

Practice and Procedure in children's hearings

Quick Guide for Children's Panel members



children's
hearings
scotland

This is a quick guide about the legal tests and decisions that can be made at children's hearings.

It is intended for Children's Panel members to use when a quick reference is needed.

More detailed information can be found in the Practice and Procedure Manual and associated practice information on the Children's Hearings Information and Resource Portal (CHIRP), and in panel member training materials.

The child is at the **centre** of the hearing. We asked children and young people who have been to hearings 'What makes a **'good'** hearing?' They told us...

As I walked into the hearing room, the panel members...
"made eye contact with me", "smiled", "said 'hello'"

When the panel members had to check my age... **"they asked politely when my birthday was and how old I was, saying they just had to double check what was in the papers"**

When I wanted to say something, the panel members...
"listened to me", "made eye contact with me", "spoke to me without lots of adults in the room", "looked interested"

When it was clear that I hadn't understood something, the panel members... **"noticed", "asked me if I understood", "summarised and explained what had been said"**

When I found I was beginning to get upset, the panel members... **"let me take a break", "asked why I was upset", "showed empathy not sympathy"**

When someone close to me began to get upset, the panel members... **"offered time out", "let them explain why they were upset"**

At the end of the hearing, the panel members... **"explained their decisions clearly", "checked I understood and explained if not", "congratulated me on doing well"**

Top tips for Children's Panel members...

We asked children and young people who have been to hearings 'What makes a **bad** hearing?' They told us...

As I walked into the hearing room, the panel members...
**"talked amongst themselves", "did not acknowledge me",
"sat in silence"**

When the panel members had to check my age... **"asked
me to say my date of birth"**

When I wanted to say something, the panel members...
"did not listen", "interrupted me", "rushed me"

When it was clear that I hadn't understood something, the
panel members... **"did not explain it to me", "made me
even more confused"**

When I found I was beginning to get upset, the panel
members... **"ignored me and kept going", "made me feel
guilty", "told me to grow up", "said 'I know how you feel'"**

When someone close to me began to get upset, the panel
members... **"ignored them"**

At the end of the hearing, the panel members... **"made
a decision and left", "gave a verbal decision different to
what I then got in writing", "didn't say goodbye"**

The chairing member's checklist:

1. Introductions

Who is present?

What is purpose of the pre-hearing panel?

2. Attendance

The child, relevant person(s) and any individual who is subject to a relevant person determination has a right to attend along with a representative. Professionals may attend at the discretion of the chairing member.

Since no one has a DUTY to attend a pre-hearing panel there is no need to formally excuse the child and/or relevant person.

3. Notifications and papers

Have those with a right to attend received the correct notification and papers?

4. Procedure

Relevant person determinations must be made before any other matters referred to the pre-hearing panel.

Discussion about the matter referred to the pre-hearing panel only – appointment of a safeguarder and whether a solicitor may be required for a child or relevant person can also be discussed.

Pre-hearing panels

The chairing member's checklist:

5. Verbal decision and reasons

All three panel members to verbally give clear decision and reasons WHY they have made the decision.

6. Confirming the decision of the pre-hearing panel

What is the majority/unanimous decision of the pre-hearing panel?
Do the child and relevant persons present understand the decision?

7. Appeal rights (if applicable)

A child, relevant person(s) and person deemed not to be a relevant person can appeal the relevant person determination by the pre-hearing panel within seven days beginning with the date of the decision – the Sheriff must decide on the appeal within three days.

8. Next steps

Explanation to those present of what happens next.

9. Reasons for decision

Completion of written reasons for decision.
Signature of the record of proceedings by the chairing member.

The chairing member's checklist:

- 1. Introductions**

Who is present and why?
What is the purpose of the hearing?
- 2. Relevant person determination**

Any decisions to be made about deemed relevant person status must be made at the start of the hearing before any other matters.
- 3. Attendance**

Who has a duty to attend? Are they present? If not, can they be excused or, if a relevant person, can the hearing proceed in their absence?
- 4. Child's age**

Establish or confirm the age of the child
- 5. Notifications and papers**

Have those with a right to attend received the correct notification and papers?
- 6. Confirmation of the child's views expressed in the report(s)**

If the child does not confirm the views expressed in the report(s) are their views then the chairing member must attempt to clarify their views.
- 7. Non-disclosure request referred to the hearing**

Non-disclosure requests referred to the hearing must be considered at the start of the hearing before any wider discussion.

START of the hearing

Who may attend a children's hearing?

The following people have the **RIGHT** to attend a children's hearing:

- **the child**
- **a person representing the child (as well as a solicitor)**
- **a relevant person**
- **a person representing a relevant person (as well as a solicitor)**
- **any appointed safeguarder**
- **the reporter**
- **a member of the Area Support Team, e.g. a Panel Practice Advisor**
- **a representative of a newspaper or news agency**

A police or prison officer accompanying a child or relevant person in custody is also authorised to attend the hearing under the Rules.

The chairing member may grant permission to any other person to attend the hearing if their attendance is necessary for the proper consideration of the matter before the hearing e.g. a social worker or school teacher.

Observers without a right to attend the hearing may be given permission by the chairing member to attend **UNLESS** the child or relevant person objects.

The following people have a **DUTY** to attend a children's hearing:

- the child
- a relevant person

The following individuals are automatically relevant persons:

- birth/adoptive parents, unless parental responsibilities and rights have been removed by a court
- a person who has parental rights and responsibilities for a child by a court order (this does not include those who have a contact order)
- a person with parental responsibility under English and Welsh legislation

Any other person may be deemed to be a relevant person by a children's hearing or pre-hearing panel if: **they have, or have recently had, a significant involvement in the child's upbringing.**

Further information about the deemed relevant person test can be found in the Practice and Procedure Manual.

Excusing a child or relevant person

A relevant person may be excused if the hearing is satisfied that it would be **unreasonable** or **unnecessary** for the relevant person to be present.

A child may be excused if:

- The hearing relates to an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 or the Sexual Offences (Scotland) Act 2009 and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing.
- The attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare in danger.
- Taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing, or that part of the hearing.

Once a child or relevant person has been excused by a pre-hearing panel or a hearing, that excusal lasts until a substantive decision is made.

When should you proceed in the absence of a relevant person, and when should you excuse a relevant person?

Does the criteria for excusing the relevant person apply?

Yes

Does the hearing wish to excuse the relevant person from attending?

Yes

Excuse the relevant person

No

Do panel members want to proceed with the hearing without the relevant person present?

No

Absence of a relevant person

A. Where a child is not present at the grounds hearing and has not been excused prior to the hearing

The hearing can:

1. Discharge the referral

This would mean the end of the hearing unless there was a second purpose to the hearing (e.g. a review at the request of the implementation authority). If the hearing proceeds to consider another purpose there must be no discussion about the discharged referral.

2. Require the Reporter to arrange another grounds hearing

This allows the child to attend a further grounds hearing. If the hearing decides to require the Reporter to arrange another grounds hearing the hearing can consider whether to issue an ICSSO **if necessary as a matter of urgency for the child**. The hearing may also consider issuing a warrant to secure attendance following an application by the Children's Reporter.

B. Where a relevant person is not present at the grounds hearing

The hearing can:

1. Excuse the relevant person from attending the hearing

The criteria for this decision are:

- it would be unreasonable to require the relevant person's attendance at the hearing; or
- their attendance is unnecessary for the proper consideration of the matter before the hearing.

2. Proceed with the hearing in the absence of the relevant person

The hearing may proceed if they consider it appropriate to do so. Full reasons must be provided.

There is no express power for a grounds hearing to be deferred for the attendance of a relevant person. Further information about this can be found in the Practice and Procedure Manual.

C. Where the hearing is satisfied that the child and/or relevant person(s) are unable to understand the grounds of referral

The hearing can:

1. Discharge the referral

This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review of an existing CSO at the request of the implementation authority). If the hearing proceeds to consider a further purpose there must be no discussion about the discharged statement of grounds.

2. Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established

This is known as ‘making an application for proof’. The hearing cannot make a substantive decision. If this direction is given the chairing member must:

- explain, as far as is possible, the purpose of the application to the child and/or relevant persons present; and
- inform the child (and, depending on the age of the child, his or her parent(s) or carer(s)) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff.

The hearing may also consider whether interim measures are required *as a matter of urgency* for the child’s protection, treatment, guidance or control.

D. Where the statement of grounds has been understood by the child and/or relevant person(s) but has not been accepted by one or more of those persons

The hearing can:

1. Discharge the referral

This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review at the request of the implementation authority). If the hearing proceeds to consider a further purpose there must be no discussion about the discharged statement of grounds.

2. Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established

This is known as ‘making an application for proof’. The hearing cannot make a substantive decision. If this direction is given the chairing member must:

- explain, as far as is possible, the purpose of the application to the child and/or relevant persons present; and
- inform the child (and, depending on the age of the child, his or her parent(s) or carer(s)) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff.

The hearing may also consider whether interim measures are required *as a matter of urgency* for the child’s protection, treatment, guidance or control.

E. Where the s67 ground is accepted and following a full discussion:

The hearing can:

1. Discharge the referral

Where, following discussion, the hearing is satisfied that a compulsory supervision order is not required for the child, it should discharge the referral. This means that the child will not attend any further hearings unless referred to a further grounds hearing by the Children's Reporter.

2. Make a compulsory supervision order

If the child is already subject to a CSO the option is to continue, vary, or continue and vary the existing order.

3. Defer the hearing to another day

The hearing may then issue an ICSO or an IVCSO if the hearing considers it *necessary as a matter of urgency*.

F. Where the s67 ground is accepted but some of the facts on which the statement is based are not

The hearing can:

1. Delete or vary the facts not accepted and proceed on the basis of those parts of the statement of grounds which are accepted

The deleted parts of the statement will thereafter form no part of the statement of grounds and must form no further part of the discussion. Panel members must be satisfied that deleting the part of the statement of grounds does not call into question the legal basis of the s67 ground.

2. Discharge the referral

This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review at the request of the implementation authority). If the hearing proceeds to consider a further purpose, there must be no discussion about the discharged statement of grounds.

(continued) F. Where the s67 ground is accepted but some of the facts on which the statement is based are not

3. Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established

This would relate to the whole of the statement of grounds. This is known as 'making an application for proof'. The hearing cannot make a substantive decision. If this direction is given the chairing member must:

- explain, as far as is possible, the purpose of the application to the child and/or relevant persons present; and
- inform the child (and, depending on the age of the child, his or her parent(s) or carer(s)) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff

The hearing may also consider whether interim measures are required *as a matter of urgency* for the child's protection, treatment, guidance or control.

The hearing can:

1. Make a further ICSO or IVCSO

This could be with or without a variation to the measures attached or a new measure added, if **necessary for the child's protection, treatment, guidance or control.**

Before grounds of referral are established the hearing may only issue three ICSOs. After this the Reporter must apply to the sheriff court for further ICSOs. There is no limit on the number of interim variations to a compulsory supervision order a hearing can make.

2. Not make a further ICSO or IVCSO

Where the hearing is satisfied that the order or variation is no longer required for the child's protection, treatment, guidance or control a further order should not be issued, or variation made.

The hearing can:

1. Discharge the referral

Where, following discussion, the hearing is satisfied that a CSO is not required for the child, it should discharge the referral.

2. Make a compulsory supervision order if the hearing considers it necessary for the child's protection, treatment, guidance or control

- What authority is the implementation authority?
- How long is the order to last? (“the relevant period”)
- Standard measure: “The implementation authority must provide supervision and support for the child”.

3. Defer the hearing to another day

The hearing may then issue an interim compulsory supervision order or a medical examination order if the hearing considers either **necessary**.

Following a full consideration of the child's circumstances, and the reason for the review hearing being arranged, the hearing can:

1. Continue the compulsory supervision order

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control and that no variation is required to any of the measures attached to the CSO
- the relevant period specified by the hearing will normally be a year, unless it is not in the child's best interests.

2. Continue and vary the compulsory supervision order

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control but that a variation is required the hearing should continue and vary the CSO
- a variation to the CSO includes both a variation to one of the existing measures and also the insertion of a new measure – a variation includes a change to the implementation authority
- the relevant period specified by the hearing will normally be one year, unless it is not in the child's best interests.

3. Vary the compulsory supervision order

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control, that a variation is required, but the relevant period should remain unaltered, the hearing should vary the CSO
- a variation can be a change to one of the existing measures attached to the CSO, an insertion of a new measure or both – a variation includes a change to the implementation authority.

4. Terminate the CSO

- where the hearing is satisfied that the CSO is no longer required for the child's protection, treatment, guidance or control it should terminate the CSO
- the hearing must consider whether supervision or guidance is needed by the child and if so, make a statement within the record of proceedings to this effect – it is thereafter the duty of the relevant local authority to provide such supervision or guidance as the child will accept.

5. Defer the hearing to another day

- the hearing may make an interim variation to the compulsory supervision order, if the hearing considers it necessary as a matter of urgency
- the hearing may continue the compulsory supervision order until the subsequent children's hearing – this would be required where, for example, the CSO would expire prior to the next children's hearing
- the hearing may make both an interim continuation of and an interim variation to the CSO

2nd Working Day Hearing

The hearing can:

1. Continue the child protection order (CPO) without variation

Where the hearing is satisfied that the criteria for making the CPO are met and that any directions attached to it remain necessary. There are two sets of criteria which can be applied to make a CPO. The first set apply where anyone makes an application for a CPO:

(a) there are reasonable grounds to believe that:

- (i) the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm
- (ii) the child has been, or is being, neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm
- (iii) the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety
- (iv) the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there), AND

(b) the order is necessary to protect the child from that harm or from further harm.

The second set of criteria can only apply when the applicant is a local authority, and are:

(a) that there are reasonable grounds to suspect that:

- (i) the child has been, or is being, treated in such a way that the child is suffering significant harm
- (ii) the child has been, or is being, neglected and as a result of the neglect the child is suffering or likely to suffer significant harm
- (iii) the child will be treated or neglected in such a way that is likely to cause significant harm to the child, AND

(b) the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made, AND

(c) those enquiries are being frustrated by access to the child being unreasonably denied, AND

(d) the local authority has reasonable cause to believe that access is required as a matter of urgency.

2. Continue the child protection order with variation to one of the directions attached

Where the hearing is satisfied that the criteria for making the CPO are satisfied, but that there should be a variation to the directions attached. A variation includes terminating or varying the existing directions or including a new direction.

3. Terminate the child protection order

Where hearing members are satisfied that the conditions for the making of a CPO do not exist or the order is no longer necessary.

8th Working Day Hearing

This is a Grounds Hearing, so see options for grounds hearings.

The hearing can:

1. Defer the hearing and make an IVCSO

Where the hearing is satisfied that **as a matter of urgency** the IVCSO is necessary for the child's protection treatment, guidance or control, the hearing may make an ICSO or IVCSO.

2. Defer the hearing

Where the hearing is NOT satisfied that as a matter of urgency an IVCSO is necessary for the child's protection treatment, guidance or control, the hearing may defer the hearing to allow for reports to be prepared and submitted. Where this is the decision of the hearing, the child will remain subject to any legal order, for example a CSO, they were subject to prior to the hearing.

Given the short notice for arrangement of this hearing, and the likely lack of reports or other information available to it, it is unlikely to be appropriate for the hearing to proceed to make a substantive decision.

The hearing can:

1. Defer the hearing and issue an ICSO or make an IVCSO with secure authorisation. Where the hearing is satisfied that:

- as a matter of urgency an ICSO or IVCSO is necessary for the child's protection treatment, guidance or control
AND
- one or more of the conditions in s83(6) are met **AND**
- having considered the other options available, it is necessary to include a secure authorisation in the order the hearing may make an ICSO or IVCSO including a secure authorisation.

The conditions in s83(6) are:

1. (a) the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk

(b) the child is likely to engage in self-harming conduct

(c) the child is likely to cause injury to another person

AND

2. Having considered the other options available (including a movement restriction condition) a secure accommodation authorisation is necessary.

2. Defer the hearing and issue an ICSO or make an IVCSO without secure authorisation

Where the hearing is satisfied that **as a matter of urgency** an ICSO or IVCSO is necessary for the child's protection treatment, guidance or control, the hearing may make an ICSO or IVCSO.

3. Defer the hearing

Where this is the decision of the hearing, the child will remain subject to any legal order, for example a CSO, they were subject to prior to the hearing.

Permanence orders and adoption orders: Advice hearings

Permanence and adoption order advice hearings consist of two separate parts:

- review of the compulsory supervision order
- discussion and provision of advice to the Sheriff about whether the hearing supports the plan for permanence (after a decision has been reached about the compulsory supervision order)

Any discussion around proposed permanence plans must not impact on the review of the compulsory supervision order. For example, parental contact should not be reduced solely in order to further the permanence plans before a decision is taken by the Court.

When providing advice to the Sheriff on the proposed application, the hearing should consider the following two questions in particular:

- Does the hearing support permanence plans for the child? **Why?**
- Does the hearing support the way in which permanence for the child is being proposed? **Why?**

More information about what information could be contained in advice to the Sheriff can be found in the Practice and Procedure Manual.

Non-disclosure requests

The hearing must only grant a non-disclosure request if panel members consider the statutory test is met, i.e. that NOT withholding the information would be **likely to cause significant harm to the child**.

When considering a non-disclosure request the hearing should discuss:

- What information is it proposed to withhold?
- Who is it proposed to be withheld from?
- Why does the current risk indicate that the child would be at risk of significant harm if the information was to be disclosed to the person?

Every children's hearing must **consider whether a safeguarder should be appointed for the child**, unless there is already one appointed. A pre-hearing panel may also consider the appointment of a safeguarder, but is not required to do so.

There are no specific criteria for the appointment of a safeguarder by a hearing. The specific role of a safeguarder may involve ensuring that:

- the child's rights are protected
- the views of the child are established and communicated to the hearing
- any proposals being made are in the child's best interests.

Appointing a safeguarder is not necessarily about filling a gap in the information available to the hearing or resolving conflict. Safeguarders should not be appointed to provide information that should be provided by the local authority.

When appointing a safeguarder the hearing should **fully justify their reasons for doing so**. However, there is no need for a hearing to provide the safeguarder with a "remit". The role of the safeguarder is to safeguard the interests of the child. Further information about safeguarders can be found in the Practice and Procedure Manual.

If the hearing is satisfied that it is unlikely that the child or relevant person will make arrangements to obtain a solicitor, and legal assistance is necessary to enable effective participation, the hearing may direct the Children's Reporter to provide the child or relevant person's contact details to the Scottish Legal Aid Board (SLAB). SLAB will facilitate contact between the child or relevant person and a solicitor.

When making decisions about effective participation, panel members should consider:

- the **complexity** of the case, including the existence and difficulty of any points of law to be considered by the children's hearing;
- the **nature** of the legal issues involved;
- the **ability** of the person to consider and challenge any document or information in the hearings or proceedings without the assistance of a solicitor; and
- the **ability** of the person to present his or her views in an effective manner without the assistance of a solicitor.

Reasons for decisions

Clear **verbal** reasons must be provided by each panel member for every decision made and this includes each measure included on an order. After the decision has been made and explained, the verbal reasons given should be written in the record of proceedings.

Panel members must always answer the **WHY** question in relation to every aspect of their decision. For example, when making a CSO containing a contact direction, reasons should be provided as follows:

- WHY** is a compulsory supervision order required for the child?
- WHY** is a measure of residence required, i.e. why can't the child live at home?
- WHY** is the measure of residence with X specifically?
- WHY** is a measure of contact with Y necessary for the child?
- WHY** does the contact need to be supervised?
- WHY** the duration of each contact session?
- WHY** the frequency with which contact has been set?
- WHY** the specific venue for contact?

Reasons given verbally must be written in the record of proceedings at the end of the hearing.

The chairing member's checklist:

1. Verbal reasons and decisions

Has each panel member (including the chairing member) provided their decision and reasons WHY all parts of the decision have been made clearly?

2. Confirming the decision of the hearing

Do the child and relevant persons present understand the decision? Who is going to meet with the child after the hearing to discuss the decision?

3. Appeal rights

A child, relevant person, safeguarder or, in some cases, the affected individual can appeal the decision of a hearing within 21 days, except an appeal against relevant person status which must be made within seven days.

If the appeal is in relation to a CSO, the person who appeals can ask the Children's Reporter to arrange a hearing to consider suspending the decision pending the outcome of the appeal.

END of the hearing

The chairing member's checklist:

4. Review rights

A child or relevant person can require a review of the CSO after three months.

5. Review of deemed relevant person status (where the hearing is a review hearing and has made a substantive decision only)

Consider the status of any deemed relevant persons who appear no longer to meet the criteria of having, or having recently had, a significant involvement in the child's upbringing.

6. Written decision and reasons for decision

Completion of written reasons for decision.

Check and sign any statutory orders.

Signature of the record and any associated forms by the chairing member.

Children's Hearings Scotland

Area 2/1/1 Ladywell House

Ladywell Road

Edinburgh

EH12 7TB

0131 244 3696

www.chscotland.gov.uk



Follow @CHScotland