fund will make additional funds available for support services, to be used for police officers and staff, and other persons (as identified under section 90(1) of the 2012 Act) who are victims of the offence.

Those who are eligible will be able to apply to the fund and request support that meets their individual physical or mental health and wellbeing needs. This support may be provided through traditional routes such as the Police Treatment Centres, or it may be secured from another provider. This will benefit police officers and staff as individuals, and will be providing a greater overall resource for support services to the benefit of officers and staff.

If the introduction of restitution orders has a positive impact on the behaviour of those who potentially would assault police officers and staff, such that they did not commit that offence, that would be a positive benefit for those in the police service, and for the wider community.

Estimated Value of Restitution Orders

Whether to impose a restitution order for the section 90(1) offence, and the level of that financial penalty, will be a matter for the courts to decide. It is therefore not certain what the value of restitution orders will be. That said, we anticipate that once established, the use of restitution orders will follow a similar pattern to the current use of fines for the same offence.

On the basis of information on fines where section 90(1) is the main offence we can estimate potential restitution orders. We estimate that there could be in the region of 250 to 500 restitution orders a year, with an average value of around £350, giving a total of £87,500 to £175,000.

(The lower figure is based on the value of fines where fines are the main disposal. The upper figure also includes the value of fines where fines are not the main disposal. However where the section 90(1) offence was the main offence, and a fine was not the main disposal, it is possible that a higher disposal (imprisonment, community sentence) will relate to the section 90(1) offence and that the fine may relate to other charges within the overall case.)

Restitution orders will take some time to become routinely used, and therefore to reach this potential estimated value. There is also a time-lag from imposition to collection of restitution orders, therefore we expect the Restitution Fund to build slowly.

The maximum sum that can be imposed for a restitution order is "the prescribed sum" which is fixed in section 225(8) of the Criminal Procedure (Scotland) Act 1995. That sum is currently fixed at £10,000. It is worth emphasising that this is the maximum sum that can be imposed, and on the basis of information in relation to the use of fines for the same offence, it is likely that the average sum will be significantly lower than this.

Collection of Restitution Orders

Restitution orders will be collected, like fines, by the Scottish Courts and Tribunals Service (SCTS) and similarly enforced. This is underpinned by the **Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020**, which specifies that restitution orders are a "relevant penalty" for the purposes of the fine enforcement rules.

SCTS will regularly make the transfer of the amount of restitution orders to the Scottish Ministers for payment into the Restitution Fund. These monies will then be transferred by the Scottish Government to the Scottish Police Benevolent Fund, the police charity organisation that will operate the fund on behalf of Scottish Ministers. **The Restitution Fund (Scotland) Order 2021** provides for the delegation of the Fund to the Scottish Police Benevolent Fund.

The Restitution Fund will take time to build, and funds will be dependent on the penalty being imposed and monies collected. No payment will be made from the Restitution Fund for period of six months from the date of restitution orders coming into force to let funds accrue – this is the same approach that was adopted in relation to the Victim Surcharge Fund.

Operation of the Restitution Fund

The Scottish Police Benevolent Fund (SPBF), a Scottish charitable incorporated organisation with registered number SC043489, will administer the Restitution Fund on behalf of the Scottish Government. The Scottish Ministers, via the Restitution Fund Order, delegate the establishment, maintenance and administration of the Fund to the Scottish Police Benevolent Fund.

SPBF will incorporate decision making on the Restitution Fund into existing decision making structures. It will follow a similar, but parallel process to the assessment of applications to the Benevolent Fund.

The Restitution Fund will be 'ring-fenced' for the intended purpose as set out in legislation.

Annex A provides a flow chart on the overall process for restitution orders and the Restitution Fund. Annexes B and C provide a narrative and a flow chart from SPBF, on the arrangements for the operation of the fund.

As a charity, the SPBF is already subject to scrutiny and governance mechanisms. SPBF will be required by **the Restitution Fund (Scotland) Order 2021** to keep records and provide reports to Scottish Ministers on an annual basis.

Beneficiaries of Restitution Fund

Eligible beneficiaries are persons who have been assaulted as mentioned in section 90(1) of 2012 Act ("victims"). This includes those acting in the capacity of a constable, member of police staff, member of other relevant police force acting in Scotland, member of joint investigation team, or other persons who were assisting those noted above whilst acting in that capacity.

Police officers (or any other persons) who are not a victim of assault as mentioned in section 90(1), are not eligible for support services funded by the Restitution Fund. For example, a restitution order cannot be imposed for the offence of resisting, obstructing or hindering a person acting in a capacity of constable etc, and the Restitution Fund cannot be used to secure support services for victims of that offence.

Retired police officers, or police staff, who were a victim of assault as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 are eligible for support

Provision of Support Services

The Fund will be used to support both physical and mental health and wellbeing. Support services can be any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim. This can extend to the purchase of equipment or adjustments if appropriate. The main limitation is that the Restitution Fund cannot be used to provide a direct payment to victims.

Police officers and custody officers are those most likely to be victims of assault under section 90(1). For most, support such as offered by the Police Treatment Centres is expected to be appropriate. However to ensure appropriate support is available for all those eligible, it will be possible to apply for support services to meet individual needs (e.g. a different type of support, setting or location.)

Consultation

A public consultation paper, 'Making Justice Work for Victims and Witnesses' was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act. This included consultation on the introduction of restitution orders.

In 2019, the Scottish Government established a working group to consult with stakeholders on the operation of the Restitution Fund, including Police Scotland, police officer staff associations, police staff unions, Police Treatment Centres and SPBF. In particular, the group focused on ensuring that support from the Restitution Fund could be accessed by all those eligible, and that administration was not a large burden in relation to the scale of the Restitution Fund.

Police officers and custody officers are those most likely to be victims of assault under section 90(1), however other persons (as defined in the legislation) should have access to the fund as appropriate.

A number of options were discussed, and there was a shared view that the Scottish Police Benevolent Fund should administer the Restitution Fund. SPBF has experience in assessing and meeting support needs, and is in a position to administer the fund within its existing structures, with the ability to purchase support services from either the Police Treatment Centres or from other service providers as necessary to meet a victim's needs.

Impact Assessments

An Equality Impact Assessment has been completed. This concluded that the provisions in these instruments do not discriminate in any significant way on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief.

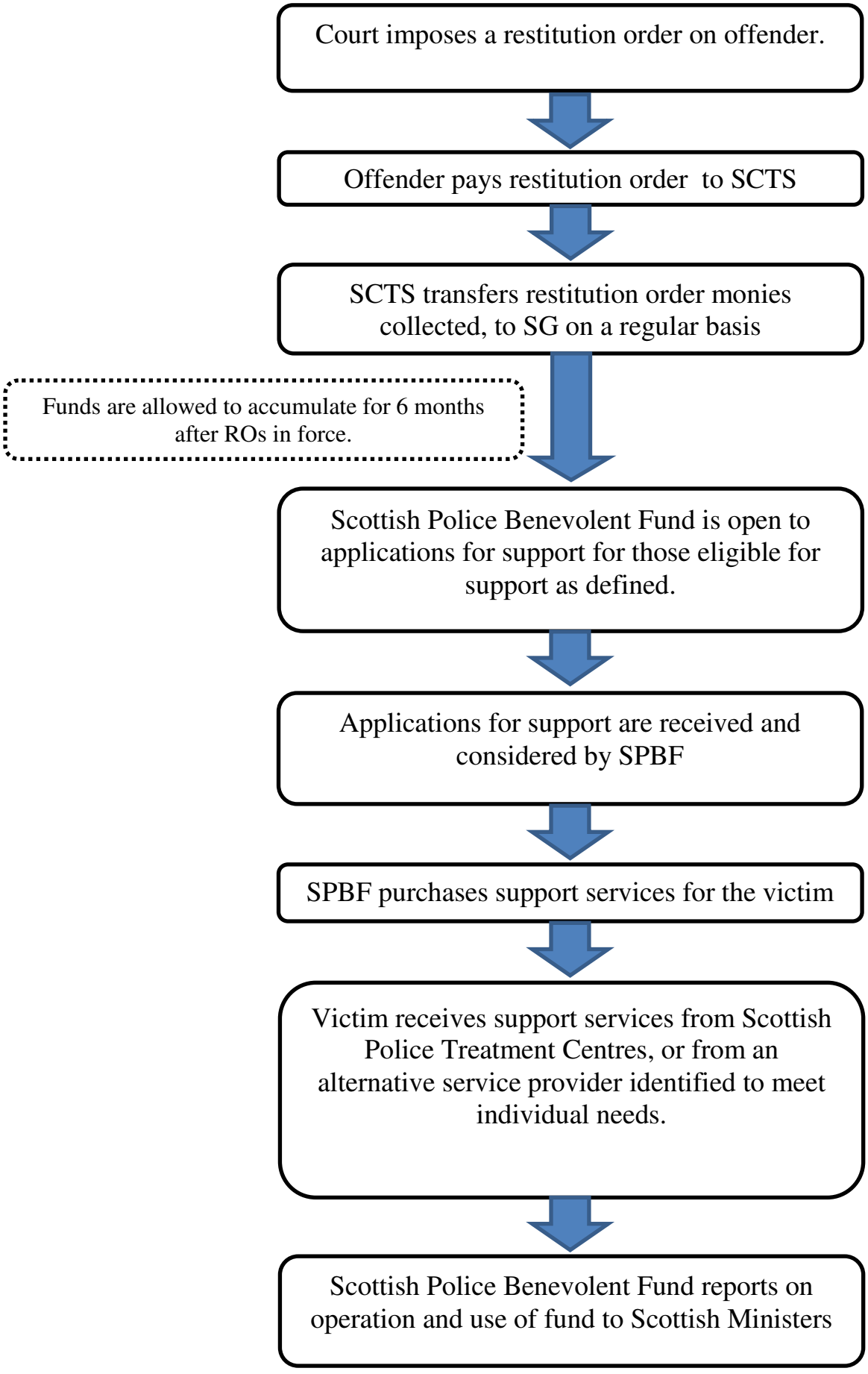
Beneficiaries of support from the Restitution Fund will be eligible on the basis that they are victims of assault on police and police staff (under section 90(1) of the 2012 Act). Access to support from the Fund is not impacted on by any protected characteristic. The Restitution Fund Working group recognised the need to ensure that all those eligible for support from the Restitution Fund should have the opportunity to access support that meet their needs (within the limits of the funds available). Therefore the operation of the Fund allows for applications to the Fund to meet an individual's needs, rather than offering only a limited range of services. This will mitigate against any unforeseen impacts on protected characteristics.

For offenders, courts will have the option of imposing a restitution order by virtue of the offence, and this is not impacted on by the protected characteristics. We anticipate that in a given situation the level of financial penalty imposed by the courts is likely to be the same regardless of whether it is a restitution order or another financial penalty such as a fine. The financial impact on the offender and their family, and any resulting impacts, are therefore anticipated to be unchanged as a result of the implementation of restitution orders.

A Business and Regulatory Impact Assessment (BRIA) has not been undertaken. There is no impact on business. The impact on the charity of Scottish Police Benevolent Fund is not significant. SPBF expects to operate the Restitution Fund within existing structures, and there is scope within the Restitution Fund (Scotland) Order 2021 for SPBF to retain outlays for administering the fund, should that be necessary.

Annex A

Flowchart of Proposed Model for Restitution Orders



Annex B

Scottish Police Benevolent Fund – Restitution Orders

Application Process

The flow chart in Annex C reflects the application process envisaged for restitution order funding through the Scottish Police Benevolent Fund.

It is a simple process and reflects the existing application and governance structures that currently exist within the Scottish Police benevolent funding and should support the accountability for the spending of public monies.

The process reflects the two most likely routes for any application although it is considered that the majority of the applications will come from the Police Treatment Centres at the point of application for attendance.

The opportunity for an individual to apply is reflected in the process where they are not a donator to the Police Treatment Centres or require support out with the remit of the treatment centres.

The applications will be received and assessed by the fund Treasurer, in the same way as existing applications and then forwarded to the Board of Trustees for consideration of the application and the allocation of funds. The application will identify that it is a Restitution Order application.

Consideration by the Board of trustees applies the correct level of scrutiny for the allocation of funds.

If required, a trustee from the charity can arrange to visit an individual applicant to confirm the details of the application. This is not considered necessary for Police Treatment Centre applications.

The remainder of the process reflects the request and allocation of funds.

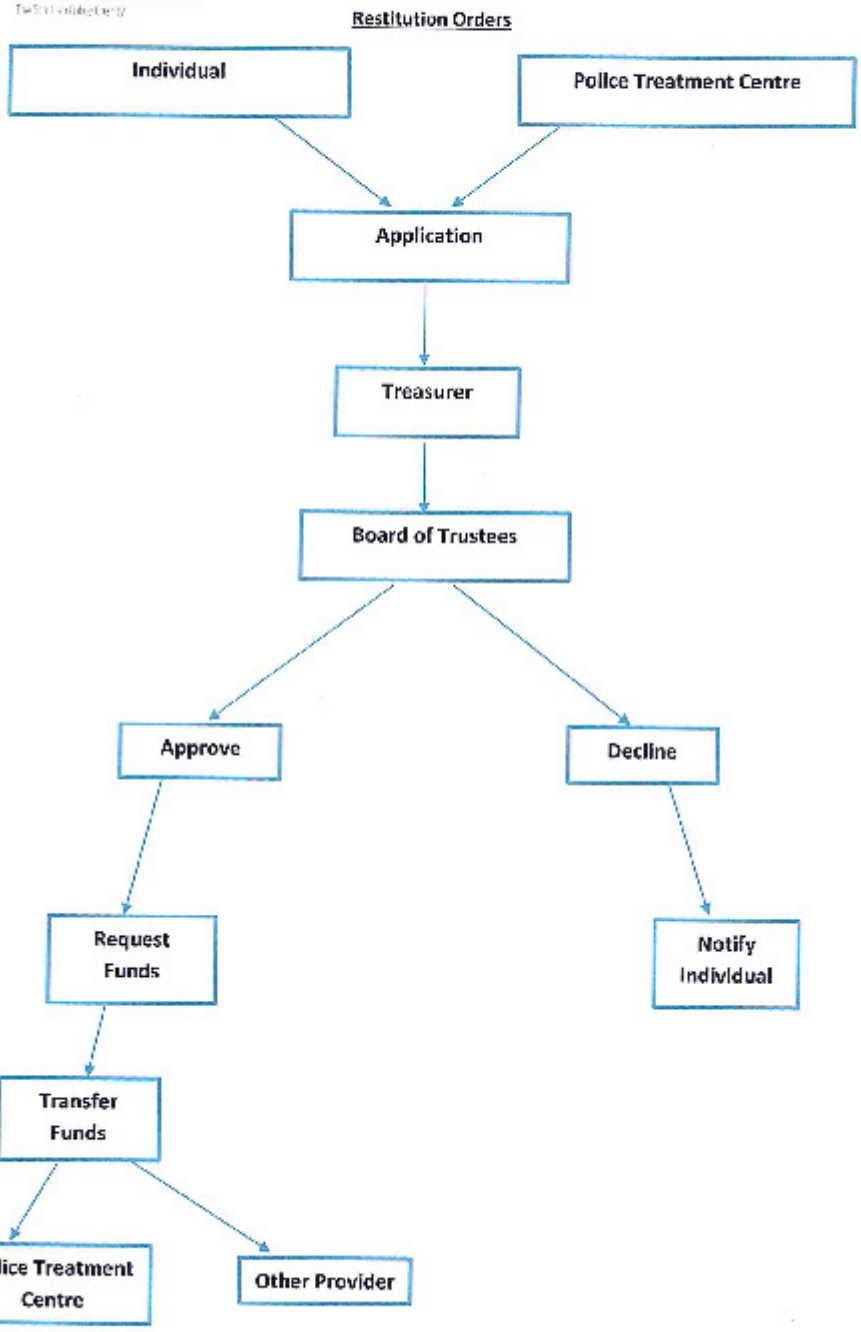
A record of all applications will be retained by the charity for audit purposes as well as the amount expended annually, or whatever time period is deemed appropriate.

The flow chart is attached and will be included in the charities Manual of Guidance.

Restitution Order consideration would become a standing item on the Board of Trustee meeting agenda.

Appendix C

Scottish Police Benevolent Fund



Revised 20/08/18