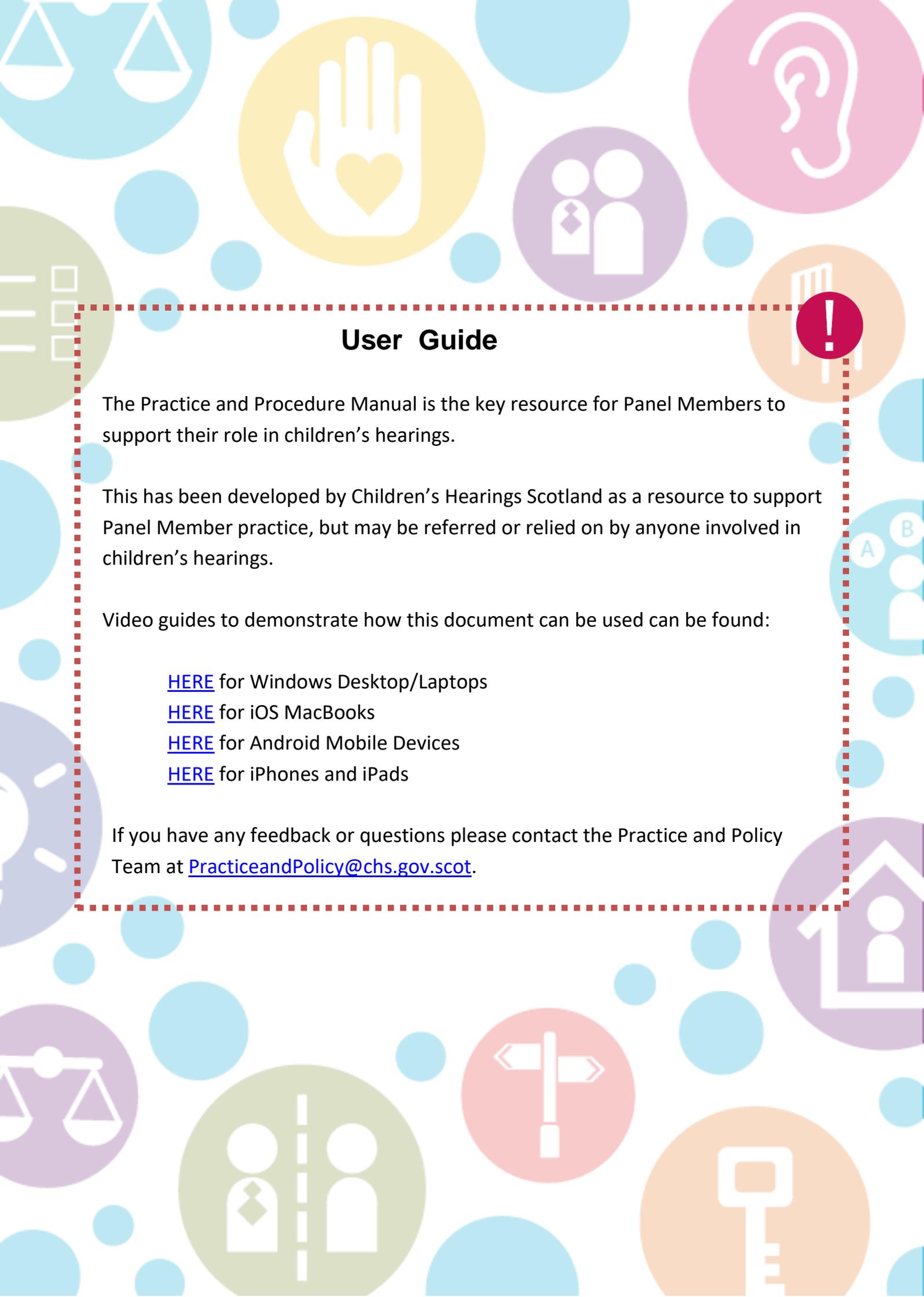




Practice and Procedure Manual

Version 4
Last Update: October 2022



User Guide

The Practice and Procedure Manual is the key resource for Panel Members to support their role in children's hearings.

This has been developed by Children's Hearings Scotland as a resource to support Panel Member practice, but may be referred or relied on by anyone involved in children's hearings.

Video guides to demonstrate how this document can be used can be found:

[HERE](#) for Windows Desktop/Laptops

[HERE](#) for iOS MacBooks

[HERE](#) for Android Mobile Devices

[HERE](#) for iPhones and iPads

If you have any feedback or questions please contact the Practice and Policy Team at PracticeandPolicy@chs.gov.scot.

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JUMP TO... PART 2
Informing Decisions: Improving Outcomes





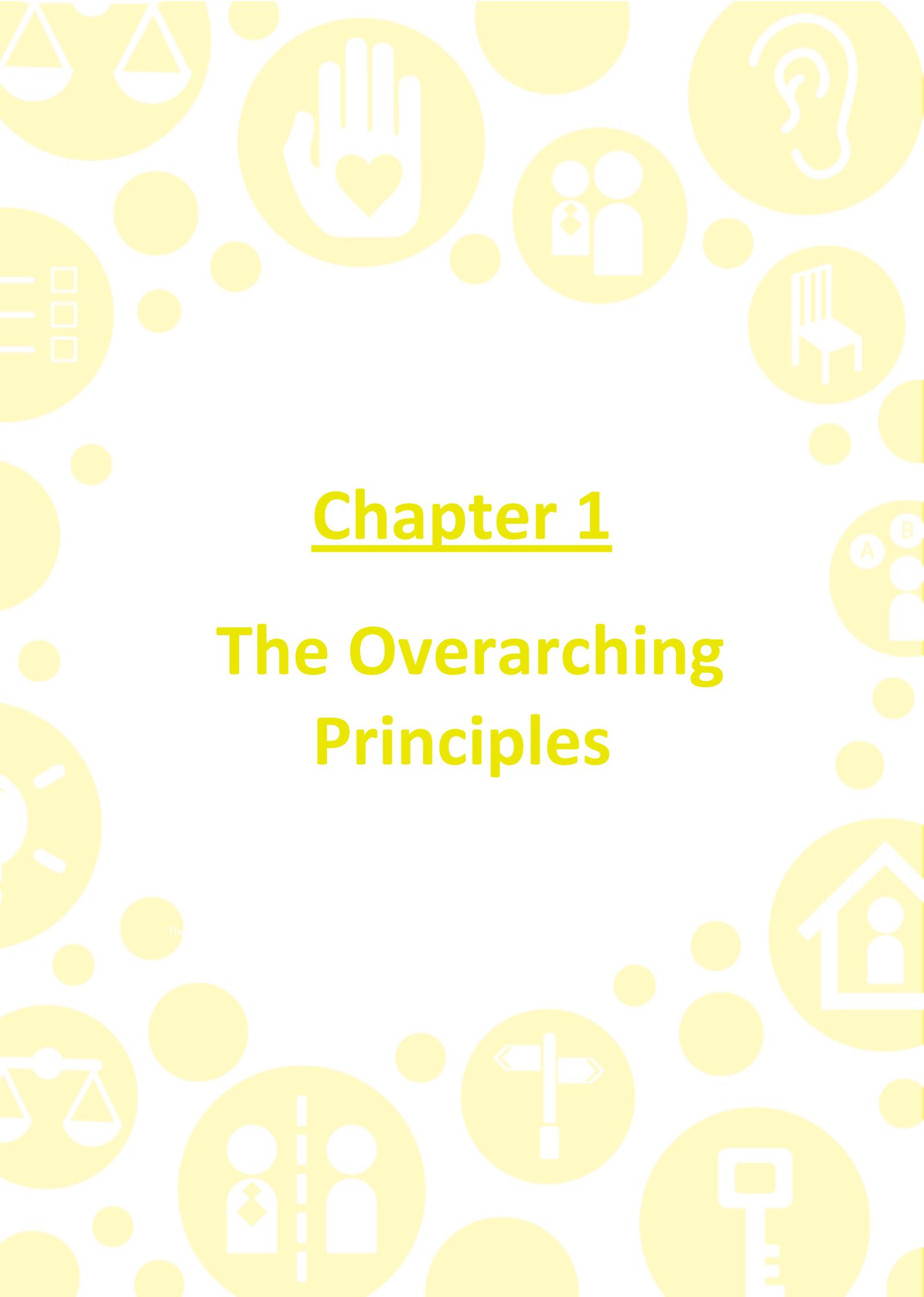







Key:

	Case examples illustrating how the law and options may be applied		Information about the relevant legislation and legal tests
	This button returns you to the contents page for that particular Part of the document		Options available to the children’s hearing
	New information added in latest update. Search “#NEW” to jump straight to new sections.		



Chapter 1

The Overarching Principles



Summary

There are three overarching principles contained in the 2011 Act which must be applied when hearings are making decisions about a child:

- The need to safeguard and promote the welfare of the child throughout the child's childhood is the paramount consideration.
- The child must be given an opportunity to express a view and, if the child chooses to express a view, Panel Members must have regard to the child's view, taking into account the child's age and maturity.
- An order can only be made if the children's hearing considers it is better for the child that a Compulsory Supervision Order, or warrant, is made than if it is not made.

It is important to separate these principles from the Panel Members' reasons for making a decision. For example the written reasons for making a decision could not simply record 'that it is in the child's best interests.' The written reasons should specify **why** the Panel Members believe that the decision is in the child's best interests.

a. The need to safeguard and promote the welfare of the child throughout the child's childhood is the paramount consideration [\(s25\)](#)

1.1 This principle is sometimes called the 'paramountcy principle', 'the welfare principle' or the 'best interests of the child principle'. It applies to children's hearings, pre-hearing panels and the courts when making decisions about children. This principle reflects Article 3 of the United Nations Convention on the Rights of the Child which says the welfare of the child should be a primary consideration of the decision maker.

1.2 This principle means that when making decisions about children and young people every children's hearing should have as its paramount consideration, that is above all else, the welfare of the child **throughout the child's childhood**.

1.3 Panel Members therefore should consider the longer term impact of the decisions they take for the child, and weigh this alongside the risks and benefits of proposals in the short or medium term.



1.4 'Welfare' can include all parts of a child's life, for example the physical, emotional or educational needs of the child.



Example

When considering a measure of residence, a hearing should take into account all the available options including the child remaining at home, residing with kinship carers, residing with Foster Carers or a residential home setting. The short term benefits of one type of care may be more prominent. That should not be the only consideration – Panel Members should think about which type of care would be most likely to provide stability and safeguard the child's welfare in the long term.

1.5 There is one exception to this principle. In limited circumstances, in order to protect members of the public from serious harm (whether physical or otherwise), a children's hearing must make a decision which is not consistent with the requirement to have the child's welfare as the **paramount** consideration. In such cases, the welfare of the child becomes a **primary** consideration. This may apply, for example, where it is necessary to authorise placement in secure accommodation for a child who has committed a serious offence against a member of the public and the child is assessed as likely to carry out further dangerous or high-risk behaviours.

Delays in Proceedings

1.6 Panel Members should consider whether any delay in proceedings would negatively affect the child's welfare. While delay is sometimes necessary to ensure Panel Members have all the information they need to make an informed decision, it is important to consider the reason for any deferral against the impact this will have on the child's welfare. You can read more about how to reduce unnecessary drift and delay in [Part 2, Chapter 9](#).

Exceptions to the 'welfare principle'

1.7 There are some legal tests which are factual tests. These tests include 'whether or not an individual meets the criteria to be deemed a relevant person' or 'which local authority should be the implementation authority' named in a Compulsory Supervision Order. This means that the welfare of the child is not a relevant factor in deciding whether or not the legal criteria are met. The decision of the panel is restricted to whether or not the legal test is satisfied. See [Chapter 2](#) for more information on the legal tests.



Example

The hearing has been asked to consider whether a father's cohabiting partner should be deemed a relevant person. All responsibility for the child is shared equally between the couple, including the day to day care and some important decisions, as well as routine decisions. The child is three years old. They have lived as a family throughout her life. It is likely that the father's cohabiting partner would meet the relevant person test that **she has, or has recently had, significant involvement in the upbringing of the child.**

Even if the hearing was convened because the partner had caused harm to the child, this will **not affect** whether or not they meet the statutory test and should not be taken into consideration. The relevant person's actions do not determine what should be their rights.

b. The child must be given an opportunity to express a view and, if the child chooses to express a view, Panel Members must have regard to the child's view, taking into account the child's age and maturity [\(s27\)](#)

1.8 Providing the child with an opportunity to participate is an essential feature of a children's hearing. This principle applies to all parts of a children's hearing, including pre-hearing panels. A child of any age should be supported to provide a view unless Panel Members consider that they are not capable of forming a view. The child must be given an opportunity to provide their views in a way that they prefer, for example by writing a letter or recording a video. If the child does not have a preference, or if the preference is unreasonable in the circumstances, views should be provided in a way which is suitable for their age and stage of development and in accordance with each child's needs.

1.9 Panel Members are **not obliged to make a particular decision only because the child wishes it.** The child's **welfare** is the paramount consideration for Panel Members. There will be situations in which the children's hearing's decision does not reflect the child's views. If a children's hearing does make a decision which is different from the child's view, Panel Members should explain to the child why they have done so, and explain why they did not follow the child's views in the hearing's written reasons for their decision.

1.10 Reports submitted to the hearing should contain the child's views, as far as these are known to the report writer. At the beginning of the hearing the chairing member should ask whether the [views of the child](#) are accurately reflected in the reports submitted in advance of the hearing.

1.11 Some children may not want to give their views personally to Panel Members at a children's hearing. They should not be forced to do so.



The child's attendance and their views

1.12 There is no expectation or legal requirement that a child must be present at the hearing to share their views. Even if the child has been excused from attending the hearing, their views can be given to the hearing in other ways. Panel Members must have regard to the child's views in whatever way these are communicated.

1.13 A child may choose to share their views in many different ways. For example:

- the child can be accompanied by a representative or advocacy worker to help them be involved in the discussion, in particular to share the child's views, or to support the child to share their own views, at the hearing;
- the hearing may defer the hearing to another day to enable the child's views to be ascertained by a trusted adult outwith the hearing;
- a Safeguarder may be appointed to speak with the child;
- the child could complete an 'All About Me' form in advance of the hearing;
- the child may choose to record their views on a video statement to show the hearing;
- the child may use a digital participation tool such as an avatar or [Mind Of My Own](#).



Example

If a pre-hearing panel has been convened to consider excusing a child's attendance from an upcoming hearing, the panel must examine the child's situation against the [criteria for excusal](#) and decide if the relevant legal test is met. It is not appropriate to insist a child attends a hearing only to gather their views if there is good reason to excuse their attendance. If the child is too young to understand the hearing or the child's mental, physical or moral welfare is likely to be put at risk by attending, a trusted adult, social worker, advocacy worker or Safeguarder, can obtain the child's views before the hearing and present them to the Panel Members.

Speaking to the child alone

1.14 If appropriate, Panel Members may ask to speak to the child on their own or without all other participants being present. This request should be phrased "we would like to speak to you" to avoid putting the child in a position where the child is seen to be asking to speak to Panel Members separately from their parents or carers.

1.15 All relevant persons and their representatives have the right to be present throughout the entire hearing. The child has no automatic right to speak to the Panel Members on their own. The chairing member may ask relevant persons to agree to leave the hearing room to allow Panel Members to have a conversation with the child without



other adults present. Panel Members should think carefully about how to word a request to relevant persons to leave the room voluntarily. They should be asked if they would be willing to leave the room, rather than being told to leave. **The chairing member cannot exclude relevant persons or their representatives against their wishes unless there is evidence that their presence is preventing the child from giving their views freely.**

1.16 Panel Members can only exclude a relevant person or their representative without their agreement if the relevant legal test is satisfied. See the [attendance](#) section for more information on excluding relevant persons and the need to provide information about the content of discussion in their absence to relevant persons when they re-enter the hearing room.

c. An order can only be made if it is considered better for the child than if no order was made ([s28](#))

1.17 This principle is sometimes referred to as the ‘no order principle’ or the ‘minimum intervention principle’.

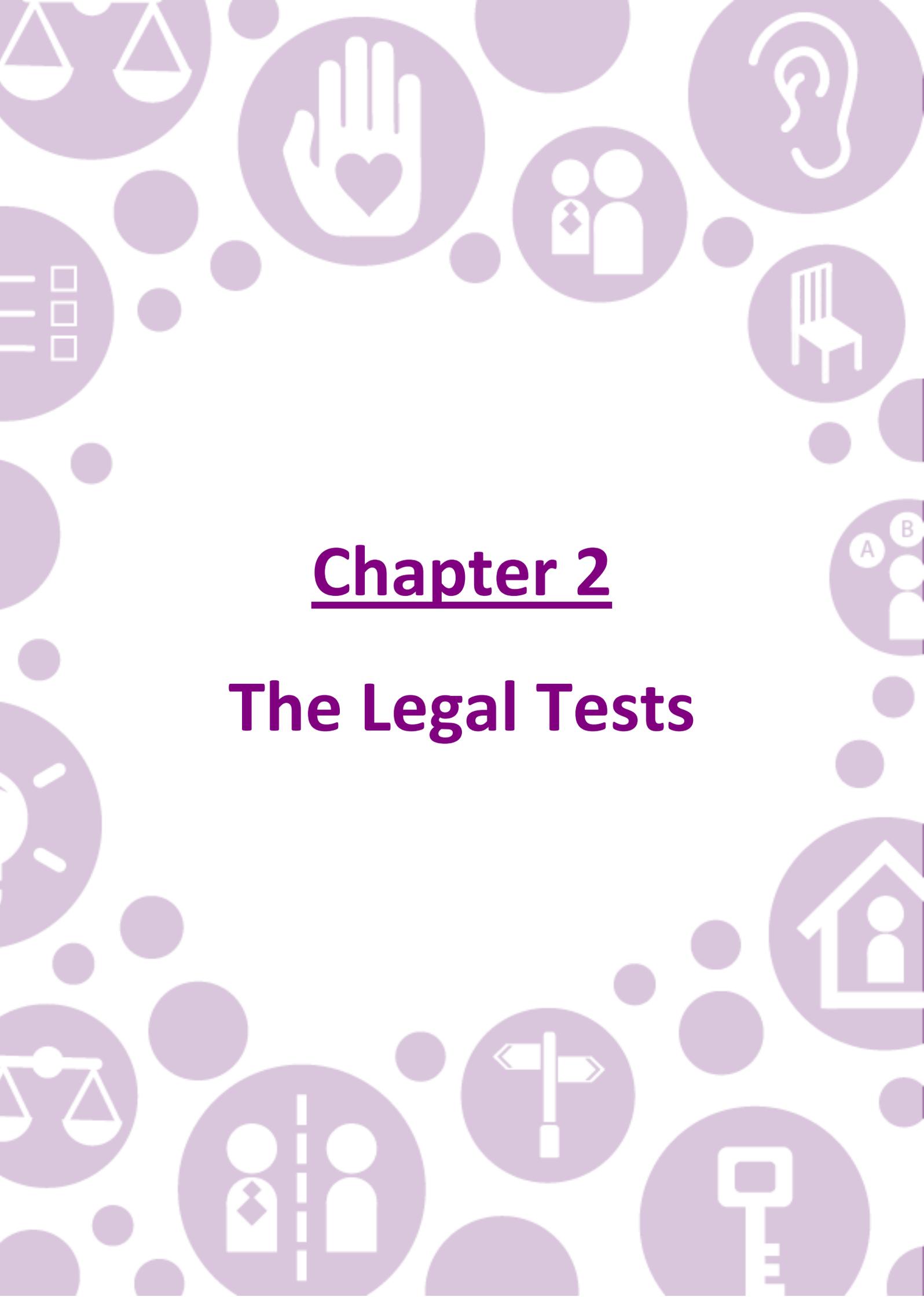
1.18 A children’s hearing must be satisfied that making an order will bring about a demonstrable benefit to the child. This principle also applies to any measures included in the order so the hearing must be positively persuaded that any measure included in the order is **necessary for the child’s welfare**. The reason or reasons must be stated in both the oral and written reasons provided by the hearing.

1.19 It is important to separate the overarching legal principle from reasons for making a decision. For example, the written reasons for making a decision should not just say that the ‘Panel Members felt the order was necessary as it is in the child’s best interests’. The written reasons should say **why** the Panel Members believe that the order is necessary and what benefit making the order will bring to the child.



Example

If a parent has not been involved in the child’s life for many years and has not asked for contact, applying the minimum intervention principle means that it would be difficult to justify including a measure prohibiting contact in a Compulsory Supervision Order because there would be no need for it. However, if the parent indicates that they will seek contact, the hearing may be justified in deciding to make a measure restricting contact and should give reasons why there should be no contact.



Chapter 2

The Legal Tests



Summary

This section contains all of the tests Panel Members may have to apply in children's hearings. They are listed here as a reference list. More detailed information on each test and examples of how they may be put into practice can be found by following the link to the relevant section.

a. Excusing a child from attending a hearing

2.1 A child can be excused from attending the hearing, or part of the hearing, if:

(a) the hearing relates to a **schedule one or sexual offence ground** and the attendance of the child at the hearing, or part of the hearing, is **not necessary for a fair hearing**

OR

(b) the attendance of the child at the hearing, or part of the hearing, **would place the child's physical, mental, or moral welfare at risk**

OR

(c) taking account of the **age and maturity of the child**, the child would **not be capable of understanding** what happens at the hearing, or part of the hearing.

The [attendance](#) section contains more information on applying this test.

b. Excusing a relevant person from attending a hearing

2.2 A relevant person can be excused from attending the hearing, or part of a hearing, if:

(a) it would be **unreasonable** to require the relevant person's attendance at the hearing or part of the hearing;

OR

(b) the attendance of the relevant person at the hearing, or part of the hearing, is **unnecessary** for the proper consideration of the matter before the hearing

The [attendance](#) section contains more information on applying this test.



c. Deem or undeer a relevant person

2.3 A person **must** be deemed, or continue to be deemed, a relevant person if:

the individual **has (or has recently had) a significant involvement in the upbringing of the child**

The [relevant person](#) section contains more information on applying this test.

d. Making a Compulsory Supervision Order (CSO)

2.4 A children's hearing should only make, continue, or continue and vary a Compulsory Supervision Order if:

the hearing is satisfied that the Compulsory Supervision Order is **necessary for the protection, treatment, guidance or control of the child.**

The [Compulsory Supervision Order](#) section contains the three requirements for a valid Compulsory Supervision Order.

e. Making an Interim Compulsory Supervision Order (ICSO)

2.5 A children's hearing should only make a **first** Interim Compulsory Supervision Order if the child's circumstances are such that for his or her protection, guidance, treatment or control it is **necessary as a matter of urgency** that the Interim Compulsory Supervision Order be made and the child is not already subject to a Compulsory Supervision Order.

The [Interim Compulsory Supervision Order](#) section contains the three requirements for a valid Interim Compulsory Supervision Order and further information.

f. Making an interim variation of a Compulsory Supervision Order

2.6 A children's hearing should only make a **first** interim variation of a Compulsory Supervision Order if the child's circumstances are such that for the protection, guidance, treatment or control of the child it is necessary **as a matter of urgency** that the interim variation of the Compulsory Supervision Order be made and the child must already be subject to a Compulsory Supervision Order.



The [review hearing](#) section contains further information on interim variations of Compulsory Supervision Orders.

g. Non-disclosure of information

2.7 A children's hearing need not disclose to a person any information about the child to whom the hearing relates or about the child's case if disclosure of that information to that person **would be likely to cause significant harm to the child.**

The [non-disclosure](#) section contains full information on the different ways information can be withheld.

h. Secure accommodation authorisation

2.8 A children's hearing may consider secure accommodation authorisation if one or more of the following criteria are met:

(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**

OR

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

OR

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

AND

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

The [secure accommodation](#) section contains further information.

i. Movement restriction condition

2.9 A children's hearing may consider a movement restriction condition if one or more of the following criteria are met:

(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; or

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

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

AND



2. Whether the inclusion of the movement restriction condition is **necessary** for the child.

More information about the Movement Restriction Condition criteria can be found [here](#).

j. Opportunity to participate

- 2.10 A person must be afforded the opportunity to participate if:
- the person is living or has lived with the child;
 - the person and the child have an ongoing relationship with the character of a relationship between siblings;
 - the children's hearing is likely to make a decision significantly affecting contact or the possibility of contact between the person and the child;

AND

the person is capable of forming a view on the matter of contact between the person and the child

More information can be found under [opportunity to participate](#).

k. Excluding a relevant person or journalist

2.11 A relevant person, their representative, and/or a representative of a newspaper or news agency, can be excluded from part of a children's hearing for as long as necessary if:

(a) the chairing Panel Member considers that the conduct of the person is **violent or abusive**

OR

(b) the conduct of the person is so **disruptive that the chairing Panel Member considers that unless the person is excluded, it would be necessary to end or adjourn the hearing**

OR

(c) the chairing Panel Member is satisfied that **the presence of the person is preventing the hearing from obtaining the views of another relevant person**

OR

(d) the chairing Panel Member is satisfied that the **presence of the person is causing, or is likely to cause, significant distress to another relevant person**

OR

(e) the hearing is satisfied that **the presence of the relevant person is preventing the hearing from obtaining the views of the child**

OR



(f) the hearing is satisfied that the presence of the person **is causing, or is likely to cause, significant distress to the child**

OR

(g) the hearing is **considering a [non-disclosure](#) request in respect of that person**

The [exclusion](#) section contains further information.

I. Referring a child or relevant person to SLAB

2.12 A hearing can ask the Children's Reporter to contact the Scottish Legal Aid Board with a child or relevant person's details if:

(a) for the purpose of enabling a child or any relevant person to **participate effectively** in the proceedings before the children's hearing **it may be necessary that the child or relevant person be represented by a Solicitor or counsel**

AND

(b) **it is unlikely that the child or relevant person will arrange to be represented by a Solicitor or counsel**

The section on [legal representation](#) contains more information.



Summary

a. Hearing orders

- There are four orders which a hearing may make:
 - Compulsory Supervision Order (COMPULSORY SUPERVISION ORDER)
 - Interim Compulsory Supervision Order (ICSO)
 - Medical Examination Order (MEO)
 - Warrant to Secure Attendance
- Only one order may be in place at any one time, other than a warrant to secure a child's attendance which may be made with another of the orders
- A Compulsory Supervision Order and an Interim Compulsory Supervision Order must contain:
 - at least one specific measure
 - an implementation authority (the local authority responsible for carrying out the measures required by the order)
 - a date on which the order will expire.

b. Measures

- there are **nine** separate measures which may be included in a Compulsory Supervision Order or an Interim Compulsory Supervision Order
- there is an express duty on the panel to consider a contact direction **at every hearing** when making, varying or continuing a Compulsory Supervision Order
- if **no other measures** are included in the order, the hearing must include a standard measure which states that **'the implementation authority shall provide supervision and support to the child'**.

a. Hearing orders

3.1 A hearing may make any of four legal orders. Three are interim orders pending a hearing's decision about whether or not a Compulsory Supervision Order is needed. The 2011 Act provides that there should only be one order in force at any one time, with the exception of a warrant to secure attendance. For example, if a children's hearing is arranged to consider changing the arrangements in place for a child already subject to a Compulsory Supervision Order, the hearing can only vary the existing Compulsory Supervision Order - the hearing cannot make a separate Interim Compulsory Supervision Order.



3.2 The four orders are:

- Compulsory Supervision Order
- Interim Compulsory Supervision Order
- Medical Examination Order
- Warrant to Secure Attendance

Compulsory Supervision Order (CSO) [\(s83\)](#)

3.3 A hearing may make a Compulsory Supervision Order if it is satisfied that **it is necessary for the child's protection, guidance, treatment or control**. A Compulsory Supervision Order is a substantive decision and should only be made following the acceptance or establishment of the grounds for referral and a full discussion at a hearing.

The three requirements

3.4 There are three requirements for a Compulsory Supervision Order to be legally valid:

1. It must contain at least one of the measures listed below:

- i. the child resides at a specified place
- ii. authorisation for the person in charge of the specified place to restrict the child's liberty
- iii. non-disclosure (either directly or indirectly) of the specified place
- iv. a movement restriction condition
- v. a secure accommodation authorisation
- vi. that the implementation authority arranges a specified medical examination and/or treatment of the child, subject to the child giving consent if of an age where he or she can provide consent
- vii. a contact direction **(it is necessary that this be considered by each hearing making, varying or continuing a Compulsory Supervision Order)**
- viii. any other condition which the child must comply with
- ix. the implementation authority carries out specified duties in relation to the child.

Every Compulsory Supervision Order must include at least one of the measures listed above and detailed [below](#). In practice, many Compulsory Supervision Orders meet this requirement with a measure regulating contact or stipulating where the child should reside. Even if the child does not require to move residence, if necessary, the hearing may specify which parent the child shall reside with, and that would be a valid measure making the Compulsory Supervision Order legally competent.



If none of these seem appropriate the hearing may make a general ‘standard’ measure that **‘the implementation authority will provide supervision and support to the child’**, to ensure that the Compulsory Supervision Order is legally competent.

Not every decision made by a hearing is a measure. Only the legal provisions summarised above are measures which form part of a Compulsory Supervision Order. Decisions, for example, that there should be an early review, or that the next hearing should include one of the same Panel Members are procedural decisions. Examples are listed in [Chapter 6 'Further Decisions'](#). **Procedural decisions alone are not sufficient to make a Compulsory Supervision Order competent.**

2. The hearing must specify the local authority which is responsible for giving effect to the order.

This is called ‘the implementation authority’. The implementation authority is ‘the relevant local authority’ which is defined as:

- a) the local authority in whose area the child predominantly resides
- OR
- b) where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the **closest connection**.

The question of ‘closest connection’ is a question of fact. Decisions should be based on the facts of the individual child’s circumstances. Factors such as where the child’s family members live, where the child has contact with family, and the future Care Plan for the child may be relevant factors when deciding with which area the child has the closest connection.

The welfare of the child is not a consideration when making a decision about which authority is the implementation authority.

When considering the ‘relevant local authority’ **no account** must be taken of any period of time in which a child lives in a residential establishment in a particular local authority area as a result of the order. For example, where a child lives in a residential placement in a different local authority area from where he or she normally lives with his or her parents or guardian, the implementation authority remains the local authority in which he or she would normally live, not the local authority in which the residential placement is located.

The implementation authority may request that another local authority or health board assist them to implement the Compulsory Supervision Order ([s183\(3\)](#)). In the case of a health board, if the implementation authority considers that the health board has failed to respond to the request without good reason, they may refer the matter to Scottish Ministers.



Although not a legal requirement, it is best practice for a representative of the proposed implementation authority to be present at the hearing, where practicable, or that the implementation authority has provided a report to the hearing. This is particularly important where a local authority is proposing a change of implementation authority.

3. It must specify 'the relevant period'.

The relevant period is how long the Compulsory Supervision Order will last. The relevant period begins with the day the hearing makes the order. The Compulsory Supervision Order can last for a maximum of one year, or to the child's 18th birthday, whichever is earlier. The hearing must specify the date on which the Compulsory Supervision Order will expire. This indicates the relevant period. Where the order is continued, the relevant period can be specified by a hearing. **Unless it is in the interests of the child to identify a shorter period, the relevant period specified by the hearing will be one year.**



Example

Decision: to make a Compulsory Supervision Order specifying Anytown local authority as the implementation authority and having effect until and including 13th October 2022 s.91(3)(a). The Compulsory Supervision Order includes a measure that Anytown local authority will provide support and supervision to Logan.

Reasons: Logan has not been in touch with any support services or carried out the plan that he attend school on a part-time basis. His school attendance has dropped and is now 63% overall, 22% this term, with no signs of improvement. Logan has been charged (though not convicted) several times by the Police despite persistent attempts by social work services to redirect his behaviour away from offending. A Compulsory Supervision Order is now required to provide substantial support to re-engage Logan with education and reduce his offending.

3.5 When a Compulsory Supervision Order is in force and requires to be varied as a matter of urgent necessity, an interim variation of the order is possible when the children's hearing is not able to make a substantive decision to vary the order. Interim variations of the Compulsory Supervision Order can last up to 22 days.

3.6 Unlike Interim Compulsory Supervision Orders, interim variations are not stand alone orders, they merely vary the existing Compulsory Supervision Order. There is no maximum to the number of interim variations allowed. This means that there may come a time when





the Compulsory Supervision Order is due to expire. If the order is allowed to lapse, there will be no order for Panel Members to vary on an interim basis. Therefore the priority of the children's hearing will be to review the Compulsory Supervision Order, making a substantive decision if necessary, to ensure the order does not lapse and leave the child unprotected.

Interim Compulsory Supervision Order (ICSO) [\(s86\)](#)

3.7 An Interim Compulsory Supervision Order may be made only if there is no existing Compulsory Supervision Order in place. If a Compulsory Supervision Order is already in place and one or more of the terms of the order need to be changed, such as a change of address or contact arrangements, and the hearing have deferred their decision, the children's hearing should make an interim variation. See the section on [review hearings](#) for more detail.

3.8 The test for making **an initial** Interim Compulsory Supervision Order (ICSO) is that the child's situation is such that **as a matter of urgency** it is necessary for the protection, guidance, treatment or control of the child that the Interim Compulsory Supervision Order be made.

The three requirements

3.9 As with a Compulsory Supervision Order, an Interim Compulsory Supervision Order must contain three elements:

1. It must contain at least one of the measures listed below:

- i. the child resides at a specified place **OR** a requirement to reside at a place of safety away from the place the child predominantly resides;
- ii. authorisation for the person in charge of the specified place to restrict the child's liberty
- iii. non-disclosure (either directly or indirectly) of the specified place;
- iv. a movement restriction condition;
- v. a secure accommodation authorisation;
- vi. that the implementation authority arranges a specified medical examination and/or treatment of the child, subject to the child giving consent if of an age where he or she can provide consent;
- vii. a contact direction;
- viii. any other condition which the child must comply with;
- ix. the implementation authority carries out specified duties in relation to the child.

. It would be unlikely that an Interim Compulsory Supervision Order would be required as a matter of urgency unless there is a need for one of the specific



measures above to be put in place, such as a measure of residence or a contact direction. However, if no other measure is necessary, the panel **must** include the standard measure that **'the implementation authority will provide supervision and support to the child'**.

It is worth noting that an Interim Compulsory Supervision Order made during a proof application cannot include a requirement for the implementation authority to arrange a specific examination of the child.

2. The hearing must specify the local authority which is responsible for giving effect to the order.

The implementation authority is 'the relevant local authority'. The relevant local authority for a child is defined as:

a) The local authority in whose area the child predominantly resides;

OR

b) Where the child does not predominantly reside in the area of a particular local authority the local authority with whose area the child has the **closest connection**.

The question of 'closest connection' is a question of fact. Decisions should be based on the facts of the individual child's circumstances. Factors such as where the child's family members live, where the child has contact and what the future Care Plan for the child's residence is may all be relevant to deciding with which area the child has the closest connection.

The welfare of the child is not a consideration when making a decision about which authority is the implementation authority.

When considering 'relevant local authority' **no account** must be taken of any period of residence in a residential establishment. For example, where a child lives in a residential placement in a different local authority area from where he or she normally lives with his or her parents or guardian, the implementation authority remains the local authority in which he or she would normally live, not the local authority in which the residential placement is located.

The implementation authority may request that another local authority or health board assist them to implement the Compulsory Supervision Order. In the case of a health board, if the implementation authority considers that the health board has failed to respond to the request without good reason, it may refer the matter to Scottish Ministers.



Although not a legal requirement, it is good practice for a representative of the proposed implementation authority to be present at the hearing, where practicable, or to have otherwise submitted a report. This should be the case where a change of implementation authority is being proposed.

3. It must specify 'the relevant period'.

The relevant period is the length of time the order will last. The relevant period for an Interim Compulsory Supervision Order is whichever occurs first:

- the date of the next children's hearing;
- the disposal of a proof application by the Sheriff;
- a day specified in the order;
- a period of 22 days.



Example

Decision: to make an Interim Compulsory Supervision Order specifying Anytown local authority as the implementation authority and having effect until and including 26th February 2022 at the latest s.93(5). The implementation authority will provide supervision and support to the child.

Reasons: Over the last month, Mr and Mrs McDonald have not met with their social worker or been in touch and the Police have attended the family home in response to two calls about domestic abuse. Mark has not been seen at nursery in 10 days. His parents latest drug samples were positive for opiates and they have missed their last two appointments with drug rehabilitation services. As neither parent appeared at today's grounds hearing, there are serious concerns about the immediate safety of the children.

Further Interim Compulsory Supervision Orders (ICSOs)

3.10 A hearing may make a further Interim Compulsory Supervision Order (ICSO) if it is satisfied that the child's circumstances are such that it is necessary for the child's protection, treatment, guidance or control. **The 'required as a matter of urgency' test applies only to the first Interim Compulsory Supervision Order.**

3.11 If a children's hearing has directed the Children's Reporter to make a proof application, prior to that application being determined, subsequent children's hearings can make up to a maximum of **three** Interim Compulsory Supervision Orders. In these circumstances, a child may be subject to Interim Compulsory Supervision Orders for a continuous period of up to 66 days. After the expiry of 66 days the Children's Reporter may make an application to the Sheriff asking for an extension, or variation, of the order.



3.12 Where grounds for referral have been accepted or established there is **no limit** on the number of Interim Compulsory Supervision Orders successive hearings can make. However, Panel Members should consider the impact of repeated short-term decisions, and the resulting uncertainty, on the child and relevant persons.

Interim Compulsory Supervision Order specifying the child be kept in a place of safety

3.13 Instead of specifying a place of residence for a child, the Interim Compulsory Supervision Order may contain a measure which specifies that the child is **required to stay in a place of safety away from the place where the child predominantly resides**.

3.14 For the hearing to make or vary a Compulsory Supervision Order to require that the child resides at a place where the child would be under the charge or control of a person who is not a relevant person, the hearing has to have received and considered a report from the relevant local authority or implementation authority. This report should provide the authority's recommendations on:

- a) the needs of the child
- b) the suitability of the place or places to meet the child's needs
- c) the suitability of the person who would have charge or control over the child to meet the child's needs.

3.15 The implementation authority must confirm to the hearing that they have carried out the procedures and gathered information to satisfy Regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009. Information about the proposed carer(s) is required for the hearing to make a substantive decision ('carer profile'). If a carer profile is not provided, the hearing should consider making an Interim Compulsory Supervision Order including a place of safety measure. The hearing cannot make a Compulsory Supervision Order without full information.

3.16 If the hearing is considering making an Interim Compulsory Supervision Order with a measure of residence away but no suitable placement has yet been identified, **the hearing should carefully weigh up the risk to the child in the short term against the distress and uncertainty the child may experience knowing they will not return home but also not knowing where they will be staying for the immediate future**.

3.17 In essence, the hearing must consider carefully whether it is better for the child to move on an unplanned basis immediately, than to remain where they are until a deferred hearing can be arranged and a suitable placement identified. Panel Members must clearly identify their reasons for deciding upon either option. This is consistent with the [overarching principle](#) of keeping the welfare of the child throughout their childhood as paramount at all times and the need to consider the short, medium and long-term effects of Panel Members' decisions.



Example

Decision: to include in the order a requirement that the child reside at any place of safety away from where he/she predominantly resides

Reasons: Over the weekend, the Police were called to a serious incident in the family home where the children were present. A fight took place between Mr Farmer and several men, all of whom were using drugs and drinking heavily. Mr Farmer was unable to care for the children safely and still does not accept they were at risk. Since Saturday, the children have been staying with their maternal grandmother and are happy, safe and settled in familiar surroundings. Unfortunately, this placement may not last due to Mr Farmer's threatening behaviour. A place of safety Interim Compulsory Supervision Order will allow the children to be kept in a safe place until the grounds are heard, even if their grandmother is no longer able to look after them.

Medical Examination Order (MEO) [\(s87\)](#)

3.18 A children's hearing can make a Medical Examination Order if the hearing considers that the child has an unmet medical need. This can be either a physical or psychological need.

3.19 **A Medical Examination Order can be made only if a ground for referral has been accepted or established but no Compulsory Supervision Order is yet in place.** If there is an existing Compulsory Supervision Order in place then an interim variation to the Compulsory Supervision Order should be considered instead with an appropriate measure directing the implementation authority to arrange a specified medical examination and/or treatment for the child.

3.20 A Medical Examination Order may be made where the hearing is satisfied that it is necessary for the purposes of obtaining further information, or carrying out any further investigation, needed before the subsequent children's hearing.

3.21 A Medical Examination Order is an order authorising any of the following measures for the relevant period:

- the child attends or lives at a specified clinic, hospital or other place
- a specified local authority arranges a medical examination of the child
- non-disclosure (either directly or indirectly) of the place where the child is to stay
- a secure accommodation authorisation
- a contact direction
- any other condition to ensure the child complies with the order.



3.22 The Medical Examination Order **must** include at least one of the above measures. However an Medical Examination Order does **not** require a measure requiring a medical examination of the child.

3.23 All medical measures, whether included as part of a Compulsory Supervision Order, Interim Compulsory Supervision Order or Medical Examination Order, require that the child consent to the medical examination or treatment if the medical practitioner is satisfied that the child is of an age and level of maturity to understand the nature and possible consequences. There may also be circumstances where a medical practitioner is unwilling to undertake the examination, or considers that parental consent is required.

3.24 The 'relevant period' for a Medical Examination Order is whichever comes first: the beginning of the next children's hearing; a day specified in the order; a period of 22 days. Further Medical Examination Orders can be issued by subsequent hearings, however the hearing should consider the impact of one or more deferred hearings on the child and relevant persons.

3.25 In some situations, it will be necessary for Panel Members to decide whether to issue an Interim Compulsory Supervision Order or make a Medical Examination Order. Where the principal issue of concern to the children's hearing is that the child receives a medical assessment or examination, a Medical Examination Order is likely to be the most appropriate order. In other circumstances, including when medical treatment is required, an Interim Compulsory Supervision Order may be the most appropriate order.

Warrant to secure attendance [\(s88\)](#)

3.26 A warrant to secure attendance gives a Police Officer the power to search for and apprehend the child, keep the child in a place of safety, and bring the child before a children's hearing. The Police Officer may break open lockfast (locked) places if necessary.

3.27 **A warrant to secure attendance can only be issued on the application of the Children's Reporter. The hearing cannot grant a warrant of its own accord.** Where an application has not been made by the Children's Reporter, but Panel Members think a warrant to secure attendance should be considered, they can ask the Children's Reporter to consider making an application. However, **the Children's Reporter cannot be required to make the application and may decline to do so.**

3.28 A warrant to secure attendance at a children's hearing should be issued only in those situations where it seems no other way of securing the child's attendance at the hearing is possible. It must be used proportionately; the hearing should have considered and ruled out all other options to obtain the child's attendance. Panel Members should also be satisfied that the attendance of the child is needed in order to make a decision.



3.29 Where an application is made by the Children’s Reporter, the hearing should enquire whether the child is aware of the hearing, for example because they have been sent a letter by recorded delivery post saying that they must attend that hearing, and that receipt has been confirmed. If it seems that the child is unaware of his/her duty to attend the hearing, Panel Members should issue a warrant to secure attendance only in exceptional circumstances. This may be where, for example, knowledge of the hearing would place the child at greater risk, such as in a case of forced marriage, when a child has been reported missing, or where the child has repeatedly failed to attend previous hearings and there is no realistic prospect of the child attending any future hearing.

3.30 The hearing should consider alternative options in the first instance. For example, a social worker, representative or advocacy worker might help the child travel to the hearing or the child may need to be notified again of a further hearing.

3.31 Where the decision is to issue a warrant to secure attendance, the warrant may contain a measure prohibiting the disclosure of the child’s address or a secure authorisation if appropriate.

3.32 A warrant to secure attendance can last for a maximum of seven days from the time the child is first detained. It will come to an end if the child attends a children’s hearing before then. Where the warrant is issued by a Sheriff the maximum length of detention is 14 days.

3.33 In practice, when a child is detained on a working day, the Children’s Reporter will arrange a hearing to take place on the same day, wherever practicable, so that the child can be found and brought before a hearing quickly.

b. Measures

3.34 The following measures may be attached to a Compulsory Supervision Order or Interim Compulsory Supervision Order. There must be at least one measure attached for a Compulsory Supervision Order to be valid. Some, such as a contact direction or a measure stipulating a child’s residence, will be used regularly. Panel Members should be aware of all measures available.

i. The child resides at a specified place

3.35 This could be a residential establishment, such as a children’s home or a residential school, with foster carers, relatives, or with a parent.

3.36 The children’s hearing can name any place of residence for the child. As with all other measures, the agreement of the implementation authority is not required. In practice, however, a Panel Member should name a place of residence only if they are satisfied there is an available place for the child.



3.37 If the implementation authority cannot immediately fulfil the requirement of the measure, for example, if the named residential establishment is fully occupied, the legislation allows the local authority to arrange the child's temporary residence in a place of safety for up to 22 days while they try to fulfil the measure. If, after this period, they still cannot fulfil the Compulsory Supervision Order, the local authority must ask for a review hearing.

3.38 If the hearing considers including a measure naming a place of residence other than with a relevant person the hearing **must** have a report from the implementation authority which provides information about the needs of the child, the suitability of the placement to meet the needs of the child and the suitability of the person who is to have charge or control over the child to meet the child's needs.

3.39 The implementation authority must also confirm to the hearing that they have carried out the procedures and gathered information to satisfy Regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009. This may be referred to by the Children's Reporter as [Rule 80](#) or a **carer profile**.



Example

Decision: to include in the order a requirement that the child reside with Mr and Mrs Jones at 73 High Street, Anytown.

Reasons: Sarah's parents are unable to meet her complex needs at present due to their continued abuse of prescription drugs and reliance on alcohol. Sarah is only four weeks old and requires all of her emotional, physical and health needs to be met by the adults in her life. Mr and Mrs Jones are experienced Foster Carers with significant experience of caring for babies with foetal alcohol syndrome and will be able to attend to Sarah's medical needs as well as provide a high-level of care.

ii. Authorisation for the person in charge of the specified place to restrict the child's liberty

3.40 The children's hearing may specify ways in which they consider it appropriate for the liberty of the child to be restricted by the person in charge of the establishment. Residential establishments also have limited powers to restrict liberty without the hearing's authority, if necessary.



iii. Non-disclosure of a named place of residence

3.41 Where an order includes a measure that the child is to reside at a specified place (see [i. The child resides at a specified place](#) above), the hearing may also include a measure which prohibits the disclosure of the address of that place.

3.42 The measure may prohibit direct or indirect disclosure. Prohibition of disclosure generally refers to the withholding of the address where the child will be residing, or the name of the establishment if it is a residential placement.

3.43 Prohibition of indirect disclosure may be required to allow other information to be withheld because the child's place of residence can be ascertained from other information. This might include the names of the carers, the name of their school or GP practice etc. When a hearing makes a decision to include a prohibition on the disclosure of a place, the Children's Reporter will identify which information is not to be disclosed in reports in order to prevent indirect disclosure.

3.44 The hearing should specify the person or persons to whom disclosure is not to be made and justify withholding information from each person separately.

Test for decision-making: non-disclosure measure

3.45 While other types of non-disclosure have a clear significant harm test, there is no explicit test for making a **non-disclosure measure**. When considering whether to withhold the child's residence, **the hearing should have in mind a range of considerations**. These include the usual considerations of necessity and minimum intervention, also whether granting or refusing a non-disclosure measure would risk significant harm to the child. This should all be considered against the overarching consideration of the child's welfare throughout their childhood being paramount.

3.46 It is possible to include a measure withholding the address of the child for the benefit or relevant rights of someone other than the child such as foster carers, prospective adopters or other children in the placement. However, it would be hard to justify such a significant interference with the right to family life of the child and parents without their being **some risk to the child** were the address to be disclosed.

3.47 Examples of when this measure may be appropriate include when someone may attempt to make contact with the child when it would not be in their best interests or may undermine the placement or prospective long-term home for the child.

3.48 Whether a measure of non-disclosure of residence is required should be discussed during the course of the hearing, after discussions on whether the proposed named placement is appropriate and required. In other words, a hearing should discuss whether a





measure of residence is required before discussing whether that named place of residence should be withheld.

Test for decision making: non-disclosure request relating to the address of prospective adopters or carers

3.49 When recommending that the child move to live with prospective adopters, new foster carers or kinship carers, the local authority must prepare information for the hearing about the proposed new home, which will include the new address. When submitting this information they may ask that the new address is not disclosed. This means that a non-disclosure request to withhold the child's placement address from the information usually provided to the hearings' participants may need to be made before or at the start of the hearing, and well before the hearing's decision about whether a Compulsory Supervision Order should be made and what measures to include. **The test to be applied is that sharing the information is likely to cause significant harm to the child.**

3.50 Panel Members must determine a non-disclosure request at the start of the children's hearing and must apply the test that sharing the information will cause significant harm to the child. If Panel Members consider that the request **does not** satisfy that test, they must refuse the non-disclosure request. However if the information relates to the child's place of residence, **it should not be disclosed until the hearing has decided whether to make a Compulsory Supervision Order and has an opportunity to consider whether a measure of non-disclosure of the child's place of residence is necessary in the child's interests.** Premature disclosure of information should not prejudice the hearing's consideration of any measure of non-disclosure of the child's place of residence. [The Rules](#) requires that **the hearing ensures that information which is the subject of a non-disclosure request is provided at such time, and in such manner, as the hearing considers appropriate.**



Example

Decision: To include in the order a prohibition on disclosure of the place where the order requires the child to reside to Rebecca and Barry Jones.

Reason: Barry made multiple threats during today's hearing that he would find the children and remove them from foster care. Barry was intimidating and aggressive. He showed no understanding that this behaviour was inappropriate. Considering his actions today and his history of violence, there is a real danger he would remove the children from the foster placement if he were to know the address, or the place where the children are living. Although Rebecca is supportive of the placement and has never indicated any intention to disrupt the children, it would be impossible for her to keep this information from Barry, therefore the non-disclosure of residence must also include prevention of disclosure to Rebecca.



3.51 At each review hearing, if Panel Members decide to renew or continue the Compulsory Supervision Order, they must **decide whether or not the measure prohibiting disclosure of the child’s address is still needed**, as with any other measure.

iv. Movement restriction condition (ss 84, 125)

3.52 A Movement Restriction Condition (MRC) is a measure a hearing can include in a Compulsory Supervision Order or Interim Compulsory Supervision Order to restrict the movement of a child to a specified place; for example, the child is to remain at their home address between 9 pm and 7 am. Compliance with the condition is monitored by an electronic tag. A movement restriction condition forms part of a system of intensive support and monitoring which involves the child having their movements restricted whilst at the same time receiving intensive support. The details of the intensive support the child is to receive must be contained in a movement restriction care plan.

3.53 Movement restriction conditions are intended to be a direct alternative to secure accommodation for a child and **must be discussed as an alternative by every hearing considering making a secure authorisation**.

The legal requirements

3.54 There are two steps the hearing must consider in order to make a movement restriction condition and more information on the secure and Movement Restriction Condition criteria can be found [here](#):



Legislation and Legal Tests

1. Whether one or more of the criteria in s83(6) are met. These are:

- (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; or
- (b) the child is likely to engage in self harming conduct; or
- (c) the child is likely to cause injury to another person

AND

2. Whether the inclusion of the movement restriction condition is **necessary** for the child.

3.55 When a hearing has decided to make, or continue, a Movement Restriction Condition, there are some measures which must be included in the order and there are



some measures which may be included.

3.56 Measures that **must** be included in the order are:

- a. The full name, if applicable, and address of the place where the child is to reside including whether this includes any garden ground or other outside space belonging to the place of residence;
- b. The days of the week, and specific hours (not exceeding 12 hours) the child is required to remain at that place;
- c. The name of the person who will be responsible for monitoring and reviewing the child's compliance with all of the measures included in the order, including the movement restriction care plan. This will typically be a named officer from the implementation authority.
- d. The name of a person contracted to provide a service on behalf of the implementation authority and the company providing the monitoring equipment, currently G4S;
- e. The period for which the condition is to have effect, up to a maximum of six months.

3.57 Further measures that **may** be included as part of the Movement Restriction Condition are:

- a. any address, location or place where the child is not to enter;
- b. any requirements to allow the responsible person to monitor the child's compliance with the order;
- c. any requirements in relation to the child's participation in, or co-operation with, the movement restriction care plan;
- d. any contingency arrangements necessary;
- e. any planned respite arrangements necessary;
- f. the method by which compliance with the movement restriction condition will be monitored – this will usually be radio and electronic monitoring located at the address the child is required to remain, but if this is not reasonably practicable it may be by mobile receiver;
- g. any further measures which may usually be included in a Compulsory Supervision Order or Interim Compulsory Supervision Order

3.58 The hearing **must** specify an early review when making, or continuing, a movement restriction condition, which may last up to a **maximum of six months**. The review will consider whether the movement restriction condition should continue.

The movement restriction care plan

3.59 Where a child is subject to a movement restriction condition, the implementation authority must prepare, in writing, a Child's Plan. This plan must, so far as practicable, address the immediate and longer term needs of the child with a view to safeguarding and



promoting the child’s welfare (“a movement restriction care plan”). The plan must also set out the services the implementation authority will provide to meet the care, education and health needs of the child and it **must** specifically include:

- a. details of alternative accommodation which can be accessed by the child if necessary;
- b. the provision of a 24/7 crisis response service, which must include a telephone service;
- c. the arrangements for evaluating the child’s participation, progress and cooperation with the plan;
- d. the arrangements for review of the Child’s Plan, which must be no later than three months after the decision to include a movement restriction condition has been made by a children’s hearing or Sheriff.

3.60 It is not a legal requirement that the children’s hearing has access to the care plan prior to making a decision to include a movement restriction condition. The local authority must provide a copy of this plan to the Principal Reporter when completed and when reviewed. If a care plan has been prepared to support a recommendation from the local authority it is good practice for the hearing to have a copy of the care plan. The hearing should consider the intensive support package proposed or planned for the child to support the movement restriction condition, when considering if this is the best decision for the child.

Legal assistance

3.61 Legal representation is not automatically available for a child where a movement restriction condition is being considered by a children’s hearing. However, if the hearing is also considering secure accommodation, the criteria for automatic legal aid will be met. As a movement restriction condition involves complex statutory provisions and represents a significant interference with the liberty and family life of the child, a hearing should consider whether the child is able to effectively participate in the hearing without the assistance of a representative, whether a Solicitor or other advocate. The child is likely to be entitled to legal aid in these circumstances.



Example

Decision: Matthew is required to comply with a movement restriction condition in the following terms:

- a) Matthew is to reside at 287 Westburn Road, Anytown
- b) Matthew is to remain at the above address between the hours of 9 pm and 9 am on each of Friday, Saturday and Sunday nights



- c) Matthew must comply with radio and electronic monitoring of his compliance with the above restrictions as described in regulation 7(1)(a) and/or 7(1)(b) of the Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013
- d) The children's hearing designates Kathryn Reid, Chief Social Work Officer, Anytown Council, and G4S in terms of Regulations 4(1)(a) and (c) of the Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013
- e) Matthew is required to comply with the above movement restriction condition for a period of six months.

Reasons: Matthew has been involved in stealing cars with a group of much older people. He is at risk of significant harm, being present in cars which are being driven recklessly and at over 70 mph in residential streets. He has already caused an accident while driving. He is likely to cause harm to others by driving without a licence. Without exception, these offences have been committed between 10 pm and midnight at the weekend therefore a movement restriction condition, stipulating that he must stay at home during these key periods, combined with intensive support, should reduce Matthew's offending behaviour and the level of risk to himself and others.

v. Secure accommodation authorisation ([ss 85, 151 – 153](#))

Two decision making stages

3.62 A children's hearing may authorise placing a child in secure accommodation as part of a Compulsory Supervision Order, Interim Compulsory Supervision Order, Medical Examination Order or warrant to secure attendance. Although a hearing has made a decision to authorise the child's placement in secure accommodation, there are additional decision-making steps before the child may be placed. The implementation authority's Chief Social Work Officer, in consultation with the head of the secure unit where the child is to reside, will decide whether or not to implement the authorisation. It is important that the chairing member ensures the child and relevant person(s) understand that there are two decision making stages; the hearing decision and the Chief Social Work Officer/head of unit decision.



The hearing decision

3.63 When a hearing is considering a secure accommodation authorisation, hearing members must be satisfied that:



Legislation and Legal Tests

1. One or more of the criteria in s83(6) are met. These are:

- (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; or
- (b) the child is likely to engage in self harming conduct; or
- (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 within the order is necessary.

3.64 It is essential that the hearing considers both these steps during the discussion at the hearing, and explains why both steps are satisfied in both their oral and written reasons.

3.65 In addition to the measure requiring the child to remain in a secure accommodation establishment, the hearing must also include details of a non-secure establishment in which the child may reside. If the secure accommodation estate also includes an open residential section, this will need to be stipulated in the Compulsory Supervision Order. See the example below for more details.

The secure and movement restriction condition criteria

(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.

3.66 A child can only be considered to have "absconded" from a place where they are required to stay. This will generally not be the child's home address unless named as a specific measure on the child's order. To satisfy this condition, the hearing needs to demonstrate three elements:

1. a history of absconding
2. a likelihood of further absconding



3. how the child's physical, mental or moral welfare would be at risk during periods of absconding – for example through drug or alcohol misuse, sexual exploitation, or associating with people with a history of offending.

These elements may be demonstrated through a history of previous similar behaviour or experiences.

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

3.67 “Self-harming conduct” should be interpreted widely. It includes a person causing physical harm to themselves as well as, for example, serious drug and/or alcohol misuse. This is not an exhaustive list. Whether a child is engaging in self harming conduct is a question of fact which must be considered by the hearing according to the individual child's circumstances.

3.68 In common with the other criteria for authorisation of placement in secure accommodation, there must be evidence to support a conclusion that the child is likely to engage in self harming conduct. In many cases this will be a history of similar behaviour.

(c) The child is likely to cause injury to another person.

3.69 This can be physical or mental injury to another person, but not any financial or property loss. For example, offences of theft would not be sufficient to meet this test.

3.70 Again there must be evidence to support a conclusion that the child is likely to cause injury to another person; evidence may include a history of such behaviour.

Review

3.71 If a child is placed in secure accommodation by the Chief Social Work Officer, the 2013 Rules require that the placement be kept under constant review. If the Chief Social Work Officer, in consultation with the head of the secure unit, considers that it is unnecessary for the child to remain in the secure accommodation, the child must be removed from the secure accommodation without the need for a further hearing.

3.72 The secure accommodation authorisation made by the hearing no longer has effect if the child is removed from secure accommodation. Therefore the child cannot be placed in secure accommodation again without a further authorisation from a hearing. This does not affect the ability of the unit and local authority to plan and prepare for the child moving out of secure accommodation by taking them out of the unit for planned short periods such as an overnight or weekend stay as part of a Child's Plan.

3.73 The Children's Reporter must arrange a review hearing within three months of the Compulsory Supervision Order being made, varied, or continued, to include the secure



accommodation authorisation. However, in the same way as for any other hearing, the hearing may specify that a review be held earlier than this three month period if required.



Example

Decisions:

To include in the order a requirement that the child reside in Kibble residential unit.
To include in the order authorisation that the child may be placed and kept in secure accommodation within Kibble residential unit.

Reasons: Gemma has been self-harming for several months. This has become so severe that she has been taken to hospital three times in the past two weeks for stitches. She has a current infection in a wound. The increase in self-harm has been accompanied by Gemma having frequent conversations about suicide and saying she does not want to live anymore. Despite a very supportive network of family and services, Gemma needs intense therapeutic intervention in a safe environment for her own protection which can only be provided in secure accommodation.

Emergency placement

3.74 See the section on [emergency secure transfers](#) where, in an emergency situation, the local authority has taken the decision to place a child in a secure unit without seeking the consent of a children's hearing first.

vi. That the implementation authority arranges a specified medical examination and/or treatment of the child

3.75 The 2011 Act requires the hearing to specify the medical examination or treatment the child is to receive. Examples of the measures could be "The implementation authority is to arrange an examination in relation to [the child's] worsening asthma" or "The implementation authority is to arrange an examination in relation to [the child's] speech and language delay."

3.76 The welfare of the child is the **paramount** consideration. A measure requiring a medical examination or treatment of the child is a significant intervention in private and family life, particularly when made against the wishes of a child's parents. A hearing must consider whether such a measure is proportionate. A measure which does not specify a particular medical need is unlikely to be appropriate. For example, "The implementation authority will arrange necessary medical treatment" is not sufficiently specific.

3.77 The requirement is placed on the implementation authority to arrange the medical



examination or treatment, not the parent, Foster Carer or any other person. Medical in this context includes psychological assessment and treatment.

3.78 All medical measures, whether included as part of a Compulsory Supervision Order, Interim Compulsory Supervision Order or Medical Examination Order, are subject to the requirement that the child consents to the medical examination - or treatment if a Compulsory Supervision Order or Interim Compulsory Supervision Order - where the medical practitioner is satisfied that the child is of an age and level of maturity to understand the nature and possible consequences. There may also be circumstances where a medical practitioner is unwilling to undertake the examination, or considers that parental consent is required.

3.79 Where a proof application is ongoing the hearing can only make a measure authorising the implementing authority to arrange a specified treatment, not examination.



Example

Decision: To include in the order a requirement that the implementation authority arrange the extraction of five of Arek's teeth.

Reasons: Arek's teeth are causing him considerable pain. Not only is his long-term dental health at risk but he has stopped eating solid food apparently due to the pain it is causing. Although all his baby teeth are in various stages of decay, there are five teeth which Arek's dentist states should be extracted urgently to reduce the pain and constant discomfort he is experiencing. Despite being advised of the risk to Arek's health, and encouragement from family members and Arek's social worker, his mother refuses to take Arek to the dentist for the extractions, therefore a measure is required to enable the local authority to arrange this.

vii. A contact direction

3.80 Every children's hearing making, varying or continuing a Compulsory Supervision Order must consider whether to include a contact direction between the child and any person or class of persons.

3.81 When considering whether to include a contact direction, Panel Members **must** consider whether to include a measure regulating contact between the child and any of the following if the child is not currently residing with them:

- a relevant person,
- a sibling (a brother or sister with at least one parent in common with the child),
- or any other person with whom the child has lived with **and** has an ongoing sibling-like relationship.



3.82 A 'sibling-like relationship' may include, for example, children who lived together in a foster or residential placement and developed a strong and enduring sibling-type bond. Information about a child's relationships should be included in information provided to the children's hearing to aid Panel Member decision-making.

3.83 Decisions about whether to include contact directions within an order are often some of the most difficult and contentious made by a children's hearing and any regulation of contact must be necessary and proportionate. When making decisions about contact, the need to safeguard and promote the welfare of the child throughout their childhood is the paramount consideration. Once relationships have been severed, it is far harder to rebuild them. Consideration should be given to preserving and promoting all the important relationships in a child's life.

3.84 The minimum intervention principle must also be considered and children's hearings should only restrict or regulate contact when it is necessary to do so. A contact direction should only be included if it is necessary and appropriate. It is preferable for contact between a child and the important people in their lives to remain as natural as possible, without becoming too restrictive for everyone involved. For example, where Foster Carers commit to facilitating regular meetings of brothers and sisters.

3.85 **Contact measures must be clear and specific.** Everyone should leave the children's hearing with a shared understanding of what contact will be taking place. Vague measures which state contact will take place "at the discretion of social work" are not clear or appropriate. Furthermore, 'minimum' measures of contact may be used when there is a clear plan building momentum to return a child home. However, in general, they should be avoided in favour of a clear level of contact to ensure all parties are clear on what to expect going forwards.

3.86 Contact measures may stipulate how often contact should take place, for how long it should take place, where it should take place or whether it should be supervised. The mode of contact, for example phone or video, may also help. While each of these elements is part of the overall contact measure, each element is a decision in itself and will require to be fully justified.

3.87 A contact direction made by a children's hearing supersedes any other right of contact, whether through a court order or as a matter of law, with the exception of an interim order made by a court as part of permanence order proceedings.

3.88 Panel Members should consult the chapter on ['Maintaining Important Relationships'](#) when preparing for a hearing where they may be considering restricting contact.



Example

Decision: To include in the order that Danielle has contact with her mother, Frankie McCann, once per week for one hour.

Reasons: Danielle regularly seeks reassurance from her carers that her mum is okay and expresses concern between contact sessions about what her mum is doing and who she is with. Frankie acknowledges she cannot provide Danielle with the care she needs just now due to her acute mental health issues however she has prioritised contact with Danielle and has always provided a warm and loving environment at contact which meets Danielle's needs for reassurance and provides her permission to settle with her current carers. At present, more than once per week for one hour would be unmanageable for Frankie and, if she failed to attend, it would have a negative effect on Danielle.

viii. Any other condition which the child must comply with

3.89 There is wide scope here for a children's hearing to include any condition it considers would benefit the child. Panel Members should give consideration to how realistic, appropriate, and necessary the condition is and how compliance will be monitored. Any condition imposed would need to be clearly identified as a measure of supervision and accompanying reasons provided.

3.90 The only stipulation is that the requirement is placed on the **child**, not a relevant person or relative.

3.91 It would not be appropriate to use this measure to require the child to attend school as there is already a legal requirement for this to happen. Other conditions which may be appropriate could include; ensuring the child meets with a counsellor at a scheduled time or ensuring a child attends regular therapy sessions.

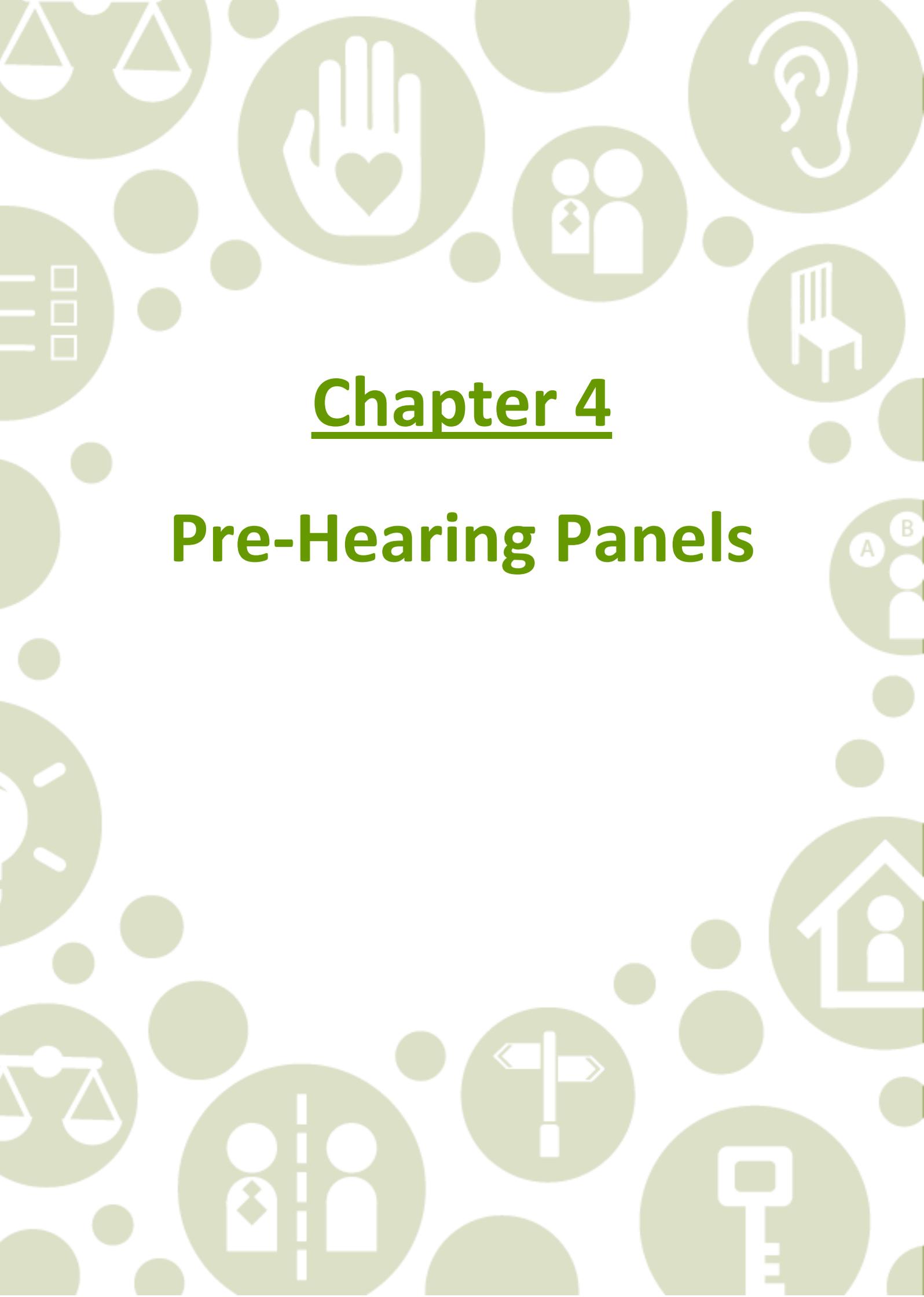
ix. The implementation authority carries out specified duties in relation to the child

3.92 As the named implementation authority, there is already an obligation to comply with and enforce an order made by a children's hearing. This measure would further require the implementation authority to provide specified services or supports to the child.

3.93 As discussed [above](#), all Compulsory Supervision Orders and Interim Compulsory Supervision Order require at least one measure to be valid. In practice, most orders will meet this test with a measure regulating contact or stipulating where the child should reside. In circumstances where the hearing makes an order where the child continues to live at home and there are no other measures required, the panel **must** include a measure that



'the implementation authority shall provide supervision and support to the child' to ensure that the Compulsory Supervision Order or Interim Compulsory Supervision Order is legally competent.



Chapter 4

Pre-Hearing Panels



Summary

Every Panel Member in the hearing session may discharge any of these requirements at a pre-hearing panel.

Introductions

- Purpose of pre-hearing panel – what are the matters referred to the hearing for consideration?
- Who is present and why are they present?

Attendance

- Who has a right to attend the pre-hearing panel?

Notification and papers

- Have those with a right to attend received the correct notification and papers? If not, what are the legal options?

Procedure

- Does anyone present wish the pre-hearing panel to consider deeming them a relevant person?
- A relevant person determination **must** be made before any other matters referred to the pre-hearing panel.
- Discussion with all those present about the matter referred to the pre-hearing panel **only** – the only other matters which can be considered are the appointment of a Safeguarder and whether a Solicitor may be required for a child or relevant person.

Verbal decisions and reasons

- is it clear what the decisions and reasons of each Panel Member are?

Confirming the decision of the pre-hearing panel

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

Appeal rights (if applicable)

- A child, relevant person(s) and any person who has been unsuccessful in an application to be deemed a relevant person can appeal the relevant person determination by the pre-hearing panel within seven days beginning on the date of the decision.
- The Sheriff must decide whether or not to grant the appeal within three days.



Next steps

- Explanation to those present of what happens next.

Complete paperwork

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

a. Purpose

4.1 A pre-hearing panel is a meeting of three Panel Members to consider and determine any procedural matter which needs to be decided in advance of a children's hearing. The following matters can be referred to a pre-hearing panel:

- whether a person should be deemed a relevant person
- whether a person should continue to be deemed a relevant person
- whether the child should be excused from attending the hearing
- whether a relevant person should be excused from attending the hearing
- whether it is likely that the hearing will consider making a Compulsory Supervision Order with a secure accommodation authorisation
- whether a person should be afforded the opportunity to participate

4.2 The Children's Reporter must refer the question of whether an individual is, or should continue to be, a deemed relevant person to a pre-hearing panel when requested to do so by the child, relevant person or an individual who wishes to be considered a relevant person. The matter of whether a person should be afforded participation rights must also be referred to a pre-hearing panel if this is requested by the individual. In all other cases referral to a pre-hearing panel is within the discretion of the Children's Reporter. The same pre-hearing panel can consider more than one of the matters listed above.

4.3 **It is essential that only matters referred to the pre-hearing panel are discussed.** The pre-hearing panel should not discuss the substance of the case or give any view in their reasoning about the need for a Compulsory Supervision Order or any measures. These are matters for the forthcoming hearing to consider, and this should be explained to those present at the start of the pre-hearing panel.

4.4 The other matters which can be discussed by the pre-hearing panel are:

- (i) the appointment of a Safeguarder and;
- (ii) whether a referral should be made to the Scottish Legal Aid Board to arrange legal representation for the child or relevant person to enable their effective participation at the forthcoming children's hearing.



b. Procedure

4.5 The procedure at a pre-hearing panel is to be determined by the chairing member, except as provided for under the 2011 Act, 2014 Act or the 2013 Rules. Where there are set procedures, they are clearly laid out below.

Introductions

4.6 Generally it will be appropriate for the chairing member to welcome those present at the pre-hearing panel before introducing all three Panel Members and any observers. Then other attendees should be asked to introduce themselves. If someone's role in the hearing is unclear, the chairing member should find out in what capacity they are attending; for example, is a grandmother there as a representative of the mother or because she is requesting relevant person status for herself?

4.7 Before the pre-hearing panel starts, a member of SCRA staff will provide Panel Members with a note of who is in attendance. This list should be checked as the introductions are being made. Enquiries should also be made as to whether notifications and papers were received and whether any person not present, but entitled to be present, had wanted to attend.

4.8 It should be evident from introductions how attendees wish to be addressed, for example 'Mark' or 'Mr Thomas'. It is not acceptable to refer to attendees as 'mum', 'dad' or 'social work'. If unsure, ask.

Attendance

4.9 A child, relevant person and any Safeguarder appointed have the right to attend a pre-hearing panel. They do not have a duty to attend. The child and relevant persons also have the right to have a representative attend the pre-hearing panel with them. Any individual who has been previously deemed a relevant person also has the right to attend the pre-hearing panel which will consider their status with a representative if they wish. If the pre-hearing panel is considering affording an opportunity to participate to an individual, they also have a right to attend the pre-hearing panel.

4.10 Other parties with a relevant contribution to make to the pre-hearing panel's consideration, such as a social worker or health visitor, are permitted to attend at the discretion of the chair.

4.11 As there is not a duty to attend, it is not necessary for the pre-hearing panel to formally consider excusing an absent child or relevant person. It would be good practice to ascertain, if possible, whether the person knew of the pre-hearing panel and whether they



had wanted to attend.

4.12 There is no provision in the 2011 Act for a pre-hearing panel to be deferred. Therefore in the vast majority of cases a decision should be taken at the time. However, there may be some, **exceptional**, circumstances where to take a decision at the pre-hearing panel in their absence would be so unfair to the absent person that the decision should be deferred to enable them to attend. In these circumstances, the pre-hearing panel can decline to make a decision and the Children’s Reporter could make a further referral to a pre-hearing panel or children’s hearing depending on timescales.

4.13 Examples of where this may apply would be:

- where sufficient notification of the pre-hearing panel has not been received prior to the pre-hearing panel by those entitled to it, and they do not wish for the pre-hearing panel to go ahead;
- an important report is missing and cannot be submitted either verbally or following a short adjournment;
- a person with a right to attend and who wished to attend was prevented from doing so through no fault of their own and their views cannot be obtained in another way.

4.14 Panel Members should consider whether any prejudice would result from the pre-hearing panel making a decision or not. For example, where the decision relates to whether or not a person is to be a deemed relevant person, and that person is unable to attend the pre-hearing panel to present their view, it may be unfair to make a decision not to deem them to be a relevant person in their absence. However, if the issue is to consider whether to remove the duty to attend the hearing from the child, and the relevant person is prevented from attending the pre-hearing panel, it may be appropriate for a decision to be made to avoid any undue distress to the child. A decision about the child’s attendance can be reconsidered by a future children’s hearing if a relevant person asks it to do so.

Papers and notifications

4.15 A child, relevant person, appointed Safeguarder and any individual who is to be the subject of a relevant person determination or opportunity to participate decision, is entitled to at least **five days’ notice** of the pre-hearing panel, wherever practicable. They also have the right to receive copies of the reports provided to the pre-hearing panel **as soon as possible** prior to it taking place. Where the pre-hearing panel is considering multiple issues, some individuals will only receive the information relating to the decision which impacts them, rather than all decisions.

4.16 The chairing member should confirm with the child, relevant persons, Safeguarder or individual subject of a relevant person determination or opportunity to participate discussion, if present, whether they have received copies of the papers. It is good practice



for the chairing member to ascertain whether the individual has had sufficient opportunity to consider the reports prior to the pre-hearing panel. If not, an adjournment to allow any paperwork to be read and understood may be necessary. In the absence of any of these people the Children's Reporter will be able to confirm to the hearing if the notifications and papers have been sent.

Explain the purpose of the pre-hearing panel

4.17 The purpose of the pre-hearing panel should be explained to those present. **It is important to make clear to those present at the outset that the pre-hearing panel is unable to enter into discussion about the substance of the case, or give any view in their reasoning about the need for a Compulsory Supervision Order or any measure.** These are matters for the forthcoming hearing to consider.

4.18 The only matters the pre-hearing panel should focus on are those matters about which it is able to make a decision:

- the attendance of a child or relevant person at a hearing
- whether a person should continue to be deemed a relevant person
- whether a person should be deemed a relevant person
- whether the hearing is likely to consider making a Compulsory Supervision Order with secure authorisation
- whether a person should be afforded the opportunity to participate
- whether a Safeguarder should be appointed
- whether the panel should ask the Children's Reporter to make a referral to the Scottish Legal Aid Board for legal assistance for the child or a relevant person
- whether a person should attend by electronic-means only

Discussion

4.19 When considering the matter(s) before them, the pre-hearing panel must ask the child, relevant persons and any individual subject of the relevant person determination (where the matter is a relevant person determination), to give any views they may have either verbally or in writing and whether they wish to submit any other written information, such as the child's 'All About Me' form. Where information or views are provided in writing these must be shared with others who are entitled to receive the papers for the pre-hearing panel.

c. Relevant person determination

4.20 Where the pre-hearing panel has been arranged to consider a relevant person matter, either on the request of any person or on the initiative of the Children's Reporter, this matter **must be considered first** if there are any additional matter(s) to be considered.



Where both a decision about whether an individual is to be deemed a relevant person and whether an individual should continue to be a deemed relevant person are referred to the pre-hearing panel, the decision about whether the individual should continue to be a relevant person must be considered first.

4.21 This is because if the pre-hearing panel's decision is that a person is not, or is no longer, deemed to be a relevant person and there is another matter for the pre-hearing panel to consider, the pre-hearing panel should also decide whether that individual should be present for any other discussion in the pre-hearing panel.



Example

Decision: to determine that an individual is to no longer be deemed to be a relevant person s.81A

Reason: Shortly after the last hearing, eleven months ago, James ended his relationship with Piotr's mum. Piotr has had no contact with him since. James now has no involvement in Piotr's upbringing and the panel considered that the previous involvement could not be said to be recent when weighing up the length of time of nearly a year since his involvement with Piotr and Piotr's age (2).

4.22 The child, relevant person or an individual who seeks to be deemed a relevant person can attend a pre-hearing panel arranged for any reason. Each may request that the Panel Members consider whether they or another individual present should be deemed a relevant person. When this happens, this request must be considered by the pre-hearing panel at the outset. In this situation the pre-hearing panel should consider that no notice will have been given to the parties involved including other participants of the intention to consider a relevant person determination. If there is a child or relevant person(s) not present, the pre-hearing panel may wish to consider whether it is appropriate to make a decision on that day, depending on the information available to them.

4.23 There are two routes to becoming a 'relevant person'. In both cases the relevant person has the same rights and responsibilities including the right and duty to attend a children's hearing, the right to receive all paperwork and the right to appeal decisions taken by the hearing. Where there is more than one relevant person, they should be referred to as 'relevant persons', not relevant people.



Automatic relevant person [\(s200\)](#)



Legislation and Legal Tests

1. A person is automatically a relevant person for a child if they are:

- a parent of a child, unless they have had their parental rights and responsibilities removed by a court;
- a person who holds parental responsibilities and rights for a child under a court order. This court order can be a parental responsibilities and rights order (now superseded by permanence orders) or residence order granted under the Children (Scotland) Act 1995 or a permanence order under the Adoption and Children (Scotland) Act 2007;
- a person with parental responsibility under equivalent legislation applying to England, Wales or Northern Ireland.

4.24 The Children's Reporter will identify who in a child's family is a relevant person in terms of section 200 of the 2011 Act as part of their investigative and preliminary decision-making role. If there is any doubt about who may be a parent of a child or who holds parental responsibilities and rights the Children's Reporter may instruct further enquiries.

Deemed relevant person [\(s81\(4\)\)](#)

4.25 The 2011 Act introduced a second category of relevant person for the first time – 'persons who may be deemed relevant persons'. **Only a children's hearing, or pre-hearing panel, can deem a person to be a relevant person.**



Legislation and Legal Tests

2. A person **must** be deemed a relevant person for a child if:

- **the individual has (or has recently had) a significant involvement in the upbringing of the child**

4.26 The test is of **significant** involvement in the **upbringing** of the child, rather than any particular care of, or contact with, the child. The Oxford English Dictionary definition of 'upbringing' is "the treatment and instruction received by a child from its parents throughout its childhood".



4.27 This is different from significant involvement in the child's day to day care. For example a child minder would not be eligible to be deemed a relevant person.

4.28 **This is a factual test.** If the criteria in the test is met, the panel must deem the individual to be a relevant person. Similarly, if the criteria are no longer met, the hearing must decide that the individual should no longer be deemed to be a relevant person. **Other considerations such as the best interests of the child or the character of the individual are not relevant considerations for being deemed a relevant person.**

4.29 Decisions should be based on the facts and circumstances of each individual child. Making decisions in this area will sometimes involve sensitive issues and some complexity. There are no set rules. Each child's relationships must be considered individually. Some suggested factors to consider are given below. The interpretation of the definition has developed over time as a result of case law and the examples below reflect decisions which the courts have taken regarding the relevant person test.

4.30 In general terms the children's hearing might consider the following criteria:

- the nature of the involvement in the child's life, for example is the person fulfilling a parental role in relation to the child – this could be involvement in key decisions in relation to the child, such as education or medical treatment, without necessarily having care of the child
- the age of the child
- the length of time the person has been involved in the child's life
- living arrangements, for example do the child and person live in the same house
- where the person and the child do not live in the same house, the level and quality of contact the person has with the child
- the child's view, if they are old enough to provide it, of the significance of their relationship with the person

4.31 This is not an exhaustive list. The hearing should consider all relevant circumstances and, as far as reasonably practicable, the entire history of the involvement of the person throughout the child's upbringing when deciding if a person has, or has recently had, a significant involvement in the upbringing of a child. There is no bar on considering information prior to a previous determination of relevant person status.

4.32 What is significant in the upbringing of one child may not necessarily be as significant in the upbringing of another child. **No one factor, for example 'involvement in decision-making', will lead to an automatic decision of relevant person status.** It is the combination of factors which require careful consideration; all material circumstances must be weighed appropriately.

4.33 Where an individual's involvement in the child's upbringing has been restricted by



the intervention of a public authority, for example through a children’s hearing or court decision to place the child in foster care, this by itself should not impact on the individual’s deemed relevant person status. **The question to be considered is whether ‘but for’ the hearing or court decision the individual would have, or have recently had, a significant involvement in the child’s upbringing.** In other words, where the lack of opportunity to be involved in the child’s life is due to decisions of the court or hearing, these should not be used to withhold relevant person status from an individual who would otherwise have had far more opportunity for involvement.

4.34 Despite this, the hearing will require to be satisfied that it was the public authority’s intervention alone which presented the bar to the continuing significant involvement in the upbringing of the child, as opposed to outside factors or the individual’s choice.

4.35 Possible examples are given in the following pages of when a person may, and may not, be deemed a relevant person based on recent court decisions. These are not to be considered as set in stone. Panel Members may arrive at a different conclusion in similar circumstances following discussion with those present at a hearing.

Examples: Partner of a parent



Example

A seven year old child lives in the same house as his mother and her partner, who is not the child’s biological father. The child’s mother has been in a relationship with her partner for five years and they have lived together as a family unit for four years. The child has no contact with his biological father and regards the mother’s partner as a father figure. In all aspects of parenting – meeting the child’s needs, making decisions and providing direction and guidance – the partner has the same level of involvement with the child as the mother. The partner does not have parental responsibilities and rights.

Factors to consider: the living arrangements; length of time the family unit has lived together in comparison to the age of the child; involvement in decision making in relation to the child; that the child recognises the mother’s partner as a father figure.

This is perhaps the most straightforward of examples in that it is likely that the mother’s partner would meet the test of having a significant involvement in the child’s upbringing.



Example

A 14 year old child lives with her father. The father has been in a relationship with his partner for the last eight months. They do not live in the same house, but the partner stays over approximately three times per week.

Factors to consider: the living arrangements; length of relationship in comparison to the age of the child; level of contact between the child and the partner.

In the absence of any further information it is unlikely that the father's partner would meet the test of having a significant involvement in the upbringing of the child. However, Panel Members may wish to ask some further questions, such as the level of contact between the partner and the child when the partner stays over in the house, the child's view of her relationship with the partner and the partner's involvement in decision making.



Example

While not residing together, since the child's birth, the mother's partner, who is not the baby's father, is a regular visitor to the home, fully participating in meeting the child's needs such as feeding, bathing and changing nappies. At 4 months old, the child is placed in foster care and the partner continues to have regulated contact with the child.

Factors to consider: The age of the child is relevant when considering the significance of the involvement in the child's upbringing, as are the decisions and the involvement which can be expected based on the child's age and stage of development. It is also key that without the intervention of the state, the partner would likely have continued to have a high level of parenting relationship with the child.

Based on the information provided, it is likely the partner would meet the test.

Examples: Foster Carers

Long term Foster Carers may meet the test to become a deemed relevant person for the child they have in their care. This is not an absolute rule and Panel Members must closely consider whether the carer has a significant involvement in the upbringing of the child. Being a Foster Carer alone will not automatically mean a person is a deemed relevant person. It is the individual Foster Carer's responsibility to request to be considered a relevant person if they wish to do so. The request should not be instigated by Panel Members or the Children's Reporter.



Example

An eight year old child has lived with a Foster Carer for the past year. The Foster Carer meets the child's daily needs, as well as attending all school meetings and social work reviews with the child. The recommendation to the hearing is that the child continues to live with the foster carer with a view to the local authority considering whether the child be placed with the foster carer permanently.

Factors to consider: the length of time the child has lived with the Foster Carer in comparison to the age of the child; the involvement of the Foster Carer in meetings and their role in decision-making.

It is possible that the foster carer would meet the definition of having a significant involvement in the child's upbringing at this time but there is not enough information. The parent's involvement will also be important; if they are also attending the same meetings, the hearing would need to ascertain who is leading on the parental decision-making for the child. The recommendation that the child will continue to reside with the carer is not relevant as the test is whether they **have, or have had**, significant involvement, not whether they **will** have.

At the next children's hearing the child is returned to the care of his parents. If deemed a relevant person at that time, the hearing should consider whether the foster carer should continue to be a relevant person at the end of the review hearing. The decision will depend on whether he or she has any continuing role in decision-making. Despite having recently had a significant involvement in the upbringing of the child, if the Foster Carer does not anticipate having any further significant involvement it is unlikely to be appropriate for their status as a relevant person to continue, with all the rights and obligations that brings.



Example

A 12 year old child has been placed with a temporary Foster Carer for the last two months while her mother recovers from an operation in hospital. The Foster Carer offers day to day care and advice and guidance as required. It is likely that the child will remain with the Foster Carer for a further month.

Factors to consider: the length of time the child has lived with the Foster Carer in comparison to the age of the child; the short term nature of the Foster Carer's involvement.



It is unlikely that the Foster Carer would meet the test of significant involvement in the upbringing of the child.

Example: Child care



Example

A three year old child is looked after five afternoons per week by a family friend whilst her mother is at work. The family friend collects the child from nursery at 1:00 pm and looks after the child at the child's house until 3:30 pm when the mother returns home. Although the family friend attends to all the child's needs during this time, she has no input into decision making in the upbringing of the child or input into their care out with these times.

Factors to consider: the length and frequency of contact between the child and the family friend; the involvement of the friend in the life of the child out with the periods of child care.

Based on the information above, the family friend would not meet the test of having a significant involvement in the upbringing of the child.

Example: Wider family relationships

The most difficult, sensitive and complex decisions around deemed relevant person status is likely to involve existing family relationships. Extended family members may be very important to the child. This does not necessarily mean that a person has a 'significant involvement' in the upbringing of the child. This may require very careful explanation to the child and person concerned.



Example

The grandparents of a six month old child have contact with the child approximately once per week for a couple of hours at their own home, as well as caring for the child overnight on an ad hoc basis when his parents need it (typically once every couple of months). The grandparents provide practical advice and some financial assistance at times to the child's parents but all major decisions are taken by the child's parents.

Factors to consider: the level and frequency of contact between the child and the grandparents; the involvement of the grandparents in decision making; provision of advice and financial assistance to the child's parents.



It is unlikely that the grandparents would meet the test of having a significant involvement in the upbringing of the child. It is likely that the grandparents are significant people to the child, but this is not the same as having a significant involvement in the upbringing of the child for the purposes of the deemed relevant person status.

Example: Siblings

As in the definition at paragraph 4.26 above, significant involvement in the upbringing of a child focuses on the parental, or quasi-parental, relationship between a child and an individual. Not all family members enjoy the same level of protection as a parent of a child placed away from home and not all relationships require the relevant person status, even if the relationship is a very close one.



Example

Two siblings aged 13 and 14 are placed in separate foster care placements and there is no recommendation to return the children home or place them together. The sisters are very close and previously shared a room, friendship groups and provided each other with advice and guidance before being placed apart. The older child requests to be a relevant person for their younger sibling at a pre-hearing panel.

Factors to consider: While the sisters share a very close relationship, it is not a parental relationship or one which would meet the relevant person test. Without more information, the hearing should not deem the sibling as a relevant person and it will not be appropriate for a sibling to be involved in all decisions – and receive all paperwork – concerning the care of their sibling.

However, the sibling relationship will be key to decision-making especially around contact where this important relationship may be at risk. As such, consideration should be given to enabling the attendance of the sibling at the hearing to participate in discussions, as appropriate.

For more information, see the sections on [opportunity to participate](#), [attendance](#) and [sibling contact](#).



d. Opportunity to participate

4.36 In many cases brothers and sisters will not meet the test for relevant persons status in a children's hearing due to the focus on parental, or quasi-parental, relationships. To ensure that, where appropriate, brothers and sisters have a route to participate in decisions which may affect their family life, there is a category of individuals who can be afforded the opportunity to participate in the hearing if they meet the criteria.

4.37 The following participation rights will be granted to those individuals:

- the right to be notified of the hearing;
- the right to provide a report or other document to the hearing;
- the right to be provided with certain documents relevant to the consideration of their contact;
- authorisation by the chair to attend the hearing;
- the right to be represented at the hearing, and
- the right to seek a review of a Compulsory Supervision Order.

4.38 These participation rights apply to most hearings, but do not apply to second-working day hearings, criminal/anti-social behaviour advice hearings or suspension hearings. Whether the person meets the criteria is to be decided by the Reporter or a pre-hearing panel. This can be requested by the child, a relevant person or the individual themselves.

4.39 Persons afforded the opportunity to participate have the right to be represented at the hearing, which includes legal representation. In this case, the representative only has a right to attend if they are accompanying the individual with participation rights.



Legislation and Legal Tests

4.40 The criteria for affording an individual the opportunity to participate in the hearing is:

- (a) the person is living or has lived with the child;
- (b) the person and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common);
- (c) the children's hearing is likely to make a decision significantly affecting contact or the possibility of contact between the person and the child; **and**
- (d) the person is capable of forming a view on the matter of contact between the person and the child

This is a four-part test and each of the four criteria must be met.



4.41 If the Reporter is satisfied that all of the above criteria is met, the individual will be afforded participation rights. However, an individual can also request that a pre-hearing panel is arranged to consider whether they meet the criteria. When considering whether the criteria is met, **the panel should have regard to the views of the child and any relevant person on whether the criteria are met.** These views may help to establish, for example, whether the relationship between the child and the individual seeking an opportunity to participate is ongoing or has the character of a relationship between siblings. **Other considerations such as the best interests of the child or the character of the individual are not relevant considerations for being afforded the opportunity to participate.**

4.42 Decisions about whether an individual meets the criteria above will involve careful consideration of the relationship between the child and individual seeking an opportunity to participate in the hearing. Sometimes determining whether the individual meets the criteria will be straight-forward, whereas other times it may involve some complexity. Below we will explore each aspect of the criteria in more detail.

The person is living or has lived with the child

4.43 Whether or not the individual seeking an opportunity to participate is living or has lived with the child should be included in the Local Authority report. This is a relatively straight-forward test. Case law in this area will develop over time but, at present, there is no minimum time required for how long the person must have lived with the child.

The person and the child have an ongoing relationship with the character of a relationship between siblings

4.44 This aspect of the criteria can be taken in two parts: firstly, it must be established that the child and the individual have an **ongoing relationship**; and secondly, the relationship must be one with the **character of a relationship between siblings**.

4.45 When determining whether the individual and the child have an ongoing relationship, Panel Members should consider the views of the child and relevant persons; whether contact is taking place between the child and the individual, whether that is face to face or via social media or letters; and the frequency of any contact taking place.

4.46 When deciding whether the individual and the child have a relationship with the character of a relationship between siblings, Panel Members must remember that such relationships do not rely on them sharing a parent in common. These relationships may arise in a variety of family contexts, for example individuals who have lived together in a foster placement in a residential home.

The children's hearing is likely to make a decision significantly affecting contact or the



possibility of contact between the person and the child

4.47 It is important to think about the potential of a children’s hearing to significantly affect contact, or the possibility of contact, between the person and the child in fairly broad terms. There will be circumstances that will obviously have the potential to significantly affect contact, such as a hearing that is deciding whether a child should be placed in a different home from where they are currently residing with the person.

4.48 However, there will be other situations which may not seem as obvious, but still have the potential to significantly affect contact. For example, a children’s hearing may be considering whether to reduce contact between the child and their mother. If the child’s brother or sister lives with the mother, and contact between the child and the mother is reduced, this also has the potential to have a significant effect on contact between the child and their brother or sister.

4.49 There does not need to be a formal contact measure or arrangement in place for contact to be potentially disrupted by the decision of a children’s hearing. A child may see a sibling naturally and regularly at school, at the weekend or when with extended family. If a children’s hearing is considering placing the child in a secure unit over an hour away, this would significantly affect their contact, albeit unintentionally. This is sufficient for these purposes.

The person is capable of forming a view on the matter of contact between the person and the child

4.50 To assess whether someone is capable of forming a view on the matter of contact, it is logical to think about their ability to form a view on contact in light of the [participation rights](#) that will be granted to them if they meet the criteria. Key considerations will include whether the person is able to acknowledge the notification of the children’s hearing, if they can understand the information in the documents that will be provided to them, and if they will be capable of providing information to the children’s hearing.

4.51 If the person is not considered able to form a view on the matter of contact, this does not mean that they will not be able to form any view. Although they may not meet the criteria to be afforded participation rights, if their views are available to the panel they should be taken into account.

Attendance at the hearing

4.52 If all four parts to the criteria are met, the person will be allowed to attend the hearing for a period which is considered appropriate by the chairing Panel Member. The person with participation rights will not be brought in by the Children’s Reporter at the start of the hearing. Instead, they will enter the hearing at the appropriate stage and leave when



their attendance is no longer necessary for the proper consideration of how the hearing's decision may affect contact, or the possibility of contact, between the person and the child. In determining the appropriate period of attendance for individuals afforded an opportunity to participate in the hearing, the key considerations for the chairing Panel Member are:

- what decisions may be taken by the hearing, and how those decisions may affect contact or the possibility of contact between the child and the individual;
- what information they need from the individual to properly consider how a decision may affect contact between the child and the individual;
- how privacy can be best protected, ensuring the individual is only permitted for the relevant part of the discussion. Their attendance must always end when it is no longer necessary for the proper consideration of how a decision may affect their contact and before Panel Members give their decisions.



Example

Sarah (13) and Lucy (15) lived together in a foster home for two years when Sarah was 8 years old and Lucy was 10 years old. Lucy became protective over Sarah and supported her when they lived together. They have not spoken for the last three years, however Lucy is keen to reconnect. The children's hearing is considering a measure of residence which would place Sarah four hours away. Lucy requests a pre-hearing panel to consider affording her the opportunity to participate.

Factors to consider: Sarah and Lucy have lived together, are both likely to be able to form views on the matter of contact and previously had a relationship with the character of a relationship between siblings. However, they no longer have an ongoing relationship and any decision of the children's hearing is not likely to affect their contact as none has taken place for three years. Lucy is therefore unlikely to meet the criteria.



Example

Example 2: Josef (3) and Tyler (13) are brothers and have always lived together. The children's hearing must consider whether to place Tyler in a secure unit. The father is requesting that Josef is granted participation rights in Tyler's hearing to ensure the relationship is maintained and Josef can give his views on the placement.

Factors to consider: While Panel Members must presume that all children are capable of forming a view unless the opposite is shown, it is likely that at three years old Josef may not be capable of forming a view on contact between him and Tyler and will be unable to



engage fully in the children’s hearing. Even if Josef is not afforded participation rights, as they are siblings, Panel Members still have a duty to consider contact between Josef and Tyler when making, varying or continuing a Compulsory Supervision Order and take all views into account.



Example

Example 3: Stacey (13) and Olivia (14) have stayed together in a residential placement for the past year. They are in the same friendship group and spent a lot of time together. A children’s hearing has been arranged to consider placing Olivia with her grandparents who live a six hour drive away. Stacey has requested participation rights in Olivia’s children’s hearing

Factors to consider: Stacey and Olivia are living together, they are both likely to be capable of forming a view on contact, the decision of the hearing is likely to have a significant effect on contact between them and they have an ongoing relationship. The question that must be answered is whether or not the relationship between them has the character of a relationship between siblings. While they seem to be good friends, there is nothing from the information provided that suggests they have a sibling-type relationship. It is important that the views of Olivia and the relevant persons are taken into account to develop a better understanding of the relationship between Olivia and Stacey.

e. Consider the attendance of the child or relevant person at a hearing

4.53 Pre-hearing panels must be arranged to determine certain matters in advance of a children’s hearing, such as a question of relevant person status or participation rights. These have a material impact on the arrangements of a children’s hearing and must be determined in advance to ensure procedural fairness. Other matters may be referred to and determined by a pre-hearing panel, such as the decision to excuse a child or a relevant person from the upcoming hearing. Where a pre-hearing panel has not been arranged, these matters are to be determined by the children’s hearing.

4.54 When a pre-hearing panel is convened to consider the attendance of a child or relevant person at an upcoming hearing, Panel Members should weigh up information contained in provided reports or representations made by persons at the hearing. This information should be considered against the tests below and, if any of the criteria are met, the child or relevant person may be excused.

4.55 A relevant person can be excused from attending the hearing, or part of a hearing, if:



Legislation and Legal Tests

(a) it would be **unreasonable** to require the relevant person's attendance at the hearing or part of the hearing; **or**

(b) the attendance of the relevant person at the hearing, or part of the hearing, is **unnecessary** for the proper consideration of the matter before the hearing



Example

Decision: to excuse Scott Mason from attending the hearing s.79(4).

Reason: Scott has not been involved in his daughter's life for seven years and has had no contact during that time. He has not taken up opportunities for contact. As he has no current input into her care or future plans, his attendance and views would not be necessary for the children's hearing to make a decision. Scott is unlikely to come to the hearing and excusing Scott at the pre-hearing panel will remove his obligation to attend and the need for the hearing to explore why he is not present. That is a subject which Sarah finds difficult and stressful to discuss and, by excusing him today, Sarah will not have to have those discussions at her upcoming hearing.

4.56 A child can be excused from attending the hearing, or part of the hearing, if:



Legislation and Legal Tests

(a) the hearing relates to a **schedule one or sexual offence ground** and the attendance of the child at the hearing, or part of the hearing, **is not necessary for a fair hearing; or**

(b) the attendance of the child at the hearing, or part of the hearing, **would place the child's physical, mental, or moral welfare at risk; or**

(c) taking account of the **age and maturity of the child**, the child **would not be capable of understanding** what happens at the hearing, or part of the hearing

4.57 For further information on ensuring the test is met and excusing a child or relevant person from attending, see the section on [attendance](#).



Example

Decision: to not excuse child from attending the hearing s.79(3).

Reasons: There was limited information available to the pre-hearing panel today to justify why Paula should be excused from attending her upcoming hearing. The short report provided claimed it would be “detrimental to her interests” but there was no evidence to back up this vague claim. Paula is nine years old, has provided her views to children’s hearings in the past and appears to understand the role of the children’s hearing in her life. With no additional information, Paula does not meet any of the criteria for excusal.



Example

Decision: to excuse child from attending the hearing s.79(4).

Reasons: Jenny is three years old, has no awareness of the reasons she has been removed from her parents’ care and is too young to understand the children’s hearing process. She has been unsettled since moving to her grandmother’s house. Her grandmother and social worker believe that Jenny seeing her parents at a hearing would be upsetting and confusing for her. Her views will be provided to the hearing by someone she knows and trusts.

f. Other decisions of a pre-hearing panel

Consideration of a Compulsory Supervision Order with secure authorisation

4.58 A pre-hearing panel may be convened to consider whether it is likely the upcoming hearing will consider making a Compulsory Supervision Order including a secure authorisation order for the child. Where a pre-hearing panel decides that this is likely, the Children’s Reporter will notify the Scottish Legal Aid Board (SLAB) of the hearing’s decision and provide SLAB with the child’s name and address. The child will be automatically eligible for legal assistance to fund their own Solicitor or may access a duty Solicitor through the Scottish Legal Aid Board if they do not wish to instruct their own Solicitor.

Safeguarder appointment

4.59 Unless one has already been appointed by a previous children’s hearing or court, a pre-hearing panel may appoint a Safeguarder for the child. There is no requirement to consider the appointment of a Safeguarder at every pre-hearing panel. This is only a



requirement of a children’s hearing. Further details on the appointment of a Safeguarder can be found [here](#).

4.60 If a Safeguarder appointment is made, the decision to appoint must be recorded and Panel Members must provide reasons for the decision.

Effective participation

4.61 A pre-hearing panel can also consider whether a child, relevant person or individual who is subject of a relevant person determination, may be in need of a Solicitor to enable their **effective participation** in the forthcoming hearing. Further information in relation to this decision is also contained in [Chapter 7](#).

Attendance by electronic means only

4.62 A pre-hearing panel may determine that a person, or persons, should attend only by electronic means rather than physically attending the hearing, i.e. through telephone or video link. These persons include:

- (a) a relevant person;
- (b) the representative of a relevant person;
- (c) a person with statutory participation rights;
- (d) the representative of a person afforded the opportunity to participate; and
- (e) a particular – or all - representative(s) of a newspaper or news agency.

4.63 To determine that a person, or persons, should attend by electronic means only, Panel Members must be satisfied that the person(s) physical presence is likely to:

- prevent the hearing from obtaining the views of the child or a relevant person, or;
- cause significant distress to the child or relevant person

4.64 It may be determined by a pre-hearing panel that **all** representatives of newspapers and news agencies should attend a children’s hearing by electronic means only if it is satisfied that the physical presence at that hearing of any person in that category of persons is likely to prevent the hearing from obtaining the views of the child or a relevant person, or cause significant distress to the child or relevant person.

4.65 The requirement to attend by electronic means only will last until a substantive decision is made.

g. Decisions and appeal rights

Decisions



4.66 Each Panel Member (including the chairing member) must reach his or her individual decision, taking a minute to note this down before giving these orally to any attendees. Panel Members are able to agree with each other's decisions rather than repeating them in full if this is appropriate. More information can be found in [Part 2, Chapter 8](#). The decision of the pre-hearing panel must then be confirmed by the chairing member. Decisions and reasons must be recorded for each matter before the pre-hearing panel.

4.67 It is important the decision is explained to the child, especially when they are not present at the pre-hearing panel. The chair should ensure that someone will explain the decision and reasons to the child after the hearing.

Appeal Rights

4.68 Decisions about whether a person is deemed to be a relevant person for the purposes of children's hearings may be appealed by the child, any relevant person and any person who has not been deemed to be a relevant person. The chairing Panel Member must ensure that the child, relevant person(s) and any individual not deemed to be a relevant person are aware of their right to appeal, if they are present at the pre-hearing panel. The child, relevant person and individual concerned must make their appeal within seven days to the local Sheriff Clerk, beginning with the date of the pre-hearing panel and the Sheriff is obliged to decide on the appeal within three days beginning with the day on which the appeal is made.

4.69 It is not possible to appeal any other decision of a pre-hearing panel.

h. Next steps

4.70 A pre-hearing panel is a **procedural hearing**. It is important to explain to the child, if appropriate, taking account of their age and stage of development, and any relevant persons present, what the next steps in the process are. This will depend on the matter referred to the pre-hearing panel.

Notification and outcome

4.71 In all cases the child, if appropriate, relevant persons, and an individual deemed not to be a relevant person and any decided participation individuals, will receive a letter from the Children's Reporter setting out the outcome of the pre-hearing panel, together with the written decisions and reasons.

4.72 The decisions and reasons from the pre-hearing panel will also be included in the papers for the upcoming children's hearing.



4.73 The pre-hearing panel should confirm to all participants the date and time of the children's hearing. Other steps in relation to the purpose of the pre-hearing panel are outlined below.

Attendance of the child/relevant person

4.74 Where a decision has been taken to excuse a child or relevant person from attending the forthcoming hearing, they need not attend. They will receive confirmation of this in writing from the Children's Reporter. Despite the pre-hearing panel's decision to excuse a person with an obligation to attend the hearing, the child and/or relevant person still have the right to attend the hearing and may attend if they want to.

Relevant person determination

4.75 Where a person has been deemed to be a relevant person they will receive from the Children's Reporter a copy of all the paperwork for the children's hearing as soon as possible after the pre-hearing panel. The person has both the right and the duty to attend all children's hearings until their status as a deemed relevant person is removed at a future review hearing or pre-hearing panel.

4.76 Where the pre hearing panel decides not to deem an individual to be a relevant person or that a person should no longer be deemed a relevant person, they will have no further formal involvement in the process. They have the right to appeal that decision.

Participation individual determination

4.77 Where a person has been found to meet the participation individual criteria, they will receive from the Children's Reporter a copy of all **relevant** paperwork for the children's hearing as soon as possible after the pre-hearing panel.

i. Record of proceedings

4.78 The Children's Reporter will keep a record of the proceedings during the pre-hearing panel. The child and relevant persons, if present, must be invited to stay in the hearing room at the end of the pre-hearing panel whilst the Children's Reporter completes the record of proceedings. They are not obliged to stay. When the Children's Reporter has completed their paperwork he or she will leave the hearing room.

4.79 The chairing member has the responsibility to ensure that written reasons are given for the decision(s) of the pre-hearing panel and must sign the decision and reasons on behalf of the children's panel.

4.80 It is important that the written reasons reflect those provided verbally. The written



reasons provided will be the only record available to the child, relevant persons, individual deemed not to be a relevant person and a Sheriff to explain the decision of the pre-hearing panel. The reasons must provide a clear explanation of **why** the pre-hearing panel has reached the decision it has.

Examples of good practice when delivering decisions and reasons can be found [here](#).

Attendance by electronic means only

4.81 A pre-hearing panel may determine that a person, or persons, should attend only by electronic means rather than physically attending the hearing, i.e. through telephone or video link. These persons include:

- (a) a relevant person;
- (b) the representative of a relevant person;
- (c) a person with statutory participation rights;
- (d) the representative of a person afforded the opportunity to participate; and
- (e) a particular representative of a newspaper or news agency

4.82 To determine that a person, or persons, should attend by electronic means only, the panel must be satisfied that the person(s) physical presence is likely to:

- prevent the hearing from obtaining the views of the child or a relevant person, or;
- cause significant distress to the child or relevant person.

4.83 The decision to require a person to attend by electronic-means only should not be taken lightly. It is important that the pre-hearing panel can explain how the above criteria are met.

4.84 It may be determined by a pre-hearing panel that all representatives of newspapers and news agencies should attend a children's hearing by electronic means only if it is satisfied that the physical presence at that hearing of any person in that category of persons is likely to prevent the hearing from obtaining the views of the child or a relevant person, or cause significant distress to the child or relevant person.



Summary

Introductions

- Who is present and why are they present?
- What is the purpose of the hearing?

Relevant person determination

- Is anyone present at the hearing asking to be deemed a relevant person? If so, this request should be determined before any discussion takes place.

Attendance

- Who has a duty to attend? Are they present? If not, have they been or can they be excused or, if a relevant person, can the hearing proceed in their absence?

Establish the child's age

Notifications and papers

- Have the child, if applicable, and relevant persons received the correct and timely notification of the hearing?
- Have the child, if applicable, and relevant persons received the same papers as the Panel Members for the hearing? Have they understood the content and recommendations in the reports?
- Briefly summarise the substance of the reports.

Confirmation of the child's views expressed in the report(s)

If the child does not confirm the views expressed in the report(s) accurately represent their views then the chairing member must attempt to clarify their views.

Informing the child of the availability of advocacy services

Non-disclosure request referred to the hearing

- Is it necessary to withhold any information from a person who is otherwise entitled to that information because disclosing the information would cause or be likely to cause significant harm to the child?

Set an agenda for the hearing

- The chair or one of the Panel Members should explain how the hearing will be conducted and who and when will be asked to contribute. All participants should be aware of what will be discussed and when.

Please note this section refers to children's hearings. For pre-hearing panels, please see [Chapter 4](#).



a. Pre-hearing planning and introductions

5.1 The start of a children’s hearing is important. Managed well, it helps set the scene for the following discussion and enables the participation of everyone to allow the children’s hearing to make the best possible decision. The need for robust pre-hearing planning was highlighted in the report [‘The Next Steps to Better Hearings’](#) (2016). This section should help Panel Members consider the best way to manage each hearing, tailoring it to the needs of the individual child.

5.2 The chairing member has a duty to take reasonable steps to ensure that the child and each relevant person are able to understand and participate in the proceedings. This applies throughout the children’s hearing. Panel Members should use plain English and age-appropriate language during the children’s hearing, and apply trauma informed principles to all communication. They should avoid using unnecessary legal jargon, acronyms or organisational terminology such as ‘the standard measure’. Part 2 of the Practice and Procedure Manual contains a glossary of terminology in accessible [everyday language](#).

Pre-hearing discussion

5.3 Panel Members should arrive at the hearing centre at least **30 minutes** prior to the start of the first hearing. This will allow time for Panel Members to introduce themselves to each other and to **plan for the first hearing and for the other hearings if possible**. All three Panel Members should agree the procedure, format and agenda of each hearing before the hearing begins either at the start of the hearing session or separately before each hearing.

5.4 Panel Members should cover these points in their **pre-hearing checklist**:

- **Why** has the hearing been arranged? i.e. the purpose and recommendation
- **Who** is expected to attend and their legal status? Any observers?
- **What** are all the legal options are open to the hearing?
- **Which** reports do Panel Members have?
- **How** should the hearing run? Set an **agenda** for the hearing including the broad issues to be discussed. Which of the Panel Members shall open up discussions?

5.5 It is important to consider the physical layout of the hearing room; where observers and participants may wish to sit, whether attendees will be required to leave for part of the hearing and how many seats are required.

5.6 A children’s hearing is a fair and open tribunal. All discussions which may influence each Panel Members’ decision-making must take place in front of all relevant participants. **It is essential that Panel Members do not discuss the issues and problems which have led to**



the child or young person's referral to a hearing before the hearing begins. They may identify broad topics for discussion only. For example, it may be appropriate to highlight that drug use or the results of drug tests will require discussion in the hearing. It would not be appropriate to narrate or discuss the frequency of drug use, or the perceived consequences out with the hearing itself.

Minimising Attendance

5.7 Research and feedback consistently highlight that children and young people can find it more difficult to actively and constructively participate in their hearing when there are too many people in the room:

“There should be less professionals at my hearing, and adults should leave my hearing when they don't need to be there.” Our Hearings Our Voice, 40 Quacks, 2020

“At all times, the principle should be that only those that have a right or a need to be present, including the child or young person themselves, should be in the room.” Education and Skills Committee, 2017

“The Care Review has heard stories where a powerful voice from a range of professional backgrounds has dominated, crowding out of the voices of children and alternative perspectives, leading to decisions that have not been in the best interests of the child.” The Promise, 2020

5.8 There is a legal duty on the chairing Panel Member to take all reasonable steps to ensure the numbers of persons present in a hearing at the same time is kept to a minimum. Children and young people have told us that it can be extremely intimidating and uncomfortable to have too many people in a hearing room discussing personal aspects of their life. It is therefore vital to take all reasonable steps to manage attendance in a way that protects their privacy and allows for effective participation. **To support this, only the child, the child's social worker, and those with a right to attend at the start of the hearing will be invited in to the hearing room at the outset of the hearing.**

5.9 The chairing member can bring in other attendees, for as long as they are required once the children's hearing has begun. It is not possible to make decision on attendance at the hearing until those with a right to attend are in the hearing room and the hearing has begun.

5.10 It may be essential to bring in some individuals immediately after the start of the hearing, possibly even before introductions are completed, whereas other individuals should be brought in at relevant points during discussions.

5.11 Panel Members must ensure to remember any individuals remaining in waiting rooms. If they are not needed, or won't be needed for some time, they should be informed of this as soon as possible by the Reporter or the virtual receptionist. For a reminder of those with a right to attend, see the section [on attendance](#).





Introductions

5.12 The chairing member will decide how best to carry out introductions at the beginning of the hearing. Those with a right to attend should be welcomed into the hearing room and allowed to make themselves comfortable before the chairing member introduces him or herself. In a virtual hearing, the Virtual Receptionist will admit those with a right to attend. The chairing member should introduce the two other Panel Members, and any observers, or ask them to do so directly.

5.13 Before the start of the children's hearing a member of SCRA staff will give Panel Members a list of who is present. Everyone in the hearing room should be asked to introduce themselves and say why they are at the children's hearing. The list of attendees should be checked as the hearing participants introduce themselves at the start of the hearing. The Children's Reporter should introduce themselves and, if they have not already done so out with the hearing room, explain to the child and relevant persons their role in the hearing. Either the Children's Reporter or the chairing member should explain that the Children's Reporter will take no part in the decision making of the children's hearing.

5.14 The list of attendees should make it clear whether there are additional individuals waiting in the waiting room to be invited into the hearing at a time to be determined by the chairing member, if and when they are needed.

5.15 Throughout the hearing, Panel Members are expected to refer to participants by name, not by their familial or professional relationship with the child. If it is not apparent from the introductions, Panel Members should clarify how an attendee wishes to be addressed e.g. 'Mrs Smith' or 'Sarah'. Individuals should never be referred to as 'mum' or 'school'.

Observers

5.16 Some observers, such as a Panel Practice Advisor, have a [right to attend](#) the hearing. Others may be permitted to observe the hearing at the discretion of the chairing member however this is discouraged to keep hearings private and numbers of attendees low. If someone is present to observe the hearing this should be explained to the child and relevant persons at the beginning of the hearing. Where the observer does not have a right to attend they should wait outside the hearing until Panel Members have confirmed that the family does not object to their presence.

5.17 The observer should be introduced by name and an explanation provided as to why they are present and why their observation of the hearing has been arranged. The chairing Panel Member should explain that they will take no part in the hearing and are bound by the same requirements to maintain confidentiality as other attendees.



5.18 The child and relevant person(s) should again be asked whether they object to the observer attending the hearing. Where the attendance of the observer is at the discretion of the chairing member, if the child and/or relevant persons object, the observer must not be permitted to remain in the hearing room.

5.19 If the observer has the right to attend, such as a Panel Practice Advisor, there is no requirement to ask for consent for their attendance. However if the child or relevant persons indicate they prefer that the observer is not present, the Panel Practice Advisor will be expected to exercise their discretion and arrange an alternative observation.

The purpose of the children's hearing

5.20 Children's hearings are arranged for a variety of legal and procedural reasons. Each has a specific purpose. The chairing member must explain the purpose of the children's hearing to those present. The purpose of the hearing should be explained clearly to the child and relevant persons, in an easy to understand manner, without jargon. [Chapter 6](#) lists the types of hearings and their purposes.

Procedures at the beginning of the hearing

5.21 After the initial introductions and the explanation of the purpose of the children's hearing there are certain legal formalities which must be carried out. Neither the 2011 Act nor the 2013 Rules prescribe how these should be carried out. The 2013 Rules state that the procedure at a hearing is at the discretion of the chairing member unless otherwise specified.

5.22 Meeting the legal requirements at the start of the hearing can sometimes appear formal and intimidating to children and families. Every effort should be made to tailor the approach to meet the needs of the child and family members, taking account of the age and maturity of the child, the circumstances of the individual case and the requirement to fulfil the purpose of the hearing.

5.23 This part of the Practice and Procedure Manual sets out the formalities that must be undertaken at the start of every children's hearing. It is not necessary that the order presented here is rigidly followed. It is important to make sure that all the legal requirements are met and the process is understood, as far as possible, by those present at the children's hearing. Much of the responsibility to complete the formalities is placed on the chairing Panel Member but any of the other Panel Members can assist.

5.24 In some circumstances there will be insufficient time for the Children's Reporter to arrange a pre-hearing panel to consider a matter in advance of the children's hearing. Where such a matter has been referred to the hearing, this will be clear from the paper work and they may ask the Panel Members to consider any such matter at the start of the children's hearing.



b. Relevant person determination

5.25 Usually, a pre-hearing panel will have been arranged in advance to consider whether a person is, or should continue to be, a deemed relevant person and the Children's Reporter would have notified those persons who are automatically relevant persons. However where:

- there has been insufficient time to arrange a pre-hearing panel prior to the children's hearing, or exceptional circumstances apply where the pre-hearing panel has been unable to make a decision;
- the relevant person request only becomes clear shortly before the children's hearing;
- a person attends the children's hearing and asks to be deemed a relevant person at the start of the hearing; or
- the child or a relevant person requests that an individual present at the hearing be deemed a relevant person at the start of the children's hearing

the hearing must consider whether the individual is, or should continue to be, a deemed relevant person before having a full discussion about the child's circumstances.

Procedure

5.26 Any relevant person decision should be made at the very start before any other matters. This approach ensures fairness, in that a person who is a relevant person is able to participate at all stages and a person who is not a relevant person does not obtain any information other than at the discretion of the chairing member. It will also allow any matters which may prevent the hearing from proceeding any further, such as a need to provide a 'new' relevant person with papers or the need for further information or views in order to make the relevant person determination, to be identified at as early a stage as possible.

5.27 **A decision in relation to whether an individual should continue to be a relevant person must be considered before a decision about whether an individual is a relevant person.** Panel Members should note that while a request to consider whether someone should continue to be a relevant person should be decided at the start of the hearing, Panel Members are also entitled to consider someone's existing relevant person status at their own instance. This must take place at the end of the hearing on the substantive conclusion of the review.

5.28 When making a relevant person decision the hearing must hear views from all those present about whether the criteria for deemed relevant person status is met. In particular the 2013 Rules require that the child, relevant person(s) and the individual who is seeking to be considered to be a relevant person, are given the opportunity to provide their views to the hearing.



Full information on the test and relevant person status can be found in the [Deemed Relevant Person](#) section.

Person deemed a relevant person

5.29 Where a person is deemed to be a relevant person the hearing must consider whether it is appropriate to proceed with the hearing, if the relevant person has not received the papers they are now entitled to have.

5.30 It may not be appropriate for a hearing to make a substantive decision to make a Compulsory Supervision Order if a relevant person has not been given reasonable access to the relevant reports to which they are entitled. That may amount to a procedural irregularity in the conduct of the hearing.

Person not deemed a relevant person

5.31 If the hearing decides that the person is not, or should no longer be, a deemed relevant person, the children's hearing should consider whether it is appropriate for the person to remain in the hearing, at the discretion of the chairing member, or whether they should be asked to leave the hearing.

Appeal rights

5.32 The child, relevant persons and any individual deemed not, or no longer, to be a relevant person should be informed of their right to appeal the decision of the hearing in relation to the relevant person status.

- the child, a relevant person or an individual deemed not to be a relevant person can appeal against the decision of the hearing to deem, not to deem, continue to deem or no longer to deem, an individual to be a relevant person;
- the appeal must be lodged with the Sheriff within seven days beginning on the date of the hearing which makes the decision;
- the Sheriff must then hear and dispose of the appeal within three days beginning on the date the appeal is lodged.

c. Attendance

5.33 One of the fundamental principles of the Children's Hearings System is that decisions are taken in the best interests of the child, with the participation of the child and the key people in a child's life. The attendance of the child and key people is therefore an important issue to be addressed at the start of the children's hearing.



5.34 **Physical attendance at a children’s hearing may not always be required.** Electronic attendance, i.e. by telephone or video link, may be requested by any person with a right to attend the hearing, or any person who has been permitted to attend the hearing. All reasonable steps will be taken to ensure this is facilitated if the Children’s Reporter is satisfied that either there is a good reason for not physically attending, or it would enable more effective participation than physical attendance.

5.35 There are certain people who have both a right and a duty to be present at the children’s hearing. Where a person has a duty to attend the children’s hearing, and has not attended, the hearing must consider whether it is appropriate to excuse the person from attending the hearing. This is an important decision which should not be taken lightly. While it is good practice to acknowledge a relevant person or the child has been excused, **where a pre-hearing panel has taken place in advance of the hearing the panel should not re-affirm the decision of the pre-hearing panel but the hearing may be deferred at any point if it is decided that the person should be present.**

5.36 A child and/or relevant person can be excused from attending the hearing, but **their right to attend cannot be removed.** Therefore even if a hearing, or pre-hearing panel, decides that a child or relevant person need not attend the hearing, they may still attend if they wish to.

5.37 Where a review hearing defers a decision, it does not have to consider excusing the child or relevant person from attending the subsequent hearing if they have already been excused either by the hearing or a pre-hearing panel.

5.38 Although the decisions to excuse the attendance of a child or relevant person or proceed in the absence of a relevant person are not in themselves appealable decisions, they can form the basis of an appeal against a hearing’s decision about a Compulsory Supervision Order if their presence was necessary to ensure the decision-making process is fair. In other words, it may be argued that the making of a Compulsory Supervision Order was not justified without the participation of a person who was not present at the hearing. Any decision regarding the absence or excusal of a person who is required to attend a hearing must be justified with robust reasons.

Child [\(s73\)](#)

5.39 Where the child does not attend their children’s hearing and has not been excused in advance by a pre-hearing panel or a previous hearing, Panel Members should consider whether they meet the test for excusal.

5.40 A child has both the right and duty to attend their children’s hearing. The exception is a contact direction review hearing where the child has a right to attend, but no duty to do so. A child has the right to attend all stages of their hearing and cannot be excluded. The only exception to this is that the hearing may exclude the child to consider whether or not





to disclose information to them when a non-disclosure request is made, or if their conduct is violent, abusive or disruptive.



Legislation and Legal Tests

A child can be excused from attending the hearing, or part of the hearing, if:

- (a) the hearing relates to a **schedule one or sexual offence ground** and the attendance of the child at the hearing, or part of the hearing, is **not necessary for a fair hearing**; or
- (b) the attendance of the child at the hearing, or part of the hearing, **would place the child's physical, mental, or moral welfare at risk**; or
- (c) taking account of the **age and maturity of the child**, the child **would not be capable of understanding** what happens at the hearing, or part of the hearing

5.41 **There is no provision to 'proceed in absence' of a child if they are not present and cannot be excused under one of the criteria listed above.** However, a hearing can still proceed if absolutely necessary to keep a child safe, for example where an order is about to lapse. The preferred option would be to defer the children's hearing and consider interim measures.

Taking a trauma informed approach to the tests

5.42 The decision about whether or not to excuse a child from their hearing is important, as it is an opportunity to reflect on the way in which the child can participate in a trauma informed way. At the heart of trauma informed practice is choice. If a child or young person chooses not to attend, the implications, effect and benefits of forcing them to attend should be carefully considered.

5.43 The attendance of the child should always be age and stage appropriate, taking due consideration of their needs and experience, including trauma, the quality and safety of their relationships and their ability to participate and communicate their needs to the panel.

5.44 Whether virtual, in person or hybrid, the hearing room can be an environment of high tension for all involved. Children are particularly sensitive to this, and Panel Members should avoid forcing a child's attendance where it is not in their best interests, and where their views can be brought into the hearing's decision making process in another way.

5.45 In order to make a well-informed and developmentally appropriate decision about whether or not a child should be excused from their hearing, it is worth considering the



experience from the point of view of the child:

- What would be the benefit to the hearing's consideration of the matters before it of this child attending their hearing and why would it be of benefit?
- What would be the benefit of this child being excused from their hearing and why?
- If we do excuse the child, how can we ensure their needs and views are well represented at the hearing and they remain central to proceedings?

5.46 Panel Members should be aware of the ways in which attending a hearing could adversely impact a child. Feeling safe will support a child's ability to share their experience and fully participate in the hearing. For example, children who have suffered complex relational trauma should be protected in any setting in which they are in direct contact with the adults that have been unable to meet their needs and who may cause them alarm or distress.

"Schedule 1 or sexual offence ground"

5.47 The Criminal Procedure (Scotland) Act 1995 lists all schedule 1 offences, including sexual offences. These include assault, ill treatment, neglect, exposure, abandonment and more. This excusal ground allows a child to be protected from attending hearings with their abuser or alleged abuser.



Example

Decision: To excuse Jenny from attending the hearing s.73(3).

Reasons: The hearing will require a detailed discussion of a violent incident in relation to Jenny's father, which is a schedule one offence ground. Jenny is ten years old, and has some awareness of the incident but has not been told about it in detail. As an Advocacy Worker has been appointed for Jenny, she will be able to share her views with the hearing without needing to attend. It is therefore in her best interest that she be excused, so she is not exposed to details about her father's conduct that she has been protected from so far.

"Mental, moral or physical welfare"

5.48 The excusal test here requires that attending the hearing *would place* the child's mental, moral or physical wellbeing at risk; this isn't a hypothetical test. However, an ill child's physical wellbeing would certainly be at risk by taking them to a hearing or a child's moral welfare may be corrupted by attending a hearing with adults under the influence of drugs or where 'adult' conversations are taking place.

5.49 More commonly, a child's mental welfare could be at risk from attending a children's hearing when considering their previous traumatic experiences, the sensitive discussions which need to take place and the people they could encounter at the hearing. There is no



need to wait for significant harm to come to a child to be able to excuse them from attending their hearing where in their best interests.



Example

Decision: To excuse Callum from attending the hearing, s. 73(3).

Reasons: Callum has been significantly impacted by previous hearings, as his mother and his father are openly hostile towards each other and have often expressed anger and upset in previous hearings, while Callum feels stuck in the middle. Callum has recently started counselling to address anxiety and depression, and feels as though he is making progress. However, the prospect of attending a hearing is triggering real concern for Callum, to the extent that he fears he will regress. Attending the hearing would put Callum's mental welfare at risk, and he therefore should be excused.

"Age and Maturity"

5.50 Each and every child is an individual with a unique history and experience. Panel Members are not, and should not attempt to be seen as, child development specialists. Panel Members will only ever see a snapshot of a child's life through the hearing, and it is not appropriate for Panel Members to draw conclusions based on one short, unrepresentative meeting.

5.51 However, a basic understanding of the way in which children generally develop, and the way in which this can be impacted and influence participation in the hearing room will help Panel Members ask relevant questions and gather factual information to inform the discussion. It may also help Panel Members' decision-making when deciding whether to excuse a child from attending their hearing.

Children aged 0 – 3

5.52 Infants are most often excused due to their age and ability to understand. They also make up the largest group of children referred on the grounds of a lack of parental care and the greatest number of children subject to a Child Protection Order. Given the significant vulnerability of this age group and their complete dependence on adults to meet their needs, they must be well represented in reports.

5.53 Young children are very expressive and their immature language skills should be no barrier to ensuring their rights are upheld. Their experience, what their **behaviour** is telling us and what they require in order to be safe, should be well considered in reports and clearly stated. This can support Panel Members to connect with the needs and experiences of the young child being discussed, and keep their needs central to proceedings.



5.54 However, it is unlikely that any infant, when considering their age and maturity, would be capable of understanding what happens at a children's hearing, or part of a children's hearing.

Children 3-7 years

5.55 In this age group, children are becoming more aware of their environment and circumstances. Most will be able to listen to a discussion, but with limited ability to understand the hearing process. This is an age when Panel Members need to be particularly careful about discussing 'adult' topics in front of children who cannot properly process this information.

5.56 They will be sensitive to those in the room with them and very aware of any tension. They may be able to express a view on some matters but may not feel able to do so without adult approval. It may be appropriate for them to attend the hearing in person for a short period of time, or to use technology to 'bring them into the room'. Children of this age can be supported to express themselves through play, drawings, stories and a range of creative activities before the hearing, and reports should provide expert interpretations of such material. Consider all options that might enable a child to express themselves and participate their views and feelings non-verbally.

5.57 Many, if not all, children in this age group, when considering their age and maturity, may not understand what happens at a children's hearing or part of it.

Children 7-14 years

5.58 These children are more likely to be aware they are attending a children's hearing and have some understanding of the process. They may have some difficulty interpreting the concerns raised and making sense of any recommendations or decisions made. They are less likely to meet the 'age and maturity' category for excusal, but may benefit from attending for only part of the proceedings and having the space and time to express and share their views with a limited group of adults in the room.

5.59 Children in late primary and early secondary school are more likely to internalise their feelings and feel some responsibility for the concerns raised. To ensure the safety and well-being of any child, consider their current and previous experiences, including their experiences of attending meetings and hearings and the benefit or otherwise of their attendance. Consider the options of using technology and a child being able to represent their views creatively and non-verbally.

Young people 14 +

5.60 Some young people will access advocacy services and feel well supported and



represented at a hearing; however, most will still feel anxious and worried about the process, despite a greater level of understanding. Young people may be able to contribute and participate fully, while others may wish to choose to share their views and participate nonverbally and may feel more comfortable using technology.



Example

Decision: To excuse the child from attending s.73(3).

Reasons: Jonny is three years old and has no awareness of the role of children's hearings in his life. He has no understanding of the reasons which led to him living with his aunt and uncle and has been protected from discussions around his mother's self-harm and mental health problems. Jonny is a happy and active little boy and although he would be able to attend the hearing, he could not contribute in any meaningful way, would be exposed to discussions which are not age appropriate and his need for an effective level of supervision would distract the adults from effectively participating themselves.

5.61 Where the hearing making the decision is a grounds hearing, the child can be excused from the explanation of grounds of referral only if:



Legislation and Legal Tests

(a) taking account of the age and maturity of the child, the child would not be capable of understanding the explanation of the statement of grounds

5.62 For example, a child may be present at the grounds hearing and the Panel Members may consider that the child is unable to understand the statement of grounds and should not be present while they are discussed. **A pre-hearing panel may use all three criteria to excuse a child from attending a grounds hearing in advance.**



Example

Decision: to excuse child from attending during explanation of ground(s) s.73(4).

Reasons: Tanya has been protected from the extent of her mother's drug use, drug dealing and the details of the offending which led to the referral to the Children's Reporter. At eight



years old, Tanya is aware of drugs but would not understand the details of the grounds, the significance of her mother's involvement and, as she is unaware of the incidents referred to in the supporting facts, she would be unable to respond to the grounds.

Relevant person ([ss74 - 75](#))

5.63 A relevant person also has a right and duty (where they have received notification of the hearing) to attend a children's hearing. A relevant person who fails to attend a hearing has committed an offence and may be fined if prosecuted.

5.64 Only a relevant person who has been notified of the hearing and has failed to attend needs to be considered for excusal. The Hearing Arrangement Form will show whether or not they have been notified of the hearing. If the relevant person is recorded as 'whereabouts unknown' rather than 'notified', it is because SCRA and the local authority do not have a current address for them. If someone is not aware of the hearing taking place, they cannot comply with any legal duty to attend. Therefore no excusal or decision to proceed in their absence is required or competent.



Legislation and Legal Tests

A relevant person can be excused from attending the hearing, or part of a hearing, if:

(a) it would be **unreasonable** to require the relevant person's attendance at the hearing or part of the hearing

OR

(b) the attendance of the relevant person at the hearing, or part of the hearing, is **unnecessary** for the proper consideration of the matter before the hearing.

5.65 A children's hearing does not have to excuse an absent relevant person's attendance in order to proceed with the hearing. The children's hearing also has the power to proceed in their absence.

5.66 This is a particularly important distinction given that a decision to excuse a relevant person's attendance will apply to any deferred hearings until a substantive decision is made. In contrast the decision to proceed in a relevant person's absence only applies to that particular hearing. For example, if a relevant person has been excused from attending a grounds hearing, that excusal will last until the grounds are established and the subsequent hearing makes a substantive decision. This includes any and all hearings to renew Interim Compulsory Supervision Orders while the grounds are with the Sheriff. Crucially, as it is only the **obligation** to attend which has been removed, the relevant person will still be invited to every hearing and can still decide to attend.



5.67 Therefore, where a relevant person has not attended the hearing, Panel Members should consider two issues:

1. Does the criteria to excuse the relevant person apply and, if so, does the hearing wish to excuse the relevant person?
2. If not, should the hearing proceed in the relevant person's absence?

5.68 Where the criteria to excuse the relevant person does not apply or the hearing does not wish to excuse the relevant person, the children's hearing may consider it appropriate to proceed with the hearing, for example where a relevant person has failed to attend several previous hearings and there is no reasonable prospect of them attending if the hearing was deferred or there is a need to make a substantive decision for the child.

Example: Excusing v Proceeding in the relevant person's absence



Example

Decision: To excuse Mrs Patel from attending s.74(3)

Reason: Mrs Patel is currently in hospital and not able to attend the hearing in person. She has indicated via Mr Patel that she is content for the hearing to proceed and Mr Patel can provide her views to the hearing.



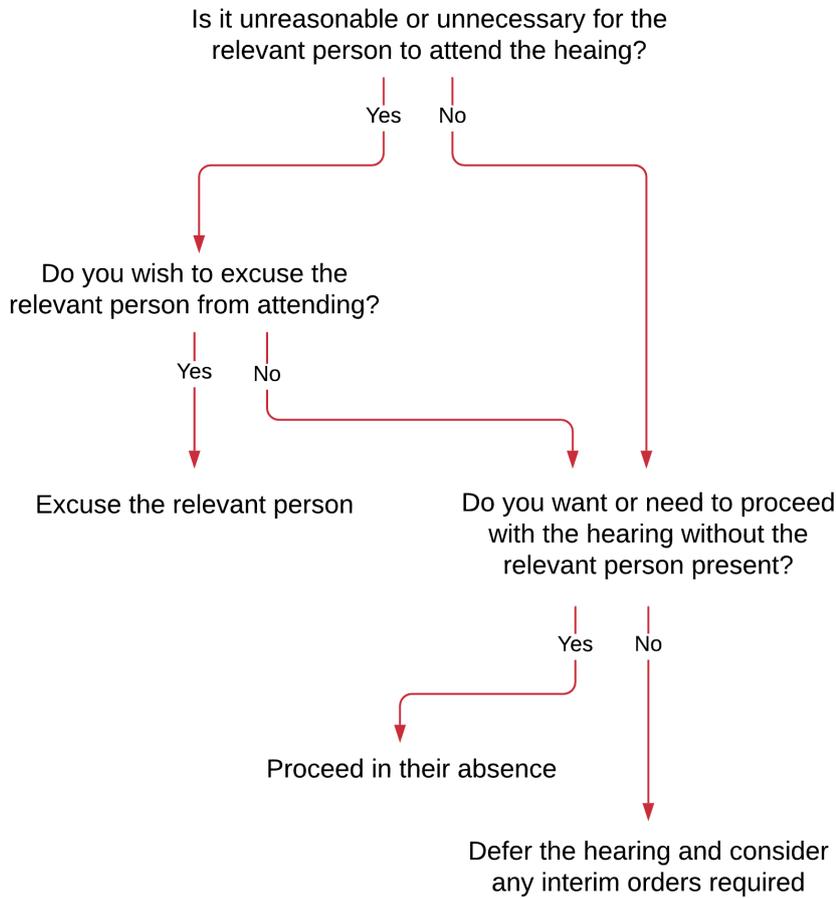
Example

Decision: To excuse Mr Whyte from attending s.74(3)

Reason: Mr Whyte has not been involved in Lily's care for several years and has had no contact with her in that time. His attendance at the hearing today was not necessary to fully understand Lily's current circumstances.



Excusing a Relevant Person v Proceeding in Their Absence



Example

Decision: To proceed in the absence of Ms Thomson s.75

Reason: Ms Thomson had indicated she wanted to attend the hearing but has been unable to secure the day off work. Unfortunately, as the order is due to expire tomorrow, the hearing had to proceed in her absence to prevent Daniel's order lapsing.



Example

Decision: To proceed in the absence of Mr Smith s.75



Reason: Mr Smith did not attend the previous four children’s hearings and has not indicated any intention to attend today. Deferring the hearing would likely not result in his attendance at the future hearing and would add unnecessary delays and uncertainty to Zara.

Others with an opportunity to participate in the hearing

5.69 Other important people in a child’s life must be afforded the opportunity to participate in the hearing if they meet the statutory criteria required. Whether the person meets the criteria is to be decided by the Children’s Reporter or a pre-hearing panel. This opportunity can be requested by the child, a relevant person or the individual themselves. If they do not meet the criteria, the Reporter may still facilitate a degree of participation, for example by asking them to provide their views or inviting them to attend. Information about the child’s relationships provided by Local Authorities will be vital to making these decisions.

5.70 The criteria for affording an individual the opportunity to participate in the hearing is:

- (a) the person is living or has lived with the child;
- (b) the person and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common);
- (c) the children’s hearing is likely to make a decision significantly affecting contact or the possibility of contact between the person and the child; and
- (d) the person is capable of forming a view on the matter of contact between the person and the child

5.71 **If the criteria is met, the person will be allowed to attend the hearing for a period which is considered appropriate by the chairing Panel Member.** This means that the person will enter the hearing at an appropriate stage and leave when their attendance is no longer necessary for the proper consideration of how the hearing’s decision may affect contact, or the possibility of contact, between the person and the child. In determining the appropriate period of attendance for individuals afforded an opportunity to participate in the hearing, the chairing Panel Member should consider:

- what decisions may be taken by the hearing, and whether those affect contact or the possibility of contact between the child and the individual;
- what information they need from the individual to make a decision about contact between the child and the individual;
- how privacy can be best protected, ensuring the individual is only permitted for the relevant part of the discussion.

5.72 Persons afforded the opportunity to participate will also have the right to be represented at the hearing. The representative should only be permitted to attend if accompanying the person with participation rights, and as directed by the Chair. For more guidance on the relevant criteria and procedure, see the section on [opportunity to](#)



[participate.](#)

Others with a right to attend the hearing [\(s78\)](#)

5.73 In addition to the child, the relevant person(s) and those afforded an opportunity to participate in the hearing, the following persons have a **right to attend** a children’s hearing and asking the child and relevant persons’ permission is not required:

- a representative of the child
- a representative of the relevant person
- a representative of any person with participation rights
- the Principal Reporter – in practice the Principal Reporter will delegate this right to a Children’s Reporter, Trainee Reporter or Assistant Reporter
- a Safeguarder appointed in relation to the child
- a member of an Area Support Team (acting in that person’s capacity as such) for example, a Panel Practice Advisor
- a representative of a newspaper or news agency

5.74 In addition to those with a right to attend, a constable, prison officer, or other person (for example a prisoner escort) who has a person who is to attend a hearing in their custody, is authorised to attend the pre-hearing panel or children’s hearing.

Attendance of a journalist at a hearing

5.75 In most cases, a journalist will arrange their attendance at the hearing in advance. The right of attendance applies to ‘a representative of a newspaper or news agency’. In order to distinguish this from bloggers or persons who publish news content on social media, CHS and SCRA interpret this to apply to journalists registered with the Independent Press Standards Organisation.

5.76 While a representative of a newspaper or news agency has a right to attend, they may be excluded from any part of the children’s hearing where the chairing Panel Member is satisfied that:

- the conduct of the journalist is violent or abusive;
- the conduct of the journalist is so disruptive that the chairing Panel Member;
- considers that unless the person is excluded, it would be necessary to end or adjourn the hearing;
- the presence of the journalist is preventing the hearing from obtaining the views of a relevant person;
- the presence of the journalist is causing, or is likely to cause, significant distress to the relevant person;
- the hearing is satisfied that the presence of the journalist is preventing the hearing



from obtaining the views of the child;

- the hearing is satisfied that the presence of the journalist is causing, or is likely to cause, significant distress to the child.

5.77 If excluded from part of the hearing to obtain the views of the child or because of significant distress to the child, the chair may explain to the person, where appropriate, the substance of what has taken place in their absence. If the basis for exclusion was for any other reason, the chair must explain the substance of what has taken place in their absence.

5.78 Journalists should be aware that there is legislation which governs the identification of children and young people involved in the Children’s Hearings System. SCRA staff will remind journalists of the publishing restrictions in [section 182](#) of the 2011 Act. Panel Members should also be aware of the restrictions and remind all participants of this at the start of a hearing where a journalist is in attendance.

5.79 It is a criminal offence to ‘publish’ ‘protected information’ if the publication of the information is intended, or is likely, to identify a child, or the child’s address or school. ‘Protected information’ means information in relation to a children’s hearing, an appeal against a decision of a children’s hearing, proceedings before the Sheriff or an appeal from any decision of the Sheriff or Sheriff Principal made under this Act. It also includes information given to the Principal Reporter in respect of a child. To ‘publish’ includes printed media, television, radio, online and social media.

Other persons

5.80 The attendance of any other person at the hearing is at the discretion of the chairing member. This includes any professional or other person working with the child or family members, for example a social worker, school teacher or health visitor. There may also be individuals who do not meet the criteria to be afforded participation rights, but will nevertheless be granted some degree of participation to protect their human rights. The Children’s Reporter may identify them and invite them to submit written information and/or to attend the hearing. The criteria for exercise of the chairing member’s discretion are:

- the attendance of the person is necessary for the proper consideration of the matter before the hearing

OR

- the person is otherwise granted permission by the chairing member– the chairing member may not grant permission to a person under this second reason if the child or relevant person objects



Attendance by electronic means only

5.81 A pre-hearing panel may determine that a person, or persons, should attend only by electronic means rather than physically attending the hearing, i.e. through telephone or video link. See the pre-hearing panel chapter for more detail about this decision.

Disruption and attendance

5.82 Any person who is being violent or abusive, or so disruptive that the hearing has to be deferred or adjourned to another day, can be excluded from a pre-hearing panel or children's hearing for as long as necessary. See the section on [exclusion](#) for further information.



	Right to Attend	Duty to Attend
Child	✓	✓
Relevant Person	✓	✓
Representative of the Child	✓	✗
Representative of a relevant person	✓	✗
Person afforded an opportunity to participate	✓ For part of the hearing only	✗
Representative of person afforded an opportunity participate	✓ Only when accompanying the participation individual	✗
Safeguarder	✓	✗
Solicitor for the child	✓	✗
Solicitor for the relevant person	✓	✗
Principal Reporter	✓	✗
A member of the Area Support Team e.g. Panel Practice Advisor	✓	✗



A representative of a newspaper or news agency

✓

✗

Other professional, e.g. social worker, school teacher, health visitor

✗

✗

d. Establishing the child's age

5.83 The chairing member must ask the child how old they are, unless satisfied that the child would not be capable of understanding the question. The Children's Hearing System is legally required to be satisfied that the definition of 'child' in the legislation applies to the subject of the hearing. **The chairing member should not ask the child their date of birth. It is not procedurally necessary. Some children may not be able to provide their date of birth and the question may seem difficult or intimidating.**

5.84 If the child is deemed as being incapable of understanding the question (or is not present) the chairing member must still determine the child's age. It is good practice to ask a relevant person, if present, to confirm the child's age. Alternately, the chair might confirm the child's age while providing a summary of the reports; "This is an annual review for Marc who has just turned eight and is living with his grandmother and cousin, Justin."

5.85 If the child is over 16, the chair must confirm whether he/she is subject to a Compulsory Supervision Order, or has not yet attained the school leaving age and has been referred on grounds of non-attendance at school.



Legislation and Legal Tests

A person is a **child** under the s.199 of the 2011 Act if they are:

1. under the age of 16 years
2. aged 16 or 17 years and subject to a Compulsory Supervision Order
3. under the age of 16 years when referred to the Children's Reporter until the Children's Reporter decides not to arrange a children's hearing or a substantive decision is made by a children's hearing
4. of school age where the ground of referral is non-school attendance
5. aged 16 or 17 years and whose case has been remitted to the Principal Reporter by the Sheriff after they have pleaded guilty to, or been found guilty of, an offence until a substantive decision is made by the hearing



e. Notifications and reports received

Notification

5.86 The hearing should confirm with the child, if applicable, the relevant person(s) and any person with participation rights whether they have received notification of the hearing. With the exception of hearings arranged at short notice, a child and relevant person(s) are entitled to **at least seven days' notice of a hearing** from the Children's Reporter.

5.87 There is an exception in relation to notification of a child; the Children's Reporter does not have to notify a child of a hearing if they are satisfied that the child would not be capable of understanding the notification. It is presumed that a child under the age of six would not be capable of understanding any notification and that a child under the age of twelve would not be capable of understanding hearing papers. Panel Members should find out whether the child has been notified of the hearing, from the Hearing Arrangement Form or ask the Children's Reporter at the start of the hearing if clarification is needed.

Papers

5.88 The child, if capable of understanding the content, and relevant persons are should receive the same reports as the Panel Members **at least three days prior** to the hearing. Panel Members must therefore also check with the child and relevant persons what papers they have received (e.g. social work report, school report, Safeguarder's report), and whether they have had adequate opportunity to look at them and whether they have been understood.

5.89 Any person with participation rights should receive, as soon as possible before the hearing begins, a copy of:

- any contact direction that regulates contact between them and the child;
- any information that is about them;
- any information that is about contact between them and the child, or;
- how the possibility of contact between them and the child may be affected by the decision of the children's hearing.

5.90 If a child, relevant person or person with participation rights informs the hearing they have not had adequate opportunity to review the papers, the hearing should consider whether it is appropriate to proceed with the hearing. When making this decision, Panel Members should consider the overall fairness of the hearing. Although not an exhaustive list, factors Panel Members may consider include:

- the length of the report(s)
- the time the person has had the report(s) prior to the hearing
- difficulties the person may have reading and understanding information – this may be due to a learning difficulty, as a result of a temporary period of ill health or they



may have been provided in a format or language which was unsuitable

5.91 If the child, relevant person or person with participation rights say they have not understood the papers, the hearing must consider how they can be helped to understand:

- the professional who prepared the report may be present at the hearing and able to explain the contents of their report either during the hearing or during a short adjournment
- the chairing member's explanation of the substance of the report may assist
- a Solicitor or other representative could help with effective participation
- the hearing may need to be deferred to another day to provide the child and/or relevant person more time to consider the report.

Notification and/or report(s) not received

5.92 If the child, relevant persons or person with participation rights have not received either the notification, or one or more reports within the required timescales, then it should be established by the hearing whether the child, relevant person(s), or person with participation rights are willing to proceed with the hearing if they are present. Panel Members should take seriously any request to defer a children's hearing to allow a child or relevant person to properly review reports. The hearing should have the welfare of the child as the paramount consideration in making any decision about whether or not to defer a hearing to a later date.

Hearings arranged at short notice

5.93 Where the hearing is arranged at short notice (for example a custody hearing or a hearing after the making of a Child Protection Order), the timescale for notification and provision of papers is "**as soon as practicable**" prior to the hearing. The exception to this is a contact direction review hearing, where there is a requirement that the Children's Reporter must notify the hearing no later than three days after the hearing whose contact decision is to be reviewed, and provide papers at least three days prior to the hearing.

5.94 It is good practice to ask the child, relevant persons and any person with participation rights whether they have received notification and papers prior to the hearing. If a decision requires to be made urgently (as in the case of a Child Protection Order hearing) and papers have been received immediately prior to the hearing Panel Members may wish to consider a short adjournment of the hearing to enable participants to review them. In other circumstances Panel Members may consider deferring the hearing to another day if the child, relevant person or person with participation rights indicate they have not had sufficient time to look at the papers provided.

Substance of the reports



5.95 Where the notifications and reports have been received by those entitled to them, the chairing member must inform those present at the hearing of the substance of any relevant report or document provided within the hearing papers. A lengthy description of the content of each individual report is not necessary. A summary of the substance of reports should be a brief and succinct description of the key issues, and recommendations, from the reports, either collectively or individually if there are differences in content or recommendations .



Example

The reports indicate that since the last hearing six months ago, Callum has increased his attendance at school from 68% to 87%, started attending Scouts and the whole family have taken part in fortnightly family counselling. Because of all the progress made, the recommendation today is to terminate the Compulsory Supervision Order.

f. Confirmation of child's expressed views

5.96 Where papers are provided to the child, the chairing member must ask the child whether the documents accurately reflect any views expressed by the child, unless the chairing member believes that it would not be appropriate to do so.

5.97 If the child says that the views presented in the report are not his or her views, the chairing member must clarify what the child's views are before the hearing moves on.

5.98 The way in which this is done will depend on the individual child. In general terms, during a hearing Panel Members should be careful not to ask children leading questions where possible (e.g. "your social worker says you want to see your mum more often, is this right?"). Therefore questions might be phrased such as "what do you think about the section of the report on your views?" "What do you think about what the report says about when you see your mum?"

More information on the child's views can be found in the [overarching principles](#) section.

g. Children's advocacy services ([section 122](#))

5.99 Since 2020, there has been a statutory duty on the **chairing Panel Member** of a children's hearing to inform the child of the availability of advocacy services in their area. This duty applies in all children's hearings.

5.100 A national advocacy scheme has been funded and set up by the Scottish Government



to make sure that independent advocacy services are available for children and young people in every local authority area. Children's advocacy services provide support and representation to children before, during, and after a children's hearing. A child's advocacy worker will meet with the child and explain how the children's system works and the kinds of decisions that Panel Members can make. The advocacy worker will help the child decide what they want the Panel Members to know and how best to communicate that in the way they prefer. **An advocacy worker will only represent a child's views.** They will not give a personal view or say what they believe to be in the best interests of the child.



Legislation and Legal Tests

The chairing Panel Member of the children's hearing **must inform the child of the availability of children's advocacy services**, unless:

(a) taking account of the **age and maturity of the child**, the chairing member considers that **it would not be appropriate** to do so

5.101 Only the child can decide they would like an independent advocate. They cannot be compelled to have one and a children's hearing cannot appoint an advocacy worker for the child. However it is essential that the chairing member talks to the child about whether they already know that advocacy is available and, if they do not, that they are given information about how an advocacy worker might help them in a hearing and how they can obtain an independent advocacy worker if they want one.

5.102 In most cases the child should already have been given information about advocacy services in their area in the letter from SCRA notifying them of their hearing and also by their Social Worker. **The aim is that the child should not hear about the availability of advocacy services for the first time in their hearing.** However every hearing should check that the child knows about the availability of advocacy services, unless the child already has an advocacy worker at the hearing or the chairing Panel Member considers that it would not be appropriate taking account of the **age and maturity of the child**. Advocacy organisations believe that most children over **five** should be able to understand the role of an independent adult who can help them participate in the hearing, and be able to form a relationship with them and make use of their support to put their views across.

5.103 If the child does not already have an independent advocacy worker, the chairing Panel Member should ask the child or young person if they have been informed about the availability of advocacy services. Every child and each hearing is unique. There is no one way to talk to a child about advocacy. It may be appropriate to introduce information about advocacy during the discussion of the child's views, or it might be raised when the chairing member is establishing the child's age. It should be raised in a way in which the child or young person can understand, using plain English and language appropriate to the child's age and stage of development.



Examples might include:

“I’d like to ask if you know that you can have help from an independent person to tell us what you think about what’s happening [at home/in school/in your life].”

“Has anyone talked to you about what help is available to put your views across to us as Panel Members?”

5.104 The duty to inform the child of the availability of advocacy should, where necessary, enable a conversation about the help they might want to participate in the hearing. If the child doesn’t know about the availability of advocacy services, the chairing Panel Member should explore whether the child would like to have an independent advocacy worker and explain how they can get in touch with their local advocacy provider. The children’s hearing cannot arrange this for the child but Panel Members should satisfy themselves that the child, their parents, carers, or Social Worker can do so.

5.105 Panel Members should consider whether the hearing ought to be deferred to allow the child to instruct an independent advocacy worker before they make a decision. Even if the child would like the support of an advocacy worker, Panel Members should have the welfare of the child as their paramount consideration when deciding whether or not the hearing should go ahead. This may not always be an easy decision to make. Panel Members should think about whether they have enough information about the child’s views to inform their decision and consider whether it is better for the child or not, to make a decision there and then rather than defer the hearing to another day. If the Panel Members have reliable and sufficient information about the child’s views and are satisfied that the child is able to participate and contribute to the discussion during the hearing, it may be appropriate to proceed rather than delay decision-making. Panel Members should include in their written reasons why, having the child’s welfare as their paramount consideration, they felt it right to proceed with the hearing in the child’s interests.

5.106 If the child is not in attendance at the children’s hearing, the chairing Panel Member will be unable to inform them of the availability of advocacy services. Nevertheless, it is good practice to discuss advocacy with other participants in the hearing to ensure that the child is aware of advocacy services and encourage these conversations to take place.



Example

Decision: To defer the hearing for the child to meet with an independent advocacy worker.

Reasons: Vicki is nine years old and seemed shy about speaking to the Panel Members. When asked how old she is, she looked at her Foster Carer and then down at the ground. There is limited information in the reports about her views. When asked if she would like to talk to someone who can help her tell the Panel what she thinks about things Vicki nodded repeatedly. The Panel considered she would be unlikely to participate in the hearing fully without the help of advocacy.



Example

Decision: To proceed with the hearing, although the child said that they would like an independent advocate.

Reasons: Josh does not have an advocacy worker, and did not know about advocacy services. He said to the Panel Members that that he would like one. Josh's views were set out fully in the social work report and while he would like an independent advocacy worker, he agreed that the report included his views and that he was willing to discuss those views with the Panel Members. Deferring the hearing until Josh is able to meet with an advocacy worker would mean continuing uncertainty about where the child should live for several weeks and where they should go to school beyond the start of the forthcoming term. The Panel considers that it is in the best interests of the child to proceed with the hearing.

The advocacy worker's attendance at the hearing

5.107 If the child has appointed their advocacy worker as their representative, the advocacy worker is entitled to attend the hearing either with the child or by themselves. As a representative, they have a right to attend the children's hearing. If the child already has a representative **and a legal representative and also wishes to have** an advocacy worker, the chairing member may permit the advocacy worker to attend as someone whose attendance is necessary for the proper consideration of the matter before the hearing (that is to enable the full expression of the child's views and wishes). If the child brings their advocacy worker with them the chairing member should enable the advocacy worker to be in the hearing room to support the child or young person in giving their views.

5.108 If a child or young person brings more than one representative, and the number of people attending the hearing exceeds the capacity of the hearing room or the capacity of possible remote connections into a virtual hearing, the chair should exercise their judgement on how the hearing should best be managed. As a representative has an absolute right to attend an advocacy worker should not be excluded if acting in that capacity. The child should not be asked to choose between a personal representative, an advocacy worker and their legal representative being present in the hearing room. It may be that the hearing has to hear separately from other contributors who do not have an automatic right to attend.

Advocacy Providers

5.109 Each local authority area has a nationally contracted primary provider who will offer advocacy services. If it is not possible for the primary provider to work with an individual



child for any reason they should put the child in touch with alternative secondary providers available in each area. You can find the advocacy provider for your area [here](#). Each of these providers will work in accordance with [National Practice Standards](#).



h. Non-disclosure requests

5.110 Any person may make a request to a children’s hearing to withhold specified information from a specified person. This is called “a non-disclosure request”. A non-disclosure request may be made, for example, by a Social Worker who recommends that the place where it is proposed the child may reside under a Compulsory Supervision Order should not be disclosed to the child’s parents or by a relevant person who does not wish the child to know a piece of sensitive information which is contained in the Child’s Plan. The Children’s Reporter must refer a non-disclosure request made to them in advance of the hearing to the hearing, or may make a request on their own initiative.

5.111 Where a non-disclosure request is made before the hearing begins, it must be decided at the start of the hearing before any discussion of any other matters. In this situation, the hearing will have received a copy of the non-disclosure request and a form explaining that information has been withheld. This may also apply to a pre-hearing panel convened to decide upon person status. To assess whether the relevant test is met, the hearing may have to exclude the person to whom the non-disclosure request relates whilst the Panel Members discuss the non-disclosure request and the perceived risks, and decide what to do. This must happen at the start of the hearing. Wherever possible, Panel Members should find out the person’s view before excluding them and making a decision about the request. After the decision is made the person should be invited back into the hearing and told of the decision to withhold or disclose information. No discussion about any matter other than the non-disclosure request must take place whilst the excluded person is outside the hearing room.

5.112 Certain documents can never be the subject of a non-disclosure request. These are:

- the statement of grounds
- an order or warrant the child is subject to
- a remit from the court after the child has been convicted of, or pleaded guilty to, an offence
- a requirement from a Sheriff under the Antisocial Behaviour etc. (Scotland) Act 2004

5.113 A non-disclosure request:

- can be made to or via the Reporter before the hearing or to Panel Members during the hearing itself
- may be made in writing or verbally
- must specify the information the hearing is asked to withhold, with reasons
- must specify the person who it is proposed to withhold the information from, with reasons.



Significant harm test

5.114 The test to be applied by Panel Members in deciding a non-disclosure request is whether **disclosure of that information to that person is likely to cause significant harm to the child about whom the hearing relates**. Panel members should be mindful of the developmental stage of the child and the different kinds of risks which may arise for older and younger non-verbal children including babies and infants under five years, children and children with disabilities. Their perspectives and views are should also be considered carefully when a case is being made for withholding information or not.

5.116 The hearing may decide not to withhold the information. Panel Members must ensure that this information is provided at such a time, and in such a manner, as it considers appropriate, having regard to the best interests of the child. It may be that the hearing should adjourn for a period to provide the individual with the information and sufficient time to consider the information before participating in the hearing.

5.117 If the children's hearing decides not to withhold information from the person, the person should usually receive the information before the hearing goes on to consider other matters, **unless this would prejudice consideration by the hearing of any other matter affecting the child's welfare**, such as the need to consider non-disclosure measure of the child's place of residence.

5.118 Panel Members should be mindful that the person may find the information upsetting. There may be a lot of information to digest. A short adjournment may be enough to allow them to get to grips with the information. If Panel Members think that the person may need more time to read, understand and consider the information fully to enable their effective participation or they require representation, Panel Members may need to consider deferring the hearing to another day.



Example

Decision: To not withhold information from Mr Gregory

Reasons: It was requested that Mr Gregory not be informed that Thomas' mother was pregnant with her new partner's child. While Panel Members were sympathetic to Ms Brown's desire for privacy and to move on from her previous relationship with Mr Gregory, her pregnancy and new partner were significant risks to her ability to prioritise Thomas' needs and would be a key factor in today's decision making. This included whether Thomas continued to live at home or with his father. Furthermore, all parties agreed that there was no risk to Thomas if this information was disclosed. In fact, he is already aware that he will soon be a big brother.



Non-disclosure request relating to the address of prospective adopters or carers

5.119 When the local authority proposes a change of residence be authorised by a children's hearing, the social worker will prepare written information for the hearing about the proposed carers and their family and household. The child and relevant persons must also receive this information. The profile of the carers will often include their address. When recommending that the child move to live with prospective adopters, new foster carers or kinship carers, the local authority may ask that the place of the child's residence with those carers is not disclosed. This means that a non-disclosure request to withhold the child's placement address from the information usually provided to the hearings' participants may need to be made before or at the start of the hearing, and well before the hearing's decision about whether a Compulsory Supervision Order should be made and what measures to include. The test to be applied is that sharing the information is likely to cause significant harm to the child.

5.120 Panel Members must determine a non-disclosure request at the start of the children's hearing and must apply the test that sharing the information will cause significant harm to the child. If Panel Members consider that the request **does not** satisfy that test, they must refuse the non-disclosure request. However if the information relates to the child's place of residence, **it should not be disclosed until the hearing has decided whether to make a Compulsory Supervision Order and has an opportunity to consider whether a measure of non-disclosure of the child's place of residence is necessary in the child's interests.** Premature disclosure of information should not prejudice the hearing's consideration of any measure of non-disclosure of the child's place of residence. [The Rules](#) requires that the hearing ensures that information which is the subject of a non-disclosure request is provided at such time, and in such manner, as the hearing considers appropriate.

i. Share the agenda

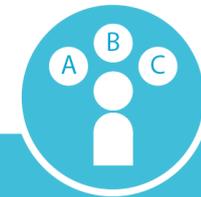
5.121 Panel Members should tell the hearing participants how the hearing will be conducted and what will be discussed at each stage. This is a key hearing management tool; the child, relevant persons and other attendees need to know when they will get their say and when certain topics will be discussed. Good practice requires that all participants, and in particular the child, should have an opportunity to say if there is anything else they would like Panel Members to discuss.

5.122 A clear agenda will help the hearing run to time. Good time management is key to prevent hearings overrunning and keeping other children and families waiting.



Example

We will discuss how Kate is getting on with Mr and Mrs Smith and the progress with her behaviour and communication before discussing Mr and Mrs Jones' drug use and improvements since the last hearing. The last thing we'll come to is the current contact arrangements for Kate with each of her parents. Is there anything else anyone would like to add to the agenda?



Summary

Types of hearing, their purpose, and the options available

This part of the manual gives information about different types of children’s hearings, their purpose and the legal options available at each hearing. A hearing may have more than one purpose therefore Panel Members may need to refer to multiple sections when preparing for hearings.

PURPOSE OF HEARING (Hearing Arrangement Form and Record of Proceedings)

TYPE OF HEARING (Practice and Procedure Manual)

Consider whether to give advice to the Sheriff who has been asked to look at the Child Protection Order

[Advice to the Sheriff on an application to vary or terminate a Child Protection Order](#)

Consider the case because there is a Child Protection Order

[Second working day hearing](#)

Consider the case which the Sheriff has referred to the Children’s Reporter

[Grounds Hearing](#)

Consider the reasons for the hearing which the Sheriff decided were correct

[Accepted or Established Grounds Hearing](#)

Consider the case which the Sheriff has asked the children’s hearing to deal with

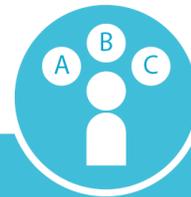
[Accepted or established grounds hearing](#)
(if the child not on a Compulsory Supervision Order) OR
[Review Hearing](#) *(if the child is already subject to a Compulsory Supervision Order)*

To review the Compulsory Supervision Order as the child is in secure accommodation

[Review Hearing](#)

Consider whether to continue the Interim Compulsory Supervision Order

[Hearing to consider further ICSSO pending the outcome of the proof application](#)



Give further consideration to the Compulsory Supervision Order including any changes made by the previous hearing

Depends on the on the purpose of original hearing (*deferred hearing, IVCSO due to expire*)

Consider giving advice to the sheriff

[Advice to Court where the child has been found guilty of, or pleaded guilty to, a criminal offence](#)

Consider whether the CSO should stay in place until the appeal is finished

[Suspension Hearing](#)

Consider the case because a young person has been arrested by the Police

[Custody Hearing](#)

Consider making an order to find and keep a child in a safe place and bring him or her to a hearing

Application by the reporter for a warrant to find and keep the child in a safe place and bring the child to the hearing

Consider making an order to bring a child to a hearing

Application by the reporter for a warrant to bring the child to a hearing

Consider the case because a young person has been moved to secure accommodation by the local authority

[Emergency secure transfer](#)

Consider releasing the child from an obligation to attend a children's hearing

[Pre-hearing panel](#)

Consider the appointment of a legal representative for the child

Often, but not exclusively, a [Pre-hearing panel](#)

Consider the appointment of a legal representative for a person attending the hearing

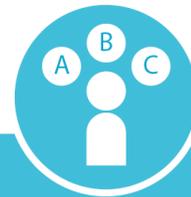
Can be considered at any hearing

Consider whether a person should be notified of a hearing as a relevant person

Often, but not exclusively, a [Pre-hearing panel](#)

Consider whether a relevant person is required to attend a children's hearing

[Pre-hearing panel](#)



a. A Child Protection Order has been granted [\(ss 45, 46\)](#)

6.1 Many children and families enter the Children’s Hearings System after referral to the Children’s Reporter who will arrange a grounds hearing. When a Child Protection Order has been granted by the Sheriff, a hearing will be arranged for the child and family on an emergency basis. Participants may be anxious, angry or frightened. Panel Members should help ensure all participants understand every step of the process.

6.2 When:

- a Sheriff has made a Child Protection Order authorising removal of the child to a place of safety or alternatively, preventing the removal of a child from a safe place
and
- the Children’s Reporter is satisfied that the criteria for the making of the Child Protection Order are met

a children’s hearing must take place on the **second working day** after the order is implemented. A ‘working day’ excludes weekends and specific public holidays. For example, an order granted on a Thursday providing for the child to be taken to a place of safety requires that a second working day hearing must take place on the following Monday.

6.3 The purpose of the second working day hearing is to consider:

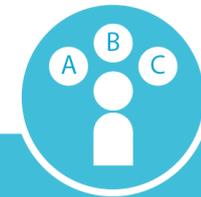
- the circumstances which led to the making of the Child Protection Order;
- whether the conditions for the making of the Child Protection Order continue to be met;
- whether it is necessary that the order remain in place; and
- whether any variations are required to any directions included in the order.

Conditions for granting a Child Protection Order

6.4 Different criteria apply to the making of a Child Protection Order depending on whether the applicant is a local authority or any other person.

Panel Members should know which criteria applied to the making of the order, to enable them consider whether the conditions for making it are met. This information will be included in the Child Protection Order itself. If there is any uncertainty, Panel Members should ask those attending the hearing or the Children’s Reporter, who applied for the Child Protection Order before the hearing begins.

6.5 Any person can apply for a Child Protection Order in the following circumstances:



Legislation and Legal Tests

(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; or
- 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; or
- iii. the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety; or
- 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.

6.6 In practice, Child Protection Orders are usually applied for by a local authority. The following criteria apply only where the local authority applies for the Child Protection Order. These criteria are:



Legislation and Legal Tests

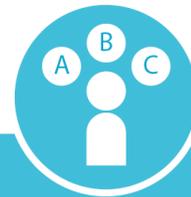
(a) there are reasonable grounds to suspect that:

- i. the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm; or
- 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; or
- iii. the child will be treated or neglected in such a way that is likely to cause significant harm to the child

(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



Directions

6.7 A Sheriff may attach 'directions' to a Child Protection Order which have the same status as a 'measure' which a children's hearing may include in a Compulsory Supervision Order.

6.8 A Child Protection Order can have one or more of the following directions attached:

1. An information non-disclosure direction. This is a direction specifying that information in relation to the child, must not be disclosed to a named person or class of persons. For example the order may require that information about the place of safety where the child is being kept is withheld from a relevant person.

2. A contact direction. This is a direction regulating contact between the child and a named person or class of persons.

3. A parental responsibilities and rights direction. A direction may restrict or limit the exercise of parental responsibilities and rights in relation to the child, such as the right to consent to medical examination and/or treatment as an example.

Legal assistance

6.9 The child is automatically entitled to legal aid to be assisted by a Solicitor at a second working day hearing, subject to the child having the capacity to give instructions to a Solicitor. There is a general presumption that a child aged 12 years or over is able to instruct a Solicitor. Younger children may also be able to instruct a Solicitor if they understand what it means to do so and appear to have sufficient capacity to give instructions.

6.10 Panel Members should ask a child present at the hearing, subject to their age and level of understanding, whether they have had the opportunity to speak with a Solicitor. If they have not, and the hearing think legal representation is necessary, Panel Members may consider a short adjournment for the necessary arrangements to be made.

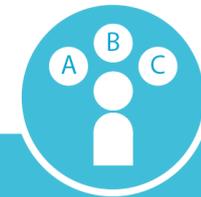
Options

6.11 The options open to a second working day hearing are:



Options

- 1. To continue the Child Protection Order without variation.** Where the hearing is satisfied that the criteria for making the Child Protection Order are satisfied and that any directions attached to it remain necessary.



2. **To continue the Child Protection Order with variation to one or more of the directions attached.** Where the hearing is satisfied that the criteria for making the Child Protection Order is 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. **To terminate the Child Protection Order.** Where hearing members are satisfied that the conditions for the making of a Child Protection Order no longer exist or the order is no longer necessary.

6.12 A decision must be made by a hearing on the second working day and therefore it is **not possible to defer** the decision. If there is a need for further information to enable the hearing to make a decision, Panel Members can consider an adjournment for the information to be obtained. The hearing must, however, reconvene on the same day.

6.13 It is possible for the local authority to apply for a Child Protection Order for a child already subject to compulsory measures of supervision, for example, to authorise urgent removal from a dangerous situation. In most cases, the child will not already be subject to a Compulsory Supervision Order..

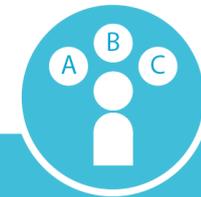
6.14 Panel Members should be mindful that by terminating a Child Protection Order, the child may be released from a place of safety without a guarantee of continuing involvement with social services, and explore whether arrangements are in place, or will be made, to ensure the child's safety and ongoing support. That may include help from wider family or other forms of support. As only two working days will have passed, Panel Members must be convinced that the conditions for a Sheriff granting an order no longer exist and be able to evidence and explain any change which means that they are satisfied the conditions for granting the order no longer apply



Example

Decision: To terminate the Child Protection Order s.47

Reasons: The Child Protection Order was granted in response to serious allegations of sexual and physical abuse by Emily against her father. There were significant concerns for Emily's safety at home as her father, although he did not live in the family home, had threatened Emily's life if she disclosed the abuse and it was not felt her mother could keep her sufficiently safe as she was also a victim of this very controlling and violent man. Since the abuse came to light and the Child Protection Order was taken, Emily's father has been arrested and remanded in custody in relation to another serious offence. It is now safe for



Emily to return home as circumstances have changed significantly since the order was granted and the immediate threat of danger has been removed. In the light of Emily's disclosures the Children's Reporter has arranged for the local authority Social Work Department to provide support to Emily and her mother, with the option that the local authority can again refer Emily to the Children's Reporter if her father is released and poses any risk to her.

Appeal Rights: Application for variation or termination of the order

6.15 If the second working day hearing decides to continue the Child Protection Order, with or without variation, the chairing member must inform the following people, if present, of their right to **apply to the Sheriff for a variation or termination of the order within two working days**:

- the child
- a relevant person
- any person who has, or has recently had, a significant involvement in the upbringing of the child
- the person who applied for the Child Protection Order
- the person who is required under the order to produce the child to the applicant

6.16 The Principal Reporter may also apply to the Sheriff Court for a variation to the directions attached to the Child Protection Order. The Children's Reporter will decide whether to arrange a grounds hearing. If they do not arrange a grounds hearing, the order will lapse.

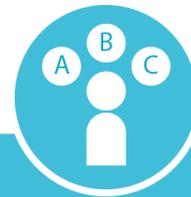
6.17 The chair should inform the child and relevant persons that, unless terminated by the Sheriff before then, there will likely be a further hearing on or before the **eighth working day** from the date on which the Child Protection Order was granted.

Next steps

6.18 In most cases, a Child Protection Order ends a maximum of eight working days beginning the day after it was first granted. If the Children's Reporter is satisfied that one or more of the grounds of referral exists and that it is necessary that a Compulsory Supervision Order be made for the child (or an existing order reviewed), the Children's Reporter will arrange a children's hearing on or before the **eighth working day**.

6.19 An eighth working day hearing is a grounds hearing. Please refer to the section of the manual on [grounds hearings](#) for the legal options open to the children's hearing.

b. Advice to the Sheriff on an application to vary or terminate a



Child Protection Order [\(s50\)](#)

6.20 Any of the persons listed in paragraph 6.15 may make an application to the Sheriff for a variation or termination of a Child Protection Order before the second working day hearing, or within two working days thereafter. The application must be heard by the Sheriff within three working days after the day on which the application is made.

6.21 When such an application is made, the Principal Reporter **may** arrange for a hearing to provide advice to the Sheriff. The purpose of the hearing is **to provide any advice to the Sheriff they consider appropriate to the Sheriff's decision on the application.**

6.22 In particular, the hearing may wish to consider the following:

- The nature of the application to the Sheriff – is it for a variation to one of the directions attached to the order, or for termination of the order as a whole?
- If the application relates to variation, would the hearing support the variation, and why or why not?
- If the application relates to termination of the order, what were the circumstances which existed at the time the order was granted? In the opinion of the hearing do the criteria for the granting of the Child Protection Order continue to exist?

6.23 The purpose of this hearing is to provide advice to the Sheriff only. The hearing is not able to make any changes to the Child Protection Order.

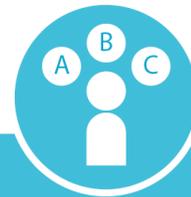
6.24 There are no rights of appeal against the terms of this advice.

c. Grounds hearing [\(s69\)](#) [\(ss.90-95\)](#)

6.25 A grounds hearing may be the first time that a child or young person and their family has had contact with the Children's Hearing System. Panel Members should be mindful of this when preparing for the hearing and during the hearing itself. A child and relevant person coming to their first hearing may need more information about roles and procedures during the hearing than those who have attended hearings before.

6.26 A grounds hearing may be arranged for a child who is already the subject of a Compulsory Supervision Order, for example where new grounds have arisen justifying referral for consideration of compulsory measures of supervision or where the child's circumstances have changed leading to an increase in existing concerns. Panel Members therefore should check whether or not there is already a Compulsory Supervision Order in place.

6.27 Where there is already a Compulsory Supervision Order in place for the child and new grounds of referral are accepted or established, a [review](#) of the existing Compulsory



Supervision Order must be carried out by the children's hearing.

Referral to a grounds hearing

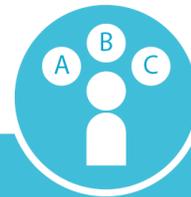
6.28 A Children's Reporter will refer a child to a grounds hearing if, following investigation, they are satisfied that one of the grounds in [s67\(2\)](#) of the 2011 Act exists and that it is necessary for a Compulsory Supervision Order be made for the child or that a new statement of grounds be considered by the hearing.



Legislation and Legal Tests

The grounds for referral are:

- (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care
- (b) a schedule 1 offence has been committed in respect of the child
- (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence
- (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed
- (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that –
 - (i) the child will be abused or harmed, or
 - (ii) the child's health, safety or development will be seriously adversely affected
- (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse
- (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009
- (h) the child is being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995 and special measures are needed to support the child
- (i) a permanence order is in force in respect of the child and special measures are needed to support the child
- (j) the child has committed an offence [only if the child is at least 12 years old]
- (k) the child has misused alcohol
- (l) the child has misused a drug (whether or not a controlled drug)
- (m) the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person
- (n) the child is beyond the control of a relevant person
- (o) the child has failed without reasonable excuse to attend regularly at school
- (p) the child –
 - (i) has been, is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or
 - (ii) is, or is likely to become, a member of the same household as such a child
- (q) the child –



- (i) has been, is being, or is likely to be forced into a marriage, or
- (ii) is, or is likely to become, a member of the same household as such a child

6.29 Only the child and relevant persons are required to make a response to the statement of grounds and supporting facts. The chairing member has a legal duty to keep the numbers of attendees in the hearing room to a minimum. Only the child, the relevant person(s), their representatives, if any, and the child's Social Worker should be in attendance during this section of the hearing.

Offence grounds (ground j)

6.30 It is important that the child and any relevant person know how information about grounds for referral and any related supporting evidence, may be used. In particular they should understand the legal effect of accepting offence grounds for referral or having these established in court (for example disclosure of this information to prospective future employers or other organisations in later life through a PVG or Disclosure check). When notifying them of the arrangements for the children's hearing, the Children's Reporter will provide information to the child and relevant persons about this in writing.

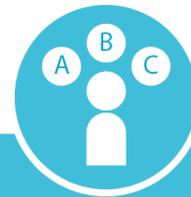
6.31 Before reading out the statement of grounds, the chairing member should check with the child and relevant persons present whether they have received information from the Children's Reporter regarding the Rehabilitation of Offenders Act and understand what this means. If they have not, Panel Members should not enter into any discussion about this complex area. Instead there should be a short adjournment of the hearing for information to be provided, read and discussed by the child and/or relevant person(s).

6.32 The current legislation about future disclosure of offences considered by a children's hearing is complex. It is not the role of a Panel Member or Children's Reporter to advise a young person about the future disclosure consequences. If necessary, a hearing can be adjourned or deferred to another day to allow the young person time to discuss the consequences or to seek appropriate advice about the issue from a Solicitor. **There are significant consequences of accepting an offence ground. Panel Members should never encourage a child to accept a ground or statement of fact.**

Explanation of statement of grounds

6.33 When a Children's Reporter arranges a grounds hearing they will prepare a statement of grounds. There are two parts to a statement of grounds; the specification of which section 67 ground, or grounds, on which the child has been referred to the hearing and the facts which, in the opinion of the Children's Reporter, mean the ground for referral is met.

6.34 The chairing member must explain the ground or grounds for referral and the facts



on which the ground or grounds for referral is based to the child, if of an age to understand, and each of the relevant persons present. The chairing member must then ask the child and each relevant person(s) separately whether they accept the statement of grounds or not. Whether the statement of grounds is understood and accepted, or not, by the child and each relevant person present will determine the legal options open to the hearing.

6.35 The Children's Reporter prepares the statement of facts supporting each ground for referral with great care, to strike a balance between what is legally required and what will be understood by the child and relevant persons. It is good practice for the chairing member of the hearing to read out each statement supporting the ground, before providing an explanation if required. There is no one right way of reading and explaining the statement of grounds. How this is done depends on the needs of the child and relevant person(s) taking account of the child's age and stage of development and other characteristics of the child and relevant person. Both the child and relevant person(s) may be anxious or upset during this phase of the hearing. Chairing members should provide an explanation of the grounds in plain English. It is important to make clear the nature and extent of concerns whilst choosing words with care and consideration for the feelings of the participants.

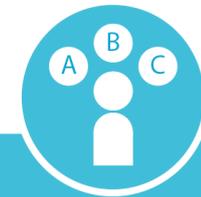
6.36 When the chairing member asks the child and relevant person individually if they accept what the chairing member has read out is true, the Panel Members must not enter into any discussion at this stage. **Panel Members should not, under any circumstances, provide any advice to the child or relevant persons about whether to accept or deny the statement of grounds or try to encourage acceptance.**

6.37 The statement of grounds has legal functions and consequences. It is necessary that the hearing is clear about exactly what the child and relevant person(s) accept or do not accept. Others present at the hearing, such as a representative or the Children's Reporter, may intervene during the explanation of the grounds if, in their opinion, the explanation does not match the statement of grounds as written. An inaccurate explanation would amount to a procedural irregularity in the conduct of the hearing.

6.38 The following are options available to the hearing, depending on the responses of the child and relevant persons to the statement of grounds and the attendance of key people.

Child not present at the grounds hearing and child not excused in advance

6.39 Where a child is not present at the grounds hearing and has not been excused prior to the hearing, it is not possible for Panel Members to excuse the child and continue with the grounds hearing. Therefore there are two options open to the hearing members:



Options

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 Principal Reporter to arrange another grounds hearing. This allows the child to attend a further grounds hearing. If the hearing decides to require the Principal Reporter to arrange another grounds hearing the hearing can consider whether to issue an Interim Compulsory Supervision Order (ICSO) if necessary as a matter of urgency for the child. Where an Interim Compulsory Supervision Order is issued before the grounds are referred to the Sheriff, this does not count towards the maximum of three Interim Compulsory Supervision Orders permitted. The hearing may also consider issuing a [warrant to secure attendance](#) following an application by the Children's Reporter.

Relevant person not present for the explanation of statement of grounds

6.40 It is not an absolute requirement for all (or any) relevant persons to be present in order to accept, or deny, the statement of grounds. Panel Members are able to [excuse or proceed in their absence](#) as with any other hearing.

6.41 Where a relevant person is not present at the grounds hearing there are three options open to hearing members:

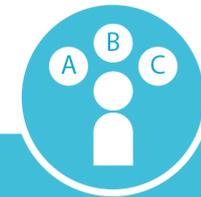


Options

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 for this decision.



3. Require the Principal Reporter to arrange another grounds hearing. If the hearing decide it is unfair to proceed in the relevant person's absence, another hearing should be arranged to allow them another opportunity to attend. Unlike paragraph 6.39 above, there is no provision to make an Interim Compulsory Supervision Order in this scenario.

Child and/or relevant person(s) unable to understand the explanation of the statement of grounds

6.42 The hearing must be satisfied that the child and each relevant person present understand the statement of grounds with explanation from the chairing member. Some assessment of the participants' understanding should be made; for example, the child is too young to understand the grounds, or the child or the relevant person make responses or ask questions which indicate that they do not understand the grounds.

6.43 Where the hearing is satisfied that the child and/or relevant person(s) are unable to understand the grounds of referral, there are two options open to the hearing:



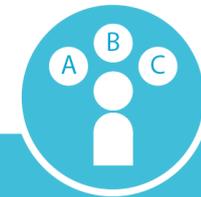
Options

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 Compulsory Supervision Order 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 or carer) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff.

6.44 Where the children's hearing directs the Principal Reporter to make such an application, the hearing should also consider whether any interim measures are both necessary and urgently required for the child's protection pending the application for proof.



Grounds not accepted

6.45 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, there are two options available to the hearing:



Options

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

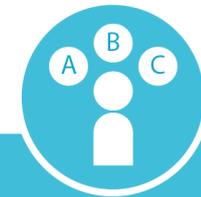
6.46 Where the children’s hearing directs the Principal Reporter to make such an application, the hearing should also consider whether any interim measures are both **necessary** and **urgently required** for the child’s protection pending the application for proof.

6.47 Where the decision is to direct the Principal Reporter to make an application for proof, Panel Members should make clear in their reasons for the decision whether the direction is being made because the child or relevant person **does not accept** the grounds or because **one or more does not understand** the grounds. The basis of the application for proof may be different for different people; for example, a child does not understand and a relevant person does not accept the grounds.

6.48 Regardless of whether any, or all, of the supporting facts are accepted, if the ground for referral is not understood, or accepted the hearing must treat the ground as not having been accepted.

Ground accepted but facts accepted only in part

6.49 In some cases the child and/or relevant person will accept the ground for referral



and some, but not all, of the facts stated in support of the ground.

6.50 **If the ground for referral is accepted by the child and all relevant persons, amendments to the statements of fact can be made by the hearing**, if acceptable to the child and relevant persons present, provided that the amendments do not call into question whether these are sufficient to prove the ground established in court or amount to a denial of facts which would be material to the decision of a hearing.

6.51 For example, if a statement of grounds alleges that a child had bruising to their arm, which is accepted, and a fractured skull, which is not accepted, it would be inappropriate to discharge the statement that the child has a fractured skull and proceed only on the basis of the accepted statement that the child had bruising to their arm. Where the hearing does not consider it appropriate to proceed on the basis of the accepted facts, a direction can be given to the Children's Reporter to make an application to the Sheriff for a finding in relation to the grounds of referral.

6.52 Similarly, in relation to a s67(2)(o) ground (that the child has, without reasonable excuse, failed to attend school regularly) it would not be appropriate to discharge a fact that 'the child has no reasonable excuse for the majority of the absences' since that is the basis of the ground of referral.

6.53 Where the ground for referral is accepted but some of the facts on which the statement is based are not the hearing has three options:

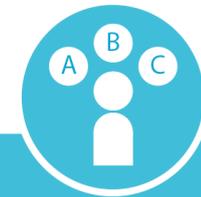


Options

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. Panel Members must be satisfied that deleting the part of the statement of grounds does not call into question the legal basis of the ground for referral. The deleted statements must form **no further part of the discussion**.

2. 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

3. 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 Compulsory Supervision Order at the request of the implementation authority). If the hearing proceeds to consider a further purpose, Panel Members **cannot include any discussion** of the discharged statement of grounds.

Grounds accepted

6.54 If the statement of grounds is accepted in full by the child and relevant person(s) present, or in part and following the deletion or variation of a non-accepted fact, the hearing may proceed to a full discussion of the child's circumstances.

6.55 Where the child is already subject to a Compulsory Supervision Order, the section relating to a [review hearing](#) should be consulted since the accepted grounds will prompt a review of the existing Compulsory Supervision Order.

6.56 The following options are open to the hearing following this discussion:



Options

1. Discharge the referral. Where, following discussion, the hearing is satisfied that a Compulsory Supervision Order is not required for the child, they 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. Or, if the child is already subject to a Compulsory Supervision Order the option is to continue, vary, or continue and vary the existing order. Refer to the [CSO](#) section for more information.

3. Defer the hearing to another day. The hearing may then issue an Interim Compulsory Supervision Order, if not already on a Compulsory Supervision Order, or an interim variation of an existing Compulsory Supervision Order if the hearing considers it necessary as a matter of urgency. Where a hearing is considering deferring a decision to make a Compulsory Supervision Order, there is a duty to consider whether any additional reports are required.

Multiple sets of grounds

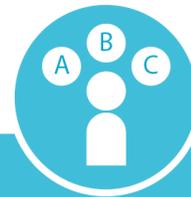
6.57 If there is more than one ground for referral, each should be read in accordance with paragraph 6.26 above. It is possible that one set of grounds may be accepted by all parties,



for example ground (o) (the child has failed without reasonable excuse to attend regularly at school), while the other, ground (n) (the child is beyond the control of a relevant person) is not accepted. Panel Members must decide whether to discharge the non-accepted ground or to direct the Children’s Reporter to make an application to the Sheriff to determine whether the ground is established.

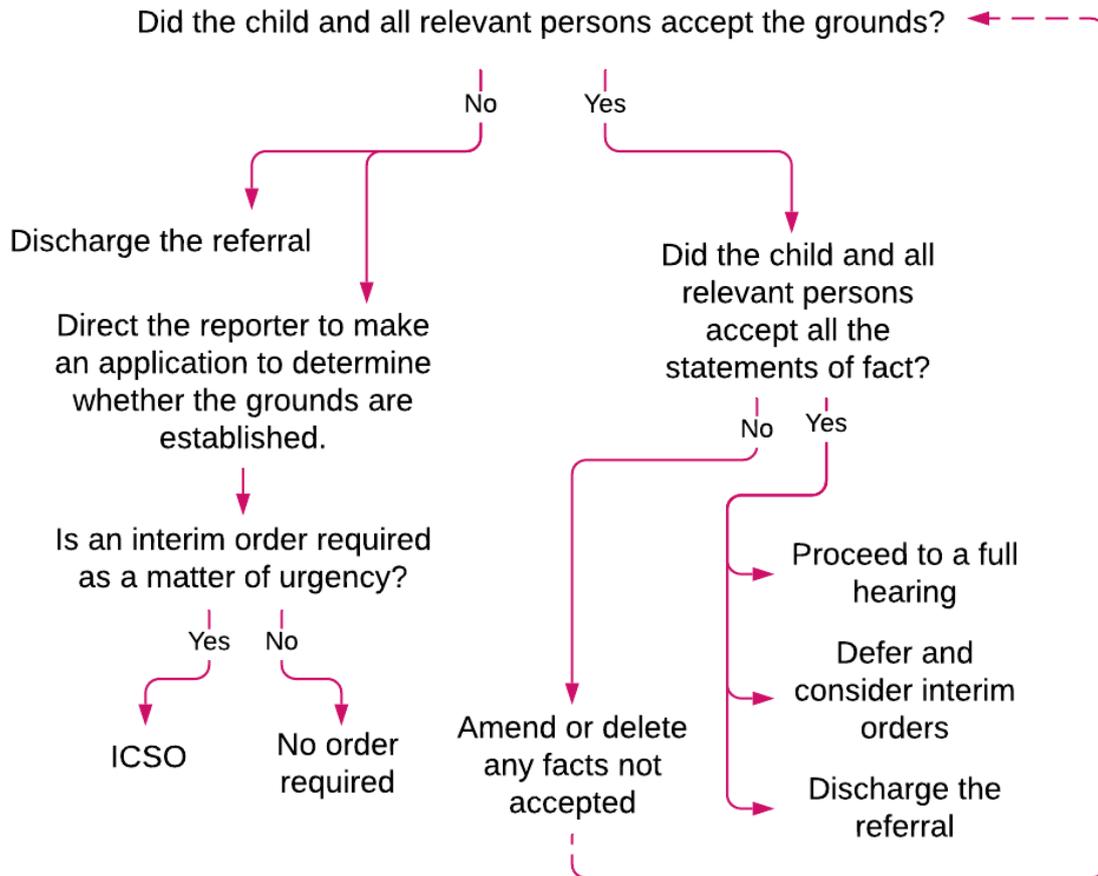
6.58 Panel Members should be aware that if they discharge the statements of facts relating to one ground, in this example the child being beyond the control of a relevant person, they will be able to proceed with a full hearing but will not be able to refer to, discuss, or link options to any information relating to the contents of the discharged statements. The hearing would have to decide whether compulsory measures of supervision are required based on the ground relating to school attendance alone.

6.59 If Panel Members consider that they need to know whether both the accepted and non-accepted grounds and accompanying statements of fact are established to fully inform their decision, it would not be competent to proceed to a full hearing on the basis of only those grounds accepted. The hearing should decide to direct the Children’s Reporter to make an application to the Sheriff for proof of the non-accepted grounds.



Grounds Hearings

(Where the child attended or was excused in advance)

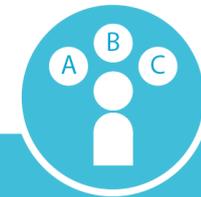


Proof applications

6.60 If the decision of the hearing is to direct the Children’s Reporter to apply to the Sheriff to establish the grounds at proof, the chair must explain the next steps to the child and relevant persons.

All participants should leave the hearing room knowing that:

- The application for proof will be lodged within 7 days of the hearing
- The application must be heard within 28 days of being lodged but the first hearing may be an initial procedural hearing; the entire process of proof may take longer and might require several court hearings
- The child, if of an appropriate age, has a right and an obligation to attend court
- Relevant persons also have a right to attend court, but no duty to do so
- The child and relevant persons can be represented by a Solicitor or lay



representative

- Legal advice can be sought and legal aid may be available
- The reporter may lead evidence to prove the grounds; evidence may be oral and taken from witnesses and/or written reports
- **If** the Sheriff finds the grounds established, they will refer the matter to a future children's hearing.

6.61 The Children's Reporter can assist with an explanation of next steps, if required.

d. Hearing to consider a further Interim Compulsory Supervision Order or interim variation of a Compulsory Supervision Order pending the outcome of the proof application [\(s96\)](#)

6.62 An Interim Compulsory Supervision Order or an interim variation of a Compulsory Supervision Order may last for a maximum of 22 days. The Children's Reporter may arrange another hearing to consider whether a further interim order or interim variation should be made where the proof application is unlikely to be decided prior to the expiry of the order or variation.

6.63 The options available to this hearing are:



Options

1. To make a further Interim Compulsory Supervision Order or interim variation to the Compulsory Supervision Order, with or without a variation to the measures attached or a new measure added. Before grounds of referral are established the hearing may only issue a **maximum of three orders**. There is no limit on the number of interim variations a hearing can make to a Compulsory Supervision Order if one is already in place.

2. To not make a further Interim Compulsory Supervision Order or interim variation to the Compulsory Supervision Order. 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. Where the decision relates to an Interim Compulsory Supervision Order there will be no order in place after the hearing. Where the hearing has not made a further interim variation, the terms of the original Compulsory Supervision Order will remain in force.

6.64 While the application for proof is pending, children's hearings can issue a maximum of three Interim Compulsory Supervision Orders. If the proof is likely to last longer, the Children's Reporter can apply to the Sheriff for an extension to the Interim Compulsory



Supervision Order, with or without variation, if required. There is no limit to the number of extensions which may be granted by the Sheriff at this stage.

6.65 Even if the children’s hearing does not make an Interim Compulsory Supervision Order, the Sheriff may make an Interim Compulsory Supervision Order at any point during the proof proceedings.

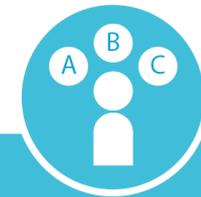
e. Established grounds hearing where the Sheriff has made an Interim Compulsory Supervision Order or interim variation to the Compulsory Supervision Order which requires the child to reside at a place of safety [\(ss118-119\)](#)

6.66 Where a hearing has directed the Children’s Reporter to make an application to the Sheriff for proof and the Sheriff has found the ground, or grounds, to be established, the Sheriff must direct the Principal Reporter to arrange a hearing to decide whether a Compulsory Supervision Order should be made, or reviewed, in relation to the child. This is known as an ‘established grounds hearing’.

6.67 An Interim Compulsory Supervision Order or interim variation of a Compulsory Supervision Order made by a hearing (or a Sheriff) will expire when the Sheriff makes a decision on the proof application. The Sheriff must therefore consider whether it is necessary that he/she make a further interim order or interim variation. The Sheriff may also make an Interim Compulsory Supervision Order (ICSO) or interim variation of a Compulsory Supervision Order for the first time.

6.68 Where the Sheriff makes an order or variation which requires the child to reside at “a place of safety” a children’s hearing must be held **within three days** of the child beginning to reside at the place of safety.

6.69 This hearing will be arranged by the Children’s Reporter at short notice. Panel Members, the child or relevant persons may not receive papers until immediately before the hearing. It may not be possible to have a full discussion or make a substantive decision at this hearing given the lack of notice and likelihood of participants, including Panel Members, not having full information or papers in advance of the hearing.



6.70 The options open to this hearing are:



Options

1. To defer the hearing and issue a further Interim Compulsory Supervision Order or interim variation to the Compulsory Supervision Order. Where the hearing is satisfied that it is necessary for the child's protection, treatment, guidance or control. If issuing an Interim Compulsory Supervision Order the hearing must consider what measures to attach.

2. To defer the hearing and not issue a further Interim Compulsory Supervision Order or interim variation to the Compulsory Supervision Order. Where the hearing is satisfied that a further Interim Compulsory Supervision Order or interim variation of an existing Compulsory Supervision Order is not necessary for the child's protection, treatment, guidance or control the hearing should not issue a further order or variation.

f. Accepted or established grounds hearing ([s119](#))

6.71 If a hearing is deferred after grounds have been accepted, or where a Sheriff has directed a children's hearing following the establishment of grounds referred for proof, the Children's Reporter will arrange a children's hearing to consider the case.

6.72 The purpose of this hearing is to consider the child's whole circumstances and decide if a Compulsory Supervision Order is necessary for the child's protection, guidance, treatment or control and, if so, what measures are required as part of the order.

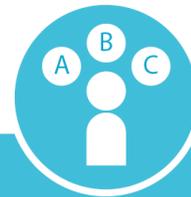
6.73 The options below relate to where the child is not currently subject to a Compulsory Supervision Order. **Where the child is already subject to a Compulsory Supervision Order, the section relating to a [review hearing](#) should be consulted, since the new grounds for referral, if accepted or established, prompt a review of the existing Compulsory Supervision Order.**

6.74 The options open to this hearing are:



Options

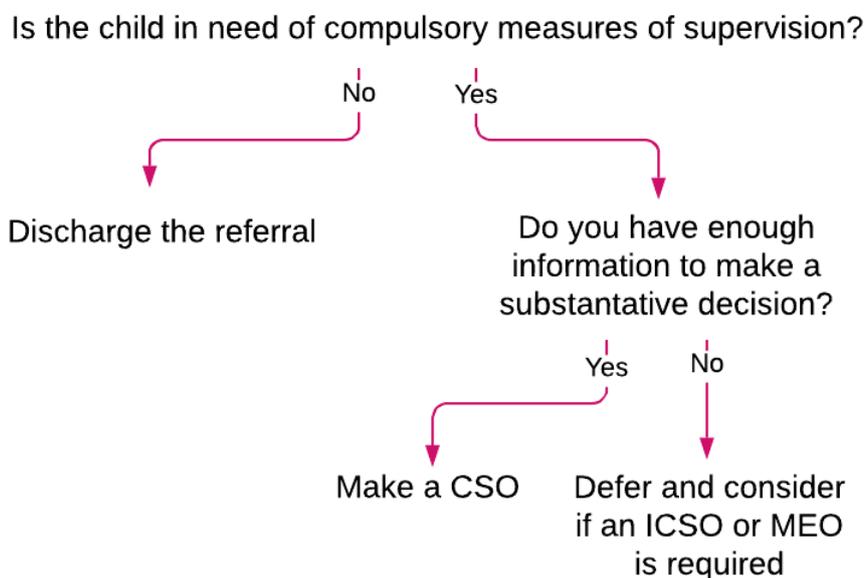
1. Discharge the referral. Where, following discussion, the hearing is satisfied that a CSO is not required for the child, they should discharge the referral. This will mean that the child will not attend any further hearings unless referred to another grounds hearing by the Children's Reporter.



2. Make a Compulsory Supervision Order, following the requirements in [Chapter 3](#).

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. Where a hearing is considering deferring a decision to make a Compulsory Supervision Order, there is a duty to consider whether any additional reports are required.

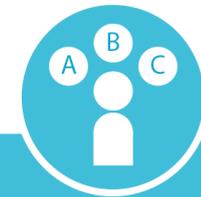
Options at an Accepted or Established Grounds Hearing



g. Review hearing [Part 13](#)

6.75 Where a Compulsory Supervision Order is in place for a child, the Principal Reporter will arrange a children’s hearing to review that order in the following circumstances:

- within three months prior to the end of the “relevant period”
- where the previous hearing made a decision to have an early review
- within three months of a secure authorisation being made
- when requested to do so by a child or relevant person and three months has passed since the last hearing
- where the relevant person proposes to take the child who is subject to a Compulsory Supervision Order to live outside Scotland
- when requested to do so by the implementation authority because:
 - the Compulsory Supervision Order should be varied or terminated
 - the Compulsory Supervision Order is not being complied with



- the authority intends to make an application to court in relation to permanence, place of adoption or is aware that an adoption order application is being or has been made by someone else
- a child who has a specified residence on their Compulsory Supervision Order is transferred to another place on an emergency basis
- when required to do so by a Sheriff, when an application for an antisocial behaviour order has been made or where the child has pled guilty to, or been found guilty of, an offence
- where the Children's Reporter has referred a new ground or grounds for referral to the hearing and these grounds are accepted or established

6.76 A review hearing must be arranged when a Compulsory Supervision Order will expire within 3 months including when a child is approaching their 18th birthday. At that review hearing, it is possible for the hearing to continue the Compulsory Supervision Order but SCRA will not arrange a further review hearing before their 18th birthday unless the hearing requests an early review for that purpose.

6.77 The chapter on [Permanence](#) should be consulted when preparing for review hearings to enable a child to reach stability as quickly as possible. Following a full consideration of the case, taking account of the reason for the review hearing and the child's circumstances, there are **five options** open to the review hearing:



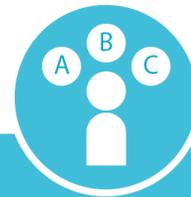
Options

1. Continue the Compulsory Supervision Order
2. Vary the Compulsory Supervision Order
3. Continue and vary the Compulsory Supervision Order
4. Terminate the Compulsory Supervision Order
5. Defer the hearing

Substantive decisions on review of a Compulsory Supervision Order

1. Continue the Compulsory Supervision Order

- Where the hearing is satisfied that the Compulsory Supervision Order 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 Compulsory Supervision Order.**



- The relevant period the order is 'continued' for will normally be a year. If the hearing is satisfied that the child should attend a further hearing within a year, it should make a decision to ask for an [early review](#) within a particular time frame.

2. Vary the Compulsory Supervision Order

- Where the hearing is satisfied that the Compulsory Supervision Order 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 Compulsory Supervision Order.
- A variation may change one of the existing measures attached to the Compulsory Supervision Order, insert a new measure or both.
- A variation may include a change to the implementation authority.



Example

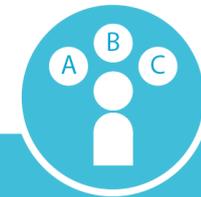
A Compulsory Supervision Order is due to expire in December 2022. A children's hearing takes place in April 2022 and decides to vary the Compulsory Supervision Order. The Compulsory Supervision Order would still expire in December 2023. The child must attend a further children's hearing before then. Only if the children's hearing continued and varied the Compulsory Supervision Order, specifying the relevant period to be one year, would the expiry date of the order move to April 2023.

3. Continue and vary the Compulsory Supervision Order

- Where the hearing is satisfied that the Compulsory Supervision Order 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 Compulsory Supervision Order.
- A variation to the Compulsory Supervision Order includes both a variation to any of the existing measures, removing a measure and also the insertion of a new measure – a variation also includes a change to the implementation authority.
- The relevant period the order is 'continued' for will normally be a year. If the hearing is satisfied that the child should attend a further hearing within a year, it should make a decision to ask for an [early review](#) within a particular time frame.

4. Terminate the Compulsory Supervision Order

- Where the hearing is satisfied that the **Compulsory Supervision Order is no longer required** for the child's protection, treatment, guidance or control it must terminate the Compulsory Supervision Order. There may no longer be the same levels of



concern for the child or there may be issues of concern but these can be resolved without the need for compulsory measures of supervision.

- **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.**
- Panel Members should not terminate a Compulsory Supervision Order solely because a child or young person is failing to co-operate or take up help offered. In those circumstances it is likely that they need more, and different, support, rather than less support. The section on [transitions](#) can be referenced when considering terminating a CSO for an older child.

Interim decisions on review of a Compulsory Supervision Order

5. Defer the hearing to another day.

6.78 Where a children’s hearing has decided to **defer** a decision to another day, Panel Members may make interim decisions about the operation of an existing Compulsory Supervision Order:

- an **interim variation** to the Compulsory Supervision Order, if the hearing considers it necessary as a matter of urgency.
- an **interim continuation** of the Compulsory Supervision Order until the next children’s hearing – this would be required where, for example, the Compulsory Supervision Order would expire prior to the next children’s hearing.
- an **interim continuation** of the Compulsory Supervision Order until the next children’s hearing **with** an **interim variation** to the Compulsory Supervision Order.
- where a hearing is considering deferring a decision to make a Compulsory Supervision Order, there is a duty to consider whether any additional reports are required to enable them to make a substantive decision at the next hearing.

6.79 A Compulsory Supervision Order can be varied on an interim basis by making an **interim variation to the Compulsory Supervision Order**. Where a review hearing cannot reach a substantive decision, but is satisfied that **as a matter of urgency it is necessary** for the protection, guidance, treatment or control of the child, the hearing may make an interim variation to the order. An interim variation is not an order in itself, but rather a short term variation to the existing Compulsory Supervision Order. The interim variation would have effect for the ‘relevant period’ which is whichever occurs first; the next children’s hearing in relation to the child; the disposal of the proof application by the Sheriff; a day specified in the order; a period of 22 days.

6.80 On deferral of a hearing, the hearing can decide to extend a Compulsory Supervision Order to the next children’s hearing, often called an **interim continuation**. This power might typically be used where the order will shortly expire but there is a need to defer the hearing.



For example, if the hearing does not have enough information to make a substantive decision but there is no need, or insufficient urgency, for an interim variation of the Compulsory Supervision Order and the Compulsory Supervision Order will otherwise expire before the next scheduled hearing. Although not legally required, it is good practice for a hearing to specify the time frame for the next hearing, for example, 'by the end of May' or 'in three months'.

6.81 It is possible to make an **interim variation to the Compulsory Supervision Order** at the same time as an **interim continuation** if the hearing is satisfied that it is necessary **as a matter of urgency** for the protection, guidance, treatment or control of the child. For example, if a review hearing is deferred because the main carer for the child has been hospitalised suddenly, an interim continuation would be appropriate. In this scenario, the carer would be temporarily unable to look after the child, therefore an interim variation of the existing Compulsory Supervision Order would enable the local authority to arrange that the child stay with respite foster carers on a temporary basis.

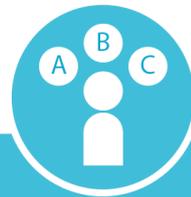
6.82 There is no limit on the number of times a Compulsory Supervision Order can be varied on an interim basis or extended until a future children's hearing. Nevertheless hearings should consider the impact on the child of successive deferred hearings, especially with interim variations to Compulsory Supervision Orders which last only a maximum of 22 days.

Secure accommodation review

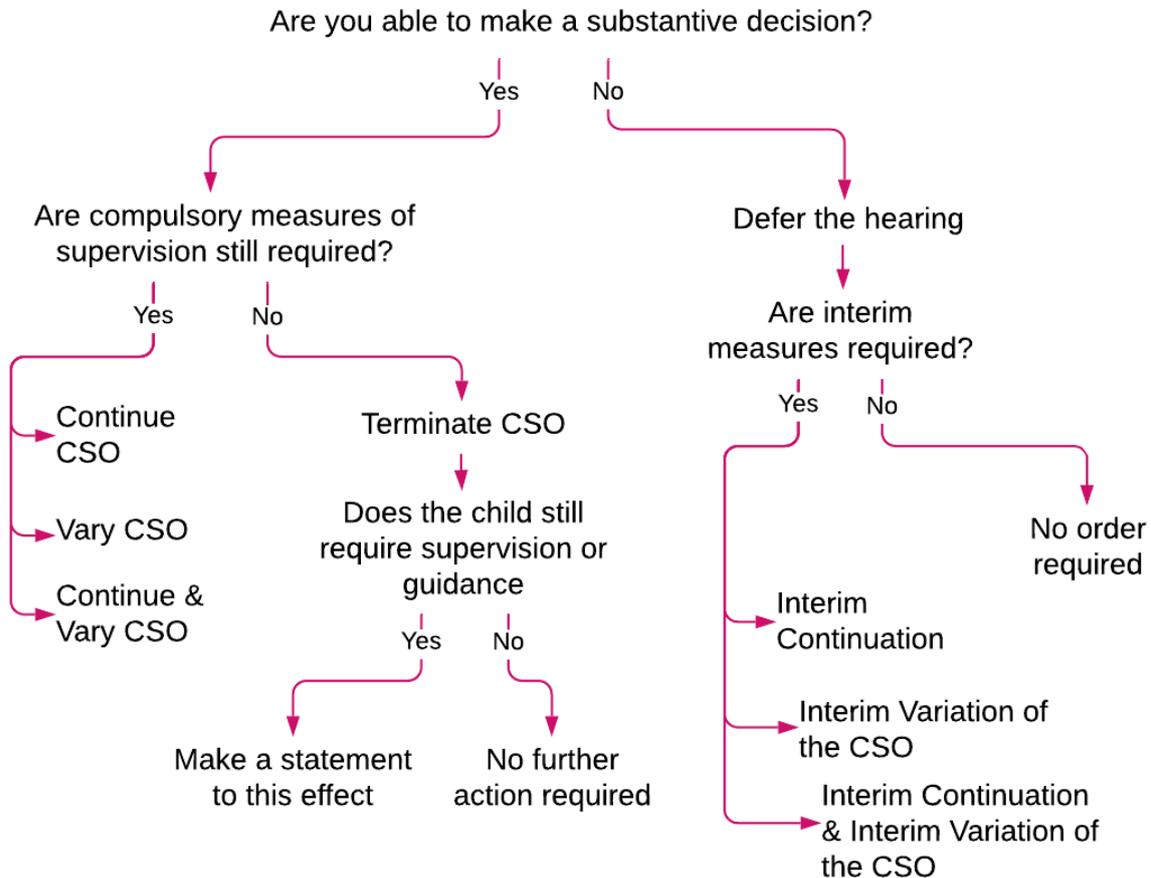
6.83 A child is automatically entitled to legal aid for representation at a hearing to review a secure accommodation authorisation. If the child does not have a Solicitor present, Panel Members should check with the child whether they have had the opportunity to have legal assistance either before, or during, the hearing.

6.84 If the child has not had such an opportunity, Panel Members should consider deferring the hearing to another day for the child to seek legal assistance. If the child indicates that they have had the opportunity of having legal assistance but does not want to have a Solicitor present at the hearing with them, then Panel Members may proceed to make a substantive decision.

6.85 When considering whether secure accommodation is still required, Panel Members must apply the test for secure accommodation. Further information can be found [here](#).



Review Hearings

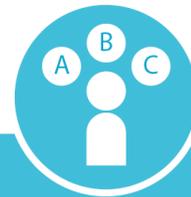


h. Application for a permanence order is before the Sheriff Court at the time of review

6.86 Where a hearing is reviewing a Compulsory Supervision Order and a [permanence order](#) application has been lodged with the court, the hearing is **not able to vary the terms of the Compulsory Supervision Order without the express permission of the court considering the permanence order application**. The need to make changes to an existing order may arise for example when the hearing wish to move a child to a prospective adopter’s residence or alter contact arrangements.

6.87 This prohibition only applies where a **variation** is being considered by the hearing. The Compulsory Supervision Order can be continued without variation.

6.88 Where the hearing wishes to vary an existing order, Panel Members must defer the hearing and prepare a report for the Sheriff (often termed a “s95 report” as the requirement is laid out in [section 95 of the Adoption and Children \(Scotland\) Act 2007](#)),



detailing the variations they consider necessary. The Children’s Reporter will forward this report to the Sheriff with the decisions and reasons of the children’s hearing which should clearly explain why a variation is required.

6.89 It is important that the chairing member ensures that the child and relevant persons understand that the hearing has made no change to the existing Compulsory Supervision Order. It therefore remains in place exactly as before the hearing. Any variations to the order proposed by the hearing can only be made if the Sheriff grants permission and these will be made by a further hearing.

6.90 This restriction does not prevent the hearing from making an interim variation to the Compulsory Supervision Order in circumstances of **urgent necessity**. For example, if a foster placement has broken down irrevocably, the panel may wish to vary the Compulsory Supervision Order on an interim basis to keep the child safe in an alternative placement in addition to writing to the Sheriff to request permission to vary the order officially.

6.91 If the Sheriff approves the request to vary the Compulsory Supervision Order, another hearing will be called and that panel **must** vary the Compulsory Supervision Order in accordance with the Sheriff’s authorisation. No additional changes are possible; if more variations are required to the Compulsory Supervision Order, another s95 report will be required.



Example

REPORT BY CHILDREN’S HEARING TO THE COURT UNDER SECTION 95(2) OF THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

To: The Sheriff Clerk,
Anytown Sheriff Court,
High Street,
Anytown

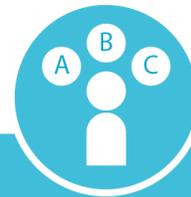
Court Ref. No: B63/14

A Children’s Hearing in relation to:

Name: John Jones
Date of Birth: 03/04/2012
Address: 123 Some Street, Anytown

Proposes to:

- make a Compulsory Supervision Order
- vary under section 138(3)(b) of the Children’s Hearings (Scotland) Act 2011 an existing Compulsory Supervision Order



Provides the court with a copy of the reasons for the hearing's decision and the report of the proceedings of the children's hearing prepared in accordance with Rule 77 of the Children's Hearings (Scotland) Act 2011 (Rule of Procedure in Children's Hearings) Rules 2013, as well as the following information.

(a) The terms of the proposed Compulsory Supervision Order

1. John is to reside with Mr and Mrs Smith at 93 Mid Street, Anothertown.
2. John is to have contact with his mother, Jane Jones, a minimum of twice per month for 2 hours.
3. Anytown local authority is to provide supervision and support to John.

(b) The terms of any proposed variation of the current Compulsory Supervision Order dated: *(copy attached)*

1. The measure that John is to reside with Miss James at 33a Top Place, Anytown is to be varied to John is to reside with Mr and Mrs Smith at 93 Mid Street, Anothertown.

Signed by: *Julie McGregor*
Chair of the Children's Hearing

On: 15/07/2022

At: The Children's Hearings Centre, Low Avenue, Anytown.

i. Adoption or permanence order advice hearing ([ss131\(2\)\(c\); \(d\); \(e\)](#))

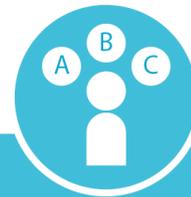
6.92 The implementation authority must ask for a review of a Compulsory Supervision Order where the authority:

- intends to make an application for a permanence or adoption order;
- intends to place the child for adoption;
- knows that another person is making, or has made, an application for an adoption order.

6.93 As well as providing advice to the Sheriff, the hearing **must** also review the Compulsory Supervision Order, and the options open to the hearing in this respect are as detailed in the section on [review hearings](#).

6.94 The purpose of this children's hearing is to provide advice to the Sheriff and Local Authority in relation to the proposed application. The key question is whether the hearing would support this course of action for the child.

6.95 It is essential that the discussion around any proposed permanence plans, necessary to inform the provision of the hearing's advice to the Sheriff, does not determine the outcome of the hearing's review of the Compulsory Supervision Order. For example contact with the child's parent should not be reduced solely in order to further the local authority's plan for permanence for the child, even if the hearing's view is that permanence is the right



option for the child. Therefore the hearing's discussion should be conducted in separate parts:

1. review the Compulsory Supervision Order

2. discuss and provide the advice to the Sheriff (once a decision has been reached about the Compulsory Supervision Order)

Advice

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

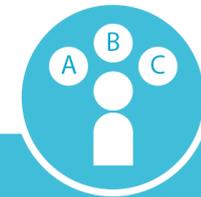
- Does the hearing support permanence plans for the child? Why does the hearing consider it is best for the child not to live with one or both parents for the rest of their childhood?
- Does the hearing support the way in which permanence for the child is being proposed, e.g. through a permanence order, with or without the authority to adopt, or an adoption order? Why?

6.97 In general terms, more detail should be provided to the Sheriff in advice from the hearing than would usually be included in the hearing's reasons for decisions. In answering the two key questions, Panel Members should structure their advice to include the following information:

- The child's history within the children's hearings system;
- The hearing's opinion of the parents' capacity to meet the child's needs and the evidence on which the hearing's view is based;
- The long term plan to meet the child's need for safety, stability and consistency, for example how the proposed order would benefit the child, or not;
- Whether the court should consider terminating the Compulsory Supervision Order if the Permanence Order is granted;
- Any views on whether ancillary measures should be included in the Permanence Order, for example in relation to contact; and
- Post adoption contact if adoption is being considered.

6.98 At the end of the hearing, in addition to completing the Record of Proceedings, the chairing member will prepare the written advice which the hearing wishes to give to the Sheriff in a prescribed form. The Children's Reporter will send this form to the Sheriff Court for the Sheriff's consideration, and send a copy to the implementation authority.

6.99 It is important that Panel Members make sure that the child, if of an age to understand, and relevant persons present understand that the information provided to the Sheriff is advice only. The Sheriff is not required to follow the hearing's advice.



6.100 The hearing's decision in relation to the review of the Compulsory Supervision Order can be appealed. The terms of the hearing's advice to the Sheriff cannot be appealed.

6.101 As with any review hearing, Panel Members have the option to defer the hearing which will delay the giving of advice and delay the child progressing to the next stage in the process.



Example

REPORT IN CIRCUMSTANCES RELATING TO PERMANENCE ORDER OR ADOPTION UNDER S.141(2) OF THE CHILDREN'S HEARINGS (SCOTLAND ACT 2011)

A Children's Hearing in relation to:

Name: David McGuigan

Date of Birth: 14/05/2017

Address: 19, High Street, Anytown

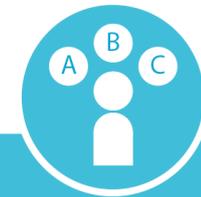
Having considered the child's case in relation to the proposed:

- application under section 80 of the Adoption and Children (Scotland) Act 2007 for a permanence order
- application under section 92 of the 2007 Act for variation of such an order
- application under section 93 of the 2007 Act for amendment of such an order
- application under section 98 of the 2007 Act for revocation of such an order
- placing for adoption
- application under section 29 or 30 of the 2007 Act for an adoption order in respect of the child

Provides the advice set out below

ADVICE

1. There is an extensive history of neglectful parenting by David's parents of both David and his two brothers (aged six and eight). There is also a history of substance misuse



by the parents, domestic violence and violence between family members, which David and his siblings have been exposed to.

2. David's two older brothers have been permanently removed from their parents' care and are now living with adoptive families.
3. David's parents do not accept the extent of these issues and continue to minimize the impact of their behaviours on David. Both parents regularly test positive for illicit drug use and the Police are regularly called to the family home following reports of domestic violence on the part of both parents.
4. The relationship between David's parents and the local authority is extremely poor, despite the extensive efforts of David's allocated social worker, and advice is only accepted when the parents choose to accept it. As a result it would be very difficult to monitor David's development if he were to be living at home.
5. Contact between David and his parents is currently arranged once per week for two hours. David's parents have missed approximately 30% of contact sessions arranged over the past year.
6. It is essential that David's future care is secured in a way to promote his well-being throughout his childhood and beyond. David's parents have demonstrated consistently their inability to prioritise David's needs above their own.
7. Given David's age the hearing considers that it would be in David's best interests for him to be adopted as soon as possible. The permanence order with authority to adopt should therefore be granted with the minimum of delay.
8. It would be in David's interests to have letterbox contact with his parents to aid his understanding of his birth family. The hearing also considers it in David's interests to maintain face to face contact with his elder siblings, which presently takes place four times per year. This will allow David to continue to build a relationship with his siblings.

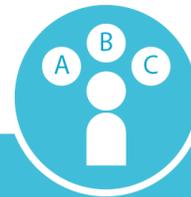
Signed by: *Sarah Webster*
Chair of the Children's Hearing

On: 3rd June 2022

At: The Children's Hearings Centre, 1 West Street, Anytown

j. Contact direction review hearing [\(s126\)](#)

6.102 A contact direction is any measure relating to contact in a Compulsory Supervision Order (CSO), Interim Compulsory Supervision Order, interim variation of a Compulsory Supervision Order or Medical Examination Order. This can be a measure which regulates the



duration or frequency of contact, specifies contact must be supervised or stipulates there should be no contact with a person.

6.103 Where the following applies, the Principal Reporter must arrange a further children's hearing within five working days after the date of a hearing:

- the hearing makes a decision in relation to a Compulsory Supervision Order or makes an interim Compulsory Supervision Order, Interim variation of a Compulsory Supervision Order or Medical Examination Order which will have effect for more than five working days;
- and**
- that order contains a contact direction;
- and**
- either a contact or permanence order is in force regulating contact between the child and another person (who is not a relevant person), or a request is made by a person, who is not a relevant person, who claims to have, or who has recently had, a significant involvement in the upbringing of the child.

6.104 It is not necessary that there be a link between the person the contact direction relates to and the person who has a contact or permanence order or claims to have, or recently have had, a significant involvement in the upbringing of the child. It is also not relevant whether the person was present at the original hearing or not.

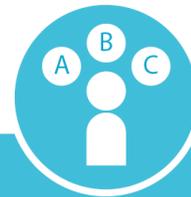
6.105 The purpose of the hearing is to review the contact direction and consider whether it should be varied in light of the existence of the contact or permanence order or the views of the person who has, or recently had, a significant involvement in the life of the child. A contact direction review hearing cannot review the order, or any measures attached other than the contact direction or directions.

Rights of attendance

6.106 The following individuals have the right to attend the hearing, but no duty:

- the child;
- relevant persons;
- the person who holds the contact or permanence order;
- any person who appears to the Children's Reporter to have, or recently had, a significant involvement in the upbringing of the child;
- where he or she has requested the hearing, the person who claims to have, or recently have had, a significant involvement in the upbringing of the child;
- an appointed Safeguarder.

6.107 These persons are not required to attend the hearing. This means that the hearing does not need to consider excusing a person who is not at the hearing. However, if absent,



Panel Members should ascertain whether the person had received effective notification of the hearing. The same individuals also have the right to receive papers for the hearing.

Request for the hearing

6.108 Where the hearing has been arranged at the request of a person who claims to have, or recently have had, a significant involvement in the upbringing of the child, the first decision the hearing will have to make is whether the person has had, or recently had, a significant involvement in the upbringing of the child. The criteria for [deemed relevant person status](#) should be consulted to help with this decision.

6.109 If the hearing is satisfied that the individual does not have, or has not recently had, a significant involvement in the upbringing of the child then the hearing must take no further action. If, however, the hearing is satisfied that the person meets this test the hearing must review the contact direction.

6.110 When reviewing the contact direction the following options are open to the hearing:



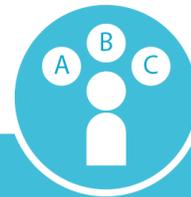
Options

1. To confirm the decision of the hearing.
2. To vary the contact direction.
3. To delete the contact direction.
4. To defer the hearing to another day. Wherever possible a substantive decision should be made at a contact direction review hearing. There may be some circumstances where it would be fundamentally unfair to proceed with the hearing. For example where the person who requested the hearing is prevented from attending, or a material report is not available to one or all of those entitled to it. In rare cases it may also be appropriate for the hearing to appoint a Safeguarder.

k. Further hearing following an appeal [\(s156\(3\)\(a\)\)](#)

6.111 Certain decisions of a children's hearing can be appealed by a child, relevant person or an appointed Safeguarder. **When considering the appeal, the Sheriff must consider whether the decision of the hearing was justified.** This is not the same as asking the Sheriff if he or she agrees with the decision.

6.112 Where the Sheriff is satisfied that the decision of the hearing was justified, he or she



must confirm the decision.

6.113 Where the Sheriff is satisfied that there has been a change in the child's circumstances since the date of the hearing or that the decision of the hearing is not justified, the Sheriff may do one or more of the following:

- require the Principal Reporter to arrange a children's hearing
- continue, vary or terminate any order, interim variation or warrant which is in effect
- discharge the child from any further hearing or other proceedings
- make an Interim Compulsory Supervision Order, interim variation of a Compulsory Supervision Order or issue a warrant to secure attendance

6.114 Where a further children's hearing is arranged following an appeal, within the hearing papers there will be either a note from the Sheriff indicating the outcome of the appeal, and the reasons for it, or a note from the Children's Reporter. The purpose of the hearing required by the Sheriff should be clearly indicated in either of these notes. Panel Members should approach the hearing accordingly. **The options open to the hearing will depend on the purpose of the original hearing subject to appeal. The other sections of this chapter of the manual should be consulted as appropriate.**

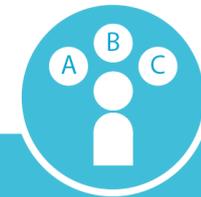
6.115 Unless indicated otherwise, the order made by the hearing which was the subject of the appeal, will remain in force until a substantive decision is made by the further hearing. If the Sheriff has decided to continue, vary, or continue and vary an existing Compulsory Supervision Order or make an Interim Compulsory Supervision Order, interim variation of a Compulsory Supervision Order or warrant to secure attendance there will be a copy of this order, and the measures attached within the hearing papers. If there is any uncertainty, the Children's Reporter will be able to clarify the status of any orders at the start of the hearing.

I. Suspension hearing [\(s158\)](#)

6.116 Where an appeal is made against a hearing decision to make, vary, continue or terminate a Compulsory Supervision Order, the person making the appeal can ask the Principal Reporter to arrange a children's hearing to consider whether the decision of the hearing should be suspended pending the outcome of the appeal.

6.117 The Children's Reporter must arrange this hearing as soon as practicable after the request is made, which will mean that the hearing will be arranged at very short notice. The only notification requirement in the 2013 Rules is that the Children's Reporter notify the hearing "as soon as practicable" in advance of the hearing.

6.118 The purpose of this hearing is to consider whether the decision of the previous hearing in relation to the Compulsory Supervision Order should remain in place pending the outcome of the appeal. 'The decision' is the decision of the hearing to make, vary, continue



or terminate a Compulsory Supervision Order, and not a particular measure attached to the order in isolation.

6.119 Where the person who has requested the suspension hearing fails to attend the hearing, the hearing may (although is not required to) take no further action.

6.120 Following discussion with the child, relevant persons and any appointed Safeguarder present there are two options open to this hearing:



Options

1. To suspend the decision of the hearing now appealed, pending the outcome of the Sheriff's decision. If the hearing considers that the decision should be suspended, the situation for the child will be as if the appealed decision had not been made. Panel Members should be alert to the expiry dates of any previous orders when considering whether to suspend a decision.

2. To retain in place the decision of the hearing now appealed. Pending the outcome of the appeal, the child will remain subject to the decision of the hearing now appealed.

6.121 There are no rights of appeal against the decision made. If a hearing considers it needs further information or is unable to make a decision, it is possible for the hearing to defer consideration to another hearing on another day if necessary.

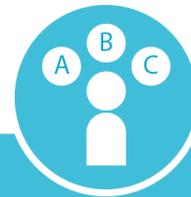
m. Custody hearing

6.122 Where the Police have charged a child with an offence they have three options:

- release the child pending a report to the Children's Reporter and the Procurator Fiscal;
- release the child with an undertaking to appear in court at a later date;
- keep the child in custody.

6.123 Where the child is kept in custody by the Police, the Police must inform the Principal Reporter. When the Children's Reporter has received the information (and the Procurator Fiscal has agreed that the offence will be dealt with by the Children's Reporter) there are three questions the Children's Reporter has to determine:

- Should the child continue to be detained in a place of safety pending the Children's Reporter's investigation?



- Following the investigation, should a grounds hearing be arranged for the child?
- If a hearing is to be arranged, should the child be liberated pending the grounds hearing?

6.124 If a grounds hearing is to be arranged, and the child is still detained in custody, the hearing must be held within three days of the Principal Reporter receiving the information. In practice, the Children's Reporter will try wherever possible to arrange a children's hearing as soon as possible after the child is first detained in Police custody. This hearing will therefore be arranged at very short notice. In these circumstances, it is unlikely that full papers will be available for the hearing.

6.125 The hearing is a [grounds hearing](#) and therefore the relevant section should be consulted.

6.126 If grounds are accepted by the child and relevant persons present, it may not be appropriate to proceed to a substantive decision given that the hearing will have been arranged at short notice and the likely lack of papers available to the hearing.

Legal assistance

6.127 A custody hearing is one of the hearings where the child is automatically entitled to legal aid for the assistance of a Solicitor. Where the child is not accompanied by a Solicitor at the hearing, Panel Members should ask the child whether they have been given the opportunity to be represented by a Solicitor.

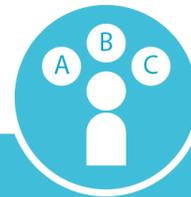
6.128 If they have not, Panel Members should consider a short adjournment of the hearing to allow arrangements to be made, if possible. The welfare of the child is the paramount consideration and Panel Members should consider the immediate needs of the child in these circumstances when deciding whether to proceed with the hearing or to defer. If Panel Members defer without putting the grounds to the child, there is no option to put in place interim measures.

6.129 If the child has been given the opportunity, but has chosen not to be represented, Panel Members may proceed with the hearing.

n. Emergency transfer ([s143](#))

6.130 When a child is residing in a place specified by a measure in a Compulsory Supervision Order, there may be occasions when the local authority transfers the child to another place without the pre-authorisation of a hearing. This will be in situations where a move was required as a matter of urgency; for example, where a placement has broken down irrevocably or it is in the best interests of the child to move them immediately.

6.131 The Children's Reporter must arrange a [review](#) hearing within three working days,



beginning with the day on which the child is transferred.

6.132 Due to the short nature by which the hearing has been arranged, Panel Members, the child and relevant persons will not have had sufficient information for a substantive decision to be reached. The hearing should focus on the short-term needs of the child to ensure they are safe and supported in an appropriate placement until a full review hearing can be arranged. This may be via an interim variation to the Compulsory Supervision Order.

o. Emergency transfer to secure accommodation

6.133 A child who is:

- subject to a Compulsory Supervision Order, Interim Compulsory Supervision Order, Medical Examination Order or warrant to secure attendance which does not contain secure authorisation;
- being provided with accommodation by the local authority on a voluntary basis, or
- the subject of a permanence order.

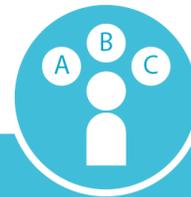
can be placed in secure accommodation, without the authority of a children's hearing. To make this decision, the Chief Social Work Officer and head of unit must be satisfied that the conditions for placing a child in secure accommodation are met and that placement in secure accommodation is in the child's best interests. The Chief Social Work Officer must also be satisfied that the particular residential establishment providing the secure accommodation is appropriate to the child's needs.

6.134 The Chief Social Work Officer must inform the Principal Reporter within 24 hours of the child being placed in secure accommodation. The Principal Reporter is required to arrange a hearing within 72 hours of the child being placed in secure accommodation.

6.135 The purpose of this hearing is to consider the circumstances which led to the child being placed in secure accommodation and consider what, if any, interim measures are required prior to a full determination of the child's case. The purpose of the hearing will depend on whether the child is subject to an order, and, if so, what type of order. The relevant section should be consulted.

6.136 At such short notice, the hearing is unlikely to have sufficient reports or other information for Panel Members to be in a position to make a substantive decision at this stage.

6.137 The hearing must consider whether the criteria for placing the child in secure accommodation are met and whether it is necessary for the child to be placed in secure accommodation. The test for [secure accommodation](#) should be applied in Panel Members' decision-making.



6.138 Where the child is *not* subject to a Compulsory Supervision Order, Interim Compulsory Supervision Order, Medical Examination Order or a warrant to secure attendance, the emergency hearing will be a [grounds hearing](#). Panel Members should consult that section. Where the Children’s Reporter is satisfied that it is not reasonably practicable to arrange the grounds hearing within 72 hours, there is an additional period of 24 hours in which to arrange the hearing.

6.139 It is **not appropriate** for a hearing to proceed to make a substantive decision given the emergency nature of the hearing and the short notice at which it will be arranged.

Legal assistance

6.140 Where a secure accommodation authorisation is likely to be considered by a hearing, the child will be automatically entitled to legal aid for the assistance of a Solicitor at the hearing.

6.141 The fact that a child has not spoken with a Solicitor does not prevent the hearing from making an interim decision about secure authorisation. However a substantive decision **should not be made** if the child has not had the opportunity of legal representation at the hearing.

6.142 The hearing has the following options depending on the child’s status and the nature of the hearing (whether the child is already on a Compulsory Supervision Order, Interim Compulsory Supervision Order or is not on an existing order and this is a grounds hearing):

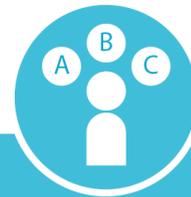


Options

1. To defer the hearing and issue an Interim Compulsory Supervision Order or make an interim variation of an existing Compulsory Supervision Order with secure authorisation if the hearing is satisfied that:

- as a matter of urgency an Interim Compulsory Supervision Order or interim variation of a Compulsory Supervision Order 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

2. To defer the hearing and issue an Interim Compulsory Supervision Order or make an interim variation of a CSO without secure authorisation. Where the hearing is satisfied that as a matter of urgency an Interim Compulsory Supervision Order or interim variation of a Compulsory Supervision Order is necessary for the child’s protection treatment, guidance or control, the hearing may make such an order or Interim variation of an order.



3. To defer the hearing. Where this is the decision of the hearing, the child will remain subject to any legal order, for example a Compulsory Supervision Order, to which they were subject immediately before the hearing.

p. Advice to court where an antisocial behaviour order has been applied for in respect of the child ([s4 Antisocial Behaviour etc. \(Scotland\) Act 2004](#))

6.143 When an application is made to the Sheriff Court for an antisocial behaviour order (ASBO), before making the order the Sheriff must first ask for advice from a children's hearing. This applies whether or not the child is subject to a Compulsory Supervision Order.

6.144 The purpose of the hearing is to advise the Sheriff whether the ASBO is necessary for the purpose of protecting persons from further antisocial behaviour by the child.

6.145 'Antisocial Behaviour' is defined as follows:

A person:

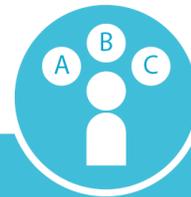
- (a) acts in a manner that causes or is likely to cause alarm or distress; or
- (b) pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as them.

6.146 The advice the hearing provides to the court is not open to appeal. The child and their representative will be able to make representations about the terms of the hearing's advice to the court when the advice and disposal is considered. The chairing member should also make clear to the child, and relevant persons, if present, that the hearing advice is not binding on the court.

6.147 Where the child is subject to a Compulsory Supervision Order, the hearing arranged to provide advice to the court **cannot** review the Compulsory Supervision Order, unless this has been requested in advance by one of the hearing participants entitled to do so. The only option therefore open to the hearing is to provide advice to the Sheriff.

q. Advice to court where the child has been found guilty of, or pleaded guilty to, a criminal offence ([s49 Criminal Procedure \(Scotland\) Act 1995](#))

6.148 Where a child has been prosecuted in a criminal court and been found guilty of, or



pleaded guilty to, the offence, a children's hearing may be asked to provide advice to the court about what the court should do as a result of the offence.

6.149 Where a child is subject to a Compulsory Supervision Order or Interim Compulsory Supervision Order a Sheriff **must** ask for the advice of a hearing. Where the person is aged 17 years or under and not subject to a Compulsory Supervision Order, asking for advice is within the discretion of the Sheriff. Where the child appears in the High Court of Justiciary (where the offence is particularly serious) it is always within the discretion of the court whether to ask a children's hearing for advice, regardless of whether the child is subject to a Compulsory Supervision Order or not.

6.150 The purpose of the advice hearing is to provide advice to the court about options for disposal of the offence. The key decision for the hearing is whether they consider it appropriate for the court to remit (or send) the offence to a children's hearing for a decision to be made or whether it is more appropriate that the child is sentenced by the court.

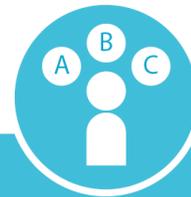
6.151 When considering this advice, the hearing may wish to consider the following factors:

- Is the child currently subject to a Compulsory Supervision Order, or have they recently been?
- How is the child cooperating with their child's plan? How have they cooperated in the past?
- What more can be put in place by the children's hearing and/or the implementation authority to support the child? Are there any further plans in place the court should be aware of?
- The nature of the offence of which the child has been convicted. Does the child appear to have any remorse for the offence? Have any contributing factors to the offence (for example substance misuse, peer group pressure) been addressed, or are they in the process of being addressed?

6.152 When considering the advice, Panel Members should consider the [Whole Systems Approach](#) to children and young people who have committed offences. Amongst other aspects, this approach means that the fact that a child is aged 16 years or over should have no bearing on what support is available, or not available, to the child. The individual child's circumstances should be considered and a tailored package of multi-agency support provided accordingly. The age of the child should not, therefore, be a factor in the advice provided to the court.

6.153 The chapter on [Improving Outcome for Older Children](#) should be consulted before any advice to court hearing.

6.154 The advice the hearing provides to the court is not open to appeal. The child and their representative will be able to make representations about the terms of the advice to



the court when the advice and disposal is considered. The chairing member should also make clear to the child, and relevant persons, if present, that the hearing's advice is not binding on the court.

6.155 Where the child is subject to a Compulsory Supervision Order, the hearing arranged to provide advice to the court **cannot** review the Compulsory Supervision Order, unless this has been requested in advance by one of the hearing participants entitled to do so. The only option therefore open to the hearing is to provide advice to the Sheriff.



Example

REPORT BY CHILDREN'S HEARING OF ADVICE UNDER SECTION 49 OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

A Children's Hearing in relation to:

Name: Katie McDonald
Date of Birth: 30/9/2003
Address: 68 Queen Street, Anytown

On the request for advice by: Sheriff Donaldson, Anytown Sheriff Court

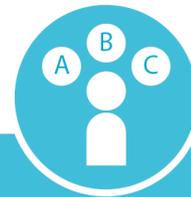
On: 12/6/2019

In terms of section [49(1)(b)]/[49(3)]/[49(6)] of the Criminal Procedure (Scotland) Act 1995 provides the advice set out below to assist the court.

ADVICE TO THE COURT

The children's hearing advises that Katie's case be remitted back to the Children's Hearings System for the following reasons:

1. Katie's offending behaviour is directly linked with a sharp deterioration in the stability of her family's circumstances. She is in need of significant support due to her complex family situation. Katie is in need of significant support which the Children's Hearings System is better placed to provide than the court.
2. Katie has taken on a parenting role in the household for her younger siblings and is regularly caring for them, taking them to school and providing meals when her parents are unable to due to their ill-health.
3. Her spate of offending has been recognised by Katie, her parents, the children's panel and all professionals involved with the family as a cry for help.
4. Since additional supports have been put in place to ease Katie's responsibilities at home and provide respite to the family, there has been no incidences of offending or negative behaviour from Katie.



5. Katie is remorseful about the impact her vandalism and shoplifting has had on other people and has been assessed as a very low risk of reoffending by those working with her.

Signed by: *Fraser Gregson*
Chair of the Children's Hearing

On: 20/6/2022

At: The Children's Hearings Centre, 1 West Street, Anytown



Summary

- Every children's hearing must consider the appointment of a Safeguarder unless there is one already appointed. A pre-hearing panel may, but is not required to, also consider the appointment of a Safeguarder.
- Panel Members may decide that the child would benefit from having one of the same Panel Members on their next hearing.
- Panel Members may decide that the circumstances of the case require an early review before the end of the order.
- The children's hearing can withhold certain information from the child or relevant persons.
- Legal aid is available automatically for a child to have the assistance of a Solicitor for a hearing in some situations. In other situations a child, relevant person and some others can apply for legal aid from the Scottish Legal Aid Board.
- If no education is being provided for a child who has been excluded or withdrawn from education, the National Convener can refer the matter to Scottish Ministers on behalf of the children's hearing.
- If the hearing is relating to a child who is offending or displaying anti-social behaviour, the hearing may require the Principal Reporter to consider applying for a parenting order.
- A hearing may be deferred for the written advice from the National Convener.
- A hearing may be deferred when the Panel Members do not have enough information to make a substantive decision. In exceptional circumstances, the hearing may request this information is sought by way of an independent report from a person not currently involved in the case.
- A hearing may decide the implementation authority is in breach of their duty to enforce the previous hearing's order or a measure contained in the order.



a. Appointment of a Safeguarder [\(ss 30- 34\) \(s82\)](#)

7.1 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.

7.2 A Sheriff is also required to consider the appointment of a Safeguarder. If a Safeguarder is appointed by a Sheriff, he or she is to be treated at any future hearings as a Safeguarder appointed by a hearing until the appointment ends, with the exception of the legal requirement to prepare a report for the hearing. In general terms, the appointment of a Safeguarder will end when a substantive decision is made by a children’s hearing which is not then appealed, or a decision is made by a Sheriff and no further appeal is made, or children’s hearing arranged, as a result of the Sheriff’s decision.

Role of the Safeguarder

7.5 There are **two** specific requirements of a Safeguarder:

1. Where a Safeguarder is appointed by the hearing, the Safeguarder must prepare a report for the hearing including **one or more** of the following:

- anything the Safeguarder thinks is relevant to the consideration of the hearing
- the child’s views so far as practicable in light of the age and maturity of the child
- any issue which the Safeguarder has been asked to consider by the hearing

The duty to produce a hearing report does not apply when the Safeguarder is appointed by the Sheriff, where the hearing is arranged at short notice or is a hearing to consider the need for a further interim order while grounds are at proof. **The Safeguarder has to submit a report within 35 days of appointment.** If they are unable to meet this deadline they may submit an interim report with an explanation of why they have been unable to complete a full report, the work outstanding, and an estimate of how long they require to complete the full report. The hearing, may, however make a decision when in receipt of the interim report if they do not consider it necessary to await the full report.

2. There is an expectation that, so far as reasonably practicable, the Safeguarder (appointed by either the hearing or the Sheriff) will attend the children’s hearing. This is not a legal requirement and therefore a hearing does not need to be deferred only because a Safeguarder is not present. However the absence of the Safeguarder may mean the hearing does not have sufficient information to make a decision and deferral of the hearing in these circumstances may be appropriate.

Appointment of a Safeguarder



7.3 A Safeguarder can only be appointed when the children’s hearing defers making a substantive decision. Before any decision to defer, Panel Members should consider whether any delay in proceedings would negatively affect the child’s welfare.

7.4 There are no specific criteria for the appointment of a Safeguarder by a hearing. The role of a Safeguarder, as defined in the 2011 Act, is **“to safeguard the interests of the child to whom the children’s hearing relates”**. 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

7.5 The hearing, or pre-hearing panel, only requires to be satisfied that the appointment of a Safeguarder is required for the child. The appointment of a Safeguarder may be made for a wide variety of reasons, but it should be necessary for reason(s) specific to the child’s individual circumstances. For example, there is no requirement to appoint a Safeguarder in every case where there is a conflict between parties or there is a gap in information. As orders should only be in place when voluntary measures won’t work, it is likely there will be a level of conflict in every case for Panel Members to manage. There are also many other ways to fill a gap in information, starting with those who are already working with the family.

7.6 Safeguarders are trained in children’s rights, the Children’s Hearings System and seeking children’s views. Some are legally trained, others come from social work or education backgrounds among many others. Other roles the Safeguarder may undertake separately, such as a solicitor, are not relevant to their role as a Safeguarder and they should not be expected to act in that manner. For example, a Safeguarder may have a social work background but, as a Safeguarder, they should not be expected to undertake an assessment of contact, or parenting capacity. In those circumstances, an [independent report writer](#) may be more appropriate.

7.7 Safeguarders have a remit and reporting duty that is widespread and broad. They can provide Panel Members with an overview of a family’s situation, elicit the child’s views, and propose recommendations but they are not experts and their views hold the same weight as all other participants at the hearing.

7.8 Reasons for appointment should be explained to the child and relevant persons present at the hearing and clearly recorded in writing in the reasons for decision.



Example

Decision: to appoint a Safeguarder s.30.

Reason: Hazel and Derek both have negative views of Social Work due to their own childhood experiences in care. It has consequently proven difficult to build a relationship with them and understand their family dynamics and living situation. This means that the hearing did not have a complete picture of Jodie's world today to make a decision about whether she is in need of compulsory measures of supervision. A Safeguarder has been appointed in the hope that an independent person, not connected to Social Work, will be able to work with the parents to understand Jodie's world and the concerns which have been raised.

Selection of Safeguarders

7.9 The 2011 Act created a national [Safeguarders Panel](#). When appointed by a hearing, pre-hearing panel or Sheriff, a Safeguarder will be allocated to the child from the National Safeguarders Panel. The National Safeguarders Panel is organised and administered by Children 1st, the voluntary organisation contracted by the Scottish Government to assist Scottish Ministers with the operation and management of the Safeguarders Panel.

7.10 Their website contains helpful information for explaining the role of a Safeguarder to children.

7.11 The allocation process for appointments is designed to be fair and transparent with appointments being allocated in a 'taxi rank' system. The exception to this is where a child has previously had a Safeguarder allocated. In those circumstances, all efforts would be made to re-allocate the Safeguarder already known to the child. Safeguarders will usually be allocated from within a particular local authority area and should be appointed within two working days of the decision being made. As the Safeguarders Panel is a national panel there will be flexibility to appoint a Safeguarder from any part of Scotland where, for example, there is no available Safeguarder from a particular area.

b. Panel Member continuity ([Rule 3\(1\)](#))

7.12 The 2013 Rules allow a children's hearing to make a request to the National Convener that one of the Panel Members be a member of the next children's hearing in relation to that child. This is known as 'Panel Member continuity'.

Process

7.13 Panel Member continuity is a decision of a children's hearing and therefore is a



decision which should be considered by Panel Members and made during the course of the children's hearing in front of all participants. The Children's Reporter will include this decision on the Record of Proceedings and the chair is required to give reasons as with any other hearing decision. There is no longer a separate form to complete and SCRA will inform rota managers immediately to allow them to facilitate the request. Separate authorisation from the National Convener is no longer required.

7.14 A request for continuity will normally only relate to one of the Panel Members and it is not possible to choose which one of the three will participate in the hearing.

7.15 Although every effort will be made to fulfil the request for continuity, it cannot be guaranteed therefore Panel Members should be clear to the child and relevant persons that continuity is not assured. For example, if none of the previous Panel Members are available for an upcoming Interim Compulsory Supervision Order renewal, an order which is about to expire will always take precedence over having a continuing member.

Benefits

7.16 Findings from the 'Better Hearings' research showed children, young people and practitioners agreed that their experience of hearings would be improved with a greater continuity of those involved in their hearings, including Panel Members.

7.17 Recent reviews of the family law court processes in both Scotland and England recommended more judicial consistency to ensure cases continue to progress and reduce the drift and delay for children in court proceedings. Similarly, Panel Member continuity may reduce the need for repetition and enable consistency of understanding and decision-making particularly in complex cases.

7.18 It is essential that a children's hearing is a fair and impartial tribunal. The Panel Member's role is to make decisions about whether a Compulsory Supervision Order is necessary and what particular measures are required to bring about improvement in a child's circumstances. Involving different Panel Members in decisions supports impartial consideration of a child's case and avoids the possibility that Panel Members could lose objectivity in cases with which they are familiar. Both of these elements may be undermined by excessive and/or inappropriate use of the Panel Member continuity provisions.

7.19 There should always be a balance between providing continuity and a need for fresh consideration of information at a hearing. Panel Member continuity may be a suggestion of any individual at the children's hearing or may be instigated by Panel Members themselves.

7.20 When considering whether it is appropriate to make a request, Panel Members should always consider the benefit to the child or relevant person(s) of having one of the Panel Members at the next children's hearing. This should be addressed in the reasons for requesting continuity.



7.21 Although not exhaustive some examples of where a request for continuity may be appropriate are:

- where having Panel Member continuity at the next hearing would help the child participate more effectively in the hearing
- where Panel Member continuity would help a relevant person participate more effectively in the hearing
- where Panel Members have requested additional information to allow them to make a substantive decision
- where a particularly complex issue was considered at the children's hearing and progress on this issue will be considered at the next children's hearing. While a full discussion will be required, a Panel Member's familiarity with the case can help prevent repeating discussions which have previously taken place
- where the decision of the hearing is to place, or continue to place, a child in secure accommodation.

7.22 There is no requirement to consider continuity at every hearing; it is one of many tools a Panel Member has at their disposal and will be particularly useful when a child or relevant person will have multiple hearings in a short space of time.



Example

Decision: To request Panel Member continuity rule 3(1)

Reason: The hearing ultimately could not reach a decision without Mr Campbell being present to provide his views on the plan for Alex. Both Alex and his mum requested a continuing member once they discovered the hearing's decision would be deferred until a later date. Children's hearings increase Alex's anxiety and a familiar face who he has already met and spoken to will be beneficial.

c. Early review [\(s125\)](#)

7.23 All children's hearings should serve a clearly identified purpose. All Compulsory Supervision Orders should last for one year unless there is good reason to review this earlier. Unnecessary additional review hearings can be unsettling for children and families, adding uncertainty. It would not be good practice to vary a Compulsory Supervision Order with only six months remaining without also continuing the order unless, for example, if a child is almost 18, the hearing may choose to set the expiry date for their 18th birthday.

7.24 Separately, the child and all relevant persons may request a review of the



Compulsory Supervision Order after three months and at any time thereafter and the implementation authority may request a review at any time.

7.25 In some circumstances, the hearing may request a review and should set a timeframe for that review. An exact date may be given but, in practice, the hearing may choose a more flexible timeframe i.e. ‘in six weeks’, ‘in early May’ or ‘before the end of the school term’.

7.26 The hearing should say why a review is needed in the reasons for the decision. It would not be a valid reason to request a review to “check how contact is working” or to “make sure the Compulsory Supervision Order is still required.” In these examples, the implementation authority have a legal duty to request a hearing if the order, or any measures it contains, require review.



Example

Decision: to require a review of the Compulsory Supervision Order dated 3 October 2022 by 3 December 2022 s.125

Reason: There have been long-standing concerns around the unsanitary conditions in the family home and no progress has been made on a voluntary basis. There is currently a lack of bedding for the children, a lack of fresh air (both parents smoke) and no toys or books for stimulation. While this level of neglect has not worsened, neither has it improved and it cannot continue long-term. A review in two months will provide the social work team time to work with the family on a statutory basis to improve the children’s situation or bring an alternative plan back to the next children’s hearing.

d. Withholding information

7.27 [Section 178](#) of the 2011 Act allows any information about the child to be withheld **if disclosure of that information would be likely to cause significant harm to the child**. This is most likely to occur when speaking to a child on their own and the child may provide information to Panel Members which may cause significant harm to the child if disclosed to others. For example, details about their home life which their parents do not want them to share, disclosures of abuse or neglect or that the child is pregnant.

7.28 Where information is shared with Panel Members in the absence of a relevant person, the hearing is required to provide an explanation to the relevant person of what was said while they were absent, whether by agreement or if excluded. If information is shared about the child or the child’s case during a hearing and Panel Members are satisfied



that disclosing the information to a specific person or persons would be likely to cause significant harm to the child, **they may decline to provide an explanation of what has taken place at the hearing. They may also decide to withhold such information in their written reasons.**

The test of ‘significant harm’ when deciding to withhold information

7.29 The test is that **disclosure of the information would be likely to cause significant harm to the child.** This is a high test and should be applied with care. There is no statutory definition of ‘significant harm’. Each child’s circumstances should be considered in relation to that individual child.

7.30 The likely harm to the child could be physical, emotional or psychological. It must be more than minor or trivial. The harm must be connected to the child, rather than any other person. The risk of significant harm to another person may be relevant but only in so far as the consequences of that harm would directly impact upon the child

7.31 Examples of where the significant harm test would be met include situations in which there is a direct threat of physical or emotional harm to the child; and/or there is a history of physical or emotional harm to the child by the person to whom the information would be shared. Or when disclosure would be distressing and traumatic for the child. When thinking about ‘significant harm’ Panel Member should consider different kinds of risks taking account of the child’s age and stage of development. For example there is evidence that even for very young children smell, face recognition, voice or touch of adults who have caused fear can re-traumatise and unplanned and unexpected contact could be harmful. It is likely to be harmful for a child to find out that an individual is not their biological parent from a written report, or during a children’s hearing. However, the risk that a child might find some information upsetting in the short term, or a person’s preference to retain their privacy is unlikely to be sufficient to meet the test of significant harm.

e. Legal representation ([ss 191, 192](#))

7.32 Unlike the Rules made under the Children (Scotland) Act 1995, a children’s hearing, or pre-hearing panel, does not have the power to appoint a legal representative for a child or relevant person.

7.33 Instead the 2011 Act sets out situations where:

- the child is automatically eligible for legal aid; and
- a child and relevant person may be eligible for legal assistance.

7.34 This means that the child and relevant person may choose their own Solicitor to



represent them at the children's hearing, rather than have a Solicitor chosen for them. The Solicitor receives payment from the Scottish Legal Aid Fund if the criteria are met.

Children

7.35 A child is automatically entitled to legal aid in the following circumstances:

- an application is made to the Sheriff for variation or recall of a Child Protection Order;
- a children's hearing is to be held on the second working day after a Child Protection Order has been granted;
- a children's hearing, or pre-hearing panel, considers that it may be necessary to make a Compulsory Supervision Order including a secure accommodation authorisation; or
- a hearing is arranged after the child is detained in custody by the Police.

Legal aid will be also available for the child for any subsequent deferred hearings.

7.36 In all other circumstances related to assistance at a children's hearing or associated court proceedings, an application must be made to the Scottish Legal Aid Board by the child before they will be eligible for legal assistance. Where the application relates to legal representation at a children's hearing, legal assistance will only be available where it is necessary to ensure the effective participation of the child.

Relevant person(s)

7.37 A relevant person is eligible for legal assistance for representation at a children's hearing or associated court proceedings following a successful application to the Scottish Legal Aid Board. A relevant person will receive legal aid for the attendance of a Solicitor at the children's hearing if the assistance of a Solicitor is considered necessary to ensure the relevant person's effective participation.

The children's hearing's role in access to legal assistance

7.38 There will be some situations where the child or relevant person is unable to arrange their own Solicitor. Where a children's hearing or pre-hearing panel consider that a child or relevant person may need a Solicitor **to ensure their effective participation, but that the person is unlikely to make the necessary arrangements themselves**, they may direct the Children's Reporter to provide the child and/or relevant person's contact details to the Scottish Legal Aid Board. The Scottish Legal Aid Board will then facilitate contact with a Solicitor.

7.39 If this decision is made by a children's hearing, the hearing must then be deferred to another day.



Effective participation [Rule 61\(1\)\(d\)](#)

7.40 Unless legal aid is automatically available to a child, before giving a direction to the Children’s Reporter to contact the Scottish Legal Aid Board, the children’s hearing must be satisfied that a Solicitor may be necessary to enable the child or relevant person’s effective participation in the hearing. This is a high test and will be relevant where the issues are legally complex or the assistance needed is only available from a Solicitor.

7.41 When making decisions about effective participation, the 2011 Act and legal aid Regulations provide that the following matters will be considered by the Scottish Legal Aid Board when deciding if legal aid will be required for the children’s hearing:

- the complexity of the case, including the existence and difficulty of any points of law in issue;
- the nature of the legal issues involved;
- the ability of the person to consider and challenge any document or information in the hearing 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.

7.42 Only if the hearing is satisfied that a Solicitor may be required for their effective participation **AND** that the person is unlikely to make arrangements to be represented themselves, should the panel make this decision. This in no way affects a child or relevant person’s right and ability to engage a Solicitor of their own accord at any point.



Example

Decision: to determine that it may be necessary for a relevant person to be represented by a Solicitor and they are unlikely to arrange such representation Rule 61(d)

Reasons: Ms Khan has difficulty understanding and retaining complex information and while she participated in today’s hearing, Panel Members were concerned that she did not understand the information and recommendations in the social work report and was not able to counter or challenge the information provided to the hearing. Before coming to a decision, the hearing explained the options open to them but it was clear Ms Khan did not understand that it was a possibility her children could be removed from her care today. In the interests of fairness, a Solicitor is required and considering her lack of understanding of the seriousness of the situation, it is not likely Ms Khan will arrange this without help.



f. Failure of an education authority to comply with duties in relation to an excluded or withdrawn pupil ([s127](#))

7.43 An education authority has a duty to continue to provide education for a pupil where they have been excluded from a school or have withdrawn from that school prior to being excluded. If a children's hearing is satisfied that an education authority is failing to comply with this duty, they may require the National Convener to refer the matter to Scottish Ministers. This is a decision that can be taken by a children's hearing arranged for any purpose and alongside any decision, substantive or interim, of that hearing.

7.44 Following the hearing the chairing member will need to complete a form, which the Children's Reporter will send to the National Convener, setting out the reasons why the hearing considers the education authority to be in breach of its duty to provide education to an excluded or withdrawn pupil.

7.45 The hearing should provide as much information and evidence as possible to allow the National Convener to progress the referral. The National Convener will not be provided with any additional reports or background material.

7.46 On receipt of the form the National Convener must make the referral to Scottish Ministers; he does not have discretion not to do so.

g. Direction to the Principal Reporter to consider applying for a parenting order ([s128](#))

7.47 Section 128 of the 2011 Act relates to provisions in the Anti-Social Behaviour etc. (Scotland) Act 2004 regarding parenting orders to compel parents to attend guidance or counselling sessions to help them tackle their child's behaviour. As such, this section must be read in accordance with the wider intent of the act which relates exclusively to children who are offending or engaging in anti-social behaviour.

7.48 A parenting order is an order granted by a Sheriff, which requires the parent of a child to attend counselling or guidance sessions, and to comply with any other conditions in the order, under the supervision of the local authority. An application can be made by either a local authority or the Principal Reporter.

7.49 Where a children's hearing, arranged for any purpose, is satisfied that it may be appropriate for a parenting order to be made, the hearing may ask the Principal Reporter to consider whether to apply for an order. Thereafter it is within the discretion of the Principal Reporter whether to make the application.

7.50 If a hearing wishes to ask the Principal Reporter to consider making the application,



the hearing must set out the details of the parent and under which of the following reasons the application should be made:

- the child has engaged in antisocial behaviour and the making of the order is desirable to prevent the child engaging in further such behaviour;
- the child has engaged in criminal conduct and the making of the order is desirable to prevent the child engaging in further such conduct; or
- the order is desirable in the interests of improving the welfare of the child.

This decision can be taken alongside any other decision of the children's hearing.

h. Advice from the National Convener [\(s8\)](#)

7.51 The 2011 Act gives the National Convener the power to provide advice to children's hearings. Advice may be provided in relation to any matter in connection with the functions of a children's hearing. Typically this will be in response to questions of law and/or procedure but it may also include issues of practice. The National Convener must not, however, direct or guide a children's hearing.

7.52 Children's hearings should not seek direction from the Children's Reporter; they may offer a view only. Their view holds the same weight as all other participants'.

Process

7.53 There is a staged approach to the provision of advice by the National Convener:

1. Pre-hearing preparation. General support can be provided by the National Convener to individual Panel Members prior to their attendance at the hearing centre. The National Convener will make available a range of information to assist with preparation, such as this Practice and Procedure Manual, and a dedicated Practice and Policy Team in Children's Hearings Scotland is available for Panel Members to contact for advice. They can be contacted on [Teams](#), or at PracticeandPolicy@chs.gov.scot.

The National Convener is not able to provide advice in relation to individual hearings at this stage. It is anticipated that most questions, which would require the advice of the National Convener, can be answered at this stage either with reference to the written materials or by making contact with Children's Hearings Scotland.

2. Discuss with fellow Panel Members during the hearing. It is important that this discussion only takes place during the hearing. The substance of the issues in the case should not be discussed between Panel Members out with the hearing or during pre-hearing discussions.

3. Seek the views of those present at the hearing. This may be the Children's Reporter, a



local authority representative, other professional, or the child and family members. The provision of advice by the National Convener is intended to complement other roles within a children's hearing and therefore any person who attends a children's hearing can offer views on legal or procedural matters. Any advice provided by the National Convener holds the same weight as an opinion offered by anyone else. Panel Members may choose to disregard the advice if they wish.

7.54 In the vast majority of situations, a combination of good pre-hearing preparation and the views of those present during the hearing will be able to resolve any matters requiring advice. However, there will be a situations where stages four and five are required. Although not an exhaustive list, these will likely be highly complex situations and/or situations where Panel Members have received no, or conflicting, views on law and procedure from those present at the hearing.

4. Adjourn the hearing to refer to the practice materials available within the hearing centre. A digital copy of the Practice and Procedure Manual is available in every hearing centre for Panel Members to refer to during a short adjournment of the hearing if required. It can be accessed online at any time.

5. Defer the decision of the children's hearing to another day and formally request written advice from the National Convener. Where the written advice of the National Convener is required by a children's hearing, a form should be completed at the end of the hearing setting out what advice is required. The Children's Reporter will then send the completed form to the National Convener and the National Convener must respond to the request for advice within 14 days of receipt. The National Convener's written advice will be made available to all those entitled to receive papers for the next hearing by the Children's Reporter and must be outlined verbally by the chairing member to those present at the next hearing.

i. Requesting additional reports ([Rule 61\(1\)\(b\)](#) and [S77 Age of Criminal Responsibility \(Scotland\) Act 2019](#)

7.55 When a hearing is considering deferring a decision to make or review a Compulsory Supervision Order, Panel Members are under a duty to consider whether an additional report is required. If an additional report is required, this request should form part of the hearing's decision.



Legislation and Legal Tests

When considering a decision to defer making or reviewing a Compulsory Supervision Order, the hearing:



must consider whether to require the Principal Reporter to obtain any report, from any person, which the children's hearing considers relevant to any matter to be determined by the subsequent children's hearing.

Additional reports and independent reports

7.56 Often, an additional report from the Local Authority or another professional already working with the child and family will be required. For example, an updated Child's Plan, a report from a school or contact centre, a more detailed parenting assessment or a report about the child's health from a health visitor, GP or other health professional.



Example

Decision: To defer the hearing to require the Local Authority to provide a contact report to the children's hearing

Reason: The recommendation before the Panel was to reduce contact significantly however there was very little information to justify this recommendation in the Child's Plan. A recent Looked After Child review had felt this was essential for the child's wellbeing based on the reports from contact sessions. None of this information was available to the hearing nor was anyone from the contact centre who could speak to the child's experiences. A report from the contact centre will allow an informed decision to be made at the next children's hearing.

7.57 When an independent person is required, not connected to the Local Authority or anyone working with the family, the hearing can appoint a Safeguarder to provide an independent view of a child's case or explore the child's views. Safeguarder requests are addressed above, including that their remit and experience is widespread and broad i.e. Safeguarders will look at a child's best interests in general across the whole of the case circumstances.

7.58 In some situations, Panel Members may need information from an independent professional with more experience or specific expertise. For example, to undertake a parenting capacity assessment, a risk assessment of a parent or to assess the quality and impact of contact on the child. These 'narrow but deep' requests are more appropriate for someone with a high level of training and experience in these areas, such as an independent social worker or a forensic psychologist. **If a hearing asks for a report from an agency who would normally provide a service to the child and/or their family and is not a Safeguarder, these are classed as 'independent reports'.**

7.59 Various people involved in the hearing may consider that there is a need for an additional report or for further analysis of a child's circumstances. **The key question for Panel Members to consider, is whether Panel Members themselves need additional information to make a substantive decision.**



7.60 Sometimes a relevant person, or their legal representative, may ask Panel Members to request a report from an independent professional. It is not appropriate for the hearing to instruct an independent report to provide a second opinion because relevant persons or family members do not agree with the assessment or conclusions of the professionals already involved with the child. **Panel Members should only request an additional report if they are satisfied that they need different and/or more information to make a decision.** If a relevant person wishes to commission their own expert report for presentation to a future hearing, their legal representative can apply for Legal Aid to do that. However, in order to obtain Legal Aid funding, the Scottish Legal Aid Board requires that the children's hearing has been already been asked to resource an additional report and that the children's hearing has decided it was not required.

Bank of Independent Report Writers

7.61 The CHS Practice and Policy Team is responsible for commissioning a report from a person with suitable experience and expertise. To do this, CHS has recruited a Bank of Independent Reports Writers. The Bank includes a number of highly experienced individuals and includes:

- children and families Social Workers,
- criminal justice Social Workers
- educational psychologists
- forensic psychologists
- mental health professionals and
- a psychiatrist.

Across the Bank, there is a wealth of experience in child protection, care and permanence planning, youth offending, psychiatry, psychology, gender identity, adult offending, risk assessment, and domestic abuse.

7.62 The request will be referred to CHS by the Reporter, and CHS will then direct the request to the professionals with the right skills and experience to answer Panel Members questions. There are clear timescales and practice standards for report writers. CHS will obtain advance estimates for this work, in order to ensure that what is proposed will meet the requirements of the children's hearing and that public funds are used properly and effectively.

Process

7.63 If the hearing decides that an independent report is needed, the hearing's request should set out clearly their **reasons** for the report, and in particular the **questions** they would like the report to answer. They may also suggest **what kind of expertise or professional** they think is needed to prepare the report if particular expertise is required.



7.64 In order to match the report request to the right professional, Panel Members need to provide as much information as possible in their reasons for their decision. Focussing too significantly on an individual report writer or an individual speciality may mean that background context or justification is lost, so it is important that requests expand beyond this.

The decision should include:

- what information Panel Members need which is missing or deficient in the existing assessments and reports provided to the hearing;
- why that cannot be remedied or obtained by the implementation local authority from the professionals or organisations network already working with the child and family;
- what questions they require an independent expert to address;
- as much background information as is needed to ensure the right person is commissioned for the report.

7.65 It is not required, or even desired, for specific report writers to be named in the decision of the hearing. Requesting an individual may cause additional delay. Due to workloads and individual capacities, CHS cannot guarantee that a particular person will be available at the time to provide the report. If a named person is unavailable, a deferred hearing would be called, unless one has already been arranged to inform Panel Members of this to allow them to change, widen, or re-affirm their decision. Those individuals on the Bank of Independent Report Writers have also been carefully recruited, selected and quality assured. Panel Members should be certain of the background and experience of any report writers they name in a decision of the hearing as CHS will not have carried out the same high level of checks and references.



Example

Decision: To request an independent social work report to provide a parenting capacity assessment for James.

Reason: The parenting capacity assessment undertaken by the local authority was finely balanced, and could not provide the hearing with a clear understanding of James' ability to look after Michael. Social work told the hearing that this was because of a range of complex factors, including his personal history and fluctuating home circumstances. An independent expert analysis could provide the hearing with greater insight about potential future options for Michael, to support his progression.

7.66 Requiring the child and other family members submit to further detailed assessment from an additional professional is a significant intervention. While the independent report



process will operate as quickly as possible, it entails inevitable delay in positively progressing a plan for the child. An independent report usually takes a minimum of three months from the date of the request to the next children's hearing able to consider the report. Complex cases may take far longer. As a substantive decision cannot be reached, the hearing may have to consider interim measures, such as an Interim Compulsory Supervision Order. That means the child and family will have to come back to further deferred hearings every three weeks during that time. It is always open to the hearing to cancel the request at any subsequent deferred hearing if they subsequently decide they now have enough information to make a substantive decision. When completed, the Reporter will request the report after CHS identify the writer, the include the report in the hearing papers and invite the Report Writer to the Hearing.

j. Breach of duty placed on an implementation authority ([ss 144 – 148](#))

7.67 The implementation authority has a duty to give effect to a Compulsory Supervision Order. In addition, a children's hearing can include a measure within the order requiring the implementation authority to carry out specified duties in relation to the child. For example, the child is to receive a particular service or intervention or is to be provided a place at a particular school.

7.68 It is essential that the children's hearing is assured that the support and supervision they decide the child requires will be provided. The child deserves to have the services they have been promised, delivered. Where weekly contact is decided to be in the child's best interests, the child and family are entitled to have this contact facilitated. It is not acceptable for support and services which the child and family need to be withheld. Ensuring that the Compulsory Supervision Order is fully implemented should be a key consideration for Panel Members.

7.69 There will be situations where, at a review hearing, the implementation authority appears to be in breach of either the general or a specific duty placed upon them by a children's hearing. In these circumstances, the 2011 Act provides a procedure to allow the National Convener, on the direction of a children's hearing, to make an application to the Sheriff Principal for an order to enforce the authority's duty.

7.70 While Panel Members will not need to utilise this option regularly, there should be no fear of doing so. Children and families should be assured that the Children's Hearings System will provide the support required to improve outcomes. Where this is not happening, it is the role of the Panel Member to address this.

The procedure

7.71 **Stage 1:** The first step is that the hearing may direct the National Convener to give



notice to the implementation authority of an intended application to enforce the duty. The notice states that if the authority does not perform the duty within 21 days, the National Convener will, on the direction of a further children's hearing, make an application to the Sheriff Principal for an order to enforce the implementation authority's duty.

The hearing must also:

- make a substantive decision in relation to the Compulsory Supervision Order; and
- require a review hearing take place 28 days after the notice has been given, or as soon as reasonably practicable after that.

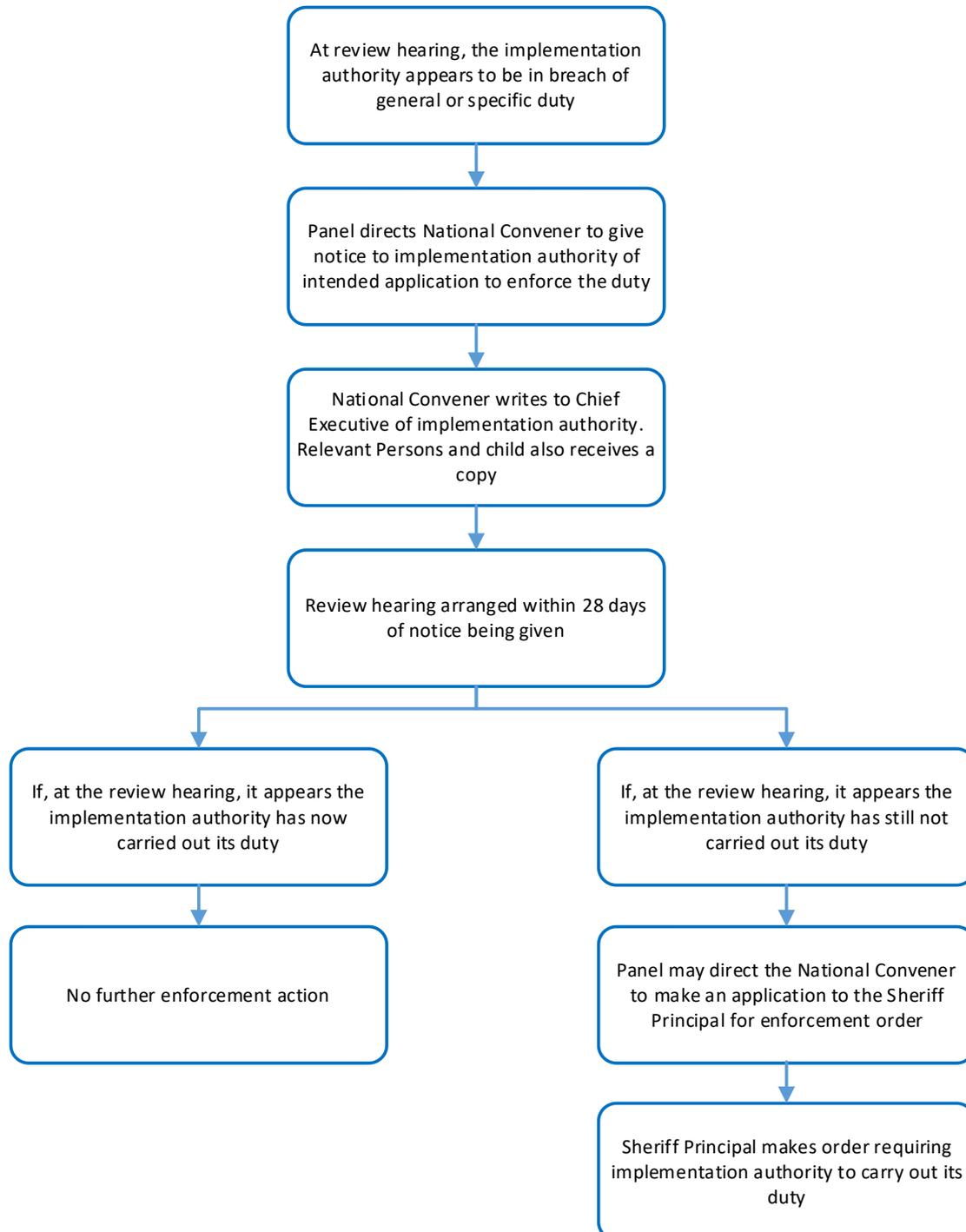
7.72 Where a direction to the National Convener is given, the chairing member must complete a form which the Children's Reporter will send to the National Convener. This form must be completed as fully as possible. In particular it must state clearly what duty the hearing considers the implementation authority to be in breach of and why.

7.73 The National Convener will write to the Chief Executive of the relevant local authority informing them of the decision of the children's hearing and provide them a notice which specifies the breach of duty. All relevant persons and the child, if of an age to understand, will also receive a copy of the notice.

7.74 **Stage 2:** If at the further review hearing, it appears to Panel Members that the implementation authority continues to be in breach of the duty imposed upon them, the hearing may give the National Convener a direction to make the application to the Sheriff Principal. This is a decision which is made alongside a substantive decision in relation to the Compulsory Supervision Order.

7.75 If the hearing decides to give such a direction, the chairing member must complete a form advising the National Convener of the direction. This form must include details of the duty the hearing considers the authority to be in breach of and why. On receiving a direction from a children's hearing, the National Convener should confirm that the local authority remains in breach of the duty and make the necessary application to the Sheriff Principal.

7.76 The 2011 Act is specific that in making a decision about whether the implementation authority is in breach of a duty placed upon them, Panel Members must not take into account the adequacy of the resources available to the authority.





k. Decision to defer a hearing to another date

7.77 When making decisions in a hearing, Panel Members must have the need to safeguard and promote the welfare of the child throughout their childhood as their paramount consideration. Postponing the hearing should rarely be an automatic decision. When considering whether to defer a hearing to another date Panel Members must think about the impact on the child of delay in making a substantive decision. They should weigh any potential negative impact on the child against any disadvantage to any other person in the hearing if they proceed to make a decision. **Panel Members reasons for deciding to defer a hearing to another date should say why deferral, rather than making a substantive decision, is in the child's best interests.**

7.78 **Deferring for non-attendance:** If the hearing is considering deferring a hearing because someone with a right to attend is not present, Panel Members should consider

- whether there is evidence that the person had been properly notified and/or knew about the hearing
- whether the person has attended hearings in the past
- any available information about their views
- what is likely to be the impact of their absence on the information available to the hearing and the discussion about the child's plan.

7.79 If a hearing is deferred for the attendance of any person, SCRA must arrange a further hearing, even if it remains unlikely that the person will come to the next hearing. Panel Members should consider the potential impact on the child's welfare of further delay in making a decision about whether compulsory measures of supervision are necessary and any specific measures which may be needed.

7.80 The **absence of a legal representative** should not automatically lead to deferral of a hearing to another date. The Panel Members should consider carefully the consequences for the child or relevant person of the absence of a legal representative, and ask what steps have been taken by the child or relevant person to have a legal representative present. They should consider whether the child or relevant person has had legal advice and whether they have an advocate present, or had been offered one before the hearing. The impact on the child's welfare of a decision being delayed should also be considered. If Panel Members are satisfied that the child and/or relevant person is able to understand the reports and participate in the hearing fully and fairly, and that it is necessary in the child's interests that the hearing should make a decision, they may do so.

7.81 A **lack, or late receipt, of reports** or other administrative problems should not automatically lead to a hearing being deferred to another date. If, for example, a Social Work report is missing but the allocated Social Worker is present at the hearing and able to give a comprehensive update the hearing may go ahead. Panel Members should satisfy themselves that the child and relevant persons were already aware of the Social Worker's



assessment and recommendation and are not hearing these for the first time at their hearing.

7.82 A hearing may be deferred for **more information or additional reports**. **If Panel Members are satisfied that they have sufficient information to make a substantive decision, they should feel confident to do so.** More information about requesting additional reports is contained in the section on requesting additional reports earlier in this chapter.

Appeals

7.83 If a decision made in the absence of any person, or of certain information, is appealed, the court will consider whether the hearing's decision was justified in all the circumstances of the case. The court will consider whether the attendance or the additional information was likely to have made a significant difference to the decision which Panel Members made. Panel Members should make clear why they decided to proceed in the child's best interests and what information they took into account in deciding to do so.

7.84 Appeals are an essential part of the Children's Hearings System and should not be feared. Decisions should attempt to balance the rights of all participants and the need for procedural fairness but deferrals should be a Panel Member's last option, rather than first option for fear of having their decision appealed.



Summary

Although this checklist is designed to assist the chairing member to fulfil certain legal duties, any Panel Member may assist with this part of the hearing.

Verbal reasons and decisions

- is it clear what the decisions and reasons of each Panel Member are?

Confirming the decision of the hearing

- what is the decision of the hearing?
- do the child and relevant persons present understand the decision?

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, beginning the day of the hearing
- where the appeal is against a Compulsory Supervision Order (CSO) with a secure authorisation or movement restriction condition, an Interim Compulsory Supervision Order, interim variation of a Compulsory Supervision Order, Medical Examination Order, warrant to secure attendance, a relevant person determination, or a decision affecting a contact or permanence order, the Sheriff must decide the appeal within three days
- if the appeal is in relation to a Compulsory Supervision Order 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.

Review rights

- a child or relevant person can require a review of the Compulsory Supervision Order after three months.

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 life.

Decision and reasons for decision

- if the Children's Reporter has not finished their paperwork, invite the child and family members to remain in the room
- complete written reasons for decision
- the chairing member will check and sign any statutory orders
- the chairing member will check and sign the record of proceedings and any associated forms.



a. Verbal decisions and reasons

8.1 At its core, the Panel Member role is a decision-making role. Providing good, robust decisions and reasons is the most important aspects of the role. It can also be one of the most challenging.

Making individual decisions

8.2 Before moving on to this stage, all Panel Members should confirm that they have enough information on which to make a decision or ask any questions which they wish to ask to enable them to make a decision. To ensure all participants understand that the discussion has concluded, the chair should offer a final opportunity to contribute before informing them that the Panel Members will now make their decisions separately and that there will be no further discussions.

8.3 The chair should inform all attendees that **Panel Members will take a minute to note down their individual decisions and reasons before giving these orally.**

8.4 Panel Members **must** make their own decision **individually**. No further discussion should be entered into with hearing participants, or between Panel Members, whilst individual decisions are being noted down. This gives Panel Members an opportunity to reflect and ensure they have covered all decisions required. It also shows those who are attending the hearing that an individual decision has been made, and helps Panel Members maintain their decision-making skillset if Panel Members end up agreeing with another's decision.

8.5 Clear reasons must be provided by the children's hearing for **every decision** made and this includes each measure contained in a Compulsory Supervision Order. **Furthermore, where there has been an alternative decision proposed to the children's hearing, such as moving the child to foster care, a reduction in contact, providing an independent report, or the appointment of a Safeguarder, the reasons why this was ruled out should also be clearly explained.**



Example

Where the decision is to make the child the subject of a Compulsory Supervision Order with measures that the child is to live with Mr and Mrs Smith at 123 Any Street, Anytown and that the child is to have supervised contact with their mother for one hour twice per week at the Anytown family centre, 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 child to reside with Mr and Mrs Smith specifically?
- **Why** is a measure of contact with the child's mother necessary for the child?
- **Why** does the contact need to be supervised?
- **Why** has the maximum duration been set at one hour?
- **Why** twice per week?
- **Why** at the Anytown family centre?

8.6 **Any measures included as part of the order must be clear to all parties and unambiguous in interpretation.** A measure should only be included as part of any order if it is necessary for the child. Where, for example, all parties are in agreement about the level of contact a child should have with an individual there may be no need to include a measure in the order. However, where there is any disagreement amongst the hearing participants, or where the agreement is vulnerable to change, the children's hearing can include a measure in the order stating what the hearing has decided must happen.

8.7 A measure can only be included if it relates to the child or requires the implementation authority to carry out a specific duty for the child. For example, a measure cannot be included which compels a parent to do something. A measure should not be included which says something is to happen at individual, or agency, discretion; for example contact to take place at the discretion of the Social Work Department. This is not specific enough, and simply repeats the duty on the Local Authority to promote family relations. If a children's hearing decides it necessary that a contact direction be included it must specify clear arrangements for that contact to take place.

Giving decisions and reasons

8.8 Spoken decisions should follow a structure of:

'My decision is [X], and the reason for this is [Y].'

This helps ensure each decision is justified by a reason. Beyond this, good decisions and reasons:



- Provide justification for each decision and measure, including where there has been a significant discussion over decisions which the Panel ultimately ruled out
- Should be based on issues discussed at the hearing, using facts, not opinions
- Must be clear, unambiguous and leave the listener in little doubt as to what the decision is, why that particular decision was made, and what that decision will mean in practical terms
- Avoid euphemisms, such as 'issues at home', instead naming the concerns which mean state intervention is required.

8.9 Panel Members should also be trauma informed in the way in which decisions and reasons are then presented. Decisions and reasons often include information that relates to traumatic experiences for the child and for other people in the hearing room. When the same decisions and reasons are repeated two or three times, just in a slightly different way this experience itself can become needlessly traumatic.

8.10 This is why Panel Members can, **if it is appropriate, give their decision and reasons as an agreement with a decision or reason that has already been articulated**. It is a legal necessity that each Panel Member state their decisions and the reasons for it. These must be individual decisions by each decision-maker. However, there is no need to repeat the decisions and reasons in full, if you are in agreement with what has already been said. This mirrors other courts where decision-makers are able to agree with their colleagues rather than produce multiple identical extended judgements.

8.11 If a decision is given without a reason, the chair should ask the Panel Member to provide a reason to justify their decision. If a Panel Member has agreed with the reasons of another Panel Member, stating this is sufficient.



Example

Where a decision to reduce contact has been because a parent has not been turning up at contact sessions that have been arranged.

Panel Member 1, Kate, may say...

"My decision is that contact should be reduced to one session a month. The reason for this is that Gemma has failed to attend 70% of the contact sessions that were arranged, and this left Xander confused and upset. Reducing contact means sessions will be more manageable for Gemma, and more likely to meet Xander's needs and expectations.

Panel Member 2, Harry, may follow this by saying...



“I agree that contact should be reduced, and my decision and reasons are the same as Kate’s.”

Or, if the decision and reason is only partly the same, Harry might say...

“My decision and reasons are the same as Kate’s, except I would like to include that contact takes place at the contact centre to allow staff to confirm Gemma’s arrival before Xander is brought along to avoid upset if Gemma is not able to attend.”

8.12 It is important that the child, if present and of an age to understand, and relevant persons, if present, are clear what decision the individual Panel Member has made and why. Panel Members should be aware of the way in which they communicate their decision, verbally and non-verbally and the impact on those with whom they are communicating; this may be a particularly anxious time for the child and relevant persons present.

8.13 A decision is not an opportunity to summarise the hearing or comment on or congratulate the child or family. Commentary on what has happened should take place within the body of the hearing.

8.14 It is essential that the reasons in the Record of Proceedings, written after the hearing has concluded, accurately reflect the verbal reasons provided to hearing participants during the hearing. Panel Members should take brief notes of each other’s verbal reasons, to help ensure consistency and accuracy. This is in addition to the individual note Panel Members should take of their own decision and reasons shortly before giving them orally.

Recording ‘non-decisions’

8.15 Where a potential measure has been discussed at length but ultimately Panel Members decide it is not required, this should be included in the Record of Proceedings, especially if relating to contact. SCRA will record this significant consideration in the Record of Proceedings and Panel Members should provide their justification for ruling this decision or option out.

8.16 Similarly, where an individual at the children’s hearing has requested a specific decision which Panel Members disagreed with, this should also be included in the Record Of Proceedings with clear reasons why their proposal was denied. Examples of this may include the request for a Safeguarder to be appointed, an independent report to be provided or for the hearing to be deferred to allow someone to attend. These decisions must also be justified.



Example

A lengthy discussion took place around Mr McDonald’s contact as he had requested a



measure to guarantee he could spend time with Josh and Claire. After hearing from all parties, there was a clear expectation and agreement for everyone that his after school contact would continue and therefore no measure was required.

8.17 There is no rigid procedure that must be followed once Panel Members have made a decision but there are certain legal requirements that must be met. The procedure set out below is not prescriptive but all the requirements contained within it must take place. The chairing member's general duty to ensure the child and relevant person(s) understand the hearing process continues to apply to the end of the hearing.

b. Confirming the decision of the hearing

8.18 Once all three Panel Members (including the chairing member) have given their individual decisions, the chairing member must confirm to those present at the hearing what the decision of the hearing is. This will be particularly important where there is a majority decision or the decision is complex or lengthy. It is good practice to ask the child and relevant person(s) if they have understood the decision and whether they want to ask any questions about the decision. The Panel Members should not enter into further discussion about the merits of the decision as the decision has been made in law. If the child is not present, the chair should ascertain who will explain the decision of the hearing to the child.

8.19 Very rarely, all three Panel Members may make different decisions. Instead of confirming the decision of the hearing, the chair should explain to the family what has taken place and how the hearing will proceed.

The options available to the hearing are:



Options

1. Continue to discuss the case if it is likely that the Panel Members can reach agreement within a reasonable time. This may be appropriate, if there is a minor discrepancy in the agreement for example over whether contact should be once per week for one hour or two hours or twice per week for one hour.

2. Defer the hearing to allow a different three Panel Members to look at the hearing afresh and consider an interim order. This may be necessary if all three Panel Members name a different place of residence for the child.

8.20 If a Panel Member does change their mind after further discussions, clear reasons justifying their new decision must be given and recorded.



8.21 The child, if of an age to understand, relevant persons and any appointed Safeguarder should be told that they will receive notification of the decision of the hearing, along with copies of the reasons for the decision and any order made, from the Children's Reporter within **five days** of the children's hearing.

c. Appeal rights ([ss154 – 162](#))

8.22 Once the decision of the hearing has been given, the chairing member must inform those present, who are eligible, of their right to appeal. The following decisions of a children's hearing can be appealed by a child, relevant person(s), any appointed Safeguarder or a combination of these groups:

- to discharge a referral
- to make, vary, continue or continue and vary a Compulsory Supervision Order
- to terminate a Compulsory Supervision Order
- to make an Interim Compulsory Supervision Order
- to make an interim variation to the Compulsory Supervision Order
- to make a Medical Examination Order
- to make a warrant to secure attendance

8.23 There are two other types of appeal against decisions of a children's hearing:

- an appeal against the decision of a hearing or pre-hearing panel in relation to deemed relevant person status by a child, relevant person(s) or person deemed not to be a relevant person; and
- an appeal against the decision of a contact direction review hearing by a person who is not a relevant person but who either holds a contact order, a permanence order or has, or has recently had, a significant involvement in the upbringing of the child.

8.24 The appeal rights are:

- an appeal must be made within 21 days beginning on the day the decision is made – except where the appeal is against a relevant person determination which must be made within seven days
- where the appeal is against a Compulsory Supervision Order with a secure authorisation or movement restriction condition, an Interim Compulsory Supervision Order, interim variation to a Compulsory Supervision Order, Medical Examination Order or warrant to secure attendance, the Sheriff must decide the appeal within three days beginning on the day after the appeal is made
- where the appeal is against a relevant person determination or a decision affecting



a contact or permanence order, the Sheriff must decide the appeal within three days beginning on the day the appeal is made

- in all other cases the Sheriff must first hear the appeal within 28 days of it being made, but there is no maximum period within which a decision on the appeal must be taken by the Sheriff
- if a person does appeal against a decision to make, vary, continue, or terminate a Compulsory Supervision Order, they may request the Children's Reporter to arrange a further hearing to consider whether the decision should be suspended pending the appeal

8.25 In addition, the child and/or a relevant person may appeal a decision of the Chief Social Work Officer to implement a secure accommodation authorisation, not to implement it or to subsequently remove the child from secure accommodation. This appeal must be made within 21 days of the date of the decision of the Chief Social Work Officer and the Sheriff is required to decide on the appeal within three days. The chairing member should therefore also inform the child and relevant person of this right to appeal, in addition to their right to appeal the decision of the children's hearing to make the secure authorisation.

d. Review rights ([s131](#), [132](#), [135](#))

8.26 The chairing member should inform the child and relevant persons of their right to require a review of the Compulsory Supervision Order (CSO) if the decision of the hearing has been in relation to a Compulsory Supervision Order.

- a child or relevant person may ask for a review of a Compulsory Supervision Order after three months of it being last made, continued and/or varied
- they can do this by contacting the Children's Reporter, either in writing or by telephone
- the implementation authority can ask for a review of the Compulsory Supervision Order at any time and has a duty to do so if they believe the Compulsory Supervision Order requires varied or terminated
- the Children's Reporter can refer any new grounds to a children's hearing at any time
- where the decision is to include a secure authorisation the Children's Reporter must arrange a review within three months
- where the decision is to include a movement restriction condition, the Children's Reporter must arrange a review within six months
- in all other cases the Children's Reporter will arrange a review prior to the end of the 'relevant period' which is normally a year



Summary

Appeal Against	Those with a right to appeal	Time in which to appeal
Child Protection Order continuation	Child Relevant Person Any person who would meet the relevant person test The person who applied for the Child Protection Order The person who is required to produce the child to the applicant under the order	2 working days
Make, Vary, Continue, Continue and Vary or Terminate a Compulsory Supervision Order Discharge a referral	Child Relevant Person Appointed Safeguarder	21 days
Make a Compulsory Supervision Order with secure authorisation or a movement restriction condition Make an Interim Compulsory Supervision Order Make an interim variation of the Compulsory Supervision Order Make a Medical Examination Order Issue a warrant to secure attendance	Child Relevant Person Appointed Safeguarder	21 days – the Sheriff must decide on the appeal within three days
To implement or not implement secure authorisation To remove a child from secure	Child Relevant Person	21 days - the Sheriff must decide the appeal within three days
A relevant person determination	Child Relevant Person The individual the determination relates to	7 days – the Sheriff must decide the appeal within three days beginning on the day the appeal is lodged



An individual with a contact order or permanence order in force who is not a relevant person

21 days – the Sheriff must decide the appeal within three days beginning on the day the appeal is lodged

e. Review of deemed relevant person status [\(s142\)](#)

8.27 Where the decision of the hearing is to continue, vary, or continue and vary a Compulsory Supervision Order and it appears to the hearing that a person currently deemed a relevant person, **may no longer have (or recently have had) a significant involvement in the upbringing of the child**, the hearing **must** review the individual’s relevant person status at the end of the hearing unless it has already been considered by a pre-hearing panel.

Procedure

8.28 The chairing member must explain the purpose of the review to the child and relevant persons present. For the review, Panel Members must consider the criteria described in the [deemed relevant person](#) section.

8.29 The chairing member must ask the child, if appropriate, all relevant persons present and any appointed Safeguarder if they have any views about whether an individual should continue to be deemed a relevant person. The hearing may also hear views from others present. Each Panel Member must make a decision independently before the decision of the hearing is confirmed by the chairing member.

8.30 The decision can be deferred to a subsequent children’s hearing if the hearing is unable to reach a decision. In particular, the hearing may consider deferring to another day if the person whose status is being considered is not present, would ordinarily be present at hearings and their views on the matter are not known. The decision in relation to the Compulsory Supervision Order will, however, continue to have force and will not be reviewed at the deferred children’s hearing.

8.31 Where a decision is made, the chairing member must ensure that the child, relevant person(s) and any individuals whose relevant person status is removed, are aware of their [right to appeal](#) the decision in relation to the relevant person determination.

Change of circumstances

8.32 Where the child’s circumstances have changed as a result of the hearing, for example, a change to the condition of residence, this does not automatically mean that a person is no longer a deemed relevant person, since they will continue to have recently had a significant involvement in the upbringing of the child. In the normal course of events, the deemed relevant person status would be removed either prior to or following the next



review hearing, where they can no longer be said to have recently had a significant involvement in the child's upbringing. See [Chapter 4](#) for more information and examples.

f. Record of Proceedings

8.33 When all of the legal requirements have been carried out the chairing member should conclude the hearing. Hearing participants should be thanked for their contributions. The child and any relevant persons should be invited to stay in the hearing room until the Children's Reporter has completed any paperwork, but are not required to stay. They may leave at any time after the hearing is brought to a close. The Children's Reporter will complete their part of the Record of Proceedings and then should leave the room, with the child and any relevant persons who have stayed within the hearing room. Thereafter the chairing member is responsible for ensuring that the written reasons for the hearing's decision(s) are recorded. These should accurately reflect the verbal reasons given to the child and relevant persons during the hearing.

8.34 Ensuring that a record is made of the reasons for the hearing's decision(s) is a legal responsibility placed upon the chairing member. This does not mean that it is the sole responsibility of the chairing member. The other Panel Members can assist by contributing the notes they have taken of the verbal reasons and decisions or by offering practical assistance with typing. The chairing member must sign and date the Record of Proceedings and any orders issued by the children's hearing.

Completing the Record of Proceedings

8.35 The reasons contained within the Record of Proceedings will be the only reasons available to the child, relevant persons, future Panel Members and a Sheriff to explain why the hearing has reached its decision(s). The reasons must reflect the discussion that has taken place and, crucially, justify each decision that has been taken by the hearing. It is important that the reasons do not simply restate the decision of the hearing, rather they must explain **why** the decision was made.

8.36 This should also **include any opposing views or requests by participants** at the hearing; for example, if a parent requested overnight contact and the hearing made an alternate decision, the request and **reasons why** it was not in the child's best interest should be noted.

8.37 Panel Members may include details of any minority decisions and reasons, although there is no legal requirement to do so.

Reasons for decisions

- reasons must be provided separately for each decision taken by the hearing and



each measure included in an order, whether the measure is made for the first time or continued;

- written reasons should reflect those given verbally during the hearing;
- reasons should be based on issues discussed at the hearing, using facts, not opinions;
- reasons must be clear, unambiguous and leave the reader in little doubt as to why a particular decision was made and what that decision will mean in practical terms;
- reasons should justify why alternative options were not taken;
- reasons must be capable of being read and understood by a child, if of an age to do so, and relevant persons;
- reasons should be concise, avoid long and complex sentences and refrain from using acronyms.

8.38 Where the hearing has decided to include a [non-disclosure](#) measure in the child's order, great care should be taken **not** to include the address at which the order requires the child to reside (or any other specific information which would be likely to indirectly disclose the address) within their reasons. The Children's Reporter will record the named place of residence within the order, and will check the Record of Proceedings before it is sent to the named individuals. There is no need for Panel Members to include the address within the reasons; doing so increases the risk of information being inadvertently disclosed to the person or persons who should not receive it.

8.39 Panel Members should also be alert to what information they include in reasons where the reporter has withheld the child's or a relevant person's current whereabouts under [Rule 16](#), or where a non-disclosure request has been granted.



Example

Record of Proceedings:

Decision 1: to excuse the child from attending during explanation of ground(s) s.73(4)

Reason 1: Caitlin is six years old and is not aware of, or able to understand, the full detail of the domestic abuse, criminal charges and substance use which formed the grounds for referral. As she would not be able to respond to the statement of grounds, it was not in her interests to reference these sensitive subjects in her presence.

Decision 2: to direct the reporter to make an application to the sheriff for a determination on whether a ground not understood is established s.94(2)(a)

Reason 2: The grounds for referral and supporting facts were fully accepted by Mr & Mrs Jones but Caitlin is not able to understand and respond due to her age. The accepted



content of the referral was far too serious to discharge therefore the panel sent the grounds to the Sheriff to make a determination on Caitlin's behalf.

Decision 3: to make an Interim Compulsory Supervision Order specifying Anytown local authority as the implementation authority and having effect until and including 28 April 2019 s.93(5)

Reason 3: There was a significant incident at the family home this weekend involving domestic violence and drug taking while Caitlin was present. She was alone, scared and crying when Police arrived. She has been staying with her grandmother for the past few nights on a voluntary basis. Both parents admitted they were unable to keep Caitlin safe or prioritise her needs at present, but wanted her returned home immediately. Therefore compulsory measures are needed to ensure Caitlin's safety while the grounds are with the Sheriff.

Decision 4: To include in the order a requirement that the child reside at any place of safety away from where she predominantly resides.

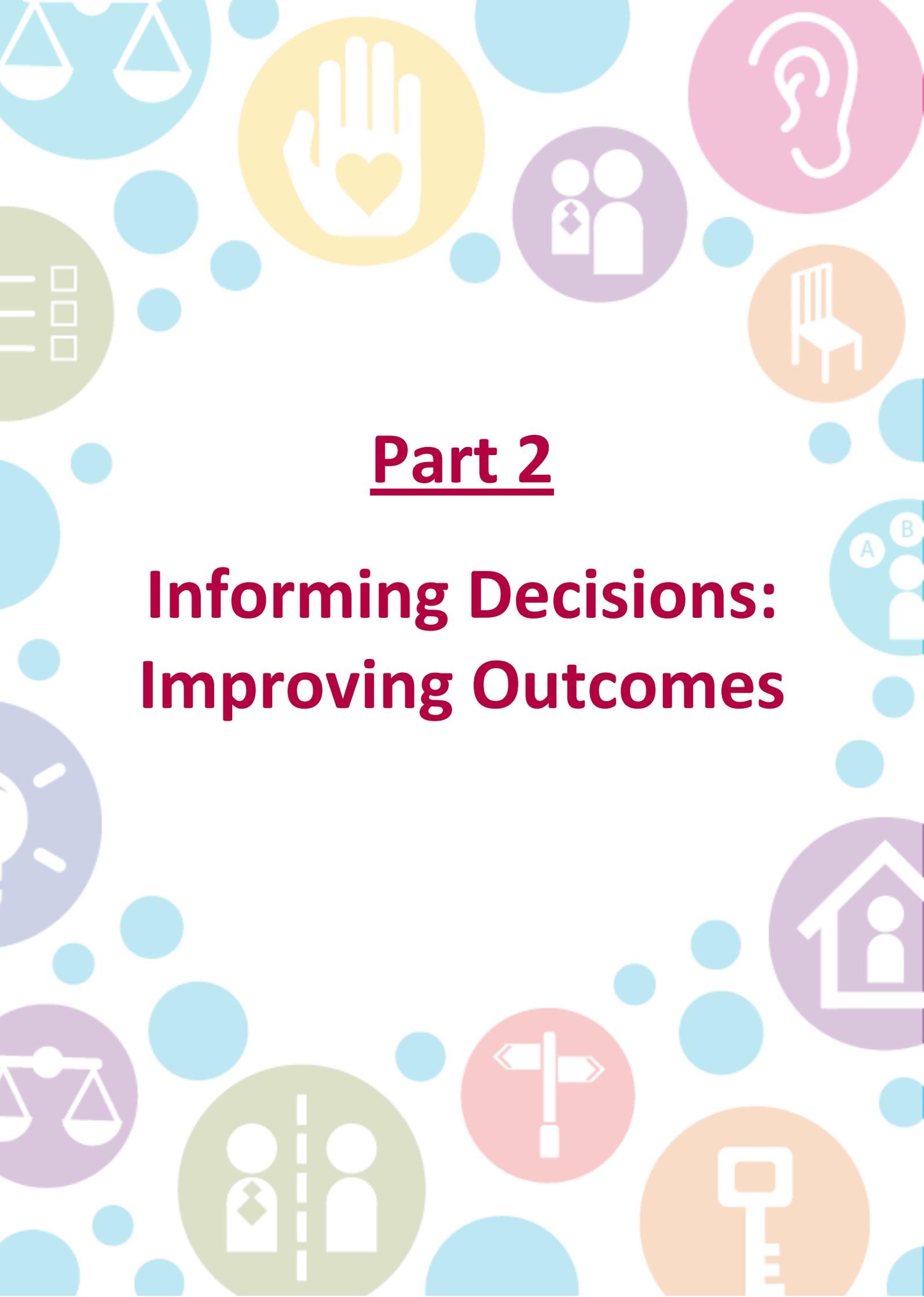
Reason 4: Due to the reasons noted above, Caitlin is not safe at home just now. Her grandmother is currently providing a loving place to stay where Caitlin feels at home and has her own room which she is familiar with. Unfortunately, there are long-standing tensions between Caitlin's father and grandmother and it is possible these tensions will lead to this very positive placement breaking down before the next hearing. A place of safety measure will allow Caitlin to be moved and kept safe if required.

Decision 5: to request Panel Member continuity Rule 3(1)

Reason 5: This was a very emotional hearing and Mr & Mrs Jones are aware there will likely be another hearing in three weeks to consider renewing the interim order. They requested a continuing Panel Member to make this easier for themselves and Caitlin and to allow them to demonstrate to the panel the changes required to allow Caitlin to return home.

Signed: *Helen Cruickshank* (Chair)

Date: 07.04.22



Part 2

Informing Decisions: Improving Outcomes

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JUMP TO... PART 1 *In The Hearing Room*



Key:



Case examples illustrating how the law and options may be applied



Information about the relevant legislation and legal tests



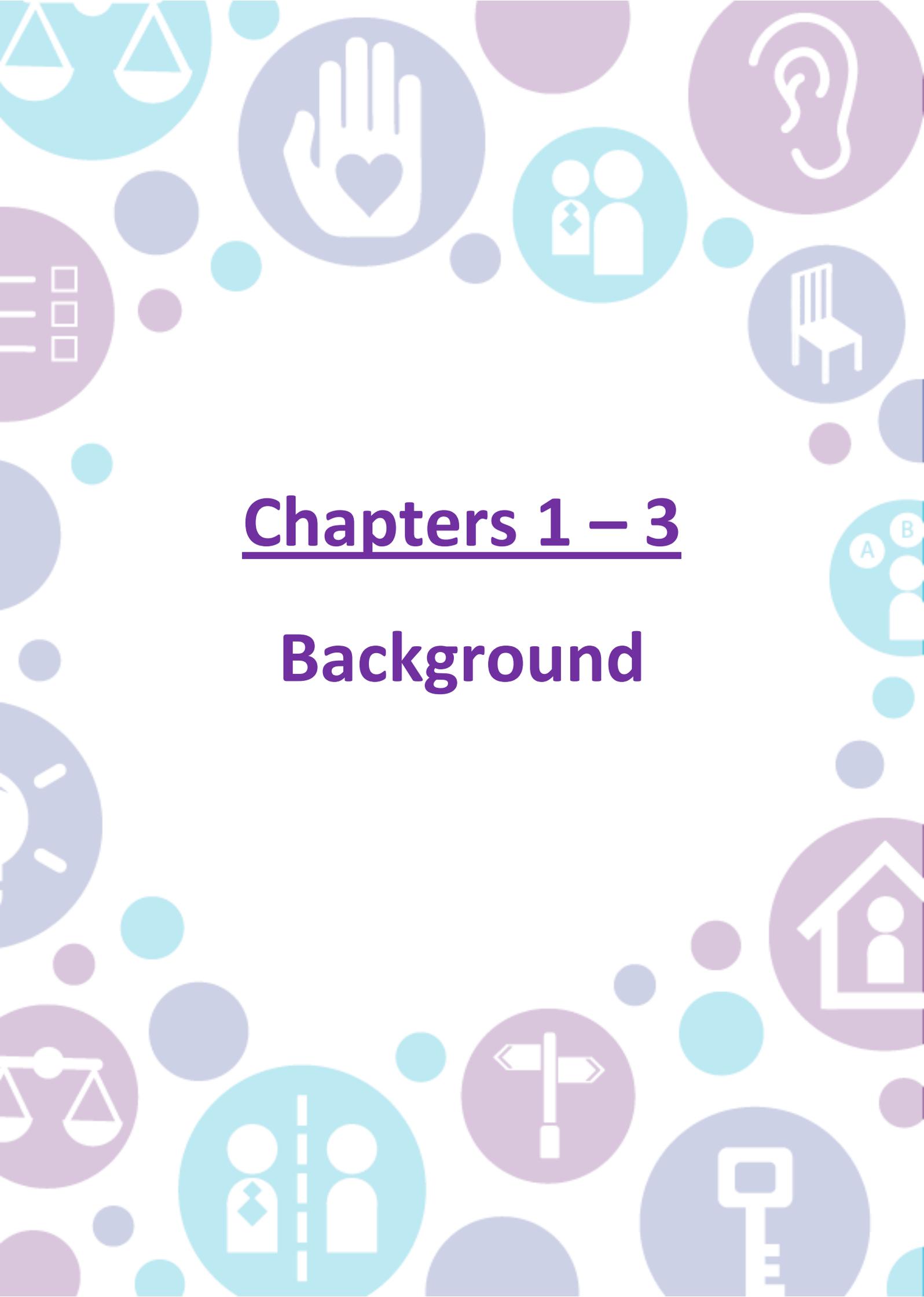
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Options available to the children’s hearing

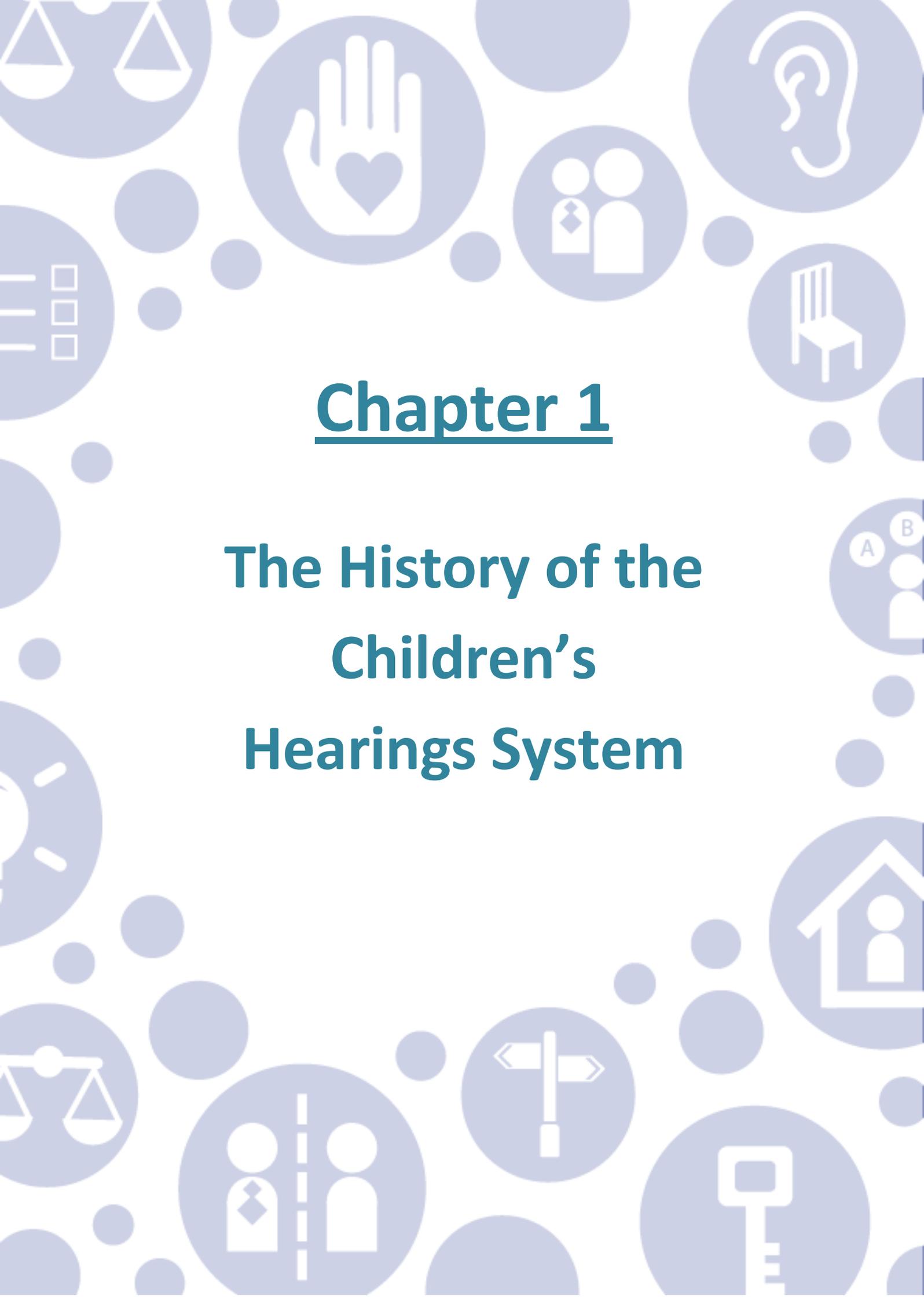


New information added in latest update. Search “#NEW” to jump straight to new sections.



Chapters 1 – 3

Background



Chapter 1

The History of the Children's Hearings System



Summary

This section is a general overview of the history of the Children's Hearings System. It aims to provide a wider understanding of Scotland's unique child protection system. It will be of particular benefit to trainee Panel Members and new Area Support Team members.

a. Introduction to the Children's Hearings System

1.1 The Children's Hearings System is Scotland's unique system of care and justice for children and young people who face serious problems in their lives. A children's hearing is a legal tribunal comprising of trained lay members of the national Children's Panel (Panel Members) who volunteer their time and skills to decide whether compulsory measures of supervision should be put in place for vulnerable children and young people who are in need of care and protection, those who have committed offences, or those whose behaviour puts themselves, or others, at risk of harm.

1.2 Children's Panel Members, the Scottish Children's Reporter's Administration and partner agencies who implement decisions made by children's hearings work together to deliver care, protection and support services to meet the needs of the children and young people involved.

1.3 There are a broad range of reasons which may lead to a child or young person coming to a children's hearing including: being abused or neglected at home by the people looking after them, not attending school, getting into trouble with the Police or putting themselves in danger through running away or drug and alcohol use.

1.4 Children's hearings act in the best interests of the child or young person to help, support and protect them, with Panel Members having the welfare of the child as their paramount consideration when making any decision.

The children's hearing

1.5 Children's hearings are held in private and only those people who have a legal right to be there, or are allowed to be there by the chairing member, will be present. The hearing consists of three people who live or work in the area in which the hearing takes place. The Panel Members are not paid any money to sit on hearings. They undertake training and development in their own time to make sure that they are well equipped to make decisions in the best interests of children and young people and that they know how to conduct hearings fairly.

1.6 The child, their family or carers, and other adults entitled to be at the hearing because of their role in the child's life, are central participants in the hearing. The role of the



Children's Reporter is to attend the hearing to support fair process and keep a record of the proceedings. The Children's Reporter takes **no part** in the Panel Members' decision-making.

1.7 The Panel Members will listen to everyone and consider all the information provided in reports prepared for the hearing. The hearing will then make a decision with each Panel Members giving reasons for their decisions. **Decisions are made openly in the hearing, in front of the child and relevant family members with reasons to justify all decisions.** The Panel Members make individual decisions and the final decision of the hearing will be a unanimous or majority decision made by at least two of the Panel Members. Panel Members record the reasons for the hearing's decision(s) in writing and the Reporter then provides these to certain attendees after the hearing.

1.8 The hearing must make decisions in the best interests of the child or young person, such as:

- the hearing can decide that formal, compulsory supervision measures are not required and discharge the case
- the Panel Members can decide that they need more information to help them make a decision about what is best and they can defer the hearing until a later date
- the hearing can decide to issue a warrant to secure the child's attendance where this is requested by the Children's Reporter
- the hearing can decide that compulsory measures of supervision are needed to help the child and can make a Compulsory Supervision Order. This will have measures attached to it which may include where the child or young person is to live (for example with foster carers or a relative)

1.9 A Compulsory Supervision Order (CSO) can be made at a children's hearing. It will contain measures, for example stating where the child is to live and other conditions with which they must comply. The local authority is responsible for making sure that what is stated in the Compulsory Supervision Order is happening, and that the child is getting the help that they need, usually provided or arranged by the local authority Social Work Department.

1.10 A Compulsory Supervision Order should last only as long as is necessary. It must be reviewed by a children's hearing at least once a year when it can be continued, varied or terminated.

1.11 When a child or young person is placed on a Compulsory Supervision Order they become 'looked after' for the period of time that the order is in place. Depending on the measures attached to the Compulsory Supervision Order, the young person may become 'looked after' at home by their parent(s) or away from home in a care setting such as foster care, residential care or residential school, or by relatives or friends (this is known as 'kinship care').

b. History of the Children's Hearing System



1.12 The Children's Hearings System is Scotland's unique system for care, protection and juvenile justice, which began operating on 15 April 1971.

1.13 A fundamental principle is that children who offend and children who are in need of care and protection should be dealt with in the same system. Decisions should be made on the basis of the child's needs. The system is centred on the welfare of the child. The lay Panel Members make decisions relating to the child's welfare whilst disputed facts (such as the grounds for referral) and appeals are considered by courts thereby protecting the civil rights of parents and children.

The Kilbrandon Report

1.14 In May 1961, a committee was set up by the Secretary of State for Scotland under the chairmanship of Lord Kilbrandon, a senior Scottish judge. Other members of the committee included justices of the peace, lawyers, a chief constable, a headmaster, a psychiatrist and a probation officer.

The remit of the committee was:

'to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles, and to report'.

1.15 At the time of the Kilbrandon Committee, "juvenile delinquency" was seen as a much greater problem than cases in which children were the victims of cruelty or neglect. The Kilbrandon Committee produced innovative and radical recommendations that led to the setting up of the Children's Hearings System.

1.16 The Committee's report, the [Kilbrandon Report](#) was presented to Parliament by the Secretary of State for Scotland in April 1964. It defined core principles which were realised through the creation of the Children's Hearings System:

- whether they require care or have offended, children or young people in trouble have similar needs and those needs should be met through a single system
- a preventive approach, involving early identification and diagnosis of problems, is essential
- once the facts of the case have been established, the focus of the hearing should be on the best means of meeting the child or young person's needs
- in deciding how a child or young person's needs should be met, his or her welfare throughout childhood should be the paramount consideration
- the child or young person's family and its circumstances should be integral to the discussion about how best to meet his or her needs
- compulsory measures of care should be applied only where the child or young person's welfare cannot be secured through voluntary arrangements



- through the appointment of lay Panel Members, the child or young person's local community should participate in decisions about children or young people

1.17 In taking all these factors into account, the Committee reached one of its most important and far-reaching conclusions:

The overriding and paramount principle was that the needs of an individual child required to be assessed so that appropriate 'treatment' could be applied. This could only be achieved by objective examination of all surrounding facts and circumstances. It was inappropriate to expect a single agency to determine disputed facts and establish what an individual child's needs were in the light of the fullest information about the child's personal and family circumstances.

1.18 The Kilbrandon Committee recommended that entirely new arrangements were required to deal with all children in need and that a special treatment agency or panel was necessary, which would be neither a court of law nor a local authority committee.

1.19 The panel would be a lay body, comprising people with the knowledge and experience necessary to consider children's problems. This was a model on which none of the then current systems of juvenile justice was based. The panel would have powers of compulsory action and the power to vary measures appropriate to the individual child.

1.20 What distinguished panels from the juvenile courts then in existence was the manner in which their powers would be exercised. The driver for action would be the child's need for special measures of education, training or support. The panel's jurisdiction would be founded on grounds where the basic facts were agreed or accepted, with disputed matters being referred to a Sheriff for adjudication.

1.21 There was intense and heated debate about the shift from courts towards a system based on 'social education'. Despite the controversy, the government accepted the recommendations in principle and in much of the detail, and created a new kind of social work department, bringing together existing specialised social work services - probation, the children's departments and welfare departments of councils - in order to provide an effective all-encompassing system.

1.22 Statutory provision for the new system was made in the Social Work (Scotland) Act 1968. Parts I and II of this Act enabled the necessary changes in the organisation of social work services to be made and the new social work departments were set up in November 1969. Part III of the Act, which established the Children's Hearings System, was not implemented until April 1971, to allow the changes brought about by the reorganisation of social work to bed in before the new social work departments assumed responsibility for working with children in need of compulsory measures of care.



The fundamental principles of the Children's Hearings System

1.23 The Children's Hearings System has been underpinned by principles set out in the Kilbrandon Report from the start. These brought together the law, expertise in providing child care, and informed lay judgement in order to reach decisions on what care was needed in the best interests of individual children. The key principles are:

- children who offend and children against whom offences are committed should normally be dealt with in the same system - but children who commit very serious offences may be dealt with by the criminal justice system;
- the system is based on a concern for the welfare of the child not punishment
- while the child's needs are normally the test for intervention this does not mean ignoring deeds;
- the gatekeeper to the system, the Children's Reporter, gathers evidence to support specified reasons for referral and also applies the test of the need for compulsory intervention;
- hearings are conducted in private but are open to prescribed public scrutiny;
- decisions in hearings are made by trained lay people, representing a cross-section of the community;
- children and parents have the right to accept or deny the grounds for referral and disputed facts are dealt with by a Sheriff, separating fact-finding from decision-making;
- hearings consider the whole child - that is the child in the context of his or her life;
- the style and setting of hearings is relatively informal to encourage full and frank discussion while legal procedures are observed;
- hearings should attempt to engage the cooperation of families in resolving problems;
- parents are usually the best people to bring up their own children and should be encouraged and enabled to do so whenever possible;
- hearings must seek, listen to and take account of the views of children and their parents in reaching decisions;
- compulsory measures should be beneficial with decisions taken by children's hearings being in the best interests of the individual child;
- compulsory measures encompass protection, treatment, guidance and control;
- children should remain in their own community wherever possible and service provision should be integrated;
- other rights, such as the right to appeal and to review of compulsory measures, are built in to the system.

c. The evolution of the Children's Hearings System

1.24 Though not without its critics, the system gained in credibility and respect over its first 25 years. The principle that determination of disputed fact and decisions on the care of



the child are separate was described by Lord President Hope in 1991 as *'the genius of this reform which has earned it so much praise'*.

1.25 Initially, children's hearings were concerned mainly with children who had committed offences. The system also has had to adapt to social changes which have increased pressure on children and their families. In the late 1970s reported incidents of child abuse increased. In the 1980s child sexual abuse began to be acknowledged as a widespread issue.

1.26 The number of care and protection referrals to hearings has grown steadily over the years. In 2020/21 non-offence referrals accounted for 82% of referrals received.

1.27 The Children's Reporter service, which was initially located within local authorities, became a national agency called the [Scottish Children's Reporter Administration](#) in early 1996. By this time, there were over 2000 volunteer Panel Members sitting on hearings across Scotland. Referrals into the system continued to increase.

1.28 Government reviews in the late 1980s and early 1990s resulted in greater emphasis in law and practice on the responsibilities of parents for the care and nurture of children and parental rights. These included a recognition that, even if they cannot live together, both parents should normally have a role to play in their child's life. There was increasing recognition of the need to include the views of children in decisions about matters affecting their upbringing.

1.29 [The Children \(Scotland\) Act 1995](#), implemented on 1 April 1997, marked a significant stage in the development of legislation on the care of children. It is centred on the needs of children and their families and defines parental responsibilities and rights.

This Act required courts and children's hearings to bear in mind the following principles in reaching decisions:

- the welfare of the child is the paramount consideration in most decisions being made by courts and children's hearings (unless members of the public need to be protected from serious harm);
- no court or children's hearing should make an order relating to a child unless the court or children's hearing considers that to do so would be better for the child than making no order at all; and
- children should be given an opportunity to express a view and, if they do so, consideration should be given to the child's views - children of 12 or over are presumed to be sufficiently mature to be able to form a view.

1.30 The Children's Hearing System has continued to develop and strengthen through the adoption of international treaties and conventions, case law which expanded the rights of children and other participants and the most recent review of the system which created the [Children's Hearings \(Scotland\) Act 2011](#), bringing the system up to date to ensure it is as



relevant and effective today as it was in 1971.



Summary

a. Children’s Hearings (Scotland) Act 2011

- the primary legislation which governs children’s hearings is the Children’s Hearings (Scotland) Act 2011.
- this Act came into force on 24 June 2013.
- the 2011 Act is underpinned by secondary legislation which provides rules of procedure at hearings, the most important of which are the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013.

b. Children and Young People (Scotland) Act 2014

- Part 16 of this Act amended the 2011 Act and gave new powers to children’s hearings at pre-hearing panels and at certain grounds hearings.
- Part 9 deemed certain organisations and individuals as ‘Corporate Parents’, including the National Convener and Children’s Hearings Scotland.

c. The European Convention on Human Rights (ECHR)

- The European Convention on Human Rights sets out in Articles 6 and 8 key human rights of children, young people and families which may be affected by referral to the hearings system.

d. The United Nations Convention on the Rights of the Child (UNCRC)

- The Children’s Hearings System must protect children’s rights and Panel Members should have regard to the Convention in the decisions they make.

e. Children (Scotland) Act 2020

- Offers a number of updates for children’s hearings, including key changes around involving brothers and sisters in hearings.

a. The Children’s Hearings (Scotland) Act 2011

2.1 The legislation governing how the Children’s Hearings System operates is the [Children’s Hearings \(Scotland\) Act 2011 \(‘the 2011 Act’\)](#). This Act came into force on 24 June 2013. Alongside the 2011 Act a variety of rules and regulations prescribe legal requirements for hearings and for the conduct of Panel Members and the Children’s Reporter. The [Children’s Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children’s Hearings\) Rules 2013 \(‘the 2013 Rules’\)](#) set out the procedural rules for a children’s hearing.

2.2 This Practice and Procedure Manual refers to section or rule numbers in the 2011 Act or 2013 Rules, unless stated otherwise.

2.3 The 2011 Act introduced structural changes to the Children’s Hearings System by



creating:

- the office of the National Convener
- a new public body, Children’s Hearings Scotland, to support the work of the National Convener
- a national Children’s Panel
- a national Panel of Safeguarders.

For further information about the role of the National Convener and Children’s Hearings Scotland please see www.chscotland.gov.uk.

2.3 In addition, the Act introduced changes to the law to:

- revise and modernise the grounds of referral
- provide for pre-hearing panels to make certain procedural decisions before a children’s hearing
- simplify and modernise the legal orders Panel Members can make
- give more flexibility to Panel Members to make interim decisions
- make help from a Solicitor more easily available to assist a child, relevant person and certain others at a hearing.

b. The Children and Young People (Scotland) Act 2014

2.4 [The Children and Young People \(Scotland\) Act 2014](#) (‘the 2014 Act’) aims to put children and young people at the heart of planning and delivery of public services and to ensure that their rights are respected across the public sector.

2.5 [Part 16](#) amended the 2011 Act making new provisions:

- allowing a pre-hearing panel to be arranged to consider whether a person should continue to be deemed a relevant person for a child;
- for a grounds hearing to make an Interim Compulsory Supervision Order (ICSO) if the hearing has directed the Children’s Reporter to arrange another grounds hearing when a child fails to attend a grounds hearing.

2.6 [Part 9](#) of the 2014 Act placed additional responsibilities on certain organisations and individuals who are defined as ‘corporate parents’. The National Convener and Children’s Hearings Scotland (CHS) are corporate parents. This means that the members of the CHS Board, CHS staff and volunteer Area Support Team members must contribute to CHS carrying out its responsibilities as a corporate parent.

2.7 **Panel Members are not corporate parents. Panel Members must maintain their independence as decision-makers at all times.**



2.8 The 2014 Act places the following duties on corporate parents:

- to be alert to matters which might adversely affect the wellbeing of looked after children and young people
- to assess the needs of looked after children and young people for the services and support we provide
- to promote the interests of looked after children and young people
- to provide opportunities for looked after children and young people to participate in activities designed to promote their wellbeing
- to take appropriate action to ensure looked after children and young people access these opportunities and make use of our services and support
- **to take any other action appropriate to improve our functions to meet the needs of looked after children and young people**

2.9 Being a corporate parent means working with other organisations who are corporate parents with the same responsibilities, to meet the needs of looked-after and care experienced children and young people. To find out more about CHS's work as a corporate parent, visit our [My Corporate Parents](#) website. For general information, see Who Cares? Scotland's website [Corporate Parenting](#).

c. The European Convention on Human Rights

2.10 Since the Children's Hearings system started in 1971 'rights' have become a bigger and more central part of the Scottish legal system. This is as a result of the United Kingdom's commitment to abide by various international legal conventions. Panel Members should be aware of the obligations on the Children's Hearings System to promote and protect human rights as a result of international legal conventions.

2.11 [The European Convention on Human Rights](#) was drafted by the Council of Europe in 1950 and came into force in September 1953. The rights contained within the European Convention on Human Rights are incorporated into UK domestic law including the law of Scotland as a result of the Human Rights Act 1998. The Scotland Act 1998 - which created the Scottish Parliament – requires that legislation passed by the Scottish Parliament must be compatible with ECHR rights. The rights apply to everyone – both adults and children.

2.12 The rights under ECHR which are most relevant for the Children's Hearings System are:



Legislation and Legal Tests

*“In the determination of his civil rights and obligations [which includes a children’s hearing] or of any criminal charge against him, everyone is entitled to a fair...hearing within a reasonable time by an independent and impartial tribunal established by law” **Article 6***

*“Everyone has the right to respect for his private and family life, his home and his correspondence” **Article 8***

2.13 Some of the most important changes to the Children’s Hearings System have come from legal challenges under the European Convention on Human Rights. For example: children, where appropriate, and relevant persons now receive the same papers as Panel Members; unmarried fathers are automatically recognised as relevant persons, and relevant persons have access to legal aid, in some circumstances, to pay for the assistance of a Solicitor at a children’s hearing.

d. The United Nations Convention on the Rights of the Child

2.14 The [United Nations Convention on the Rights of the Child](#) (UNCRC) was adopted by the General Assembly of the United Nations in November 1989. It is unique amongst international Conventions in terms of the number of States which have signed it and the range of rights it contains for children.

2.15 The Convention contains 54 Articles which apply to all individuals aged under 18 years. More information on the Convention can be found on the website of Scotland’s Commissioner for Children and Young People at www.CYPCS.org.uk.

2.16 The United Kingdom has signed the Convention. At present, a child cannot make an application to court claiming that their rights under the UNCRC have been infringed in the same way as they can with the European Convention on Human Rights. Both the Scottish and UK Parliaments are expected to abide by the terms of the convention in the legislation they pass. Public bodies (including a children’s hearing) should have regard to the Convention in carrying out their functions. Panel Members should know about and act within the spirit of the Convention.

2.17 In December 2018, the Scottish Government gave a public commitment to incorporating UNCRC into Scots law. This led to the UNCRC (Incorporation) (Scotland) Bill 2019, which is expected to come into force shortly. When passed, this will bring the rights contained in the UNCRC into Scotland’s domestic law. It will also create new compliance and reporting duties for organisations like Children’s Hearings Scotland and the Scottish Children’s Reporter’s Administration. International experience demonstrates that incorporating the UNCRC into domestic law can bring about transformational societal change, helping to create a culture which respects, protects and fulfils children’s rights.



2.18 Incorporation of the UNCRC will make Scotland accountable for protecting children’s rights. It will give courts the powers to decide if legislation is compatible with UNCRC requirements, and the power to invalidate legislation if it is found to be incompatible or make a declaration of incompatibility. It also places a duty on public authorities to act compliantly with the Convention. Children’s Hearings Scotland, along with other public bodies, must report every three years on what they have done to meet UNCRC requirements. Work is already well underway to ensure we are implementing this legislation, and you can find our first report on the steps taken to further effect the UNCRC requirements [here](#).

2.19 Under this legislation, The Children and Young People’s Commissioner in Scotland will now have the power to take legal action if children’s rights under the UNCRC are breached. Children, young people, and their representatives will be able to use Scottish courts to enforce their rights, providing far greater accountability measures for UNCRC compliance in Scotland.

Some of the key articles from the United Nations Convention on the Rights of the Child for the purposes of children’s hearings are as follows:



Legislation and Legal Tests

“In all actions concerning children...the best interests of the child shall be a primary consideration” **Article 3**

“States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine...that such separation is necessary for the best interests of the child” **Article 9**

“States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely and in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”

Article 12

e. Children (Scotland) Act 2020

2.20 The Children (Scotland) Act 2020 (‘the 2020 Act’) was passed in August 2020. The Act contains a number of changes relevant to children’s hearings, many of which came into force on the 26th of July 2021.

2.21 Some of the key changes in this Act relate to **promoting and maintaining relationships between brothers and sisters**. For these changes, siblings are defined as either a sibling of the child (defined as having at least one parent in common, i.e. a



biological or adoptive parent) or any other person with whom the child has lived with and has an ongoing sibling-like relationship. The changes include placing a duty on local authorities to promote relationships between brothers and sisters where appropriate, and to consider how contact can be maintained between brothers and sisters. It also creates a new category of individuals who will be granted participation rights in children's hearings, provided they meet the relevant criteria. This includes the right to be notified of a hearing, to be provided with relevant paperwork, to attend and be represented at the hearing, and to seek a review of the hearing.

2.22 When an individual is seeking to participate in a children's hearing, Panel Members must consider the options open to the hearing and whether any decision they make is likely to significantly affect contact or the possibility of contact between the person and the child. Contact should be considered every time a Compulsory Supervision Order is varied, continued or terminated, and the opportunity for an individual to participate in a children's hearing provides a route for the person to be heard and lay out their case for a change, or as it may be a continuation, in contact arrangements between them and the child. These changes are far-reaching and respond to calls for change from the Care Review, now being delivered via The Promise, and groups such as Stand Up for Siblings.

2.23 Further changes which have not yet come into force include removing the presumption that a child is able to form and express a view at twelve years old. When considering whether a child is capable of forming a view, the presumption must be that all children are capable of forming a view in some way. Once the child has provided their views regard must be had to those views, taking into account their age and maturity. Children must also be given the opportunity to provide their views in a way that they choose, provided that it is reasonable to accommodate the child's preferences in the circumstances. This may include, but is not limited to, means such as bringing a video to the hearing or writing a letter.



Summary

a. Panel Member

- makes decisions which have legal effect.

b. Panel Practice Advisor

- ensure Panel Members are providing a high quality experience at hearings.

c. Virtual Support

- Supports the smooth running of virtual or hybrid hearings.

d. Children's Reporter

- receives referrals about children and decides whether any of the grounds for referral apply and if they may be in need of compulsory measures of supervision
- arranges a children's hearing for a child and prepares the statement of grounds
- notifies parties of the hearing and arranges for information and reports to be sent to everyone including reports from the local authority
- has four parts to their role at a children's hearing:
 1. fulfilling legal obligations
 2. supporting fair process
 3. customer care
 4. meeting health and safety requirements
- conducts court proceedings to establish the statement of grounds and appeals against children's hearings decisions.

e. Child

- defined in [s199 of the 2011 Act](#).

f. Relevant Person

- there are two categories of relevant person:
 - 'automatic' relevant persons ([s200](#))
 - 'deemed' relevant persons ([s81\(3\)](#))
- a deemed relevant person is someone who has, or has recently had, a significant involvement in the upbringing of the child
- only a hearing or pre-hearing panel can deem someone to be a relevant person.

g. Safeguarder

- is a person appointed by a pre-hearing panel, children's hearing or Sheriff to safeguard the interests of the child.

h. Solicitor

is a legally qualified person who must be registered with, and is regulated by, the Law Society of Scotland.



a. Panel Member

3.1 A children's hearing is a legal tribunal. A Panel Member is one of a group of three lay people who make up a children's hearing and who takes legally binding decisions about a child. Although decisions are made individually, Panel Members work as a team throughout the hearing.

A Panel Member is a decision maker. A Panel Member is not a social worker, a counsellor, or a problem solver.

3.2 As far as reasonably practicable, the volunteers who serve on the Children's Panel live or work in the local authority area in which the children and young people for whom they are making decisions also live. Under the current law, panels are also to be composed with a man and a woman as far as practicable.

3.3 Occasionally a hearing or pre-hearing panel will need to be arranged to take place out with the local area where the child normally resides, for example, to prevent disclosing their whereabouts to another person or where there is a real risk to the safety of the child or others if they were to attend their local hearing centre.

3.4 In these cases, Panel Members may be asked to travel outside the area in which they serve. If there are no Panel Members available to travel to a hearing which has been arranged at short notice or the distance to travel is too great (for example involving travel from a remote or island area), Panel Members from the area local to the children's hearing may be approached. At least one Panel Member in the hearing should be from the child's local authority area.

Chairing

3.5 At every children's hearing, one Panel Member will be identified as the 'chairing member' to facilitate the hearing discussion and to fulfil certain requirements of the 2011 Act.

3.6 Every Panel Member is required to chair children's hearings once they have successfully completed the relevant training. If possible, each hearing will have a different chairing member to share the additional workload evenly.

3.7 Although certain duties are the responsibility of the chairing member, all Panel Members should work together to ensure the smooth running of the hearing and support the chair in the fulfilment of their duties. See the section on [chairing a children's hearing](#) for more information.



b. Panel Practice Advisors

3.8 In every local authority area an [Area Support Team](#) (AST) provides local guidance and support to Panel Members. Every AST includes Panel Practice Advisors (PPAs) who are specially trained volunteers. PPAs are responsible for observing each Panel Member in a hearing at least twice per year to ensure they are following correct legal procedures and are providing a high quality experience to children and families. They fulfil other roles in the AST, such as recruiting new Panel Members, reappointing existing Panel Members and investigating complaints.

3.9 Observations are assessed against a national competency framework and written feedback is provided to Panel Members after the hearing. Feedback will highlight examples of good practice and identify any training needs.

3.10 PPAs have a right to attend a children's hearing under the 2011 Act.

c. Virtual Support

3.11 The Virtual Support person is a new role to support virtual hearings. Their role starts before the hearing and they remain available to support the hearing until the end.

3.12 The Virtual Support role starts when they contact the family and child at least a week before the hearing to give them the opportunity to talk through the process of joining the hearing. This includes letting them into a Teams room so they can see what it looks like. This is similar to a pre-hearing visit for a child or young person. During a virtual hearing they will admit people to the hearing room and provide support if participants have connection issues.

3.13 The e-mail with a joining link received by Panel Members will include the name and phone number of their Virtual Support person for that hearing session.

d. Children's Reporter

3.14 The Children's Reporter is employed by the [Scottish Children's Reporter Administration \(SCRA\)](#). The 2011 Act gives certain responsibilities to the Principal Reporter. These are delegated to a Children's Reporter, a trainee or an Assistant Reporter who will attend the hearing. Children's Reporters fulfil several distinct functions in the Children's Hearings System:

Decision-making

3.15 The Children's Reporter receives referrals about children who may be in need of compulsory measures of supervision. This may be because the child appears to be in need of





care and protection and/or they are alleged to have committed an offence. Anyone can make a referral to the Children's Reporter. In practice, most referrals come from social work, the Police and education.

3.16 When a referral is received the Children's Reporter may carry out an investigation. The Children's Reporter asks for information and reports from a variety of agencies before deciding whether a children's hearing is needed. The decisions of the Children's Reporter are made in line with the SCRA's [Framework for Decision Making by Reporters](#). The reasons for referral and decisions of the Children's Reporter made in each local authority can be found on the [SCRA statistical dashboard](#).

3.17 If the Children's Reporter is satisfied that a Compulsory Supervision Order (CSO) is not necessary, depending on the needs of the child and their individual circumstances, the Children's Reporter may refer the child to the local authority, or another agency, for support without the need for compulsion.

3.18 In 2020/21, there were 17, 082 referrals to the Children's Reporter relating to 9,665 children. This represents 1.1% of all children in Scotland. In 22% of referrals, the decision was made to arrange a children's hearing in respect of the child. Wider information on the most common grounds for referrals, types of hearings held, appeals and the ages of children referred can be found in the [Statistical Analysis 2020/21](#).

Grounds for referral

3.19 Grounds for referral to a children's hearing describe the legal basis for the decision by the Children's Reporter to refer a child's case to a children's hearing. The grounds for referral must include the appropriate statutory reason why the referral is justified, and the relevant facts provided to the Reporter by the referring agency to support that reason. The statutory grounds are set out in [section 67](#) of the 2011 Act. The grounds for referral should make clear the nature of the concern or risk to the child or young person and the reasons *why* there are concerns. The Reporter may refer the child to a hearing on the basis of more than one ground. At least one of the statutory grounds must be accepted or established in court in order for a hearing to make a decision about whether compulsory measures of supervision are needed.

3.20 When the Children's Reporter receives a referral their role is

- to assess the information and consider whether a statutory (section 67) ground applies to the child, and
- if so, to consider whether it is necessary for a compulsory supervision order to be made in respect of the child.

The Reporter may seek further information from other professionals or agencies involved with the child and family. They may ask for a report from the local authority on the child or on any matter relating to the child.



3.21 If, having completed their investigations, the Reporter is satisfied that there is sufficient evidence to support a legal ground for referral, and they consider a compulsory supervision order is needed, the Reporter can proceed to arrange a children’s hearing. The Reporter will decide which of the seventeen grounds in the 2011 Act most accurately reflects the concern regarding the child’s welfare and will draft a statement of the ground(s) to put before the children’s hearing.

3.22 If the Reporter considers that none of the section 67 grounds applies in the individual child’s case the Reporter may not arrange a children’s hearing. If the Reporter considers that a section 67 ground applies but that the child is not in need of a Compulsory Supervision Order the Reporter must inform the referrer, the local authority in which the child lives, the child and any relevant person that they do not intend to refer the child to a children’s hearing. In these circumstances the Reporter may refer the child to the local authority to arrange any advice, guidance or assistance that the child or family may need.

Section 67 Grounds

Section 67 of the 2011 Act lists the legal reasons for which a child can be referred to a children’s hearing:

(a) The child is likely to suffer unnecessarily, or the health or the development of the child is likely to be seriously impaired, due to a lack of parental care.

Lack of parental care is the most common ground for referral. Lack of parental care can be indicated by evidence that the child is not being given sufficient food, or appropriate clothing, is living in unsanitary conditions which pose a risk to their health, is not being given the right health care or medical treatment at the right time, or their parents are not able to meet all their physical and emotional needs because of addiction to alcohol or drugs, poor mental health or other personal problems.

As the ground refers to “likely” to suffer unnecessarily, there is no need to prove that the child has actually experienced harm or serious impairment in their health or development, but that there is a risk that unnecessary harm will result from the parent or parents failure to meet their child’s physical, psychological or emotional needs. In some cases very young babies or infants may be referred because their older siblings have been placed in care because of their parents’ problems looking after them and there is no evidence to suggest improvement in the parents’ skills, knowledge or understanding.

(b) A schedule 1 offence has been committed in respect of the child.

Schedule 1 offences refer to the offences listed in [Schedule 1](#) of the Criminal Procedure (Scotland) Act 1995. These include neglect, sexual abuse, physical assault and other harmful behaviours, such as giving a child drugs.



It is not essential for a specific person to be identified or charged with the offence. It is enough that there is evidence that an offence against the child has been committed. For example, a child may have had an injury which appears to have been caused by an assault while in their parents' care. Both parents may deny having caused the injury or suggest an accident as the cause. There may be conflicting evidence or limited evidence which parent harmed the child. As long as the evidence indicates that on the balance of probabilities the injury was caused by an offence against the child, this ground can apply. However if the ground is not accepted by the parents, it is likely to require referral to the court so that the ground can be established by evidence and medical evidence is likely to be key here.

(c) The child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence.

This ground is used to protect a child from birth onwards, where the child has had or is likely to have in the future, a close connection with someone who has committed an offence.

Close connection means a being member of the same household or having significant contact with the offender, so being regularly around the family circle. This ground is about the risk that the behaviour outlined in Schedule 1 creates for the child, even if they are not the victim of that offence.

Just as above, charges against someone for the offence aren't necessary to meet this criteria – this ground can even be established if a prosecution hasn't been secured.

(d) A child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed.

The term 'Household' has been given a lot of consideration by courts, who have discussed the idea as being about more than just a location. Physical separation won't end membership of a household, as the term has been considered in terms of the relationships it represents rather than just the space people occupy. That said, a relationship on its own won't suffice – it's about the overall living arrangements a person is involved in.

- (e) The child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that –**
- i. the child will be abused or harmed, or**
 - ii. the child's health, safety or development will be seriously adversely affected.**



The purpose of this ground is to protect a child from anyone whose conduct either directly or indirectly creates a risk of future harm. This could be active or passive conduct, in the past or the present and needn't be based on the conduct of a caregiver – it could be anyone involved in the child's life.

This ground can also be used when the child's safety is or is likely to be compromised by more than one person due to their past or present conduct. It has the potential to cover a broad range of circumstances such as being present in a house where substance misuse is taking place or pornography is being shown. 'Likely' also applies to the impact on the child.

For example, living in a household where an older sibling is partaking in substance misuse and younger siblings are witnessing this/being exposed to it.

(f) The child has, or is likely to have, a close connection with a person who has carried out domestic abuse.

Domestic Abuse perpetrated against someone in the child's immediate circle, has serious detrimental emotional and developmental consequences, even when the child has not been physically harmed during the incident.

This ground protects any child who has a close connection with the perpetrator of domestic abuse whether that person is a man or a woman. If the only significant concern is exposure to domestic abuse, then this is the most more likely ground to be used, opposed to the 'lack of parental care' ground.

The second element to this ground is that the child is taken to have a close connection with the person who has carried out domestic abuse. The child will have a close connection with a person if: the child is a member of the same household as the person or the child is not a member of the same household but has significant contact with the person.

The ground covers current or 'likely' close connection with a person who has carried out domestic abuse but it is not necessary that the domestic abuse has been carried out in the referred child's family.

The definition of domestic abuse isn't set out in the 2011 Act, but since the creation of the 2011 Act, this has become one of the most commonly used grounds of referral.

(g) The child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9).



This ground protects any child who has a close connection with someone who has committed an offence of unlawful sexual intercourse, rape etc. of a young child (a child who has not attained 13 years of age) or an older child who has not reached 16 years of age.

A child has a close connection with a person if: the child is a member of the same household as the person or the child is not a member of the same household but has significant contact with the person.

For example, a parent enters into relationship and the partner has a conviction of sexual offences and the partner frequents the home in which the children live.

(h) The child is being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995 and special measures are needed to support the child.

This ground relates to children who are being looked after by the local authority on a voluntary basis and their behaviour is potentially risk taking or posing a threat to themselves or others and requires a restraining measure to that behaviour to be in place.

The 'special measures' available to support the child could include a movement restriction condition, or placing the child on a compulsory supervision order.

For example, a child or young person who is living in Foster Care and repeatedly absconding from their foster placement, resulting in them endangering themselves or others.

This ground also relates to Local Authorities carrying out their statutory duties which sometimes requires special measures to properly support the child. If so, the child can be referred to a Children's Hearing for consideration of such measures which would best support the child.

For example, access to a particular resource, such as specialist accommodation.

(i) A permanence order is in force in respect of the child and special measures are needed to support the child.

This ground relates to a child or young person whose future has been secured through a permanence order. It would be presumed that the child or young person is not subject to a compulsory supervision order, however, the child requires a degree of compulsion to support them through a difficult time.



For example, a child or young person who has been looked after for several years and has had their compulsory supervision order terminated as their future has been secured by a Permanence Order.

If the child or young person is to experience difficulties in the future, e.g., Placement breakdown, a re-referral to can be submitted to the Children's Reporter to bring the child/young person back into Children's Hearing system.

(j) The child has committed an offence.

Children under the age of twelve years cannot be prosecuted in court for an offence or referred to a children's hearing on offence grounds. They may be referred to a children's hearing on an offence ground if they are aged 12 or over at the time of the alleged offence. The police may refer a child charged with an offence aged twelve or over to the Reporter alone, or to the Reporter and the Procurator Fiscal. The Lord Advocate has issued [guidelines](#) for police about when they should refer offences jointly to the Children's Reporter and the Procurator Fiscal. Offences which should be jointly reported include offences which would be prosecuted in solemn proceedings including offences of violence, sexual and firearms offences, certain motoring offences committed by children aged fifteen and over, which might lead to disqualification from driving and offences committed by older young people already in touch with the Children's Hearings System.

If the ground for referral is that a child has been charged with an offence and the child and relevant person(s) accept the ground or it is established in court following evidence, the effect on the child will be the same as if they had been found guilty in court of the offence. This may have consequences for future opportunities both in higher education and for jobs.

A high standard of proof applies when the court is asked to determine whether or not this ground is established. It must be proven beyond a reasonable doubt that the child committed the named offence.

It is worthwhile noting common types of offences children are likely to be referred to a Children's Hearing for: Theft, Reset (receiving from another person property known to be stolen), Damage to property (vandalism or fire raising), Offences against the person (assault or various sexual offences), Possession of an offensive weapon, (carrying a knife or other implement which is used in a threatening manner), Traffic offences (the taking and driving away of a motor vehicle) and Miscellaneous acts like possessing an air weapon or general breach of the peace.

(k) The child has misused alcohol.

This ground relates to any child who has misused alcohol.



The misuse of alcohol is a serious problem that can lead to long term health difficulties (physical and psychological) for young people. For example, a young person engaging in underage alcohol consumption with friends without adult supervision that results in inebriation.

(l) The child has misused a drug (whether or not a controlled drug).

This ground is in line with Article 33 of the UN Convention of the Rights of the Child, which expects appropriate action to be taken to protect children from illicit substance misuse.

A child may legitimately take a drug for medical reasons which has been prescribed. However, if a child uses a drug for recreational use or any other use other than medical this will amount to misuse.

For example, a teenager who misuses cannabis with friends.

(m) The child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person.

It is likely that children who have been involved in concerning or offending behaviour under the age of 11 would be referred under this ground.

For example, this could involve a child who runs away from home, is involved with substance misuse issues or has been exposed to issues within the community, such as sleeping rough/homelessness.

(n) The child is beyond the control of a relevant person.

As a relevant person is tasked with the responsibility of being able to control a child or young person. This ground can be applied when a child is behaving in a way that is deemed unreasonable to the demands of a relevant person.

It does not matter that the relevant person does not hold full parental responsibilities and rights to exercise control. Nor does it matter why the relevant person is unable to exercise control. For example, this might be due to a break down in the relationship, suffering from illness or the hyperactivity of the child.

For example, a young person staying out late at night until the early hours of morning or continually running away from home while placing themselves at risk of harm.

(o) The child has failed without reasonable excuse to attend regularly at school.



This ground can be applied when a child is of school attending age.

Reasonable excuses are defined in section 42 of the Education (Scotland) Act 1980. These can vary from: health problems, special circumstances, difficulties with travel arrangements and not within reasonable walking distance.

If a child is excluded from education due to behaviour this is not considered a reasonable excuse for not attending school. However, if the child is being educated at home to an appropriate standard this is considered a reasonable excuse.

(p) The child –

- i. has been, is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or**
- ii. Is, or is likely to become, a member of the same household as such a child.**

This ground would apply when a child is being or is likely to be put under pressure to enter into a civil partnership.

In the year 2020/2021, the Scottish Children's Reporters Administration received zero referrals in relation to this ground.

(q) The child –

- i. has been, is being or is likely to be, forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriages etc (Protection and Jurisdiction)(Scotland) Act 2011 (asp 15))or,**
- ii. is, or is likely to become, a member of the same household as such a child.**

This ground may be used to protect children who are pressured while they are children to enter a marriage when they reach the legal age of marriage at 16. This ground also applies to children at risk of being taken abroad to a country where the age of marriage is below the age in Scotland.

For example, if a child is held captive somewhere until he/she agrees to the marriage, this would fall under physical pressure. Or if the child is threatened with being cut off from his/her family until they agree to the marriage, this would be considered emotional pressure.

A crucial point to remember is arranged marriages, which is where a family play a significant role in selecting a partner which the bride and groom consent to the arrangement does NOT fall into this category.

In the year 2020/2021, the Scottish Children's Reporters Administration received



less than 5 referrals in relation to this ground.

Standard of Proof

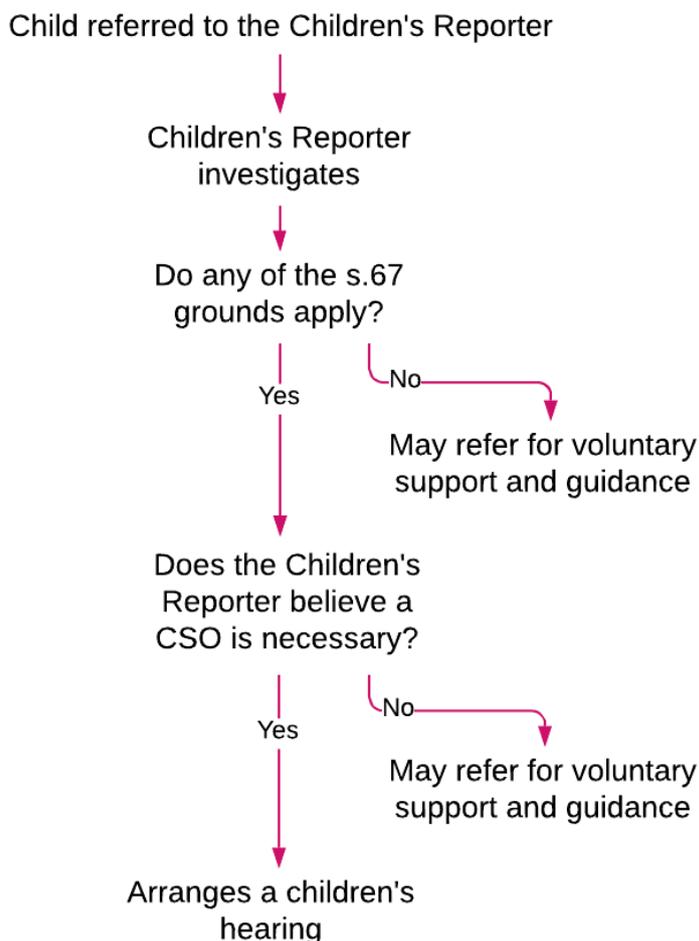
3.23 If the child and relevant persons do not accept the grounds put to them at the grounds hearing, Panel Members can direct the Children's Reporter to make an application for a court hearing at which a Sheriff will decide whether the available evidence indicates that the ground is justified. A hearing to consider whether compulsory measures of supervision are necessary requires the court to find the ground(s) for referral established.

3.24 The Reporter conducts the court case in the Sheriff Court to establish grounds for referral. If the ground for referral is that the child has been charged with a criminal offence, the Reporter must satisfy the Sheriff that the evidence proves that the child committed the offence in question beyond reasonable doubt (the 'criminal standard of proof'). All other grounds must be found proven on the balance of probabilities (the 'civil standard of proof'). The civil standard of proof means that the evidence indicates that it is more likely that the ground is justified, than not and is a lesser standard of proof than is required to justify establish an offence ground.

3.25 The child and relevant person will be legally represented in court and their solicitors will put their position regarding the ground of referral to the Sheriff. The Sheriff will receive the written reasons prepared by the children's hearing in support of their decision(s) and any reports provided to the hearing. The Sheriff may decide to hear oral evidence from witnesses. Both the Reporter and solicitors for the child and relevant person(s) may call witnesses. The Sheriff may appoint a Safeguarder during any court proceedings relating to the child.



SCRA Referral



Arranging a children's hearing

3.26 The Children's Reporter must arrange a hearing for a child if:

- one of the grounds for referral in s67 of the 2011 Act exists
- AND**
- the Children's Reporter is satisfied that a Compulsory Supervision Order is necessary

A hearing cannot be scheduled for a child unless both these criteria are satisfied.

3.27 In 2020/21, 16,248 children's hearings were held for 8,977 children.

3.28 It is the responsibility of the Children's Reporter to notify children, young people and relevant persons of the date, time and location of the hearing and provide them with all relevant paperwork which they request from the agencies and professionals working with the family. If there are language barriers, the reporter is responsible for organising an



[interpreter](#) for the hearing.

Withholding an individual's whereabouts ([Rule 16](#))

3.29 When sending out information about a hearing or pre-hearing panel, the Children's Reporter has the power to withhold the current whereabouts of the child or a relevant person if the Children's Reporter believes disclosing the information would cause significant harm to the child or relevant person. See section on non-disclosure for further information.

The role of the Children's Reporter at a children's hearing

3.30 There are four parts to the role of a Children's Reporter at the hearing:

- 1. Fulfilling legal obligations.** The reporter must keep a report of the proceedings of the hearing.
- 2. Supporting fair process.** This can include giving a view to the hearing about a legal or procedural issue in the same way as any other hearing participant. This view can be given in response to a question or offered on the Children's Reporter's initiative.
- 3. Customer care.** The Children's Reporter will introduce themselves to the other participants on arrival and be available to assist with any practical issues in advance of the hearing.
- 4. Health and safety duties.** As SCRA are responsible for providing the premises for hearings, the Children's Reporter must make appropriate arrangements to make sure that the hearing is safe for all participants and responds to any concerns, for example about potential threats of violence, identified before, or during, the hearing.

3.31 They are directed by the Principal Reporter to carry out their role in a way which supports the independence and impartiality of the hearing. The Children's Reporter has a right to attend a children's hearing.

3.32 The Children's Reporter should not discuss information about the child's case with Panel Members before a hearing. If the Children's Reporter think there is, or is likely to be, a procedural irregularity in the way the Panel Members are conducting the hearing, they have a responsibility to intervene to express a view during the hearing.

3.33 The Children's Reporter can also respond to any questions asked by Panel Members about procedural matters or to questions that Panel Members ask of all the participants.
Panel Members are independent of the Children's Reporter and of all other participants. They are under no obligation to accept the view of the Children's Reporter, or any other view offered by anyone else at the hearing.

3.34 After the hearing, the Children's Reporter should not stay in the hearing room with the Panel Members unless the child and relevant persons are also permitted to stay. If the Children's Reporter still has some paperwork to complete when the formal hearing is over,



the child and relevant persons present should be invited to stay by the chairing member while the Children's Reporter completes this paperwork. The Children's Reporter must have no involvement in the writing of the reasons for decisions.

3.35 After the hearing the Children's Reporter is responsible for notifying the outcome of the hearing in writing to every person entitled to receive a copy of the written decisions of the hearing.

Court

3.36 If the hearing directs the Children's Reporter to make an application to the Sheriff to decide whether the grounds are established (also known as sending for Proof), the Children's Reporter will lead evidence in court to enable the Sheriff to make a determination. More information on Proofs can be found in the [grounds hearing](#) section.

3.37 The Children's Reporter will be notified of any appeal to the Sheriff following the hearing decision and will conduct the appeal in court.

e. Child ([s199](#))

3.38 In the Children's Hearings System, compulsory measures of supervision are placed on the child. Panel Members must be satisfied that the person to whom the hearing relates is classed as a child for the purposes of the 2011 Act.



Legislation and Legal Tests

A person is a child under the 2011 Act if they are:

- under the age of 16 years;
- aged 16 or 17 years and subject to a Compulsory Supervision Order;
- under the age of 16 years when referred to the Children's Reporter until the Children's Reporter decides not to arrange a children's hearing or a substantive decision is made by a children's hearing;
- of school age where the ground of referral is non-school attendance; or
- aged 16 or 17 years and whose case has been remitted to the Principal Reporter by the Sheriff after they have pleaded guilty to, or been found guilty of, an offence until a substantive decision is made by the hearing.



f. Relevant person

3.39 A 'relevant person' is a legal category of person who has a parental or quasi-parental role in the child's life. Within the context of a children's hearing, relevant persons are granted the right and duty to attend a children's hearing, the right to receive all paperwork, the right to be represented at the hearing (by both a legal and lay representative), the right to respond to the grounds for referral, request a review of the decision of the children's hearing and the right to appeal decisions taken by the hearing.

3.40 There are two routes to becoming a 'relevant person' for the purposes of children's hearings. In both cases the relevant person has the same responsibilities and rights. Where there is more than one relevant person, they should be referred to as 'relevant persons', not relevant people.

Automatic Relevant Person [\(s200\)](#)



Legislation and Legal Tests

A person is automatically a relevant person for a child if they are:

- a parent of a child, unless they have had their parental rights and responsibilities removed by a court; or
- a person who holds parental responsibilities and rights for a child under a court order. This court order can be a parental responsibilities and rights order (now superseded by permanence orders) or residence order granted under the Children (Scotland) Act 1995 or a permanence order under the Adoption and Children (Scotland) Act 2007; or
- a person with parental responsibility via equivalent legislation applying to England, Wales or Northern Ireland.

3.41 The Children's Reporter will identify who is a relevant person in a child's family in terms of section 200 of the 2011 Act during their preliminary investigation.

Deemed Relevant Person [\(s81\(3\)\)](#)

3.42 The 2011 Act introduced a specific route in which, for the first time, persons without parental responsibilities and rights can become relevant persons – 'persons who may be deemed relevant persons'. **Only a children's hearing, or pre-hearing panel, can deem a person to be a relevant person.**



Legislation and Legal Tests

A person **must** be deemed a relevant person for a child if:

- the individual has (or has recently had) a significant involvement in the upbringing of the child

3.43 The test is that the person has had significant involvement in the upbringing of the child, rather than that they carry out any particular care task, or have a lot of contact with, the child. The Oxford English Dictionary definition of ‘upbringing’ is “the treatment and instruction received by a child from its parents throughout its childhood”.

3.44 This type of involvement is different to significant involvement in the child’s day to day care. For example, a child minder would not be eligible to be deemed a relevant person. For further information and detailed examples of when this test may be met, see the attendance section.

3.45 **This is a factual test.** If the matter is before a hearing or pre-hearing panel and the criteria in the test is met, the panel **must** deem the individual to be a relevant person. **Other considerations such as the best interests of the child or the character of the individual are not relevant considerations for being deemed a relevant person.**

g. Safeguarder

3.46 A Safeguarder is an independent person who is appointed by a children’s hearing, pre-hearing panel or a Sheriff to help them make the best decision for a child. The role of the Safeguarder is to safeguard the interests of the child to whom the hearing relates. Specifically, this 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

3.47 The national [Safeguarders Panel](#) is operated and managed on behalf of the Scottish Government by Children 1st. They are responsible for the recruitment, selection, training and monitoring of Safeguarders across Scotland. Their website contains helpful information for explaining the role of a Safeguarder to children. If any Panel Member wishes to feedback about a Safeguarder, [forms](#) are available online or in hearing centres.

3.48 It is [not possible](#) for a Panel Member or Area Support Team Member to also be a



Safeguarder.

3.49 For information about the decision of a hearing to appoint, or not appoint, a Safeguarder please see [Chapter 7](#).

h. Solicitor

3.50 The child and any relevant person has the right to be accompanied at the hearing by a representative. They are also entitled to representation by a Solicitor. In some circumstances the cost of the Solicitor can be paid from the Scottish Legal Aid Fund and is known as children's legal assistance. In limited circumstances, certain other participants in the hearing may be entitled to legal representation.

3.51 Solicitors are legally qualified and registered with and regulated by the Law Society of Scotland.

3.52 The role of the Solicitor at the children's hearing is to help the child or relevant person to participate effectively in the hearing. This can include giving the child or relevant person's views directly to the hearing, assisting them to give their own views including in writing or by other means, ensuring that the hearing is taking the legal rights of the person into account in their consideration, or a combination of these roles. Solicitors must act on the instructions of the person they are representing, irrespective of the Solicitor's personal view of whether those instructions are in the child's best interests. **Solicitors are not required to have the welfare of the child as the paramount consideration in their representations to the hearing on behalf of the child or any other person.**

3.53 **Panel Members are under no obligation to accept the view of a Solicitor and the views of a Solicitor at a hearing have no more weight than any of the other participants.**

3.54 Children's legal assistance funding can be available to pay for the Solicitor to give legal advice to an eligible child or relevant person out with the hearing and to represent them at the hearing. Children's legal assistance is administered by the Scottish Legal Aid Board. Only Solicitors who are registered with the Scottish Legal Aid Board and have agreed to abide by its [code of practice](#) for children's legal assistance, are eligible to apply for and receive children's legal assistance funding on behalf of the child or relevant person.

3.55 The code of practice sets out five competencies that a Solicitor must demonstrate in order to be registered by the Scottish Legal Aid Board as eligible to provide children's legal assistance:

1. An understanding and detailed knowledge of the provisions of the Children's Hearings (Scotland) Act 2011 and associated Rules and Regulations.
2. An understanding and detailed knowledge of children's legal assistance as set out in Part 19 of the 2011 Act and associated Regulations.

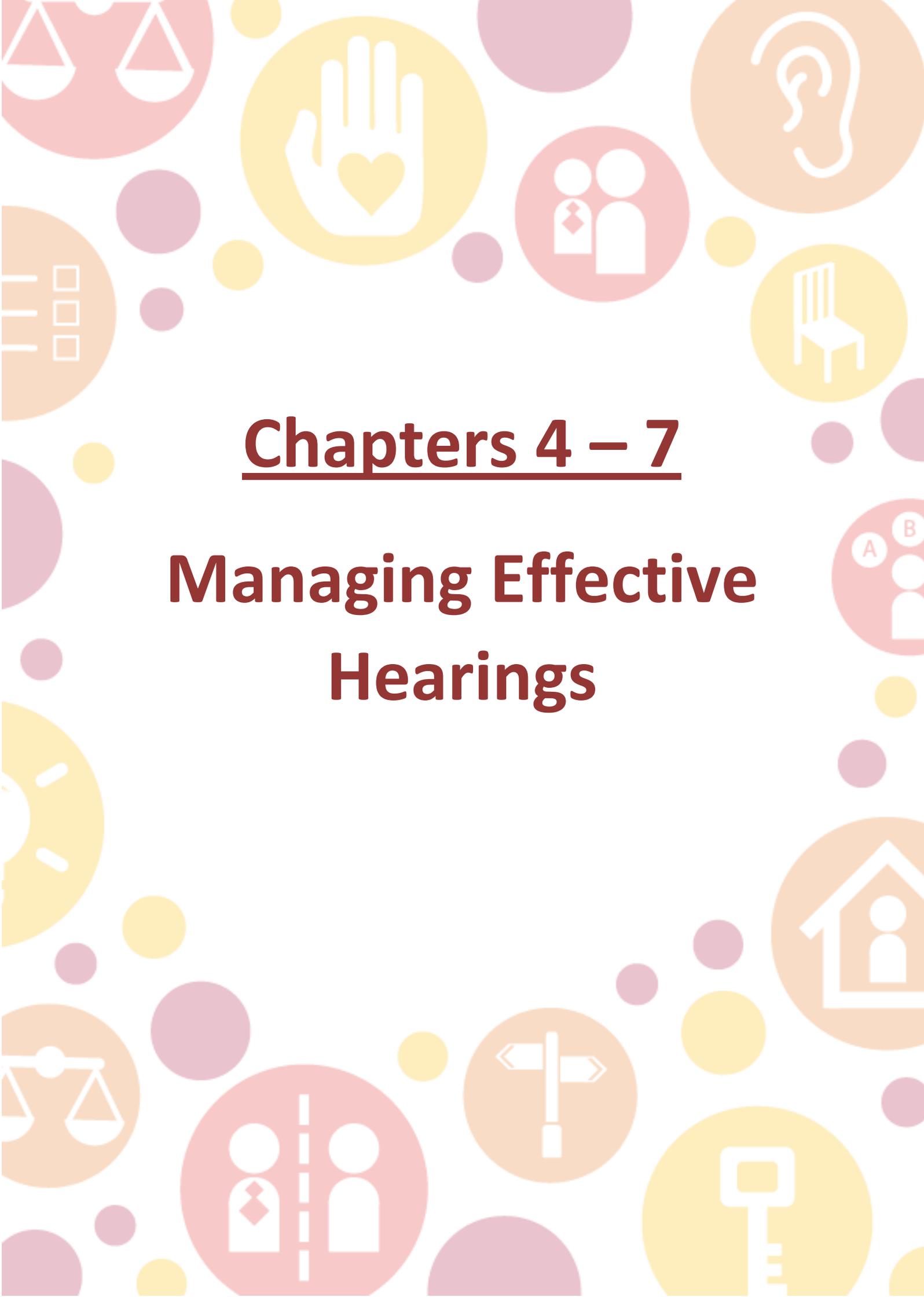


3. An understanding of the ethos of the Children’s Hearings System.
4. Detailed knowledge or experience of representing clients at children’s hearings and related court proceedings.
5. A general understanding of child development and the principles of communicating with children, if representing children.

3.56 The code of practice states that the Solicitor should meet with their client to take instructions at a suitable time before of the hearing . They should be fully prepared to represent their client’s position at the scheduled hearing time. Only in exceptional circumstances should the start of a hearing be delayed to enable a Solicitor to take instructions in the hearing centre.

3.57 Registered Solicitors are expected to maintain these competencies and this will be monitored by the Scottish Legal Aid Board.

3.58 For information about decisions a hearing may make about the appointment of a Solicitor for a child or relevant person please see [Chapter 7](#).



Chapters 4 – 7

Managing Effective Hearings



Summary

As soon as children's hearing papers arrive, check:

- the time and date of the hearing
- the names of the child, relevant persons and wider family to ensure there is **no conflict of interest**
- the **purpose** of hearing – if it is a less common type of hearing, more time may be needed to prepare and check the relevant sections in this manual.

When preparing for your hearing, take note of:

- the current legal status of the child and when any order may lapse
- the names of all participants
- **all** the options open to the hearing
- the content of the reports
- the local authority's recommendation(s)
- the child's views.

4.1 There is no one way to prepare for a hearing and each Panel Member will find the method that works best for them. It is not necessary or possible to be prescriptive. The following suggestions and examples of good practice may benefit Panel Members.

a. Formats of Hearings

4.2 The pandemic forced a wholesale shift to virtual hearings, practically overnight. Today, virtual hearings continue to take place where this is the best type of hearing for the child or family. However, face to face hearings have resumed and a new type of hybrid hearing will also be encountered regularly as we blend virtual technology with the benefits of in person hearings when necessary.

4.3 This means that Panel Members may encounter three types of hearing format. As arrangements may vary for individuals who are due to attend right up to the point of the hearing itself, Panel Members should be prepared to encounter all types and to be adaptable to the needs of those whose lives the hearing will impact.

Face to face

4.4 When all participants, including Panel Members, agree to attend a hearing in person at a hearing centre this is referred to as a 'face to face hearing'.

Virtual





4.5 When all participants, including Panel Members, join the hearing meeting through a Teams link made available to them by the Children’s Reporter, this is referred to as a ‘virtual hearing’. In addition to normal hearing preparations Panel Members should:

- Arrange to join the hearing from a private and secure location. No-one else should have access to the space during the hearing. Using headphones can also help ensure privacy.
- Avoid virtual backgrounds, and as far as possible remove personal and identifiable items to support security and transparency.
- Turn off notifications and ensure devices are fully charged and plugged in, to avoid disruption.

4.6 All Panel Members have a role in helping ensure all participants are able to fully engage with the hearing process. This includes observing others’ connectivity, and their ability to hear and participate in the hearing properly. Often connection issues can be resolved with workarounds, such as switching to a dial in line. **However, where internet connections stops people participating properly, Panel Members will need to consider whether it is fair to proceed with the children’s hearing.**

Hybrid

4.7 When some participants attend a hearing centre, and others join either through the hearing centre’s teleconference or virtual hearing set up, this is a ‘hybrid hearing’.

4.8 In hybrid hearings, Panel Members will need to carefully ensure that all those attending – whether they are virtual or in person – are respected and that their views are considered properly. This can be difficult while juggling various platforms, so Panel Members should ensure they work together to support this.

4.9 Prior to the pandemic, significant steps were needed to enable virtual attendance such as holding a pre-hearing panel to excuse the individual’s attendance and ensuring that virtual attendees joined from a securely linked location such as a court or alternative SCRA office. Legislative changes to enable better and easier virtual attendance were drafted pre-pandemic and came into force via the Children (Scotland) Act 2020. Today, SCRA must take all reasonable steps to enable attendance by phone or video link, if:

- the individual has a right, or is otherwise entitled to attend.
- They have made such a request to the Reporter, and
- The Reporter is satisfied that they either have a good reason for not physically attending, or that it would enable more effective participation than physical attendance.

4.10 The impact of these changes mean that every face to face hearing may end up as a hybrid hearing if a participant requests to attend virtually.



b. Notes

4.11 Notes are essential to keep focus on the main issues in a hearing. Well-prepared notes can also remove the need to refer to hearing papers during the hearing as all relevant information is in one place. They are a helpful reminder to the Panel Member of parties' names and the content of any existing orders.

4.12 There is no prescriptive formula to preparing notes; the following are general tips:

- it is good practice to handwrite notes and to fit them onto one side of paper. Having handwritten notes distinguishes the notes from the hearing papers and other reports
- in circumstances where a Panel Member is unable to handwrite notes they must not be saved or retained on any device, such as a laptop or tablet and there should be no reference made to the child's name, date of birth or other identifying information about the child or family on any personal device
- notes should only contain information which is taken from the hearing papers, with the exception of the legal options open to the hearing. Where options are included these should be identified as **options** only to avoid any implication that the Panel Member has reached a decision before the hearing
- notes should identify key matters that the Panel Member wants to discuss during the hearing. This helps to set the agenda for the hearing, to ensure that all material issues are covered, avoids straying into irrelevant areas and keeps a focus on good time management
- a child or relevant person might ask to see a Panel Member's notes during the hearing. Decisions in children's hearings are made according to the principle of openness, with all relevant information being made available to the child (if appropriate given their age and maturity) and relevant persons. **Panel Members should be alert to any non-disclosure provisions attached to an order before showing any participant his or her notes.** Where a non-disclosure provision is in place, Panel Members can ask a fellow Panel Member or the Children's Reporter to double check the notes do not disclose information which must be withheld before showing them to the child or relevant person. Detailed information on [non-disclosure](#) can be found in Chapter 7.
- any notes made about a case by a Panel Member **must** be returned to the Children's Reporter with the hearing papers at the end of the hearing to be securely destroyed.

4.13 Each Panel Member will find their own preferred method of taking notes in preparation for a hearing. The following example serves to highlight the information which should be included to ensure that all key information related to the child and family is easy to access during the hearing.



Example of notes

Sarah West - review requested by mother

Intros - Paul Ho Susan Watson Carla Martinez
(Trainee PM)

Age - 2 1/2

Attendance - Sarah excused by PHP

Papers -

Purpose & Summary:

- Review requested by Jane - would like contact increased from 2 → 5 times p/w
- Sarah living w/ Kate (f/c) for 8 months. Settled, just started 2's group, coming out of her shell.
- Contact reports are +ve - Sarah enjoys spending time with her mum & dad but there are concerns in the SW report that both parents have stopped engaging w/ supports. 90% attendance at sessions.
- Parents lifestyle is still chaotic w/ a reliance on alcohol and recent police attendance at the home.
- The Local Authority's recommendation is for Sarah to stay with Kate and for contact to remain the same.

Discussion notes

Decision (inc Safeguarder)

Appeal rights
Reporter stay in room?

Jane West - mum
David West - dad
Kate Richardson
- foster carer
Asim Moah - s/w

CSD exp 19.6.19

- reside w/ f/c
- contact w/ m & d 2x p/w

Options

- Continue CSD
- Vary CSD
- Cont + Vary CSD
- Terminate CSD
- Defer



Example of notes (annotated)

Sarah West - review requested by mother

Intros - Paul Ho Susan Watson Carla Martinez
(= em)

Age - 2 1/2

Attendance - Sarah excused by PHP

Papers -

Has anyone not turned up?

Who are you expecting?

Jane West - mum
David West - dad
Kate Richardson - foster carer
Asim Moah - sl

This can help note where people are sitting in the hearing

Purpose & Summary:

- Review requested by Jane - would like contact increased from 2 → 5 times
- Sarah living w/ Kate (f/c) for 8 months. Settled, just started 2's group, coming out of her shell.
- Contact reports are +ve - Sarah enjoys spending time with her mum & dad but there are concerns in the SW report that both parents have stopped engaging w/ supports. 90% attendance at sessions.
- Parents lifestyle is still chaotic w/ a reliance on alcohol and recent police attendance at the home.
- The Local Authority's recommendation is for Sarah to stay with Kate and for contact with her parents.

Is there a current order in force? Any measures?

Discussion notes

CSD exp 19.6.19

- reside w/ f/c
- contact w/ m & d 2x p/w

Note all the options

Options

- Continue CSD
- Vary CSD
- Cont + Vary CSD
- Terminate CSD
- Defer

Decision (inc Safeguarder)

Space for noting all Panel Members' decisions and reasons

Appeal rights

Reporter stay in room?



c. Last-minute substitutions and reports

4.14 Every Panel Member should consider whether they have enough information to proceed and whether all persons entitled to information (Panel Members, children, relevant persons) have had reports and other information in sufficient time to prepare for the hearing. More information about how to consider notifications and reports received at the start of a children's hearing can be found [here](#).

Substitutions

4.15 When a Panel Member has been asked to stand in for another Panel Member in a scheduled hearing session at short notice, they should consider whether they have had sufficient time to prepare for the hearing. Factors such as the time available before the hearing for preparation, the volume of papers and complexity of issues to be discussed will be relevant to this decision. **There are no fixed rules. There is unlikely to be procedural irregularity, and therefore no need to defer a hearing, if a Panel Member is sufficiently prepared and properly able to consider the case, even if papers have been received at short notice.**

4.16 If a Panel Member has been asked to sit on a hearing session at very short notice they should advise the hearing participants and confirm that they feel fully prepared to proceed with a full discussion with a view to making a substantive decision. If the child or relevant person has a strong objection to the Panel Member proceeding to make a substantive decision in these circumstances, the hearing should consider carefully whether it is appropriate to proceed. Some hearings must proceed, such as a second working day hearing when a Child Protection Order has been granted.

4.17 If a decision is made to defer the hearing to another day, the need for an interim order or variation can be considered by the hearing if necessary. Panel Members should consult the section of the Practice and Procedure Manual relevant to the specific [type of hearing](#).

Reports

4.18 The timescales within which Panel Members should receive reports varies depending on the type of hearing, who has written the report and when it was provided to the Children's Reporter. It is not accurate to state that receiving reports less than three days before a hearing will require a hearing to be deferred.

4.19 When any report is received by the Children's Reporter in advance of a hearing, they have a legal duty to ensure Panel Members are provided with the report "as soon as possible" before the hearing. If there is insufficient time to post the report or information to Panel Members, these reports may be tabled for Panel Members to consider on the day of the hearing if it is held in a hearing centre.



4.20 Rather than focussing only on the usual timescales for receiving reports prior to a hearing, Panel Members should apply a test of fairness, including fairness to child and relevant persons when considering whether and how to proceed. Factors such as when a report was received, the length of the report and the significance of the information will be key in deciding whether a hearing should be rescheduled.

4.21 A long report might not have much of relevance or may be a duplicate of a previous report with only a small update at the end. On the other hand, a very short report might indicate a new issue and a different recommendation, which requires the child and family not just to have read it but to have adequate time to get advice or support to prepare for the hearing.

d. Conflicts of interest

4.22 Children's hearings are legal tribunals which make decisions affecting the civil rights of children, young people and their families, including in response to criminal offences established in court. All legal tribunals which make decisions about the determination of civil rights or the criminal law must comply with Article 6 of the European Convention on Human Rights which guarantees the right to a fair trial by an independent and impartial tribunal. It is essential that hearings are independent, impartial, fair and transparent. Equally important is the need for hearings to be seen to be impartial, fair and transparent by all participants and members of the public. This means that serving Children's Panel Members must take care to avoid any conflict of interest arising before or during a children's hearing.

What is a conflict of interest?

4.23 A conflict of interest can be defined as a situation in which an individual has competing interests or loyalties which may compromise their independence, or prior knowledge, which may affect their objectivity and impartiality when they make decisions as a Children's Panel Member. People who work with children and families in a locality may have access to sensitive personal information or attend hearings as key workers, representatives or advocates for children and families. Whilst people in these positions have valuable knowledge and experience to bring to the Children's Panel, they are also more likely to find themselves in a situation in which their previous knowledge or a current or previous role may give rise to questions about their independence or impartiality. **Any prior knowledge or involvement with a child or family in a professional or personal capacity no matter how long ago presents a conflict of interest, even if the family do not remember the Panel Member.**

4.24 In any particular case there may be clear evidence of the presence of a conflict of interest, or only a concern that a conflict may arise. **A conflict of interest may be present, even if the Panel Member is confident that they are independent and impartial.** In the interests of transparency Panel Members should consider and disclose to participants at the beginning of a hearing any previous activity or association which would or might provide the



basis for a reasonable apprehension of lack of impartiality. This gives the child or relevant persons an opportunity to object to the Panel Member making important decisions about their case. It also shows that the Panel Member is entirely open and sensitive to factors which might make participants concerned that they may not be fully impartial. A conflict of interest may not always be obvious. Where there is any doubt, a Panel Member should always disclose the possibility of any potential conflict or perception of conflict.

Consequences

4.25 A decision taken by a hearing where a conflict of interest is present will always be open to challenge. When a Panel Member has a conflict of interest or a potential conflict of interest, and participates in a hearing, the child or young person, relevant persons or the child's Safeguarder may appeal that hearing's decision. This may happen irrespective of whether the decision was taken by Panel Members in good faith, whether they were aware of the conflict or whether the decision is supported by evidence.

4.26 Appeals as a result of a conflict of interest or a perceived conflict of interest will contribute to delay and uncertainty for the family and everyone involved with the child or young person. This may also detrimentally affect the child's care plan. If upheld, the decision will be set aside. The child or young person and their family will have to attend another children's hearing.

Recruitment

4.27 Some people are ineligible for appointment to the Children's Panel because of the job they do, or other volunteering roles. In certain circumstances, others may have to serve as a Panel Member in an Area Support Team locality outside the area in which they live or work. During the recruitment to the Children's Panel every effort is made to identify and address actual or potential conflicts of interest.

Serving Panel Members and conflicts of interest

4.28 Every Panel Member must be alert to the potential for conflicts of interest and seek advice from their local Area Convener or Area Support and Improvement Partner if they become aware of a conflict arising.

4.29 Panel Members should apply the advice below to reduce the risk of a conflict of interest arising in the following circumstances:

(i) due to a change of personal or professional circumstances

When changing job or taking on an additional volunteer role, consult this guidance and inform your Area Convener of the change to your circumstances. In many cases conflict of interest can be avoided by careful planning or by serving in another local authority area of your AST locality.



(ii) from prior knowledge of a family on receipt of documentation for an upcoming hearing

Panel Members should check all paperwork and reports as soon you receive them. If a child or family are known to you, no matter how limited your knowledge or connection, you should contact your rota manager to arrange another Panel Member to replace you on the hearing. Once the conflict is identified, you should re-seal the papers and return them to the Scottish Children’s Reporter Administration or pass them on to the replacement Panel Member without reading them further. Your rota manager will advise you how to proceed depending on the procedure in your AST.

(iii) recognition of a participant on attendance at a hearing

If a conflict of interest becomes apparent during a children’s hearing, Panel Members should consider whether they must defer making a decision until another Panel Member can participate. Panel Members should not proceed to make a legal decision which affects the child and family’s civil rights if there is a concern that a conflict of interest compromises the hearing’s independence and impartiality. In some cases, Panel Members and other participants may agree that limited prior knowledge does not compromise the hearings independence and impartiality. In those circumstances the hearing may proceed. The Children’s Reporter will note that a potential conflict of interest was discussed, and the participants agreed that the hearing should go ahead. The chair should ensure this is recorded in the Record of Proceedings.

In general, Panel Members should defer the hearing if the child or any relevant person objects to the hearing taking place on the basis of an identified conflict of interest. The Panel Member can still make any interim decision required to safeguard the child from significant harm in the interim and in certain situations, must make a decision if the hearing cannot be deferred, such as when a Child Protection Order has been granted.

Partners and relatives of serving Panel Members or the Children’s Reporter

4.30 There is no barrier to spouses, partners or other relatives of Panel Members or staff of the Scottish Children’s Reporter Administration applying for membership of the Children’s Panel. Panel Members are required to keep all information about cases they have dealt with at a hearing strictly confidential, including from fellow serving Panel Members. Related Panel Members will not be permitted to participate in a children’s hearing together and good practice would be for related Panel Members to not sit on consecutive hearings. When scheduling the rota, CHS’s rota management software will identify Panel Members who may not participate in a hearing together and they will not be allocated to the same hearing session.



Professional conflicts

4.31 There may be situations where a Panel Member's personal, business, professional or financial interests may present a conflict of interest. Panel Members must declare to their Area Convener or designated member of their Area Support Team any personal relationships with professional staff, business, or other professional or financial interests or connections which, if known by families or other participants in a children's hearing, might undermine their confidence in the independence and fairness of the tribunal, or breach national standards for the conduct of Panel Members.

4.32 It is essential to maintain clear independence in the relationship between the Panel Members and the local authority particularly in relation to planning and decision-making for vulnerable families. For example, if a Panel Member serves on the Management Board of a voluntary organisation offering a placement recommended by the local authority in a children's hearing, that should be considered as a potential conflict of interest and disclosed to the participants.

How to identify a conflict of interest

- Has the Panel Member had contact or involvement with any participant in a children's hearing out with the context of the children's hearing?
- Does the Panel Member have any personal, social or financial relationship with any participant at a children's hearing?
- Does the Panel Member have any personal, social or financial relationship with organisations providing resources to the child or recommended for the child and family?
- What might a child or family member feel about the Panel Member's involvement in important decisions about them in the light of that involvement or relationship?
- Would an informed and independent observer, in possession of all the facts, think that the decision-maker might be biased in favour of any of the hearing participants?

Dealing with possible conflict of interest

4.33 Where a possible conflict of interest is identified, or a perception of conflict is apparent, the Area Support Team should consider the relevant particulars of each individual case carefully and decide whether a Panel Member should be withdrawn from a hearing or withdraw from the rota. In order to decide whether the actual or perceived conflict of interest can be managed in a way that reassures every participant in children's hearings that the Panel Member is acting independently and impartially when making decisions, the Area Support Team may need to ask for more information from a third party, such as the Panel



Member's employer, other organisations or take legal advice from the CHS national team.

4.34 If a potential for conflict exists, but the Area Support Team considers that this is unlikely to arise other than in exceptional circumstances, the AST should, where possible, agree a strategy for avoiding the conflict, seeking advice from the national team as required. Strategies for avoiding conflict may for example involve the prospective Panel Member sitting on hearings only in a part of the AST local authority area(s), where the AST includes more than one local authority area.



Example

B has served on the Children's Panel in her local authority area for many years. She has recently been approved by the local authority as a foster carer. The local authority will shortly place a child with her on a long-term basis. She has been encouraged by the local authority to continue volunteering as a Panel Member because they feel it would add value to her experience and abilities as a foster carer. She is sure that she will not be allocated to any hearings involving children or carers that she knows. She asks whether she can continue to be a Panel Member in her home local authority area.

Conclusion: It is not possible for B to be a foster carer employed by the local authority and be a Panel Member in that local authority area at the same time. As well as acting impartially, it is just as important that Panel Members are perceived to be independent. The conflict of interest arises because (i) the Panel Member is employed and paid by the local authority whose Social Work Department plays an active part in the hearings, (ii) the Foster Carer will be supported by the local authority's staff (some of whom may appear at hearings), and (iii) she will be part of a network of local Foster Carers who may be participating in hearings. It is open to B to serve on children's hearings in a neighbouring local authority.



Example

C, a Panel Member, manages a family centre which provides support and counselling for vulnerable parents with children under three. She receives papers for a hearing about seven year old A. C recognises that A and his mother attended the family centre when he was around two or three years old. They left the centre at least four years ago. C has had no contact with A or his family since then. She is confident that neither the child or his mum will remember her. She asks whether she should sit on A's hearing.

Conclusion: Any previous involvement with A and his family in a professional or personal capacity no matter how long ago presents a conflict of interest, even if the family do not remember the Panel Member. C must let her rota manager know that she cannot sit on A's hearing.



Example

D works in a government department dealing with casework on victims and witnesses in the criminal courts. D regularly meets with a wide range of people to discuss policies which will



impact on them, including professionals in local authorities and voluntary organisations. He also answers queries and correspondence from people seeking information and answers about crime and criminal proceedings which have affected them, including young people charged with offences who may be referred to the Children's Hearing System. His Area Support Team have asked whether he can continue to be a Panel Member.

Conclusion: There is no difficulty with D continuing to serve as a Children's Panel Member. He has lots of knowledge and skills which are valuable in his role as a Panel Member. If he finds that he has knowledge from his case work in relation to a person or family referred to a children's hearing he will have a responsibility to disclose that and must withdraw from that hearing.



Summary

The role of chair in a children's hearing is an important one. An effective chair enables the active participation of all people attending a hearing and shapes the experience of all participants.

Panel Members' training now includes a professional development award (PDA) at level 7 accredited by the Scottish Qualifications Authority. An essential part of the PDA is a training module in Management of Hearings to equip Panel Members to manage all aspects of a children's hearing. It is designed to ensure that every Panel Member is competent and able to carry out the statutory responsibilities imposed by the Act, including those imposed on the chair of the hearing. This chapter supports the skills-based Management of Hearings training.

a. Obligations of the chairing Panel Member

5.1 The 2011 Act and associated rules impose certain responsibilities on the chairing member of a children's hearing to do certain things during the hearing and, separately, to make sure that other things must be done. The chair of the hearing has wide discretion to decide how the hearing should be conducted. **All aspects of the conduct of a hearing should be determined by the chair of the hearing unless specified below.** However, every Panel Member has a part to play in making sure that the discussion during a children's hearing is well managed. The chair's responsibility is to make sure that the legal requirements of the hearing are properly fulfilled rather than to carry out all those tasks in every case. All three Panel Members should actively contribute to the planning and conduct of a hearing.

5.2 For those attendees who do not have an automatic right to attend the hearing, the chair has the lead responsibility for deciding who should be admitted to the hearing room, whether each person should remain in the hearing room throughout the hearing and, if not, when they should leave and what they should be told about what happened in the hearing room when they were absent. The chair can only make decisions about who should enter the hearing once the children's hearing has begun. All decisions must be made during the children's hearing itself and in front of all relevant participants. All Panel Members are responsible for planning a hearing well and deciding together, for example, when and how issues should be discussed, and which of the Panel Members should raise them. Before making any final decision about any aspect of the conduct of a hearing, the chair should consult their fellow Panel Members.

5.3 During the hearing, the chair is primarily responsible for managing the contributions and the time available. The chair's role is to guide discussion during the hearing so that it



remains focused and relevant, and that every participant is able to contribute as effectively as they can, including fellow Panel Members. The chair is also responsible for ensuring that well-evidenced and well-structured written reasons for the hearing's decision(s) are prepared. Every Panel Member should contribute to and review the written reasons of a hearing and confirm that they accurately reflect the verbal decisions and reasons delivered by the hearing as a whole.

Specific Legal Duties

5.4 Any duties emboldened below are assigned to the chairing member in the 2011 Act or 2013 Rules.

5.5 The chairing member **must take all reasonable steps** to ensure that the number of people present at any one time is kept to a minimum.

5.6 The chair of the children's hearing or pre-hearing panel **must take reasonable steps to ensure** that the child and each relevant person present at a hearing are able to understand and participate in those proceedings. If the child wishes to express a view during the hearing, the chair **must make reasonable arrangements** to enable the child to express those views in a way he or she wants. This means that the chair must find out whether the child wishes to give a view to the Panel Members on matters to be discussed and ask the child and, if necessary, other participants how best the child's views can be given to the Panel Members. The child or young person might be offered the opportunity to talk to the Panel Members alone, if other people with the right to be present at the hearing agree to this. Panel Members should tell the child that they will have to summarise what was discussed in their absence to other important people in the hearing room.

5.7 The hearing **cannot** compel relevant persons or their representatives to leave the hearing unless the criteria for exclusion is met. You can find the criteria for exclusion [here](#). If, in order to hear the views of the child, relevant persons agree to leave the room or are excluded, on their return the chair **must** disclose the substance of the discussion. If members of the press agree to leave or are excluded, the hearing **may** disclose the substance of the discussion.

5.8 The chair's responsibility to inform those attending a children's hearing of the substance of any report, document or information or to explain any matter is subject to any decision of the children's hearing to withhold information or by virtue of a non-disclosure request. The hearing may not disclose information which would breach non-disclosure arrangements in place. More information on [non-disclosure](#) can be found in Chapter 7.

Pre-hearing panels

5.9 At the beginning of a pre-hearing panel the chairing member **must explain the purpose** of the pre-hearing panel. A pre-hearing panel may be convened for one or more of the following purposes:



- whether an individual already deemed to be a relevant person should continue to be deemed to be a relevant person in relation to the child;
- whether a particular individual should be deemed to be a relevant person in relation to the child;
- whether the child should be excused from attending the children's hearing;
- whether a relevant person in relation to the child should be excused from attending the children's hearing; or
- whether it is likely that the children's hearing will consider making a Compulsory Supervision Order including a secure accommodation authorisation in relation to the child.

5.10 If they are present at the pre hearing panel, the chair **must invite the child, any relevant person, any individual about whom the panel is making a decision and any other person the pre-hearing panel considers may help, to give their views** to the pre-panel hearing verbally or in writing or provide any other written or information that the person wishes to give for the pre-hearing panel to take into account.

5.11 After each Panel Member has stated their decision about each question raised for the pre-hearing panel and the reasons for that decision the chairing member **must confirm the decision** of the pre-hearing panel in respect of each matter **and the reasons** for that determination.

Grounds hearings

5.12 The chair of a grounds hearing **must explain the grounds for referral** and supporting facts to the child, if able to understand, and relevant persons. Before explaining the grounds to them, the chair should explain to the child and the relevant persons that the hearing cannot enter into any discussion of the grounds. The explanation should enable the child and relevant persons to give a definite answer to each ground without putting them under pressure to do so. If a ground has been accepted by all parties, including the child, the supporting facts may be amended to remove or amend facts providing the amendment does not call into question the acceptance of the ground.

5.13 The chair should ask whether the child and each relevant person understands each supporting fact, and whether or not each accepts the statement. Once agreement or disagreement is noted for each statement of facts, the chair should ask whether the child and each relevant person understands and accepts the ground for referral.

5.14 If the grounds are sent for proof the chair **must explain to the child, young person and relevant persons what this means and what will happen next**; a court hearing will be held to establish the facts of the case and that the child has an obligation to attend, unless excused by the Sheriff, and a right to do so if they wish.

General procedure for all children's hearings



5.15 At the beginning of a children’s hearing the chairing member must **introduce the members** of the children’s hearing and **explain the purpose** of the hearing.

5.16 The chair is required by law to check the age of the child, either with the child directly or a person able to answer on their behalf.

5.17 The chair must ask whether the child, each relevant person and any appointed Safeguarder have all received all relevant information and documents and confirm whether the child, each relevant person and any appointed Safeguarder has had the opportunity to review the information and documents and whether these have been understood by the child and each relevant person.

5.18 The chair must ask the child if their views contained within the reports are accurate. If the child states that the documents do not accurately reflect their views the chairing member must endeavour to clarify the child’s views on the relevant matter.

5.19 The chair informs those present of the substance of any reports.

5.20 **Any child who attends their hearing must be informed of the availability of advocacy services**, unless the chair believes it is not appropriate, considering their age and maturity.

5.21 During the hearing, all Panel Members must consider the appointment of a Safeguarder. This must be done explicitly. The chair or any Panel Member can introduce the subject at an appropriate point or this can be discussed at the end of the hearing before the Panel Members give their decisions. There is no right or wrong time to do so.

Decision-making

5.22 Each Panel Member must make an individual decision and justify this with robust reasons. There is no need to repeat their decision and reasons verbatim if they are the same as a previously given decision by another Panel Member. The chair must be certain what the decision and reason of each Panel Member is.

5.23 When each Panel Member has given their decisions and reasons verbally in the hearing, the chair of the hearing will **confirm what the final decision of the hearing is, the hearing’s reasons and what that means for the child or young person**. The chair should also check with the child or young person and each relevant person that they understand the decision of the hearing.

Rights of appeal

5.24 Thereafter the chair must inform the child, each relevant person and any Safeguarder appointed of the appropriate right to appeal the children’s hearing’s decision.



5.25 The chair must tell the child and all relevant persons that, if they intend to appeal a decision to make, continue, vary or terminate a Compulsory Supervision Order they are entitled to ask the Children’s Reporter to convene another children’s hearing to consider suspending the decision of the hearing until the Sheriff has dealt with the appeal. The request should be made to the Children’s Reporter after the appeal against the decision has been lodged with the relevant court.

5.26 The hearing should tell the child and relevant persons that if they wish to appeal against any of a children’s hearings decisions they may be entitled to legal aid and that they should seek legal advice.

Rights to review the child’s case

5.27 The chair **must inform the child and the relevant persons of the appropriate rights and obligations to have a children’s hearing review the child’s case:**

- The child or young person and any relevant person(s) have the right to ask the Children’s Reporter to arrange a review hearing three months after the date of the decision.
- The implementing local authority may ask the Children’s Reporter to arrange a review hearing at any time after the decision is made.

5.28 If there is a measure in a Compulsory Supervision Order authorising the child’s placement in secure accommodation or placing the child under a Movement Restriction Condition, the chair **must inform the child and relevant person(s) that there will be a further children’s hearing within three or six months respectively to review the child’s case.**

Preparing a record of the hearing’s decision

5.29 The chair **must ensure that a record is made** of the decision(s) and determinations of the children’s hearing and the reasons for each decision and determination and must sign and date the record of the decision(s) and reasons. While the chair is required to ensure the reasons are recorded, there is no obligation on the chair to write or type these, it can be any Panel Member.

b. Chairing checklist

5.30 Panel Members will develop their own style of chairing and, as stated above, the chair has a wide discretion as to how to fulfil this role. The following checklist aligns with the chairing checklist which Panel Practice Advisors will be provided. Responsibilities of the chairing member are emboldened but this checklist can be used by all Panel Members.

5.31 The checklist does not give guidance for during a hearing as the chair’s role is mainly



to ensure a full and fair discussion takes place. They have no more a duty or responsibility to ask questions and lead discussions than any other Panel Member.

Planning for hearings

- **Why** has the hearing been arranged? i.e. the purpose and recommendation;
- **Who** is expected to attend and their legal status? Any observers?
- **What** are all the legal options are open to the hearing?
- **Which** reports do Panel Members have?
- **How** should the hearing run? Set an **agenda** for the hearing including the broad issues to be discussed. Which of the Panel Members shall open up discussions?

Beginning of the hearing

- **Welcomes and introduces** self, the other two Panel Members and any observers;
- Beginning with the child or young person, ask everyone present to introduce themselves and ascertains their entitlement to be present;
- **Confirm the child's age;**
- Determine whether someone with a right to attend is not present and decide how to proceed;
- **Ensure that the number of people present at the same time is kept to the minimum consistent with fair process and effective decision-making;**
- Explain the purpose of the hearing;
- Check who has received reports and when, and that they have been read and understood;
- Inform child/family of the substance of the reports and the agenda for the hearing
- Are the child's views accurate or do they need established?
- Ensure the child is aware of the availability of advocacy services.

End of the hearing

- Each Panel Member gives his/her decision and the reasons for the decision;
- Note the decision and reason of all Panel Members;
- **Confirm and explain** the overall decision of the hearing and the reasons;
- **Explain** the child and relevant persons will receive a written copy of the decision and reasons within five days.

Rights of appeal

The chairing member must tell the child, relevant person and, if one is appointed, the Safeguarder of their rights of appeal:

- If the hearing's decision is to continue a Child Protection Order, to apply to sheriff to vary or set aside within two working days;
- to appeal any other decision to the Sheriff in writing within 21 days beginning with



the date of the hearing;

- In the case of an Interim Compulsory Supervision Order, any appeal will be heard within three days of being lodged;
- Advises the child and/or relevant persons that if they wish to appeal they should seek legal advice and that legal aid will be available to the child and may also be available for any relevant person wishing to appeal with legal representation;
- if there is a secure authorisation in place they can appeal against the implementation/non-implementation of the authorisation or the removal of the child from secure accommodation;
- Informs the child, relevant person and Safeguarder of their right to seek to have the hearing's decision suspended when an appeal has been made.

Rights of review

The chairing member must summarise the requirements for review of the child's case and when this may happen:

- The child and any relevant person may seek a review hearing after three months;
- Local authority can seek a review at any time;
- Authorisation of secure accommodation will be reviewed within three months;
- A movement restriction condition will be reviewed within six months.

Confirm that the hearing has ended and thank everyone for attending.

After the hearing

- Invite family to stay until the Children's Reporter has completed the Record of Proceedings and any orders;
- Panel Members complete the Record of Proceedings with robust reasons;
- **Sign** the Record of Proceedings and any orders;
- Ensure all Panel Members return any physical papers and notes to the Children's Reporter.



Summary

This section provides tools and good practice examples to help Panel Members confidently manage potentially difficult hearings, including excluding relevant persons, managing hearings where participants contribute separately at different times and techniques to control difficult behaviour.

It contains background information to increase Panel Members' understanding of domestic abuse and how it can affect children and families who attend children's hearings. Guidance is provided on recording children's hearings including why families may wish to do this.

a. Keeping communication constructive

6.1 Children's hearings are complex meetings in which individuals with competing and conflicting needs and views come together. Family members may be experiencing serious personal problems and crises. There may be a possibility that the hearing will decide their children should not be in their care. This may have already happened. It is understandable that emotions can run high, families may feel anxious or angry, and there may be strong disagreement between parties. Similarly, professionals have their own role to play in the process. A Solicitor actively representing their client may be perceived as intimidating to some professionals and lay Panel Members.

6.2 This section aims to provide support for Panel Members to deal with behaviour that they find challenging, intimidating or upsetting. It is important to remember that behaviour that you find particularly challenging may not be perceived in the same way by other Panel Members.

6.3 There are many reasons why a person may find a type of behaviour particularly challenging to deal with. This can happen when behaviour is unexpected or appears disproportionate, or when it doesn't conform to our individual standards or values. In these cases, we may find it difficult to address the behaviour whilst simultaneously managing the hearing effectively. In these circumstances, it is possible that our response to the behaviour we may in fact make the situation more challenging.

6.4 The following behaviours can be managed using interpersonal skills:

- anger
- distress and upset
- confused or illogical communication
- repetitive and circular communication
- unpleasant or intimidating language which may not clearly reach the threshold of



verbal abuse.

6.5 This section is aimed at supporting Panel Members to tackle these behaviours appropriately with appropriate tools and strategies. The aim is to improve communication and participation within the children’s hearing for all participants.

6.6 In order to do this, we recommend that Panel Members use **basic assertiveness skills**, think about their own **trigger points** and have **strategies** to deal with challenging behaviours which may arise during a hearing.

6.7 Effective participation is a key tenet of the Children’s Hearings System and Panel Members may find that relevant persons can display a lot of the behaviours above as a result of confusion, lack of understanding of the hearing’s role and powers or an inability to understand or accept the concerns regarding their family. When encountering the behaviour discussed below, Panel Members should always consider whether a relevant person or child is able to understand and participate in the hearing effectively. If this is doubtful the hearing should consider whether the person needs help from an advocate or other representative to contribute constructively. The hearing may need to consider whether legal representation is necessary and consider whether the hearing should be adjourned or deferred to instruct a [referral to the Scottish Legal Aid Board](#).

Basic Assertiveness Skills

6.8 Many Panel Members regularly deal with members of the public and already have skills that help tackle difficult behaviour. Basic skills in assertiveness are essential in developing good communication and dealing with conflict by clearly stating your view without being aggressive and retaining control of the situation.

This section includes descriptions of common techniques used to demonstrate assertiveness and when to apply these.

Basic Assertion

6.9 A straightforward and unemotional statement expressing your wants, needs, opinions, beliefs or feelings.

- “I need to discuss your recent arrest with you.”
- “I feel that you are not being fair with me, as I am trying to help you.”
- “We will discuss your contact, as soon as we have finished discussing Mr Whyte’s.”

6.10 You should use a basic assertion at the beginning of a conversation or whenever you need to raise an issue. For example, “Mr Smith, I am not happy that you are shouting at me. I am trying to listen to you.”



6.11 You can repeat a basic assertion to re-emphasise a point if you feel this is necessary or if you feel that what you are saying is not being heard. If you are finding this difficult because you are unsure about what you can do for the person, then this may also be an important assertion to make. It is almost always counterproductive to guess answers to questions that you are unsure about. For example, you can say “I’m sorry I don’t have the answer to that right now. Let me ask the Children’s Reporter to explain how long the proof might take and what could affect the timescales.”

Broken Record

6.12 A calm repetition of what you want to happen or what is the factual position.

- “Again, this is not something that is within the remit of today’s hearing”
- “As we’ve said, we are not able to discuss this until the grounds are established in court.”
- “A future hearing will examine what the next steps should be after the Child Protection Order expires. We need to decide what happens in the next week. Moving forward...”

6.13 This is a useful way of keeping your cool and can be helpful if someone is struggling to keep to the point or is not hearing something important. It is also useful in situations where someone is insisting on an answer you cannot give, or where you have already given an answer.

6.14 The aim is to refocus the individual on the key points by your persistence. Normally, three repetitions are enough. If **after three repetitions** this has not worked, you will need to move on to another technique to avoid escalating conflict.

Emphatic Assertion

6.15 A statement that contains an element of empathy but at the same time still expresses your own needs or wants.

- “I appreciate this is a very difficult situation for you, Mr Smith. I am trying to help you by asking whether or not you agree to these statements.”
- “I understand that you are frustrated, and, in your position, I would be frustrated too. We need to discuss all aspects of Claire’s life before we make any decisions.”

6.16 This technique can be used when the other person holds a different view to your own and feels very strongly about their view. You are letting them know that you understand their position.

Discrepancy Assertion



6.17 A statement that points out an inconsistency in someone's position or actions but without blame or criticism.

- "I'm sorry I think I've got myself confused. You said that the social worker did not give you any opportunity to see John since the Child Protection Order was granted. However earlier you said that they called you three times and came to your house. Can I clarify which is the most accurate or can we go over the sequence of events again?"
- "Can I just check – your letter requesting a review stated that you were unhappy with the care Sara is receiving with her foster carers but today you have only requested more contact."

6.18 This technique is useful when you are getting contradictory information and are trying to work out a solution or compromise. It is important to be as factual as possible and not express an opinion on which version of events is correct.

Negative Feelings Assertion

6.19 A statement that allows you to draw attention to the undesirable affect another person's behaviour is having on you.

- "Mr Smith, please do not use abusive language. It makes me feel uncomfortable and is preventing us coming to a decision. I need you to stop now."

6.20 This technique enables you to express your own concerns about the situation/behaviour without becoming judgemental or blaming the other party. You must:

1. describe the other persons behaviour objectively
2. describe the impact of the persons behaviour on you
3. describe your feelings
4. state how you would prefer the behaviour to be in the future.

Know your trigger points

6.21 Everyone reacts differently to different situations. By trigger point, we mean situations which will lead to a heightened emotional reaction from you. Behaviours that we find personally difficult will differ for every Panel Member.

6.22 A range of behaviours that people have identified as triggering:

- patronising or sarcastic language
- someone being rude about colleagues
- derogatory or threatening phrases, for example, "Your system is a joke and a failure," or "I will be contacting the press about this and naming you personally."



- someone who is very distressed or crying
- someone who seems to be telling deliberate mistruths or seems manipulative.

6.23 This list is not exhaustive. There may be other types of behaviour that you react emotionally to.

6.24 Be aware of the possibility of inadvertently labelling the person. If you find you are defining the person in negative terms (such as difficult, aggressive or manipulative) in your head, this labelling is likely to inform your reaction to them and make the interaction more emotional from the outset.

6.25 Empathy is very powerful. Letting someone know you would feel the same way or accept the feelings they are having may be appropriate, but if you want to help, you need to be able to remain calm and clear-headed.

6.26 Positively, this can help the other person by creating a sense that they are being listened to. In some circumstances, people can feel frightened by feeling out of control. Staying calm in these circumstances can help individuals feel that this is a safe place within which to calm down.

6.27 Remember that this may be the first time an angry parent may have said a particularly confrontational or irritating phrase even though you might have heard it several times in similar highly charged hearings. It could be that this is said out of extreme frustration. It is unlikely to be meant as a personal attack on you.

6.28 Once you have identified your trigger points, it is important to make active efforts to relax and stay calm in those situations. In dealing with trigger points, it can be useful to have a strategy or approach in mind which will be looked at in detail below.

Strategies

6.29 We set out below some possible approaches to a set of different scenarios. From your own experiences, you will know already that the most effective conversations are personal and do not follow any type of script or incorporate clichéd phrases. As such, the strategies are not meant to be used word for word but can be used as a prompt or to give you an idea of the type of language to avoid.

Basic tips for all situations to support you in staying calm

6.30 Below are listed some basic body awareness techniques that can be used in any situation to make sure you stay calm:

- ensure your breathing remains steady
- push your feet into the ground to help you feel more in control



- keep your voice low; the higher the pitch the more distressed you may sound
- try to keep the pace of your voice steady and do not speed up or increase. This will help you to remain calm but also conveys to the other person that you are in control and not reacting emotionally to what is being said.

Where the person is shouting or angry

6.31 Let the person know the problems their behaviour is causing and that if they stop you will be able to help.

- “Can I please ask you not to shout so that we can discuss your contact and try and progress this situation?”
- “I appreciate that you are upset. It is difficult for me to follow what you are saying when you are shouting. If you can calm down, we can talk about your issue with the report.”

Where the person is distressed and upset

6.32 Make it clear that you can hear the distress and upset. Check if they need time out to deal with this.

- “I appreciate this is very difficult for you and I can hear that you are becoming very upset. Would you like to take a break and we can pause the hearing for five minutes?”

Where the person is going round in circles

6.33 Reflect that the conversation is not progressing.

- “We are now going round in circles and this is not taking things forward.”
- “I want to focus now on what steps you now need to take to progress your situation.”
- “I am sorry, we are now repeating ourselves which is not helpful. I have explained what we will do next. I need to now...”

Where the person will not stop talking

6.34 Going silent will often prompt the other person to go silent too, when this occurs, you need to be ready with a statement which takes the conversation forward.

- “I now need to ask you some questions.”
- “I have noted the main points; can I check those with you?”
- “I have explained why the hearing made this decision today. Can I give you details of how you can appeal our decision or when you can request a review hearing to look at the facts again?”



Where the person is making accusations or allegations

6.35 Probing questions means the person is not able to make allegations without justification. It can also help you to work out what is going on if you are unsure why someone is reacting that way. Avoid “why” questions which can be confrontational – it might best to use what/where/how/when questions such as:

- “What makes you think that?”
- “What has happened that makes you feel that way?”
- “When did you start thinking we weren’t listening to you?”

“We” messages can also be useful to de-escalate the situation.

- “Could we look at it this way?”
- “How can we resolve this? How can we move forward?”

Legal challenges in a hearing

6.36 Panel Members may encounter situations where a participant challenges the legality of the Children’s Hearings System as a whole, claiming their, their family’s or their client’s rights are being breached. Where the concern relates to the procedures and legislation which govern the children’s hearing, or the powers of Panel Members to make decisions, the chairing member should indicate that the hearing is operating in accordance with the Children’s Hearings (Scotland) Act 2011 and the 2013 Rules which are European Convention on Human Rights (ECHR) compliant. If the individual still believes there is an ECHR issue, they are entitled to appeal the decision on the hearing on that basis.

b. Exclusion ([ss76 -77](#)) ([Rule 20D](#)) ([Rule 86\(3\)](#))

6.37 A relevant person (and their representative, including a Solicitor) and a representative of a newspaper or news agency can be excluded from part of a children’s hearing if:

- (a) the chair considers that the conduct of the person is **violent or abusive**, or;
- (b) the conduct of the person is so **disruptive that the chairing Panel Member considers that unless the person is excluded, it would be necessary to end or adjourn the hearing**, or;
- (c) the chair is satisfied that **the presence of the relevant person is preventing the hearing from obtaining the views of another relevant person**, or;
- (d) the chair is satisfied that **the presence of the relevant person is causing, or is likely to cause, significant distress to another relevant person**, or;
- (c) the hearing is satisfied that **the presence of the relevant person is preventing the hearing from obtaining the views of the child**, or;



(d) the hearing is satisfied that the presence of the person **is causing, or is likely to cause, significant distress to the child**, or;

(e) the hearing is **considering a [non-disclosure](#) request in respect of that person**

6.38 The relevant person, their representative or journalist can be excluded from the children’s hearing for as long as necessary. The chairing member must explain to the person the substance of what has occurred during their absence on their return to the hearing room, subject to a hearing decision to withhold information from that person. Although an exact narrative of what was said out with the presence of the person is not required, it is very important that the substance of the discussion is provided to the person. This is particularly important where the child expresses a view directly relevant to the decisions to be made by the hearing, for example about where they live with and with whom, and/or where or how often they wish to have contact with a particular person.

6.39 There is also an ability to exclude any person from a pre-hearing panel or children’s hearing if the chairing Panel Member considers:

- The conduct of the person is violent or abusive, or;
- The conduct of the person is so disruptive that unless the person is excluded, it would be necessary to end or adjourn the hearing

6.40 This exclusion can last for as long as necessary, however the chairing Panel Member must explain what has taken place in their absence. This power of exclusion is intended to ensure that children’s hearings are conducted safely, however the power to exclude any person should never be taken as a precautionary measure. If there is a concern over someone who is likely to cause significant disruption to the children’s hearing, please see the section on [attendance](#).

6.41 CHS fully supports the chair of the children’s hearing to make this decision to enable the hearing to be managed safely and competently. As always, this decision should be clearly justified in the reasons for the decision.

Speaking to the child alone

6.42 The child, relevant persons and their representatives, including Solicitors, can agree to leave part of the hearing in order to facilitate the effective participation of the child or one of the parties. **Unless one of the criteria above is met, the panel cannot force anyone with a right to attend to leave the hearing room while they speak to a child on his or her own.** If none of the legal tests for excluding a relevant person or any representative are met, it is open to any person to agree to leave the hearing room to allow an important conversation to take place. Panel Members should not simply ask individuals to leave. Care must be taken to ensure those with a right to attend know they are being asked to consent to leaving and have a right to stay.



6.43 The same test applies in a virtual context, and the Virtual Support will help facilitate this. Other participants may leave the room, or if Panel Members have access to a pre-hearing room the child may be given access to this.

More information can be found in the sections on confirming the [views of the child](#) and the [overarching principles](#).

c. Summary of non-disclosure provisions



6.44 Decisions at a children's hearing or in a pre-hearing panel should be made fairly and openly with the full involvement and participation of the child, relevant persons and others supporting the child and family. This means that in most circumstances the child and relevant persons have the right to have the same information as the Panel Members who are making decisions about their family.

6.45 However, in some situations there may be a risk that disclosure of information concerning the child or sensitive information contained in the hearing papers to certain persons may give rise to actual or possible risk of harm to the child or other people connected with the child. In these circumstances it is possible for a Children's Reporter, a children's hearing, or a Sheriff to decide that certain information should not be shared with the person who poses the risk. Withholding information from a child or relevant person should happen only in exceptional cases, when necessary. It should be noted that the law relating to non-disclosure is complex and evolving and there are areas for which there is not yet a definitive legal ruling so Panel Members should use the power to withhold information with care. Children, young people, and relevant persons should have full information to enable them to participate effectively in a hearing unless there is very good reason not to disclose it, and then only to the extent required to ensure the child's safety and welfare.

Types of Non-Disclosure

6.46 There are four separate provisions in the 2011 Act and 2013 Rules which allow information to be withheld from a child, relevant person or any other person if necessary.

These are as follows:

- The Reporter's ability to withhold information (Rule 16)
- Non-Disclosure Requests (Rule 84)
- Withholding information (Section 178)
- Non-Disclosure Measures (Section 83(2)(c)).

6.47 Each type of non-disclosure provision stands alone and are referred to at the appropriate place in the Practice and Procedure Manual. They apply at different times and in different circumstances, and may require Panel Members to apply different legal tests. In some cases more than one type of non-disclosure decision may be in force at one time, in



relation to different types of information. It is important that you are clear which legal section is being applied to non-disclosure in any individual case.

6.48 If information has been withheld from a child or relevant person the Hearing Arrangement Form which accompanies all hearing papers will make it clear which legal provision, if any, authorises the non-disclosure.

The Reporter's decision not to disclose child or relevant person's whereabouts

6.49 [Rule 16](#) allows the **Reporter to withhold information about the location of a child or relevant person** when arranging a children's hearing, sending notifications, information or reports to anyone in connection with a children's hearing or carrying out any of their functions in relation to a children's hearing or a pre-hearing panel., The Reporter may withhold this information **if satisfied that disclosing the whereabouts of the child or any relevant person to whom the children's hearing or pre-hearing panel relates would be likely to cause significant harm to the child, or any relevant person.**

6.50 In documents produced by the Reporter, the address of the child or relevant person will be recorded on the hearing's papers as the address of the Children's Reporter. If the address appears in information provided by others, the address of the child or relevant person will be redacted. The Reporter's exercise of their power to withhold information about the child or relevant person's whereabouts is often referred to as a 'Rule 16 decision'. Additional information about the child's 'whereabouts', such as the location of the child's school or nursery, may also be withheld if it is likely to lead to the disclosure of the child or relevant person's address or if the disclosure of the child's whereabouts when in school or nursery would be likely to cause significant harm to the child or any relevant person attending there.

6.51 This Rule 16 power can be exercised only by the Children's Reporter. Panel Members must be careful during the hearing not to share information inadvertently about the child's or relevant person's whereabouts which the Reporter has decided should be withheld. The chairing member may need to ensure that all attendees at the hearing take extra care not to share information which might indicate the child's whereabouts by accident such as sharing the name of the child's school or nursery, or the location of their service.

Non-Disclosure request

6.52 Any person can request the children's hearing withhold any document or part of a document or information contained in a document, if disclosure of that document or part of the document or any information contained in it is **likely to cause significant harm to the child** to whom the hearing relates. For example a social worker may recommend that the place where the local authority recommends a child should reside under a Compulsory Supervision Order should not be disclosed to the child's parents. A relevant person may not wish their child to know sensitive information about the parent's background, or ask that another party not be told where they live.



- 6.53 Certain documents can never be the subject of a non-disclosure request. These are:
- **the statement of grounds**
 - **an order or warrant the child is subject to**
 - a remit from the court after the child has been convicted of, or pleaded guilty to, an offence
 - a requirement from a Sheriff under the Antisocial Behaviour etc. (Scotland) Act 2004

6.54 A non-disclosure request:

- can be made to or via the Reporter before the hearing or to Panel Members during the hearing itself
- may be made in writing or verbally
- must specify the information the hearing is asked to withhold, with reasons
- must specify the person who it is proposed to withhold the information from, with reasons.

6.55 Where a non-disclosure request is made before the hearing begins, it must be decided at the start of the hearing before any discussion of any other matters. In this situation, the hearing will have received a copy of the non-disclosure request and a form explaining that information has been withheld. To assess whether the relevant test is met, the hearing may have to exclude the person to whom the non-disclosure request relates whilst the Panel Members discuss the non-disclosure request and the perceived risks, and decide what to do. This must happen at the start of the hearing. Wherever possible, Panel Members should find out the person's view before excluding them and making a decision about the request. After the decision is made the person should be invited back into the hearing and told of the decision to withhold or disclose information. No discussion about any matter other than the non-disclosure request must take place whilst the excluded person is outside the hearing room.

6.56 The test to be applied by Panel Members in deciding a non-disclosure request is whether **disclosure of that information to that person is likely to cause significant harm to the child about whom the hearing relates.**

6.57 The hearing may decide not to withhold the information. Panel Members must ensure that this information is provided at such a time, and in such a manner, as it considers appropriate, having regard to the best interests of the child. It may be that the hearing should adjourn for a period to provide the individual with the information and sufficient time to consider the information before participating in the hearing.

6.58 If the children's hearing decides not to withhold information from the person, the person should usually receive the information before the hearing goes on to consider other matters, **unless this would prejudice consideration by the hearing of any other matter affecting the child's welfare,** such as the need to consider non-disclosure of the child's place of residence.



6.59 Panel Members should be mindful that the person may find the information upsetting. There may be a lot of information to digest. A short adjournment may be enough to allow them to get to grips with the information. If Panel Members think that the person may need more time to read, understand and consider the information fully to enable their effective participation or they require representation, Panel Members may need to consider deferring the hearing to another day.

6.60 There is no statutory definition of 'significant harm' however, physical, emotional and mental harm should be considered when deciding to apply the test.

6.61 The threshold for the legal test to be met must be **likely to cause significant harm**; a risk of *some* harm or a risk of *possible* harm does not meet the legal threshold for the test.

6.62 A Foster Carer who cares for a child that lives with them asks that their address is withheld from hearing papers because they would prefer that the parent of the child does not know where they live. This would not meet the **significant harm** test to apply a non-disclosure to the address of the Foster Carer as there is no evidence of immediate risk to the child.

6.63 However, A Foster Carer who cares for a child that lives with them asks that their address is withheld from hearing papers because the parent of that child has a history of unpredictable behaviour that is influenced by illicit substance misuse. Recently, the parent turned up at the child's placement is under the influence, seeking contact with the child. This would meet the **significant harm** test to apply a non-disclosure to the Foster Carer address as the parent has evidenced a pattern of unpredictable behaviour which could cause significant mental and emotional harm to the child.

Non-disclosure measure of the address of prospective adopters or carers

6.64 There is no explicit test for making a non-disclosure measure although all other types of non-disclosure, , have a clear significant harm test. When considering whether to withhold the child's residence, **the hearing should have in mind a range of considerations**. These include the usual considerations of necessity and minimum intervention, also whether granting or refusing a non-disclosure measure would risk significant harm to the child. This should all be considered against the overarching consideration of the child's welfare throughout their childhood being paramount.

6.65 It is possible to include a measure withholding the address of the child for the benefit of someone other than the child such as foster carers, prospective adopters or other children in the placement. However, it would be hard to justify such a significant interference with the right to family life of the child and parents without their being **some risk to the child** were the address to be disclosed.

6.66 Examples of when this measure may be appropriate include when someone may



attempt to make contact with the child when it would not be in their best interests or may approach or undermine the placement or prospective long-term home for the child.

6.67 Whether a measure of non-disclosure of residence is required should be discussed during the course of the hearing, after discussions on whether the proposed named placement is appropriate and required. In other words, a hearing should discuss whether a measure of residence is required before discussing whether that named place of residence should be withheld.

6.68 When the local authority proposes a change of residence be authorised by a children's hearing, the social worker will prepare written information for the hearing about the proposed carers and their family and household. The child and relevant persons must also receive this information. The profile of the carers will often include their address. When recommending that the child move to live with prospective adopters, new foster carers or kinship carers, the local authority may ask that the place of the child's residence with those carers is not disclosed. This means that a non-disclosure request to withhold the child's placement address from the information usually provided to the hearings' participants may need to be made before or at the start of the hearing, and well before the hearing's decision about whether a Compulsory Supervision Order should be made and what measures to include. The test to be applied is that sharing the information is likely to cause significant harm to the child.

6.69 Panel Members must determine a non-disclosure request at the start of the children's hearing and must apply the test that sharing the information will cause significant harm to the child. If Panel Members consider that the request **does not** satisfy that test, they may refuse the non-disclosure request. However if the information relates to the child's place of residence, **it should not be disclosed until the hearing has decided whether to make a Compulsory Supervision Order and has an opportunity to consider whether a measure of non-disclosure of the child's place of residence is necessary in the child's interests.** Premature disclosure of information should not prejudice the hearing's consideration of any measure of non-disclosure of the child's place of residence. [The Rules](#) requires that the hearing ensures that information which is the subject of a non-disclosure request is provided at such time, and in such manner, as the hearing considers appropriate.

Withholding Information

6.70 [Section 178](#) of the 2011 Act allows any information about the child to be withheld **if disclosure of that information would be likely to cause significant harm to the child.**

6.71 This is most likely to occur when speaking to a child on their own and the child may provide information to Panel Members which may cause significant harm to the child if disclosed to others. For example, details about their home life which their parents do not want them to share, disclosures of abuse or neglect or that the child is pregnant.

6.72 Where information is shared with Panel Members in the absence of a relevant



person, the hearing is required to provide an explanation to the relevant person of what was said while they were absent, whether by agreement or if excluded. If information is shared about the child or the child’s case during a hearing and Panel Members are satisfied that disclosing the information to a specific person or persons would be likely to cause significant harm to the child, **they may decline to provide an explanation of what has taken place at the hearing. They may also decide to withhold such information in their written reasons.**

Summary of non-disclosure

	RULE 16 (Reporter Application)	RULE 84 (Non-disclosure measure)	S.83(2)(c) (Non- disclosure request)	S.178 (Withholding information)
Request for non-disclosure to apply can be made by anyone	✓	✓	✓	✓
Decision made by Reporter	✓			
Decision made by Panel Members		✓	✓	✓
Decision can be made before the hearing		✓		
Decision must be made at the start of the hearing		✓		✓
Decision may be made during the hearing				✓
Decision may be made at the end of the hearing			✓	✓
Legal test – significant harm to the child	✓	✓		✓
Legal test – a full range of considerations			✓	
Subject to the ‘no order principle’			✓	
Have regard to child’s views		✓	✓	✓



d. Bail conditions

6.73 If a hearing becomes aware that there is significant conflict or tension between two relevant persons and/or that a relevant person is refusing to be in the hearing room at the same time as another, the hearing should consider and agree on an approach to dealing with the situation at the start of the hearing. A relevant person and/or their representative may voluntarily agree not to attend part of the hearing. Where a hearing is made aware of such a voluntary arrangement, it is for the hearing to decide how to proceed. **Where the voluntary agreement has been reached as a result of bail conditions or another legal order in place preventing contact between the people involved, the hearing should not require those individuals to attend the hearing at the same time in breach of the bail conditions or legal order.**

6.74 Where a relevant person is subject to a bail condition, this does not affect their right to attend the hearing and does not give rise to any additional power for the children's hearing to exclude that person. If the bail condition would potentially be breached by their attendance, it is the responsibility of that relevant person to obtain their own legal advice in relation to seeking amendment of the bail condition. Neither the Children's Reporter nor the hearing can guarantee that there will be no Police action or prosecution. As with other situations of tension or conflict, the person subject to the bail condition may voluntarily agree not to attend part of the hearing. Equally other relevant persons may do so.

6.75 Where a hearing decides to proceed in the absence of a relevant person who has voluntarily agreed not to be present at the outset of the hearing or to leave the hearing, there is no express duty on the chair to explain what has happened in the person's absence. However, if the person subsequently comes into the hearing, giving such an explanation will generally support fair process. It is not necessary for the chairing member to repeat the full discussion which took place in the person's absence or to conduct the hearing 'in two parts' but participants should be able to fully participate in the hearing.

6.76 Decisions should only be made once and there is no express requirement for the chairing member to explain the final decisions and reasons to a relevant person who was voluntarily not present when the decision was made, and the reasons given. The chairing member can ask the Children's Reporter, or another person present, to explain the decision and reasons outside the hearing room.

e. Domestic abuse

6.77 This section provides some key information that Panel Members can consider when making decisions for children who have experienced, or who are at risk of experiencing, domestic abuse or when managing hearings where there is domestic abuse in the family. Furthermore, this section will provide guidance for Panel Members around how to engage



safely with families where domestic abuse is, or may be, present in the family's life.

6.78 It is estimated that 100,000 children in Scotland experience domestic abuse. It is important to understand the complexity of this experience and how adversities interact with one another. Domestic abuse is a key signifier of wider adversity – for instance, problematic substance use and mental health problems are often caused or exacerbated by domestic abuse and domestic abuse is a common context for child abuse.

Background

6.79 The 2011 Act introduced a new section 67 ground:

(f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse.

The introduction of this ground is acknowledgement that domestic abuse does not only affect the adults involved. Under this ground a child can be referred to a children's hearing and made subject to a Compulsory Supervision Order. Panel Members may also encounter issues of domestic abuse where other grounds have been referred to the hearing.

6.80 The [Domestic Abuse \(Scotland\) Act 2018](#) broadened the legal and legislative framework surrounding domestic abuse. The 2018 act extended the legal definition of domestic abuse beyond physical abuse, to include psychological and emotional ill treatment and coercive and controlling behaviour, for example, where abusers isolate their victim from friends and relatives, control their access to money or other essential resources, or monitor their whereabouts.

6.81 The new Domestic Abuse Act contains an aggravation to an offence where the behaviour is carried out in the presence of a child. Aggravations are characteristics which make an offence more serious and which may attract a stronger penalty by way of sentence. In domestic abuse cases, it is sufficient aggravation that a child is present and witnesses the behaviour, the child does not need to be physically harmed themselves.

6.82 The availability of the aggravated offence recognises that abuse does not need to be directed at, or directly involve, the child to negatively impact upon the child's welfare and development. Research shows that witnessing or being in the same household as domestic abuse can have a negative impact on a child's wellbeing. Domestic abuse can also affect a parent's own wellbeing and their parenting and in a way that has a negative impact on the child.

What is domestic abuse?

6.83 When defining the nature of domestic abuse, Scottish policy-makers have consistently recognised the harm caused to children who are exposed to it:



*“Domestic abuse (as gender-based abuse) can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family and friends). In accepting this definition, **it must be recognised that children are witness to and subjected to much of this abuse and there is a significant correlation between domestic abuse and the mental, physical and sexual abuse of children**”*

The National Strategy to Address Domestic Abuse in Scotland (2000)

*“Domestic abuse describes any behaviour that involves exerting control over a partner or ex-partner’s life choices and that undermines their personal autonomy. It is an assault on their human rights. Although most victims are women, men can also suffer domestic abuse, and it can occur in same-sex relationships as well as heterosexual ones. **Children and young people living with domestic abuse are at increased risk of significant harm, both as a result of witnessing the abuse and being abused themselves.**”*

National Guidance for Child Protection in Scotland (2014)

6.84 Domestic abuse is most commonly perpetrated by men against women, however abuse of men by female or male partners does occur. It can take place in any relationship, including LGBT partnerships.

- Incidents of domestic abuse recorded by the Police in Scotland with a female victim and a male perpetrator represented 82% of all incidents of domestic abuse in 2017-18 where gender information was recorded. 16% of incidents recorded a male victim and female perpetrator, whilst 3% of incidents involved LGBT partnerships.
- The Scottish Government’s [Equally Safe national strategy](#) outlines action on all forms of violence against women and girls. This strategy acknowledges the systematic gender inequality that lies at the root of violence against women and girls.

6.85 In 2017-18 there were 59,514 incidents of domestic abuse reported by the Police in Scotland, an increase of 1% from 2016-17. However Police reports and statistics of “incidents” of domestic abuse reflect primarily physical incidents of harm and not the pattern of emotional, psychological, financial, and sexual abuse which make up **coercive control**. Therefore they do not provide an accurate picture of prevalence or range of harms present in domestic abuse.

6.86 In terms of children’s experience of domestic abuse:

- 100,000 children in Scotland will experience domestic abuse
- At least one child in every classroom in Scotland experiences domestic abuse.
- In 90% of domestic abuse incidents in family households, children were in the same or the next room.



Coercive Control

6.87 The Domestic Abuse (Scotland) Act 2018 broadened the legal understanding of domestic abuse to include coercive control.

“Coercive control is a term to help us understand domestic abuse as more than a “fight”. It is a pattern of behaviour which seeks to take away the victim’s liberty or freedom, to strip away their sense of self. It is not just women’s bodily integrity which is violated but also their human rights.”

CEDAR Network

6.88 Coercive control is not primarily a crime of violence; it is first and foremost a crime of restriction of liberty. Where coercive control is present within a relationship, violence may be used alongside a range of other tactics – isolation, degradation, mind-games, and the micro-regulation of everyday life (monitoring phone calls, dress, food consumption, social activity etc). The perpetrator creates a world in which the victim is constantly monitored and criticised; every move is checked against an unpredictable, ever-changing, unknowable ‘rule-book’ .

6.89 Coercive control is not domestic purely in the sense that it occurs at home – it crosses social space: literally, in that technology allows for surveillance wherever a victim is, and metaphorically, in that the victim can internalise the ‘rules’ and adapt their behavior to keep the equilibrium.

“Experiencing coercive control is like being taken hostage; you become captive in an unreal world created by the partner/abuser, entrapped in a world of confusion, contradiction and fear.”

Stark (2009)

The non-abusing parent/carer

6.90 **The impact of domestic abuse on a child should always be understood as a consequence of the perpetrator choosing to abuse rather than of the non-abusing parent’s/carer’s failure to protect** ([Child Protection Guidance](#)).

6.91 The purpose of a children’s hearing is to make decisions in the best interests of the child. Where domestic abuse is present in a child’s life, it may not be possible to ensure the child’s safety and welfare within the family. In circumstances where the decision of the hearing is to remove the child from the care of their parents, it is important that blame or fault is not directed towards the non-abusing parent.

6.92 Women are most often seen as primarily responsible for a child’s safety, despite the perpetrator’s responsibility for harm and abuse. Women can feel very fearful that their children will be removed from their care. Professionals may overlook or dismiss the efforts that women have made to protect their child from abuse, and fail to take



sufficient account of the challenges and the increased risk of violence faced by women when leaving an abusive partner.

6.93 Professionals or Panel Members may question why a non-abusing parent doesn't simply leave an abusive situation. However, the effect of the abuse may make this difficult or impossible; the non-abusing parent should not be blamed for this. For example:

Coercive Control, Physical Abuse and Threats – the non-abusing parent may be fearful of what the abuser will do to them and the children if they left or attempted to leave.

Psychological and Emotional Abuse – the non-abusing parent's self-confidence and freedom to make choices may be significantly undermined.

Financial Abuse – the non-abusing parent may not have access to household finances and benefits may not be in their name as a tactic designed to create financial dependence on an abuser.

Isolation – the non-abusing parent may have been intentionally isolated from their friends, family and support systems leaving them with no one to turn to.

6.94 Leaving an abuser takes a great deal of courage. Non-abusing parents often attempt to leave several times before finally leaving. Furthermore, separation does not necessarily guarantee safety. Leaving an abuser can be very dangerous. Statistically non-abusing parents and children are at the greatest risk of homicide at the point of separation or shortly after leaving a violent partner. Therefore, it is important that support and protection for the non-abusing parent and child does not reduce or stop when partners separate and that non-abusing parents are not coerced into separation or penalised for not doing so.

6.95 When separation does happen, children's experiences of domestic abuse and its impact on them should always be fully considered with an acknowledgment that post-separation abuse is commonly experienced by non-abusing parents. Abuse of the non-abusing parent should not be seen as a separate issue from the child's safety and wellbeing; the two are intrinsically linked.

6.96 An effective child protection response, and often an important factor in promoting resilience in children, is to strengthen the alliance and bond between the child and the non-abusing parent. Support for the family in the Child's Plan should display a non-blaming, partnership approach between the lead professional and the non-abusing parent as the safety, protection and resilience of the child is usually linked to that of the non-abusing parent.

6.97 Pregnancy can also increase the risk of domestic abuse (and homicide). It may be a trigger for abuse starting. Existing abuse may get worse during pregnancy or after birth. Statistics indicate that women are at twice the risk for physical assault during pregnancy;



statistics for coercive behaviour are unavailable.

6.98 Domestic abuse, both physical and coercive/non-violent abuse, can have wide reaching adverse impacts on women and unborn children during pregnancy. Where domestic abuse is present, there is increased risk of delayed pre-natal care because domestic abuse is preventing a woman from leaving the home, or she may be fearful of practitioners discovering evidence of injuries during doctor and midwife appointments.

How does domestic abuse affect children?

6.99 The range of harm to children from domestic abuse is very broad. In general terms children who experience domestic abuse face three risks;

1. the risk of witnessing traumatic events
2. the risk of being abused themselves
3. the risk of neglect or emotional harm.

6.100 Domestic abuse is considered an adverse childhood experience (ACE). Domestic abuse, including coercive control, can have life-long emotional, physical, mental and financial consequences for children who do not receive appropriate support.

6.101 A common facet of domestic abuse is for the perpetrator to attack the parenting role of the non-abusing parent. This can take the shape of undermining parenting decisions and choices, involving children in the abuse (directly or indirectly), favouring one child over another or encouraging gender based violence between siblings.

6.102 Children can experience domestic abuse by witnessing physical abuse and/or subsequent events, hearing abuse from another room or being aware of and affected by dynamics between the abuser and the non-abusing parent. The harm is not just in witnessing incidents but in living in an abusive, unpredictable and frightening environment around the clock. Whether or not they are the primary target of the abuse, children will experience the fear, confusion and control where domestic abuse is present. Although many children are resilient in the face of this adversity, research consistently shows that children living with domestic abuse have higher rates of depression, trauma symptoms, and behavioural/cognitive difficulties than other children.

6.103 Evidence suggests that experiencing domestic abuse may be as harmful to children as suffering physical abuse, and that there is a co-occurrence of domestic abuse and other forms of child abuse in 40% of cases.

6.104 It is vital that the impacts of domestic abuse on children are understood beyond the effects of current or recent experience. It is a commonly known statistic that children exposed to domestic abuse are at a greater risk of being involved in an abusive relationship as an adult. They are also at a higher risk of mental health problems as adults, particularly depression and anxiety, as well as physical health conditions, including diabetes, obesity and



heart disease.

At a children's hearing

6.105 It is the responsibility of the chair to manage the hearing effectively, with the support of their fellow Panel Members and the Children's Reporter, where appropriate. In instances where domestic abuse is known to be present, this is particularly important.

6.106 It is common for perpetrators of abuse to deny, rationalise or diminish responsibility for their actions, which may manifest within the hearing. It is important that Panel Members do not minimise abusive behaviour, whilst ensuring the focus is kept on the best interests of the child. Perpetrators of domestic abuse can often be seen as 'charming' or 'charismatic' by others. Often this is a cornerstone of the abuse, ensuring that the non-abusing partner is isolated from others, and creating an outward facing persona that appears incompatible with society's perceptions of domestic abuse. This may be manifest within the hearing. That can be challenging for Panel Members.

6.107 If Panel Members are concerned about a perpetrator's behaviour during a hearing, but it does not meet the criteria for exclusion, you can explore whether the perpetrator is willing to leave for part of the hearing. This is a voluntary option that requires the agreement of the relevant persons. The section on [bail conditions](#) above gives more details about how Panel Members can approach this.

6.108 If the perpetrator is a Relevant Person, they have the right to attend the hearing. This may present risks for the non-abusing parent or for the child, and be complex for Panel Members to manage within a hearing. There are a number of statutory options to manage this.



Legislation and Legal Tests

A Pre-Hearing Panel may determine that a person, or persons, should only attend a hearing by phone or video link if the person's physical presence is likely to prevent the hearing from obtaining the views of a child or a Relevant Person, or cause significant distress to the child. This test can be applied to a Relevant Person or their representative, a Participation Individual or their representative or a representative of a news agency.

In addition, during the hearing itself the hearing may exclude any relevant person and/or their representative from a children's hearing if satisfied that:

- exclusion is necessary to enable the hearing to ascertain the views of the child AND/OR
- their presence is causing or is likely to cause the child significant distress.

The Chair has [additional abilities](#) to exclude:



- Any person whose conduct is violent or abusive, or so disruptive that, unless excluded, the Chair would need to end or adjourn the hearing or;
- A Relevant Person, their representative or a representative of a news agency if their physical presence is preventing or likely to prevent the panel from obtaining the views of a Relevant Person, or causing or likely to cause significant distress to a Relevant Person.

6.109 If a hearing excludes a relevant person to ascertain the views of the child, the child should be made aware at the outset that the chairing member must explain to the relevant person(s) the substance of what has occurred during their absence on their return to the hearing room, subject to a hearing decision to withhold information from that person.

6.110 The perpetrator may be subject to bail conditions or other legal order preventing them from having contact with the child or another relevant person at the hearing. The existence of the bail conditions or legal order does not change the right and duty of the child and each relevant person to attend the hearing.

6.111 Where there are bail conditions or a legal order in place or a relevant person is refusing to be in the hearing room at the same time as another, it may be possible for the relevant persons, and the child if of sufficient age and understanding, to agree on an approach to dealing with the situation. A relevant person may voluntarily agree not to attend part of the hearing, or simply decline to be present with the other relevant person who is unwilling to absent themselves for any part of the hearing. Where a hearing is made aware of such a voluntary arrangement, it is for the hearing to decide whether to proceed in the absence of the person who has agreed not to attend.

6.112 Where a hearing decides to proceed in the absence of a relevant person who has voluntarily agreed not to be present at the outset of the hearing or to leave the hearing, there is no express duty on the chairing member to explain what has happened in the person's absence. However, if the person subsequently comes into the hearing, giving such an explanation will generally support fair process.

6.113 Where the hearing is aware that domestic abuse is present, consideration should be given as to how the seating arrangement could increase or decrease risk to the non-abusing parent and their ability to participate effectively. Giving the non-abusing parent and child the lead in choosing the seating arrangements should be considered by Panel Members, if appropriate. Consideration of seating arrangements should form part of every [pre-hearing planning](#) to facilitate effective hearing management.

6.114 Where the criteria for excluding a relevant person are not met it may be appropriate to arrange the seating within the hearing room in a way which creates as much distance as possible between an abused parent and the abuser. Where possible, attendees at the hearing should take the lead on deciding where they sit. However, the hearing should be alert to, in particular, the views of the child and non-abusing parent, along with any representatives, and whether they are comfortable with the seating arrangements.



6.115 The Children’s Reporter may decide to withhold the whereabouts of the child or relevant person from the papers sent to the abuser in advance of the hearing. However, there may be a need for the hearing to consider whether the whereabouts of the child or other information should be disclosed to the perpetrator of the domestic abuse. In this situation a ‘non-disclosure request’ will be made to the hearing or a recommendation made that an existing non-disclosure measure continue.

6.116 The test the Reporter must apply when withholding information in hearing papers from an abuser is that, if known, the information would be likely to cause significant harm to the child. This is a high test and should not be applied lightly. It is also important to consider significant harm in the broadest of terms, not only physical harm, but also mental or psychological harm. The harm must be linked to the child, so the likelihood of significant harm to a relevant person, such as the abused parent, is not included within the test. When making this decision, consideration can and should be given to how harm to a parent or carer might cause significant harm to a child. Where there is a risk to the abused parent of his or her whereabouts being disclosed, the Children’s Reporter can consider this when communicating information about the hearing to the perpetrator and can withhold the relevant person’s whereabouts. More information about [non-disclosure](#) can be found in Chapter 7.



Example

Mr Adebayo has a history of domestic abuse towards Mrs Adebayo. The previous hearing made a measure of no contact between Mr Adebayo and his four year old son, Ifem. Mr Adebayo has not been consistently involved in Ifem’s life since he was six months old, and previous contact has caused Ifem to be distressed and social work have reported Ifem has begun bed-wetting in the days following any contact.

Mr Adebayo continues to make threats of violence towards Mrs Adebayo, and Ifem and his mother have had to move home twice in the past 18 months due to Mr Adebayo finding out where they reside and attacking Mrs Adebayo outside her home.

The social worker and Mrs Adebayo have requested that Ifem and his mother’s address is not disclosed within the hearing papers to Mr Adebayo, or to Ifem’s grandfather, Mr Adebayo’s father, who is a relevant person for the purpose of the hearing. social work consider that if either party were to know their address that there would be a risk of significant harm to Ifem due to the impact violence towards his mother and moving into temporary accommodation has previously had on Ifem’s emotional wellbeing.

Engaging safely with families affected by domestic abuse



6.117 Panel Members should be aware that for families affected by domestic abuse, children’s hearings can present risks for both the child and the non-abusing parent. Hearings are sensitive meetings, and often those involved in these circumstances will feel unable or unwilling to respond fully to questions or participate completely in the discussion.

6.118 Panel Members can consider options which entail speaking to individuals separately, such as requesting to speak to the child alone or separating aspects of the hearing. Anything that involves members of the hearing who have a right to be present stepping out of the room is voluntary, and therefore if parents, relevant people or legal representatives do not agree to voluntarily leave the room at this stage, Panel Members are unable to remove individuals who do not meet the legal test for [exclusion](#).

6.119 Where individuals who have a right to be present leave the part of the hearing voluntarily, the chair should explain to them the substance of what has happened in their absence. Where domestic abuse is present, it is important that it is considered how discussion with the non-abusing parent or child can be summarised to the abusive parent without putting them at risk of harm.

6.120 Relationships and behaviours presented within a hearing where domestic abuse is present are complex, and it is important for Panel Members not to take all behaviour at face value. The dynamics of abuse can impact on how the non-abusing parent and child behave and disclose at a hearing and it is important for Panel Members to be mindful of this when speaking to children about their circumstances. Using phrases such as ‘Can you help me understand?’ and ‘Do you know why we’re here?’ are helpful to allow a child to share their own perspective of their circumstances.

6.121 For families where domestic abuse is present, consideration should be given to Panel Member continuity for future hearings. See the section on [continuity](#).

Domestic abuse and contact decisions

6.122 Careful consideration should be given to approaching decision-making around [contact](#) when domestic abuse is part of the child’s life experience.

6.123 The separation of a non-abusing parent and their abuser does not equate with safety either for the non-abusing parent or the child and violence and/or control may continue or escalate after separation. In some circumstances arrangements for child contact might be used as a means of enacting this continuing control. Contact decisions must consider the behaviour of the abuser as a parenting choice.

6.124 Special consideration may need to be given to practical aspects; for example, issues such as where the contact takes place, who is present, how the child is transported and whether the abuser and the non-abusing parent need to be in contact with each other to facilitate the child’s contact may all need to be considered in more detail than situations where domestic abuse is not a factor. Panel Members should consider the actions of the



abuser, the direct and indirect harm to the child by the abuser, whether the Child's Plan is addressing the abuser's behaviour and the cooperation of the abuser with that Plan.

6.125 The key points to consider in all contact decision-making are:

- When making decisions about contact directions the need to safeguard and promote the welfare of the child throughout childhood is the paramount consideration.
- The starting point in any decision-making is that contact should take place between a child and their parent/s on a regular basis, and that this will be promoted by the Local Authority where the child is looked after. The exception to this is where contact would be contrary to safeguarding and promoting the child's welfare.
- A hearing is not obliged to make a contact direction. In the same way as any other measure included in an order, a contact direction must be necessary and the decision must be proportionate to the facts.

6.126 When making decisions around contact where domestic abuse is a concern the hearing may also consider:

- any risk that the person/s may pose to the child - this can be physical or emotional
- any evidence about the impact on the child before, during and after contact
- any evidence in relation to what happens during contact, in terms of verbal or non-verbal messages which are given to the child.

6.127 Clear verbal and written reasons must be provided for any decision made about contact. In particular decisions which involve a significant restriction on a child's contact, for example that there should be no contact between a child and parent or that contact should be supervised, should be fully justified with reference to clear evidence.

Domestic abuse in different cultural contexts

6.128 Domestic abuse can affect families from all ethnic backgrounds. The form that domestic abuse takes may vary; in some communities, for example, domestic abuse may be perpetrated by extended family members, or it may include forced marriage or female genital mutilation (FGM).

6.129 In many cultures, patriarchy is central to community, society and familial structures which creates conditions that can lead to gender based violence. Violence towards, or control of, a woman by their husband or male relative can be normalised in some cultures, often accepted by societal expectations.

6.130 Black, Asian or minority ethnic (BME) communities are more likely to face additional barriers to receiving the help and support that they need. Challenges such as language, limited social networks and shame are significant barriers for non-abusing parents from BME communities in seeking help.



6.131 A significant issue faced by BME victims of domestic abuse, particularly women, is immigration status. For a number of women in these circumstances, their immigration status and 'right to remain' are reliant on their marriage and dependant on remaining with their husband. There are also additional complexities for families in these circumstances who are unable to take passports and documentation with them if they leave an abusive household, which leaves them vulnerable.

Further reading

- [Adverse Childhood Experiences and tackling Violence Against Women and Girls: the need for an Equally Safe-informed approach to ACEs.](#) A joint briefing by Aberlour, Canongate Youth, Children 1st, Children in Scotland, Empower Project, Engender, NSPCC, Rape Crisis Scotland, Scottish Women's Aid, Zero Tolerance.
- [Better Outcomes for Children and Young People Experiencing Domestic Abuse Directions for Good Practice](#), Scottish Government (2008). Literature Review.
- [Cedar Network](#) CEDAR stands for 'children experiencing domestic abuse recovery'. Their model is based on core principles that recognise that domestic abuse is damaging to children as well as to the mother/child relationship, and on the belief that mothers are best placed to support their children in their recovery
- [Domestic Abuse and Child Contact](#), Scottish Women's Aid (2018). This briefing looks further at challenges and risks around child contact in families affected by domestic abuse.
- [Domestic Abuse and Child Protection](#). This research by IRISS (2017) looks at women affected by domestic abuse and their experience of social work intervention.
- [Equally Safe: Scotland's strategy to eradicate violence against women](#). This strategy, published by the Scottish Government in 2018, outlines Scotland's aim to work collaboratively with key partners in the public, private and third sectors to prevent and eradicate all forms of violence against women and girls.
- [Nineteen Child Homicides](#), Women's Aid (2016). This publication tells the stories of the cases of nineteen children, all intentionally killed by a parent who was also a known perpetrator of domestic abuse.
- [Scottish Women's Aid](#) - the lead organisation in Scotland working towards the prevention of domestic abuse.
- [Shakti Women's Aid](#) helps BME women, children, and young people experiencing, or who have experienced, domestic abuse from a partner, ex-partner, and/ or other members of the household.
- [Strengthening mother-child relationships as part of domestic violence recovery](#), Centre for Research on Families and Relationships (2014). This study looks at how mother-child relationships are damaged by domestic abuse.
- [The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse](#), Scotland's Commissioner for Children and Young People (2013).



f. Recording and publication of children's hearings

6.132 This section provides information to Panel Members about the recording and publication of information in relation to a children's hearing; specifically, why parents may wish to record a hearing and how issues relating to recording and publication can be approached before, during and after a children's hearing.

6.133 A children's hearing takes place in private. However, with an increase in the availability of digital technology, opportunities to record and publish information about a children's hearing have increased.

6.134 It is not illegal to record a children's hearing and Panel Members can grant permission for the children's hearing to be recorded as part of a fair and open legal process however covert recordings can bring mistrust into often already tense proceedings, and can raise concern that protected information may be published, therefore guidance on both open recordings and covert recordings is provided below.

'Recording' and 'Publication'

6.135 '**Recording**' arises where an attendee wishes to take notes at the hearing, either handwritten or electronically, or wishes to audio or visually record the proceedings.

6.136 Under [s182](#) of the 2011 Act it is a criminal offence for anyone to "**publish protected information**" if the publication is intended to, or is likely to, identify a child or an address or school of the child.

"Publish" is given a wide meaning and includes publication in newspapers, television, radio or online.

"Protected information" is information about a children's hearing, children's hearing court proceedings, or a Children's Reporter's investigation.

Why might a parent want to record a children's hearing?

6.137 A [report](#) by The Transparency Project, looking at why parents may want to record a meeting with a social worker, categorises the possible reasons into the following categories which can all apply to children's hearings:

- For their own objective record; there is a power dynamic in terms of who writes the minute for a meeting and who records what is said. Parents may want their own record of exactly what was said without waiting for minutes of a Looked After Child review or the Record of Proceedings from a children's hearing. They could better challenge any inaccuracies in reports with a recording of the meeting.
- Because children's hearings can be stressful and complicated; it can be difficult to remember everything which was said and agreed. This will apply particularly when a



parent has additional support needs or a learning difficulty.

- Lack of trust of professionals, Panel Members or the Children’s Hearings System in general.
- Previous minutes or reports may have been inaccurate and the parent may have been unable to prove this due to a lack of evidence.
- To “catch out” a professional or Panel Member.
- As part of a social media campaign, especially if they feel they are not being treated fairly in court or in the Children’s Hearings System.

There are few examples of the last reason. Nevertheless it is often perceived as the main intention for recording a hearing. We have given guidance below on how this can be addressed effectively and what support there is available.

Requesting permission

6.138 If a parent requests to record a children’s hearing, Panel Members should consider the reason for the request and approach the subject in an open and fair manner. It would be appropriate to question what they intend to do with the recording; for example, whether it is for their own use or if it is intended to be used in court.

6.139 If permission to make a recording is given by the hearing, the person should be reminded about the rules in relation to publication of that information.

6.140 For fairness, and to provide an accurate record, the whole children’s hearing should ideally be recorded as short snippets of discussion can be taken out of context and may distort a person’s intent when taken in isolation.

6.141 You may feel uncomfortable with the thought of being recorded but Panel Members are operating in a fair and open process and should have nothing to hide.

Before the children’s hearing

6.142 When the Children’s Reporter is meeting attendees in the waiting room, particularly if there is information to suggest recording may take place, the Children’s Reporter may choose to reinforce that children’s hearings are private proceedings, recording of the hearing is not allowed without the express permission of the hearing and secret recording may amount to contempt of court.

6.143 Before all hearings the Children’s Reporter should request that all attendees switch off their mobile phones and other devices, unless they are needed for an emergency, before entering the hearing room.

During the children’s hearing

6.144 If necessary, as part of the introductions the chairing member can remind all



attendees that:

- mobile phones should be turned off, unless needed for an emergency
- children's hearings take place in private and the discussions that take place within the hearing room are confidential.

6.145 At the discretion of the chairing member the following words, or similar, may also be used at the start of the hearing:

*“Children’s hearings are private and as such we do not permit hearings to be audio or visually recorded without permission.
Recording of this hearing without permission may amount to contempt of court.”*

This statement may be appropriate where there is evidence that hearings have been audio or visually recorded in the past without permission or information has been received in advance that an attendee may do so.

6.146 There is a presumption that the taking of notes for personal or professional purposes, will be permitted where this is done in an open way and does not impact on the discussion or decision-making of the hearing. Notes can be taken by hand or electronically. Where notes are being taken, the chairing member should remind the note-taker of the restrictions around publication of information discussed at the hearing.



Options

6.117 If during the hearing the Children's Reporter becomes aware, either directly or via another attendee, that a recording may be being made they will alert the chairing member immediately. If such a situation arises the chairing member should stop the discussion, enquire whether a recording is being made and consider how the hearing should proceed. Panel Members should ask the person if he or she is recording the hearing and what the purpose of that recording is. Having ascertained that information, the hearing has two options:

1. **Proceed with the hearing.** The person making the recording should be reminded of the restrictions in relation to publication of the information.
2. **Defer the hearing to another day.** As in any circumstance where the hearing is considering whether to defer the decision Panel Members should consider the impact on the child of a delay to making a substantive decision.

6.148 **Neither the Panel Members nor the Children's Reporter have the power to stop the recording, view or delete the recorded material or to seize any recording equipment.**



6.149 Panel Members may also consider whether to ask the Children’s Reporter to refer the matter of recording the hearing without permission to the Police as an offence of contempt of court.

After the Children’s Hearing

6.150 If a Children’s Reporter becomes aware that a hearing may have been audio or visually recorded and/or protected information may have been published they must alert their Locality Reporter Manager as soon as possible who will ensure the CHS and SCRA national teams are informed.

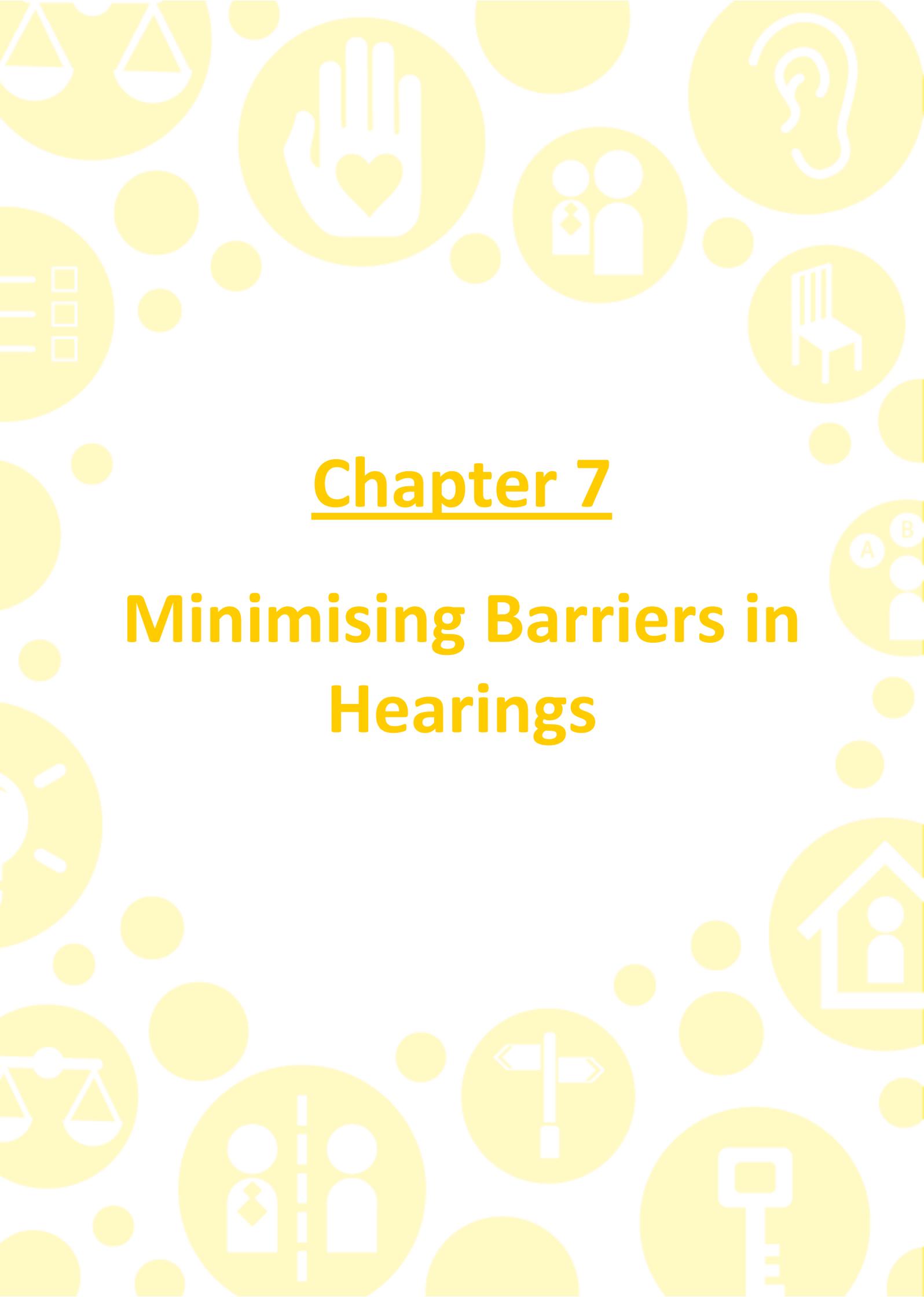
6.151 Where information is published online SCRA and CHS will take all reasonable steps to have the information removed. However, depending on the website, sometimes this may take a long time to remove or will not be possible despite repeated requests; if removal of the information is not possible the affected individuals (Children’s Reporters or Panel Members) will be informed of this.

6.152 Where contact details for the person who has published the information are available the Locality Reporter Manager may write to the person to advise of the legislation preventing publication and ask for the information to be removed.

6.153 Where a recording has been made without the permission of the children’s hearing there is presumption that SCRA will report this matter to the Police as a possible contempt of court. Likewise, where protected information has been published there is a presumption that SCRA will report this matter to the Police.

Further Reading

- The Transparency Project [‘Parents recording social workers - a guidance note for parents and professionals’](#)



Chapter 7

Minimising Barriers in Hearings



Summary

Panel Members are responsible for ensuring that a children's hearing is fair for all participants. This means that Panel Members need to be able to identify and mitigate some of the barriers that can face children and families from a range of backgrounds and circumstances. This chapter seeks to empower Panel Members to increase the effective participation of children and their families through increased understanding of gender, sexuality, disability, race and autism. It gives Panel Members the tools to manage more complex situations and to communicate effectively in simple more child-friendly and family-friendly language.

a. Working with interpreters

7.1 Everybody involved should be able to participate effectively in a children's hearing. The European Convention on Human Rights ([ECHR](#)) Article 6 means that everyone has the right to a fair trial, which includes language assistance and interpretation where that assistance is necessary. Some families who come into contact with the Children's Hearings System do not have English as a first language or require sign language interpretation. Many of these families will need an interpreter to communicate during the hearing. It is necessary to plan and prepare for these hearings properly and take additional factors into account to ensure the hearing will run smoothly.

7.2 An interpreter may not be requested for a hearing where those involved are confident in English as a second language. Panel Members should be mindful that the processes and language used within a hearing can be technical and complex. Much of this can be mitigated by Panel Members using more [accessible language](#) and taking time to explain technical terms. However if it is clear that a participant is struggling to understand and participate effectively, Panel Members should consider deferring the hearing to allow for an interpreter to be arranged.



Legislation and Legal Tests

There are several pieces of legislation and policy that underpin the local authority and government's requirements to take account of race, religion, language and culture.

- Children (Scotland) Act 1995 [s17\(4\)\(c\)](#) [s22](#)
- European Convention on Human Rights
- [UN Convention on the Rights of Persons with Disabilities](#) Article 9
- [UN Convention on the Rights of the Child](#) Article 2



Considerations prior to the hearing

7.3 The Children’s Reporter has a responsibility to ensure that where there is clear and reliable information that that a hearing participant requires an interpreter, that one has been arranged. Further information regarding the Children’s Reporter’s role and responsibilities regarding translation and interpretation can be found [here](#).

7.4 Panel Members should ascertain whether the hearing papers have been sent to the person/s requiring interpretation in a language that they understand. If they have not, the hearing should consider if sufficient information can be given during an adjournment. This consideration is not limited to those who require interpretation at a hearing – individuals who can speak English may not be able to read written English.

7.5 A family member should not be asked to interpret during a hearing. Family members are participants in the hearing, and although they may provide support in informal settings, this would not be appropriate for the purposes of a hearing. Children often pick up languages quicker than adults, especially when surrounded by English at school and on television. In cases where the child is fluent in English but the parents are not, the child should never be asked to translate or ensure their parent’s understandings of the proceedings.

7.6 A professional working with the family about the issues which have brought them to the hearing should not be asked to interpret. Duality of roles may hinder the family speaking up. This could also diminish the professional’s ability to participate in the hearing.

7.7 The Children’s Reporter and/or the Panel Members should ascertain that the interpreter and family speak the same language or dialect.

7.8 When arranging an interpreter, SCRA should consider whether there are particular sensitivities or needs. Characteristics such as the gender of the interpreter or community connections/familiarity can significantly impinge on the child or family’s ability to participate. If, during a hearing, the family expresses that they know or have a community connection with the interpreter, Panel Members should consider whether this is a conflict of interest and whether it would be appropriate to continue with the hearing or defer to another day.

7.9 The gender of an interpreter could have a significant impact if the hearing is discussing particularly sensitive topics, for example female genital mutilation, arranged or forced marriage or domestic abuse. If Panel Members consider that the gender of the interpreter is impacting on anyone’s ability to participate, then they should consider whether it is necessary to defer the hearing.

7.10 At the beginning of the hearing the Children’s Reporter or Panel Members should ask the interpreter how they will interpret for the participant/s to allow Panel Members to



adjust the speed and rhythm of their delivery. This will be either:

- **Simultaneous translation:** the interpreter listens in one language and speaks in another at the same time or with short time lags, or
- **Consecutive translation:** first the interpreter listens to the entire original phrase or passage, then interprets it into the other language.

7.11 There may be circumstances where the Children’s Reporter was not made aware of the need for an interpreter in advance or has not assessed the individual as requiring assistance. In cases where the Children’s Reporter has not made arrangements for interpretation at the hearing, Panel Members can defer the hearing and require the Children’s Reporter to arrange for an interpreter or for translation in terms of Rule 61(1)(f) of the 2013 Rules.

During the hearing

7.12 How Panel Members and others communicate when a hearing requires the use of an interpreter is key to the effective participation of everybody involved. In the first instance, Panel Members should make sure that the interpreter is positioned in the right place to be effective. This usually means the interpreter should sit next to the individual requiring interpretation. Where there are multiple participants requiring interpretation, this should be arranged before commencing the hearing.

7.13 Panel Members and professionals should speak to and make eye-contact with the participant directly. It is important to avoid addressing questions to the interpreter instead of the participant to avoid inadvertently marginalising or excluding the key participants.

7.14 Where possible avoid acronyms, jargon or colloquialisms – this may be challenging to interpret. Equally, some words do not always have precise equivalents. A short sentence in English may take several sentences to explain in another language – or vice versa. The section on [everyday language](#) may help Panel Members explain legally complex terms in a way which can be easily translated.

7.15 The pace of delivery should be slowed down and speech broken up into shorter segments if this seems necessary. However sentences should be complete to avoid misunderstanding.



Example

After completing the relevant preliminaries at the start of the hearing, the chair summarises the purpose of the hearing and the content of the reports. Agata, 7, speaks English as her first language, and Agata’s father, Luca, understands little English and an interpreter is present to enable him to participate in the hearing:



“We’re all here today to talk about Agata.”

“Agata’s school have asked us to have this meeting because they are worried that she is missing a lot of school.”

“Agata’s school attendance is currently 52% and she has missed every Monday for three months.”

“Her teachers are also worried that sometimes Agata is sleeping in class, hungry and easily upset.”

The chair has broken up the information into shorter sentences with gaps to allow the interpreter to share the information with Luca. The language they have used is also clear and avoids jargons and acronyms.

7.16 When using sign language interpreters, it is important to avoid unintentionally leading questions. In British Sign Language there are a number of words where there is no exact equivalent to the English generic term – e.g. weapon. Sign language is very descriptive and if a general term like weapon is used the interpreter has to make a choice of a type of weapon before signing the interpretation. Be specific to avoid confusion.

7.17 Anyone speaking should try to be precise in their narrative. The discussion will take longer than usual and for particularly long hearings, it may be necessary for the interpreter or participant to take a short break. The Children’s Reporter should discuss this with the interpreter in advance, nevertheless it is good practice to check with both the interpreter and participant if they require a short break.

7.18 Avoid conversations that are not translated. Participants using an interpreter should be aware of everything that is said and discussed at a hearing in the same manner a native English-speaking child or family member.

Quick Tips

- Use clear language and avoid jargon or acronyms.
- Address questions to the participant - not the interpreter.
- Make eye contact with the participant – not the interpreter.
- Ensure everything discussed is interpreted and shared with the participant.
- Any queries or concerns regarding the interpreter should be raised with the Children’s Reporter.

b. Inclusive language

“Communication is not what you say, but how it's heard.”



7.19 The hearing room should be a space where participants feel supported and able to contribute effectively and do not feel discriminated or marginalised. This section outlines some of the considerations for Panel Members before, during and after hearings.

7.20 The language we use is powerful. It is important to avoid using words, expressions or assumptions that could unnecessarily exclude people. By using inclusive language, we aim for communication that includes people regardless of gender, language, culture, religion, race, ability, family structure, socio economic background, marital status, sexuality or origin.

Disability

7.21 Collectivising people by a shared characteristic, such as disability, can often marginalise individuals. The word 'disabled' is a description, not a group of people. Use 'people with disabilities' not 'the disabled' as a collective term.

7.22 When speaking about someone with a disability, it is important to strive to use positive terms. For example, the phrase 'suffers from' suggests discomfort and pain, which may not reflect how the person views their circumstances. Similarly, wheelchair users may not view themselves as 'confined to' a wheelchair - try thinking of it as a mobility aid instead.

7.23 The general principle to apply with regard to improving language inclusivity around disability is to focus on the person, not the disability. Hence, phrases such as 'person with disability' or 'child with visual impairment' are considered more inclusive and sensitive. Always refer to people first.

7.24 Avoid terms which equate the person with the ability or disability, e.g. 'an epileptic'. It is always preferable to say 'a person with epilepsy.' It is best practice to avoid using euphemisms, however commonly they may be already in use (for example 'challenged', 'specially-abled').

7.25 Terms that stem from the context of mental health, for example, 'schizo', 'paranoid', 'crazy', 'mad' or 'psycho' are discriminatory and derogatory towards those with mental ill health. For example, it is not appropriate or accurate to describe a conflicting approach to an issue as 'schizophrenic' as this shows a misunderstanding of what schizophrenia is and underplays mental illness. Jokes or dismissive comments about mental health minimise the experiences of those affected by mental health issues. Similarly misunderstanding or misuse of terminology can stigmatise those affected by mental health issues.

7.26 We can also be more mindful of the small steps that we can take to make someone feel more included and able to fully participate. For example letting the person who is blind or visually impaired person know when someone new comes into the room or when someone leaves the room or the conversation. Non-verbal communication and body language should also be verbalised.



Culture, race, nationality and ethnicity

7.27 Collectivising people by their culture, race or ethnicity can be discriminatory and prejudicial. Avoid stereotyping or using phrases that refer to 'all' people of a specific race, culture or religion sharing characteristic/s.



Example

Yao, 13, is attending his annual review with his father, Zaan, and his social worker. During the hearing Yao's teacher shares about his progress at school;

"Yao is a very quiet boy who is doing well academically. Yao is in the top class for maths, which we would expect as all of our Chinese students are excellent at maths."

Yao's teacher's comments are clearly not intended to be discriminatory or offensive to Yao, however at the same time it collectivises Yao along with all other students of Chinese heritage. This minimises Yao's achievement as well as generalises that 'all' people of the same culture and background are alike.

7.28 Consider using terms that are inclusive, such as 'first name' and 'family name', rather than 'Christian name'.

7.29 Racial or ethnic invisibility can occur when umbrella terms, such as 'Asians', are used. This example ignores and homogenises multiple diverse ethnicities. If limited information is provided about the ethnicity of a child or relevant person, you should ask rather than assume.

7.30 Without necessarily intending to, many terms set aside some groups from an implied mainstream, suggesting a 'them and us'. The use of terms like 'ethnics' or 'ethnic Scots' can imply a distinction that is divisive whereas 'ethnic minority groups' is a more straightforward and descriptive usage. Panel Members can, and should, feel confident to ask families how they define and frame their own ethnicity.

7.31 Groups from some cultures or religions may use 'slang' terms as a means of claiming their identity. These can be seen as derogatory when used by people outside of the group.

Socioeconomic status or location

7.32 Discrimination can occur through language in relation to perceived or actual economic status (usually poverty) and, linked to this, geolocation (usually rural or suburban).



7.33 It is inappropriate to make assumptions or use presumptive language based on someone's socioeconomic status or geographic location. This is important during the hearing and in preparatory discussions, as well as wider discussions during training, AST meetings or other CHS events.

7.34 We should treat all people, regardless of their perceived or actual economic circumstances or where they live, with respect, fairness and dignity.

Sexual orientation and gender identity

7.35 Lesbian, gay, bisexual, transgender and intersex people can often experience direct and/or indirect discrimination, harassment or victimisation through the language of others.

7.36 One way to avoid reinforcing invisibility is to use 'partner' instead of 'husband' or 'wife', and 'boyfriend' or 'girlfriend' if you do not know the sexual orientation or marital status of the person you are referring to. Some examples of neutral language swaps include:

- Boyfriend or girlfriend = partner
- Husband or wife = spouse
- Mum or dad = parent
- Son or daughter = child
- He or she = they
- His or her = their

7.37 We should all take steps to avoid stereotyping LGBT+ people. Placing limitations or expectations on individuals because they belong to a certain group is damaging, hurtful and discriminatory. Also avoid stereotyping that could be considered 'positive' but still places unfair expectation and limits on others, for example, 'gay people are generally more creative and open-minded'.

7.38 For more information on sexual orientation and gender identity, read the section on [Gender Identity and Sexuality](#).

Jargon and acronyms

7.39 The Children's Hearings System and adjacent professions (Social Work, Health, Education) can be quite acronym and jargon heavy, much of which would exclude children and adults from fully understanding and participating in their hearing. [Acronyms](#) should be avoided or explained if they are used.

7.40 With regard to languages, it is best to try to avoid acronyms used to describe people whose home language is not English, such as NESB (Non-English-Speaking Background) and EAL (English as an Additional Language). These privilege English as a reference point and suggest that any language that is not English is limiting.



7.41 Culture-specific terms, such as FGM (female genital mutilation) and BME (black and ethnic minority) are commonly used. In the hearing room it is appropriate to ascertain everyone's understanding of terms such as these before proceeding to use.

c. Disability

7.42 The [Equality Act \(2010\)](#) requires reasonable adjustments to be made to remove barriers faced as a result of disability. This strives to ensure those affected by disability receive the same services, as far as possible, as someone without a disability.



Legislation and Legal Tests

The Equality Act (2010) states that:

"A person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities."

In this context 'substantial' means more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed and 'long-term' means 12 months or more.

Some conditions or illnesses are deemed as disabilities from the point of diagnosis such as cancer, HIV infection and multiple sclerosis. Other types of conditions that may be a disability include:

- Physical impairments such as mobility difficulties
- Neurodiverse conditions including people with autism, dyslexia and dyspraxia
- Mental health conditions or illnesses which have a long-term effect such as depression and anxiety, panic attacks, phobias, eating disorders
- Sensory impairments such as those affecting sight or hearing.

7.43 1 in 5 people in Scotland are affected by disability, and around 8% of children and young people (0-15) have a diagnosed disability. Every person with a disability is affected differently. This section contains some suggestions and guidance around adjustments and considerations that Panel Members can make, however it is by no means exhaustive and the needs of each person will be individual.

7.44 Many of the necessary adjustments fall under the remit of SCRA and the Children's Reporter's responsibilities, such as ease of access to the hearing centre and ensuring that hearing papers are sent in an accessible format. However there are important considerations for Panel Members to make both before and during the hearing. Disability



may affect children, parents, relevant persons or professionals involved in a hearing. Panel Members' communication style, language and attitudes can positively impact on someone with a disability's ability to participate effectively.

Communicating about disability

7.45 Many people express that they feel unsure or uncertain how to communicate with someone with a disability about their disability. The most effective approach is to be sensitive, flexible and honest.

7.46 It is important not to assume that you know what the disability is or how it impacts on the life of the individual. Many different conditions can present in similar ways, and equally the same diagnosis can affect different people in different ways. Reports prepared for the hearing (in particular social work, education or health reports) should include information about the child or adult's diagnosis and how this affects them. If this information is limited, Panel Members should ask the participant (if appropriate) and relevant adults (professionals, carers) to share how this impacts upon the child/adult.

7.47 Some disabilities are 'invisible' – they are not immediately obvious when you are speaking to the person, but they may still face challenges in communicating with you. Relate to the individual person and respond to their individual needs.

7.48 Different cultures also view disability differently and may not share the common view of disability as a physical or physiological issue. Be aware that people from other cultures may be embarrassed if you draw attention to the person with a disability.

7.49 Above all, be respectful, polite, considerate, offer assistance, communicate effectively and don't hesitate to ask questions. Treat all people in the same way you would wish to be treated yourself.

Sensory impairment

7.50 Around 1 in 6 people in Scotland are affected by hearing loss and more than 1 in 30 people live with sight loss, along with around 2,000 people in Scotland who have both significant hearing and sight impairments (deafblind). Communicating effectively with someone with a sensory impairment can be challenging as the person may not be able to pick up on non-verbal cues or follow a conversation as easily.

7.51 Some things that you can do to minimise this include:

- Be clear about who is speaking and who you are speaking to and try to gain the participant's attention before starting to speak.
- Similarly if someone is leaving or entering the hearing room, make sure that the participant is made aware of this.



- Explore with the participant whether the environment is meeting their needs. For example, for someone with a sight impairment, turning on the lighting or opening blinds may increase light levels and allow them to engage more effectively.
- A participant affected by a sensory impairment may not be able to pick up on non-verbal communication, such as body language.
- For someone with hearing loss, a British Sign Language (BSL) interpreter may be required for the participant to be able to understand and contribute to the hearing. If an interpreter is not present, it would be appropriate to explore with the participant whether a BSL interpreter is required. For more information on interpreters see the section on [interpreters](#).
- All hearing rooms are fitted with an induction loop, as required by law. If a participant uses a hearing aid, it is appropriate to check that they are aware of this and connected if they wish.
- If someone has a hearing impairment, turn your face towards the person and ensure your face is well-lit so your lip movements can be easily seen.
- Don't shout or over-exaggerate words or lip movements - this can make it harder for someone to understand you. Speak clearly and slightly slower, but keep the natural rhythms of your speech.

d. Autism

7.52 Autism is a developmental disability that affects how people understand the world, communicate and interact with others. People with autism see, hear and feel the world differently, and everyone with an autism spectrum condition is affected in a different way or to a different extent.

7.53 Around 1% of the population have some form of autism condition, and [research](#) by the Scottish Commission for Learning Disabilities found that around 70% of those on the autistic spectrum had also been diagnosed with an additional learning difficulty. This affects how someone is able to participate and understand a hearing, so it is important that everyone involved takes steps to minimise these barriers.

7.54 One of the most significant ways that autism can impact on someone's ability to participate effectively in a hearing is communication. It is common for people on the autistic spectrum to face challenges both communicating and expressing themselves and understanding the communication of others. Individuals with autism may have difficulty interpreting verbal and non-verbal language like gestures, tone of voice or facial expressions. Many may also have a very literal understanding of language and think that people always mean exactly what they say. "We'll talk about that in two minutes" can be a



specific timeframe for someone with autism, rather than meaning “we’ll get to that soon.”

7.55 This section looks at how Panel Members can reduce some of the barriers for participants (both adults and children) on the autistic spectrum who attend a hearing.

7.56 SCRA have created a short film in conjunction with Reach for Autism, aimed at helping young people with autism attending hearings. You can read more about the film and access it [here](#).

Before the hearing

7.57 Knowing what to expect can help to reduce anxiety for someone on the autistic spectrum attending a hearing. Knowing in advance who they are going to meet in their hearing can be helpful. Panel Member profiles are a positive tool for those who have an autism condition and have already helped children with autism attend hearings.



7.58 Many hearing rooms across Scotland have been redesigned to be more child friendly and take the needs of people with autism into consideration. It is good practice to look around the hearing room before the hearing for anything that may be intrusive for someone on the autistic spectrum e.g. red or other highly coloured items, bright lights, complex pictures, items that make noise such as ticking clocks or humming lights.

7.59 Invite the child, young person or adult with autism into the hearing room before other participants. This will allow them to familiarise themselves with the room a little, choose where they sit and help them feel calmer in a quieter hearing room before other people come in.

7.60 Panel Members and/or the Children’s Reporter should check whether the participant could find some routine behaviours upsetting within the hearing. For example, does the person have a preference about where a person should look when speaking to them.



During the hearing

7.61 Reports prepared for the hearing (in particular social work, education or health) should include information about the child or adult's diagnosis and how this affects them. If this information is limited the panel should ask the participant (if appropriate) and relevant adults (professionals, carers) to share with the hearing how this impacts upon the child/adult.

7.62 Provide the child, young person or adult with regular reassurance as appropriate throughout the hearing.

7.63 Ensure that the participant is given sufficient time to process information and understand questions from any participant and respond. Panel Members can support this by discouraging others from interrupting or speaking ahead.

7.64 Visual aids may help a participant with communication difficulties. Emoji cards or pictures may aid a child or young person to express emotions if they struggle to do so. It is important that Panel Members do not assume that the child or young person understands what the emotions are and what they mean, so it is best to explore this with the child and those who know them best.

7.65 Where possible, explore other methods by which the participant with communication difficulties can share their views. If facilities are available, provide opportunities to show how they feel by using pictures, by enabling them to draw on white boards and flashcards.

7.66 Support aids such as sensory or fidget toys often help those on the autistic spectrum to focus on tasks and lessen anxiety. Panel Members should check how the person might want to use aids during the hearing. SCRA have sensory toolkits available in hearing centres which contain sensory and fidget toys for use during hearings.

7.67 When communicating their decisions, Panel Members should make sure that the child, young person or adult understands the decision of the hearing. Give them time to process what they have been told or ask questions when appropriate.

e. Gender identity and sexuality

7.68 Gender identity is a way that someone describes how they feel about their gender. Gender is different from sex, which is related to someone's physical body and biology. People are assigned a gender identity at birth based on their sex.



7.69 Sexuality is a person's sexual orientation or preference. Sexuality includes someone's gender identity, however sexuality and gender identity are completely different things.

7.70 LGBT+ is an acronym that stands for Lesbian, Gay, Bisexual and Trans. It is seen as an inclusive way to represent all of the different identities, with the plus often used as an umbrella term for other identities not represented by a letter of the acronym.



Legislation and Legal Tests

Gender reassignment is a protected characteristic under the Equality Act 2010. Gender reassignment means that those whose gender identity is different from the gender assigned to them at birth – this can be at any stage of the transition process, and does not necessarily involve physical or medical transition.

- The Equality Act 2010 also outlines that individuals should not be discriminated against on the basis of sex or perceived sex.
- Article 2 of the United Nations Convention on the Rights of the Child (UNCRC) states that 'children's rights should be respected and ensured without discrimination of any kind'.

Gender Identity

A recurrent message from trans and non-binary young people is that depression and anxiety are not caused by *their* issues with their gender identity, but by the attitudes, responses and actions of others.

7.71 Children and adults that are involved in hearings may identify differently from the gender they were assigned at birth, or from their physical appearance. Our understanding of gender has progressed from a male/female binary, to recognising gender identity as a continuum or a spectrum.

7.72 The percentage of the population that identify as trans or non-binary is not accurately known. However a consistent statistic is that a higher proportion of young people identify as other than the male/female binary than adults over the age of 25. Two in five transgender young people say that they first thought they were trans aged 11 or under.

7.73 Mental health issues are significantly more prevalent for transgender young people. According to research by LGBT Youth, 67% of transgender young people considered themselves to have mental health issues. The [Trans Mental Health Study](#) found that nearly 85% of trans people have said that they have thought about ending their life, and 40% reported that they had attempted suicide on at least one occasion.



7.74 It is important that hearings are a safe space for all children, including those who identify or express their gender in a way that is different from their biological birth sex.

Language

7.75 Names, pronouns and gender markers are important. We are all constantly learning and adjusting to new language and identity terms and pronouns can be tricky as every label can mean something different to each person who identifies with it.

7.76 This list is not absolute, however it is a foundation of terminology and vocabulary that is commonly used by those who identify as trans and should provide Panel Members with the confidence to use appropriate terms to discuss issues of gender sensitively and openly.

- **Trans:** an umbrella term that encompasses a range of identities that transgress socially defined gender norms. This is often seen as a preferred term as it encompasses a range of identities.
- **Queer or genderqueer:** someone who does not subscribe to conventional gender distinctions but identifies with neither, all, or a combination of genders.
- **Transgender:** someone who identifies as being a different gender to that they were born with. This includes transitioning between male and female, as well as those who identify as having transitioned to non-binary or agender.
- **Cisgender:** someone who identifies as being the same gender that they were assigned at birth, whose gender aligns with their sex.
- **Non-binary:** a term used by people describing themselves as not conforming to any specific gender
- **Gender dysphoria:** this is where a person experiences discomfort or distress because there is a mismatch between their biological sex and gender identity.
- **Gender non-conforming or gender variant:** someone who identifies or expresses their gender differently from their gender assigned at birth, which doesn't necessarily mean a change of gender and can refer to gender expression.
- **Androgynous:** this refers to someone who has a mix of male and female characteristics – a middle line between feminine and masculine.
- **Advocate or ally:** someone who is outwith the group or identification, who takes action to support and respect members of a community.
- **Agender:** someone who is 'gender neutral' and identifies as no gender/genderless.

7.77 Pronouns are words or groups of words that take the place of the noun in a sentence. In English only personal pronouns (such as she), reflexive pronouns (such as himself) and possessive determiners (such as his) have gender. For trans individuals, pronouns are an important part of their identity that should be respected.

7.78 When someone identifies as trans, you should call them by the pronouns that they prefer. This is not always clear, and you can't tell someone's preferred pronoun from just



looking at them. In a hearing this information may be included within reports, however this might not always be the case. If it is not clear how a child or relevant person identifies or their preferred gender pronouns, the best time to ask is when you meet them for the first time.

7.79 It is *not offensive* to ask someone what their preferred pronouns are, it is important and inclusive. You could do this by sharing your own name and preferred pronouns during introductions. Equally, asking “*what pronouns do you use/prefer?*” is a simple, direct and open way of allowing someone to share how they identify and feel safe and welcome.

7.80 Language is constantly evolving, and it is always best to mirror the language that a young person is using, including pronouns. Messages from young people are clear that it’s okay to get it wrong, to use the wrong pronouns or words, but that it’s important to acknowledge this – correct, apologise and continue.

Sexuality

“The difference between gender identity and sexual orientation is between who you are and who you love.”

United Nations Free and Equal Campaign.

7.81 According to statistics from LGBT Youth, 71% of LGBTQI+ young people reported they had experienced bullying at school based on their sexual identity. Nearly 10% of young people left education as a result of homophobia.

7.82 As part of growing up, all young people will spend time exploring their identity and developing a sense of who they are. This will include thinking about who they are attracted to, their sexual orientation, and how they feel about their gender (see above).

7.83 Being lesbian, gay or bisexual is not a problem or a risk, but young people can find it difficult when other people around them – teachers, doctors, parents/carers and family, friends, youth workers, faith leaders and other young people – respond negatively or don’t provide them with the support they need.

7.84 One in four lesbian, gay and bisexual young people say that they first thought they were LGB aged eleven or under.

7.85 It is important to recognise that a child’s sexuality is not a risk or a concern, however children that are navigating their sexual identity can be at a higher risk of mental health issues, peer bullying and social isolation.

7.86 As with gender identity, not every aspect of someone’s sexuality is ‘your business’ or needs to be discussed or known by the hearing – it is important to be okay with this ambiguity.



7.87 Most importantly, Panel Members should feel comfortable and familiar with non-stigmatising and non-heteronormative language in order that a hearing is a safe and inclusive space, where those who identify as LGBT+ feel supported and do not feel discriminated against. See the section on [inclusive language](#) for more information.

7.88 A hearing may be a space where a child or young person feels safe and able to acknowledge their own sexuality or gender identity to other people for the first time. This can be challenging and emotional, and it is important that Panel Members respond in a sensitive and understanding manner. Some tips for responding to a young person coming out about their sexuality or gender identity include:

- listen to them. This is undoubtedly difficult for the child or young person and it is important to allow them time and space.
- don't panic: they don't expect you to be an expert.
- say "thank you": the fact that they have trusted you enough to speak to you is a privilege.
- ask what support they think would help: listen to what they say, and repeat back to check you've understood correctly.
- if the young person is sharing about their gender identity, check what pronouns they would like you to use, as well as what first name they prefer.

f. Poverty and the hearing system



7.89 Poverty in its most simple form is where the lack of financial resources have an impact on a person's standard of living, and their ability to provide and support their family. There are different types of child poverty that Panel Members will encounter, including absolute poverty, material deprivation and persistent poverty. In practice, this means not being able to heat homes, pay rent, or buy essentials for children. This can cause those affected to wake up facing insecurity, uncertainty, and stressful decisions about money.

7.90 The Independent Care Review made it explicit that poverty and the care system are inextricably linked. The Review argues, "impossible to review Scotland's 'care system' without properly considering the pervasive impact of poverty". The Review found that:

- Poverty exacerbates the impact of times of crisis for families.
- There is evidence that provision of financial assistance for families reduces child abuse and neglect.
- Financial and housing support were amongst the most significant issues for children and families.
- Lack of financial resources impacts a families ability to meet all the needs of children.
- Poverty is a contributing factor in worsening mental and physical health and increasing the stresses of everyday life. This can make engaging with support services challenging.
- This stress can lead to harmful coping strategies (e.g. substance misuse), can raise



the risk of abuse and neglect.

What Causes Poverty?

- **unemployment and low-paid or insecure jobs:** jobs which pay minimum wage contribute to a lack of savings or pensions amongst workers.
- **low levels of skills or education:** young people and adults who do not possess adequate skills and qualifications find it more difficult to get a job which offers decent pay and job security.
- **high costs:** housing and essential services like credit, electricity, water, council tax, telephone and broadband can exacerbate poverty. Families living in poverty also experience a 'poverty premium' on goods and services.

7.91 Panel Members will be aware that the majority of all children and young people who come to the attention of the authorities for welfare or offending reasons have experienced poverty and disadvantage. The same is the case for those children and young people who are then brought through the Children's Hearing System and are considered to be in need of compulsory measures of care and protection.

7.92 Data compiled by SCRA shows that there is a clear relationship between deprivation and supervision orders with over half of children with Compulsory Supervision Orders living in areas of deprivation ([Children referred to the Reporter \(scra.gov.uk\)](http://scra.gov.uk))

7.93 A 'deprived' area looks at the extent of deprivation across seven areas: income, employment, education, health, access to services, crime and housing when determining the level of deprivation.

7.94 The COVID-19 Pandemic highlighted further impacts of poverty, in terms of children and families experiencing 'digital' poverty through lack of access to internet services and digital equipment like tablets, iPads or laptops. This, at times, affected how children and families participated in children's hearings. This is something Panel Members should be mindful of post-pandemic, with a blended hearing system.

Tips for Panel Members in being poverty aware:

- **Mindful of language:** when dealing with children and families experiencing poverty – loaded language like "skivers" or "benefit scroungers" is unacceptable and must be challenged if overheard. Not wanting to cause 'othering or further oppression'.
- **Environmental perspective:** Be aware of environmental factors like poverty shaping childhood behaviour by linking poverty with the environment and the wellbeing of the individual. Also, how the decisions made on a macro level by Government (e.g. benefit cuts) can have a domino effect on individuals and circumstances.
- **weak relationships:** breakdowns within family relationships can often result in increased levels of child poverty.
- **abuse, trauma or chaotic lives:** for some people, problems with drugs or alcohol



can deepen poverty levels. This ties in with those who suffered neglect or abuse as a child and how the trauma of that can develop in adult life and be linked with poverty. The trauma can manifest and present itself as forms of mental health in adults which can then lead to unemployment and low earnings.

g. Glossary: everyday language

7.95 Children's hearings are complex legal tribunals which Panel Members undertake significant training to be able to navigate and manage successfully. Panel Members should make every effort to ensure that all participants and, in particular, children and young people understand every step of their hearing and fully understand what is happening and why.

7.96 Communicating in everyday language should be an active focus at all hearings as individuals can naturally default to communicating in ways which children, families and other attendees may not understand such as:

- **shorthand:** 'section 25', 'the standard measure'
- **jargon:** 'send for proof', 'substantive decision'
- **acronyms:** 'ICSO', 'MRC'.

7.97 To aid everyone's understanding of children's hearings and to help Panel Members explain complex terms quickly and simply, the follow list should be consulted and adapted to suit the age, stage and level of understanding of every child at their hearing.

Absconding

Running away from somewhere you have to stay.

Adjournment

A short break during the hearing.

Child's plan

The report which explains what support will be given to the child to meet their needs. It is normally written by their social worker.

Child Protection Order

A legal order made by a Sheriff in an emergency. It means the child will be kept in a place of safety away from home.

Children's Reporter

The person who decides that a hearing is necessary and invites everyone to attend. They don't take part in the decision-making in a hearing.



Compulsory Supervision Order (CSO)

A Compulsory Supervision Order is a legal document that means the local authority is responsible for looking after and helping the child. It can contain decisions that say where the child must live – and other decisions that must be followed.

Contact

Seeing members of your family (or people who are important to you).

Deferral

Where the hearing decides to delay making a decision to another day.

Foster carer

Foster carers can look after children when their parents are not able to. The children stay with the foster carer in their home.

GIRFEC

‘Getting it Right for Every Child’ is the way for families to work together with people who can support them such as teachers or nurses.

Implementation authority

The local council who have to make sure the decisions made by the hearing happen.

Interim Compulsory Supervision Order (ICSO)

A short-term decision when the hearing has decided to delay making a long-term decision to another day but some decisions couldn’t wait. It might decide where the child lives or how often they see someone important to them.

Interim continuation of a Compulsory Supervision Order

A decision to continue a Compulsory Supervision Order to the next children’s hearing when the hearing has been deferred to another day and the current order might run out before then.

Interim variation of a Compulsory Supervision Order

A short-term decision to change the child’s current order when the hearing has been deferred to another day.

Legal aid

Payment covering some, or all, of a person’s legal expenses.

Measures

The order says that something has to happen to support the child, the measures say what those things are. For example, it could be seeing family members more or less or saying where the child should live.



Movement Restriction Condition (MRC)

An electronic tag which limits where a child can go at certain times. It can be a measure on a Compulsory Supervision Order or Interim Compulsory Supervision Order.

Non-disclosure request

When someone asks the hearing to keep some information from someone. There must be very good reasons.

Notification

The term for informing those with a duty and/or right to attend a hearing or pre-hearing panel of the children's hearing. This will usually be by way of a letter from the Children's Reporter.

Permanence

When a child has a stable, safe place to live without needing to come to children's hearings.

Permanence order

An order made by the Sheriff giving rights to the local authority which allow them to decide where a child lives until they are 16.

Pre-hearing panel

A meeting of three Panel Members to decide a matter in advance of the children's hearing.

Principal Reporter

The head Children's Reporter. Their responsibilities are carried out by local Children's Reporters.

Procurator Fiscal

The person who prosecutes crimes in Scotland.

Proof

The Sheriff will read reports and hear evidence to decide if the examples in the statements of fact are true or false.

Relevant period

The length of time an order will last.

Relevant person

Parents and other people who have a parental-type role in a child's life.

Safeguarder

Someone who is independent can read the reports and speak to the child and any important people to make sure decisions are being made in the child's best interests.

Schedule 1 offence



A physical, emotional or sexual offence against a child.

Scottish Children's Reporter Administration (SCRA)

The Children's Reporter works for SCRA; they decide if a child might need a children's hearing and arrange children's hearing and send all the papers out.

Section 25

When a child lives away from home with family, friends, foster carers or in a children's home because of their parent's agreement, not because of the decision of a children's hearing or court.

Secure authorisation

The decision of a hearing which allows a child to be placed in secure accommodation.

Secure accommodation

A form of residential care which limits the freedom of children who stay there and offers intensive support.

SHANARRI

The Scottish Government's 'Getting it Right for Every Child' policy identified eight areas of a child's life which can make their wellbeing better or worse. They are Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included, often referred to by the initials SHANARRI.

Siblings

Brothers and sisters.

Statements of grounds

The legal reasons which the Children's Reporter writes explaining why a child has been referred to a hearing.

Substance misuse

Regularly using anything which affects the way you think and act and adversely affects your health. This can be alcohol, illegal drugs, prescription drugs or solvents.

Substantive decision

If the hearing have all the information they need, they can make a decision which can last up to a year.

Warrant to secure attendance

An order issued by a hearing to enable the Police to search for, keep somewhere safe and bring the child to the next children's hearing.



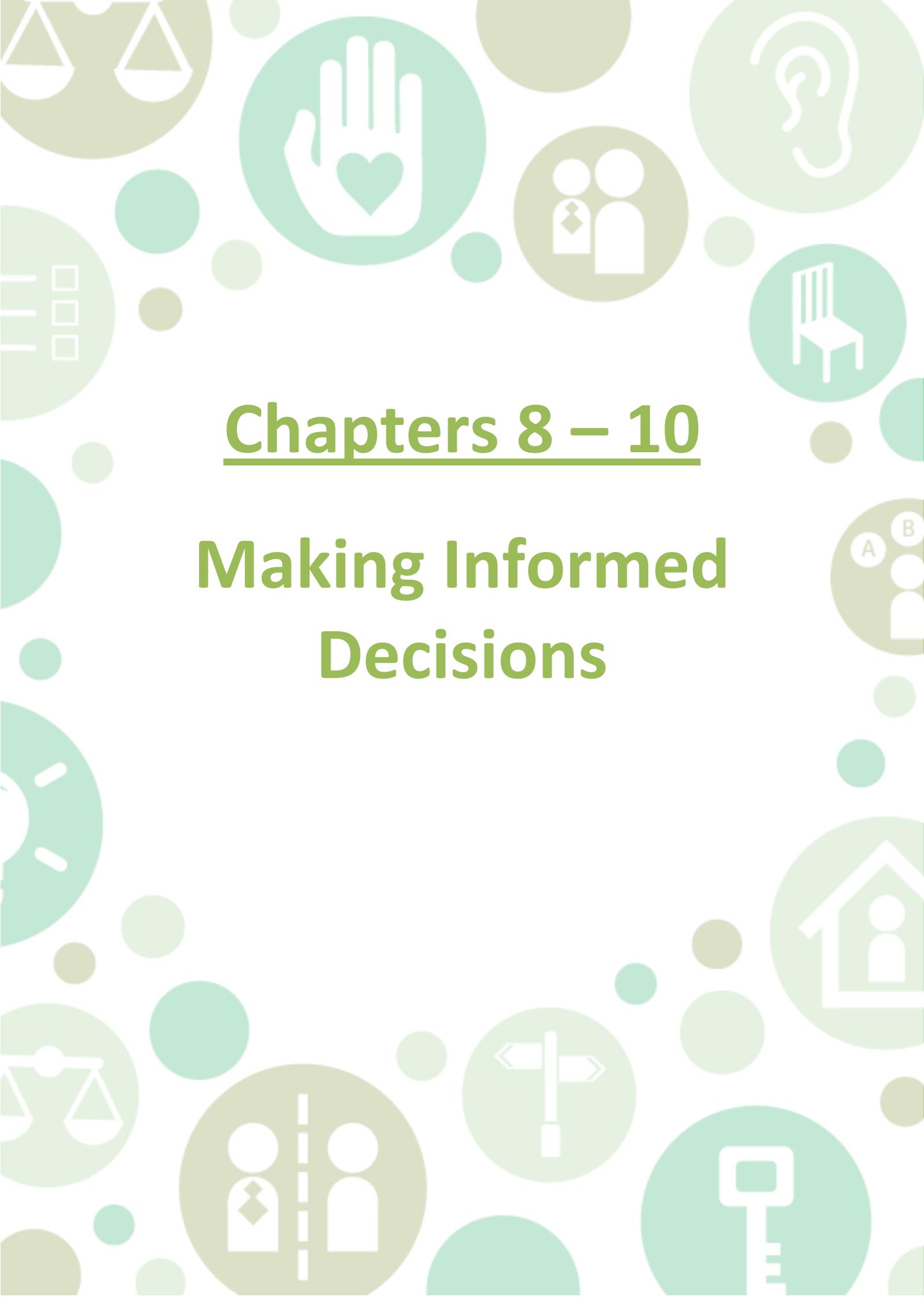
Acronym List



AC	Area Convener
ACLG	Area Convener's Liaison Group
ADHD	Attention Deficit Hyperactivity Disorder
ASBO	Antisocial Behaviour Order
ASD	Autistic Spectrum Disorder
ASIP	Area Support and Improvement Partner
ASL	Additional Support for Learning
AST	Area Support Team
AUP	Acceptable Use Policy
BME	Black and Minority Ethnic Community
C&F	Children and Families
CAMHS	Children and Adolescent Mental Health Service
CELCIS	Centre for Excellence for Children's Care and Protection
CHIP	Children's Hearings Improvement Partnership
CHS	Children's Hearings Scotland
CHSLA	Children's Hearings Scotland Learning Academy
CPC	Child Protection Committee
CPO	Child Protection Order
CRO	Children's Rights Officer
CSAS	Core System Application Solution (CHS and SCRA's joint digital system)
CSO	Compulsory Supervision Order
CSWO	Chief Social Work Officer
CY CJ	Children and Young People's Centre for Justice
DAC	Depute Area Convener
EHP	Enhanced Hearings Practice
FGDM	Family Group Decision Making
GIRFEC	Getting It Right For Every Child
HIP	Hearing Information Pack
ICSO	Interim Compulsory Supervision Order
IVCSO	Interim Variation of a Compulsory Supervision Order
LA	Local Authority
LAC	Looked After Child
LAAC	Looked After and Accommodated Child.
LDC	Learning and Development Co-Ordinator
LPR	Lead Panel Representative
MEO	Medical Examination Order
MOH	Management of Hearings training
NAS	Neonatal Abstinence Syndrome
NFA	No Fixed Abode
OCD	Obsessive Compulsive Disorder
OHOV	Our Hearings, Our Voice

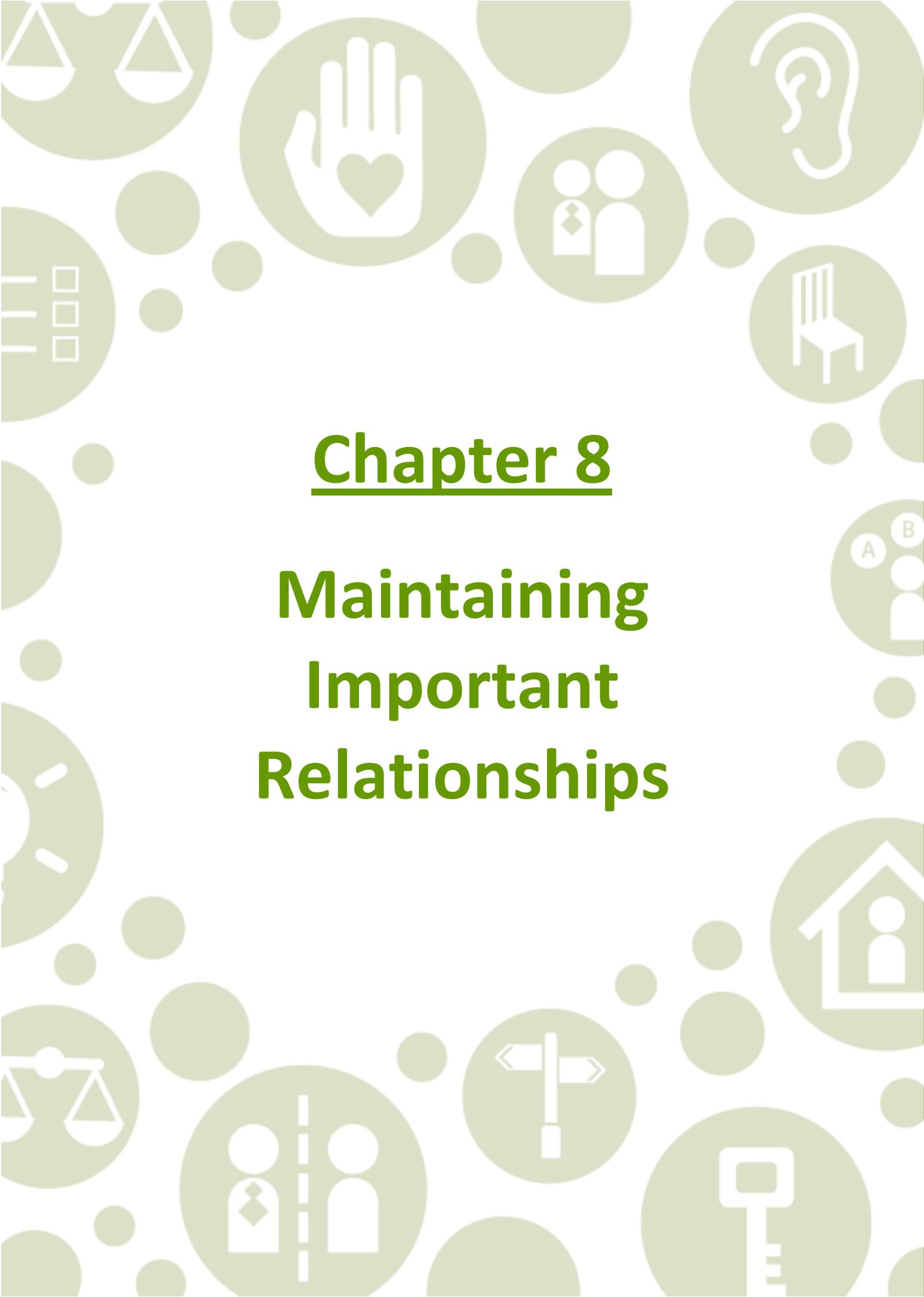


PACE	Permanence and Care Excellence
PF	Procurator Fiscal
PHP	Pre Hearing Panel
PO	Permanence Order
POAA	Permanence Order with Authority to Adopt
PPA	Panel Practice Advisor
PR	Panel Representative
PRR	Parental Rights and Responsibilities
PVG	Protection of Vulnerable Group Register
RAVHI	Remote Access Virtual Hearings Interface
RP	Relevant Person
RRRG	Recruitment and Retention Reference Group
SAR	Subject Access Request
SCRA	Scottish Children's Reporter Administration
SDS	Skills Development Scotland
SFL	Support for Learning
SHANARRI	Indicators of wellbeing; Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, Included
SLAB	Scottish Legal Aid Board
SW	Social Work
SWD	Social Work Department



Chapters 8 – 10

Making Informed Decisions



Chapter 8

**Maintaining
Important
Relationships**



Summary

Contact with a range of people will be important to a child. As well as having contact with their parents, the child may need, or want, to keep in touch with brothers and sisters, grandparents, other relatives or previous foster carers. There is nothing to prevent a children's hearing regulating contact between a child and any person if that is necessary. The following section focuses primarily on a child's contact with parents and siblings but, when thinking about contact, Panel Members should take into account any relationships which the child identifies as important to him or her.

a. Parental contact

8.1 At every hearing where Panel Members are making or continuing a Compulsory Supervision Order (CSO), they must consider whether to include a direction of contact.

What is contact?

8.2 Contact can take place in a number of ways. It can be direct contact via face to face meetings and telephone calls or indirect contact by letter, email or via social media. It may include exchange of photographs or videos. Direct contact may be observed or assisted by a third party ('supervised contact').

8.3 A contact direction may specify where contact should take place and at what time, state how often it should happen and how long it may last. It should state whether the contact should be supervised. Every child's situation is unique. Their circumstances and needs for contact are likely to change as they grow and mature.

Contact with parents: responsibilities and rights

8.4 A child has a right to maintain personal relations and direct contact with his or her parents when separated from one or both of them. Maintaining and supporting parental relationships when a child is separated from family is essential for many reasons, not least to help a child preserve his or her sense of identity. The child's welfare may require that contact with one or both parents be restricted or regulated.

8.5 A child's parent has a legal responsibility to maintain personal relations and direct contact with the child on a regular basis, if the child is not living with them, and the corresponding legal right to enable the parent to do so. These responsibilities and rights are contained in [sections 1 and 2 of the Children \(Scotland\) Act 1995](#). The legal responsibility and right to maintain contact persists unless removed by a court order. However a Compulsory Supervision Order may regulate how a parent is able to exercise their right to contact. A contact direction made by a children's hearing will supersede any existing



arrangements for contact, whether these are decided by parents or arrangements, contained in a formal agreement or specified in a court order.

8.6 If a child is looked after by a local authority away from home or as a result of an order by a children's hearing, the local authority has a legal duty to promote personal relations and direct contact between the child and their parents, on a regular basis, where this is practical, reasonable and in accordance with its duty to safeguard and promote the child's welfare.

8.7 The starting point in any decision-making is that contact should take place between a child and their parent(s) on a regular basis, and that the local authority will take steps to promote this when the child is looked after **unless contact is not consistent with the requirement to safeguard and promote the child's welfare.**

8.8 The local authority may ask a children's hearing to include a measure regulating contact, for example where the local authority wish to restrict contact in a way the parents do not agree with, or where the parents wish the level of contact to be increased. In these situations it is likely to be necessary to include a direction in any Compulsory Supervision Order setting out what contact the child should have with their parents.

The purpose of contact for the child*

8.9 Being clear about the purpose of contact can help to clarify what contact, and with whom, is in the child's best interests and also signal what practical arrangements may be needed to make sure the contact works well. Understanding what the contact is designed to achieve should help indicate where and/or how it should take place, for how long and how often, and who else might need to be present.

8.10 Contact can serve several functions. Contact may:

- maintain relationships important to the child;
- promote the child's sense of identity and links with their racial, cultural and religious heritage;
- support the child to make sense of events in their life;
- give the child reassurance about another person's wellbeing, health or safety;
- provide information about birth family members;
- enable assessment to take place, for example of a parent's ability to meet the child's needs for care and stimulation or to keep a child safe, or to assess the quality of a child's attachment to one or both parents;
- facilitate support and teaching to improve parenting skills; in those circumstances a staged schedule of contact may be needed in which sessions may increase in both length and frequency to enable a staged return for the child to the care of his or her birth family ; or
- provide the child with reassurance following separation from important family members and provide the child with 'permission' to help them to settle away from



home in their new placement.

*Adapted from Wassell, S "Contact - Review of Research and Practice Literature" (Inverclyde CHCP)

8.11 The purpose of contact should be the first consideration in any contact decision.

The purpose of contact with different people may change over time. Contact is a continuum which should be re-considered at every hearing to ensure it is meeting the needs of the child and the purpose of contact will influence the frequency and duration of any contact specified in a measure. For example, if contact takes place three times a week to enable a full parenting assessment, what is the purpose of contact after the assessment is complete? If the recommendation following the assessment is for the child to return home, an increase in contact is likely to support that transition. If the recommendation is that return home would not meet the child's physical and emotional needs, the main purpose of contact may become maintaining relationships or reassuring the child. The frequency of contact may need to reduce or increase, or the people with whom the child has contact may need to change in accordance with the primary purpose of the contact.

8.12 In some circumstances contact may present risks as well as, or instead of, benefits.

It may re-traumatise a child who has experienced inconsistent or neglectful care or physical and emotional abuse. Contact may undermine a child's placement within another family if a parent is critical of carers or suggests a child may come home soon. A child may be exposed to unacceptable levels of risk of injury or further abuse. If face to face or other forms of direct contact are assessed as unsafe for a child, Panel Members should consider whether alternative forms of indirect contact may be appropriate.

8.13 When considering contact:

- a hearing must specifically consider the inclusion of a measure regulating contact between the child and a relevant person, a brother or sister of the child, or any other person with whom the child has lived with **and** has an ongoing sibling-like relationship. A 'sibling-like relationship' may include, for example, children who lived together in a foster placement and developed a strong and enduring bond.
- a hearing is not obliged to make a contact direction. As with any other measure included in a Compulsory Supervision Order, a contact direction must be necessary and proportionate.
- if the child, his or her parents, the local authority and any other involved parties are able to agree upon the arrangements for contact and they will be adhered to, it is unlikely that a contact direction will be needed.
- if arrangements for contact cannot be agreed between all parties, a contact direction may be necessary. The hearing is not obliged to make a direction. If there are settled contact arrangements already in place and the hearing considers there is no need to change them, there may be no need for the hearing to make an order.
- Panel Members must have the child's welfare as their paramount consideration. They should consider the child's needs throughout their childhood and have regard to the child's wishes about contact.



- Contact arrangements should be made which bring positive benefit for the child. When deciding what form a contact direction should take, Panel Members should not be influenced by what resources are available to the local authority or any plans presented by the local authority to pursue permanence away from home.
- Panel Members should take account of the capacity of the child’s parents, carers and any service involved. Arrangements for contact need to be practical and capable of working smoothly.
- Panel Members should consider the likely impact on the child of any significant changes in well-established arrangements already in place. If a hearing directs that contact should increase or reduce in a way which will require a significant change to the care arrangements for the child and/or local authority’s care plan for the child, the Panel Members should explain why they consider the change is necessary for the child’s welfare, and what evidence they have considered.

8.14 When making a direction of contact:

- Panel Members should avoid making directions that leave the child, relevant persons or any other person affected by the direction uncertain about the level and frequency of contact. For example, if the hearing makes a direction that contact should take place at the discretion of an individual or the implementing local authority, there is a risk that contact may not take place in the way that was discussed at the hearing. If there is a need to regulate contact then Panel Members must describe in clear terms how the contact should take place.
- Sometimes, it will be in the best interests of the child for flexibility to be included within the contact direction. For example, Panel Members may specify a minimum level of contact if they consider that there is a **realistic prospect** that the local authority and the parents may agree that more contact should take place during the period of the order. For example if a parenting assessment goes well, Panel Members may wish to enable the local authority to facilitate more frequent contact without the need for a review hearing.

Relevant factors

8.15 Panel Members’ thinking about contact may include many factors, including those listed below. Many of these will be addressed in the written reports from professionals working with the child and family.

- the age of the child
- the child's developmental stage
- the child's attachments
- the child's relationship with the person/s
- the child’s views about who they want to see
- any potential risks posed to the child by any person(s) - this can be physical or emotional
- the person's views on contact with the child, even if they are not present at the



hearing

- the person/s circumstances to the extent that they may impact on contact with the child
- the purpose of contact for the child
- any evidence about the impact on the child before, during and after contact and perceived causes
- evidence about positive and negative behaviours during contact, including whether the child has good opportunities to play, is well looked after and whether the child or parent(s) display distress or aggression, how the parent(s) talk to the child, that interaction is age-appropriate information, and any exposure to risks.

8.16 All decisions about contact should be based on comprehensive information about the child's situation, how contact will impact upon the child and include information about the child's views and wishes. The child's lead professional should provide the hearing with an assessment and recommendation(s) about contact, which describes what information has been gathered, recommend what contact should take place and, most importantly, say why this is the right option for the child. The assessment should highlight potential benefits and risks of contact and consider any reasonable alternatives to the recommendation. If there are persistent concerns about how contact is working, Panel Members should explore with the implementation authority what additional supports could improve the child's experience of contact.

8.17 Decisions around contact are often the most contentious discussions in children's hearings. Panel Members are legal decision-makers, not mediators. Where there are conflicting views, the hearing must make an informed, justified decision. Decisions must be made on what level of contact best meets the child's needs, not the level of contact which both parties may accept. For example, if a parent seeks contact five times per week and a local authority recommends once per week, a compromise in the middle may not necessarily be the right option for the child.

8.18 Contact arrangements should fit around the child, not the parents or professionals. In most cases, the adults having contact should travel to see the child, not the other way around. Young children should not be expected to travel significant distances. Contact should be as least disruptive as possible for the child.

8.19 The evidence for any recommendation should be clear in the information available to the hearing. If this is not the case, Panel Members can ask for this to be provided either verbally or in writing before making a final decision about contact.

8.20 If a hearing is thinking about whether to increase or reduce contact or reintroduce contact after a period of no contact, Panel Members should consider what help a child may need from carers and professionals to ensure that contact is or continues to be a positive, healthy and safe experience for the child. If the hearing is considering ending direct contact with a parent or family member, Panel Members should explore whether indirect contact may be appropriate.



b. Sibling contact

“We know that children who face adversity greatly value their relationships with siblings. Yet often these relationships become disrupted when...children become looked after... We believe that more can be done to protect the rights and promote the wellbeing of siblings in such circumstances”

Stand up for Siblings

Placing brothers and sisters together

8.21 According to the [United Nations Guidelines for the Alternative Care of Children](#), Guideline 17, “Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.”

8.22 There will be situations where keeping brothers and sisters together is not in the best interests of the children, for example, due to different and conflicting needs, or if it is not possible. How relationships are maintained or developed when brothers and sisters are not living together should be considered carefully by each child’s children’s hearing and measures of contact should be considered, if necessary.

Meeting the differing needs of all brothers and sisters

8.23 The local authority has a responsibility to think about how relationships between brothers and sisters can be protected. Appropriate steps must be taken by the Local Authority to promote relationships and contact between the children they look after and their brothers and sisters. The contact must be practicable, appropriate and have regard to the child’s welfare. Local authorities also have a duty to gather the views of brothers and sisters before any decision is made about the child. These duties apply to those who have at least one parent in common, along with any person the child has lived with and has an ongoing relationship with the character of a relationship between siblings.

8.24 The local authority also has a duty to place brothers and sisters together when they cannot reside at home. If it is not appropriate to place brothers and sisters together, they must place them in homes which are near to each other. This duty applies when the local authority is considering placing a child with a carer or in a residential establishment, and any brother or sister of the child is looked after or about to be looked after. A sibling is defined as a person who has at least one parent in common, along with any person the child has lived with and has an ongoing relationship with the character of a relationship between siblings.

8.25 For many people, the relationship they have with brothers and sisters will last longer than the parent child relationship. It may be a more positive or stronger relationship



especially where children have faced adversity together. Older children may have a strong need and wish to see their younger brothers and sisters especially if they have had a caring role for them within the family.

8.26 When children are at different developmental stages with competing issues and levels of understanding, discussions around contact can be emotional and complex. Some young children may need space and consistency to develop a sense of belonging with new carers. It may be impossible to reconcile all parties' needs but discussions and decisions need to be honest and explained to the child or children in a way they can understand.

8.27 As separated brothers and sisters grow older Panel Members can be proactive in discussing issues of contact including how contact may emerge through social media or undisclosed contact. A 9 year old may not want to see a 14 year old brother or sister, but a 13 year old child may want to see an 18 year old brother or sister. The contact needs of a child should be re-assessed at every hearing.

Maintaining relationships between brothers and sisters

8.28 When a children's hearing is making, varying or continuing a Compulsory Supervision Order, there is a statutory requirement for Panel Members to think about including a contact direction between the child and any brothers and sisters they do not live with, or other persons the child has lived with and has an ongoing relationship with the character of a relationship between siblings. Relationships with the character of a relationship between siblings may include, for example, another person the child has lived with in a familial context such as a foster placement. Panel Members should have information about a child's relationships with their brothers, sisters and other sibling-like relationships from Local Authority reports as well as contributions from those at the hearing, and give careful consideration to how these relationships can be maintained and protected.

8.29 The key considerations of the hearing will be*:

- Identifying all the child's brothers and sisters, including those who have had a similar role in the child's life, such as children brought up in the same placement;
- The views of the children about their relationships and existing contact provisions;
- Promoting face-to-face contact where possible;
- The practical and emotional capacity of carers to facilitate contact;
- How contact can be achieved in as relaxed and natural manner as possible.*

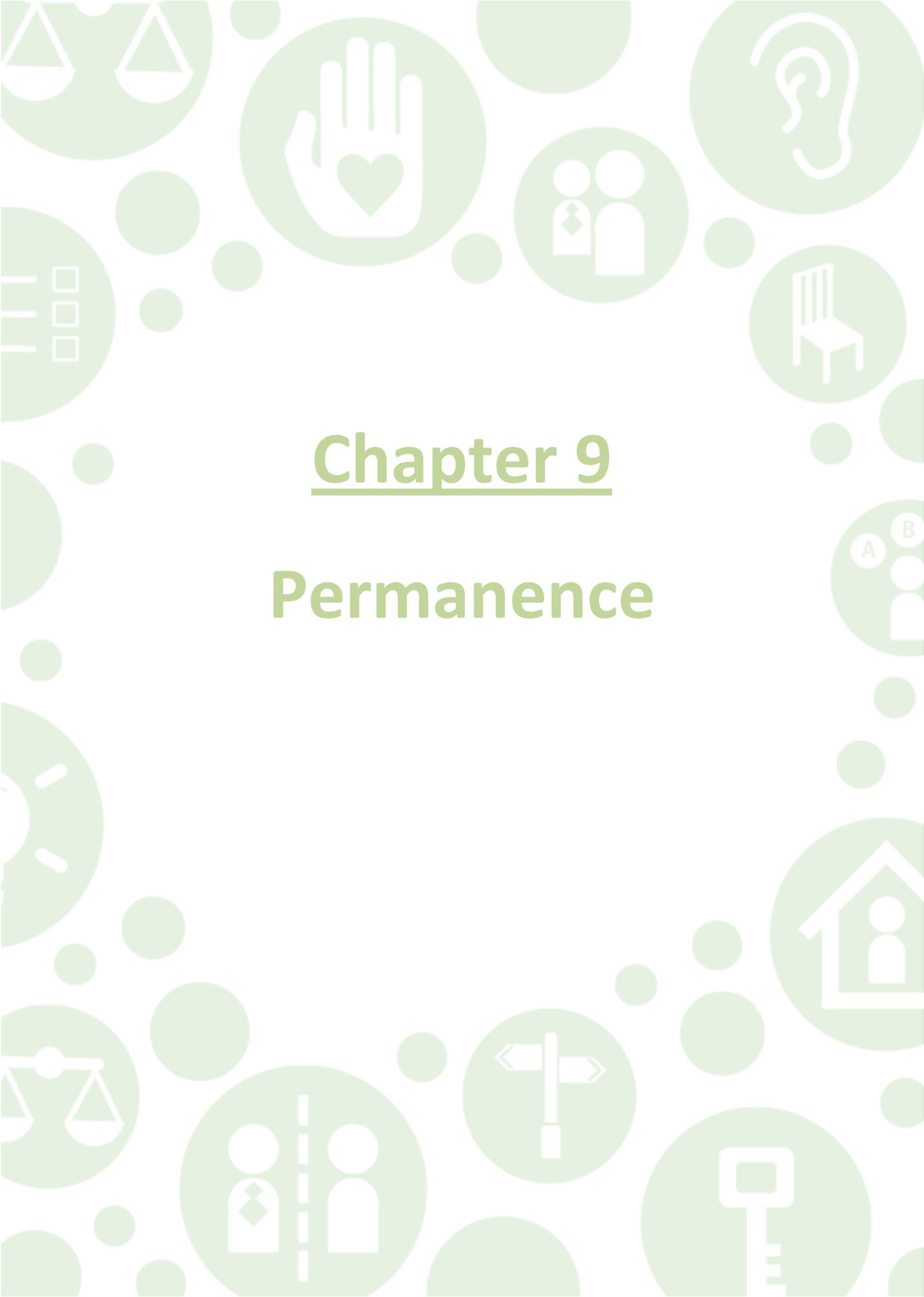
* adapted from Clan Childlaw, *'Promoting Sibling Contact for Looked After Children'*.

Further Reading

- [Keeping in Touch: Managing Contact for Looked After Children](#) This comprehensive guide contains information around the legal framework for contact, child development and children's hearings decisions.



- [Stand up for Siblings](#) is a collaboration between various Scottish organisations to protect the right and wellbeing of siblings in care. The website contains information for children and professionals and hosts copious research papers on sibling contact and relationships.
- [Clan Childlaw](#) 'Promoting Sibling Contact for Looked After Children'



Chapter 9

Permanence



Summary

All families experience difficulties at times. When the difficulties are serious and persistent, referral to the Children's Hearings System allows legal steps to be taken to ensure that families are supported to look after their children and promote their welfare safely, or, where necessary, alternative care arrangements are in place to meet the child's welfare needs and provide the stability which all children need. Long-term stability and continuity in the relationships between a child and their caregiver(s) are the fundamentals of permanence.

Panel Members are responsible for making decisions which facilitate permanence at the earliest possible stage and enable children and young people to lead secure, healthy and fulfilling lives. Panel Members should seek long-term stability for a child as a goal at every hearing and make decisions which achieve security and stability of care and relationships for a child with as little drift and delay as possible.

This section explores the options for achieving permanence, whether a child lives at home with their family or in an alternative family or care setting, how to avoid drift and delay when making these important decisions and identifies the Panel Member's role in the steps to permanence away from home.

a. Permanence

9.1 Lasting, loving relationships are key to a positive childhood and lead to the best long-term outcomes for children. Permanence provides reassurances that relationships and placements are permanent. Permanence is the goal for every child.

9.2 There is no single route to permanence and no one form of permanence is preferred over another, although ideally children should be supported to remain within their own family, wherever possible. The best outcome will depend on the individual needs and circumstances of the child.

9.3 Permanence can be achieved via:

- the child returning or remaining at home with their birth parent(s)
- settled care with extended family, with or without a residence order
- a permanence order where a child is in foster, residential or kinship care
- a kinship care order
- an adoption order.

9.4 **'Permanence' does not refer only to a child's placement away from home.** A child returning or remaining at home, with or without ongoing support, can be a stable, positive and permanent outcome. However permanence is not achieved if a child returns home but



needs accommodated again quickly with alternative family members, foster carers or in a residential setting because home cannot provide stability and security in the long-term.

9.5 Permanence should be thought of as three states: legal, physical and emotional.

- **Legal permanence** involves the decisions made by hearings and courts which make relationships permanent or remove the state's involvement in a family's life. For example, a court can create a permanent life-long relationship through an adoption order or a hearing can terminate a Compulsory Supervision Order, removing the state's involvement with a family and restoring legal permanence for a child with their parents.
- **Physical permanence** relates to where the child is living. This can be anywhere the child feels is their home; be that their family home, in kinship care or a residential home. A child should move as little as possible to allow relationships with carers, teachers and friends to strengthen.
- **Emotional permanence** is when a child has reached a place where they are able to trust the adults responsible for them, and feel safe and secure. The child is able to be a child without worrying about their relationships and future with those looking after them.

9.6 While all the three states create stability for a child, the three may not arise at the same time. For example, a child can be emotionally stable in foster care with consistency of school, friends and carers without there being a legal permanence order to formalise that placement. Alternatively, a child can be in the family home experiencing physical permanence but not have their emotional needs met from the relationship with their parents.

9.7 Although children's hearings often focus on the legal permanence, physical and emotional permanence are intrinsically linked and are equally, if not more, important. The foundation of a child's development is that they must be secure in the caring relationships around them. When these relationships are not stable and predictable, they need to be stabilised as quickly as possible.

Drift and delay

9.8 Panel Members can influence and enable all three stages by making sure there is no unnecessary drift and delay in their decision-making and by considering the impact of every decision against the short, medium and long term plans for a child. Decisions should add to the permanence and stability of a child rather than disrupt it.

9.9 Children and families should be in the Children's Hearings System for as short a period of time as possible. Panel Members should read this section should be read while preparing for review hearings. Every hearing should move the child towards permanence



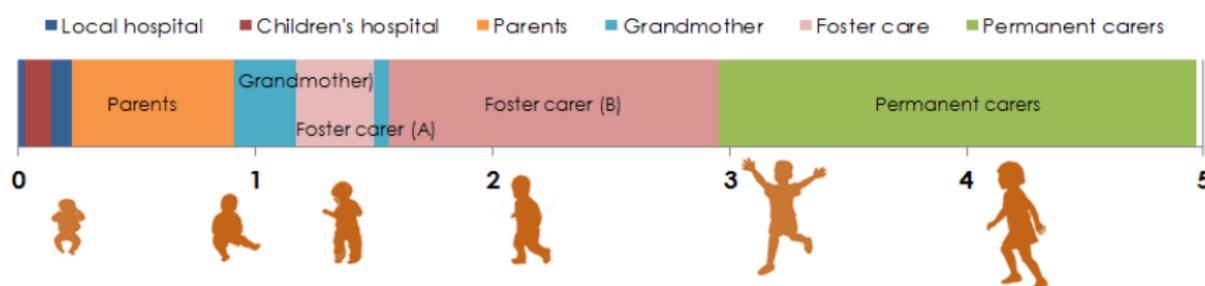
rather than keeping them in a state of uncertainty. Reviews should focus on what has happened to the child and what needs to happen next rather than allowing further instability.

9.10 Repeated short-term moves, instability, and drift and delay can all be reduced by earlier and better permanence planning. Permanence should be considered right from the start of every child’s journey. Implementation authorities should actively support parents to create and maintain positive changes to allow the child to return or remain at home, with or without ongoing support. At the same time, alternative arrangements such as kinship or foster care should be explored to reduce the number of short-term placements and changes a child experiences if care at home breaks down.

9.11 Placements can end where challenging behaviours as a result of a child’s early trauma and failures of parental care are not understood and addressed early enough. Where Panel Members are asked to authorise an unplanned change of placement, they should ask about underlying causes of distress and what is being done to support the child emotionally and psychologically to reduce challenging, risky or harmful behaviours. Physical and emotional permanence is not achieved by continually moving the child to a new placement.

9.12 The developmental needs of babies and young children mean that instability at a young age, even in utero, can have lasting effects. For older children, before a hearing is arranged, universal services such as health visitors and teachers may have been trying to support the child in stressful or difficult home circumstances. When a child’s case is brought before a hearing, they may have been in an unstable situation for some time.

9.13 The following timeline is a visual example of how each short-term decision impacts upon a child’s long-term stability and either steps them towards or away from legal, physical and emotional permanence. It is useful for Panel Members to understand each change in residence or carer in terms of the age, stage and impact on the child.



b. Permanence away from home

9.14 A recommendation that a child requires permanent care away from home has far-reaching implications for a child and family. Therefore there are many steps to be taken between reaching this conclusion following assessment and authorisation for permanent placement outwith the birth family being given in court. The number of steps are designed



to ensure decisions are well-evidenced, fully-justified and approved by independent persons. However, the processes and procedures required can lead to delay and drift for children who need stability as soon as possible.

9.15 Understanding what happens at each stage of permanence planning and decision-making can provide Panel Members with an understanding of their role and place in the process.

Steps to permanence away from home

1. Recommendation to pursue permanence away from home

9.16 When a child is subject to a Compulsory Supervision Order, regular meetings, often known as “looked after child reviews” will be held to discuss the whole circumstances around the child, their family and the plan for the child.

9.17 Meetings will involve the professionals in a child’s life, such as their Social Worker and teacher and their parents/family. If the local authority’s view is that rehabilitation home is not appropriate, a decision can be made to pursue permanence away from home for example through kinship care or adoption.

2. Adoption or Permanence Panel

9.18 A recommendation to pursue permanence away from a child’s birth parents must be based on a comprehensive social work assessment of the child's needs and a legal assessment of the options for the child. The local authority social worker will prepare and present these to the local authority Adoption and Permanence Panel. This Panel is a statutory group of professionals who will consider and make recommendations in relation to the local authority's plan for the child. Adoption and Permanence Panels include Solicitor, doctor and a lay member as well as social workers and social work managers experienced in planning for children.

9.19 The case social worker will be required to fully justify their recommendation to allow the Panel to reach a recommendation to make to the agency decision-maker about whether permanence away from home is appropriate for the child.

3. Agency decision-maker

9.20 Following the Adoption or Permanence Panel’s recommendation, the local authority will make a formal decision whether or not to pursue permanence away from home. The designated agency decision-maker is usually a senior member of the Social Work Department. They will review the reports, minutes and recommendations of the Adoption and Permanence Panel and confirms whether the local authority accepts the recommendation and will proceed with a plan for permanence.



9.21 The local authority will notify the child’s parents and anyone else with parental responsibilities and rights for the child of their decision.

4. Advice to court hearings

9.22 When a child is subject to a Compulsory Supervision Order (CSO), there are three legal orders which may be used to secure permanence away from home where the court will ask for advice from a children’s hearing before the court will grant the order.

9.23 An order under [s11 of the Children \(Scotland\) Act 1995](#) can also be sought (in relation to parental responsibilities and rights for a child, such as residence). **Section 11 Orders can be used to remove a child from the hearings system by legally securing the child’s residence.** However the advice of a children’s hearing is not required before this order may be granted by the Sheriff. Sheriffs may grant a kinship or residence order and then a hearing will be arranged for the Panel to consider terminating the Compulsory Supervision Order if it is no longer necessary.

9.24 A child can be subject to a Compulsory Supervision Order and a section 11 order at the same time. However, where there is a dispute between the contents of the orders, a Compulsory Supervision Order takes precedence. Some Sheriffs may only grant an interim order while the child is under a Compulsory Supervision Order and will not grant a full section 11 order until the child is no longer subject to a Compulsory Supervision Order. This is a competent process.

9.25 When a Panel is asked to terminate the Compulsory Supervision Order without a full order being in place, this is appropriate as long as terminating the order is justifiable and you are satisfied the child no longer requires compulsory measures of supervision. However, you are not required to terminate the Compulsory Supervision Order simply to facilitate the making of a section 11 order.

Advising on permanence

The three types of orders hearings may be asked to provide advice in relation to are:

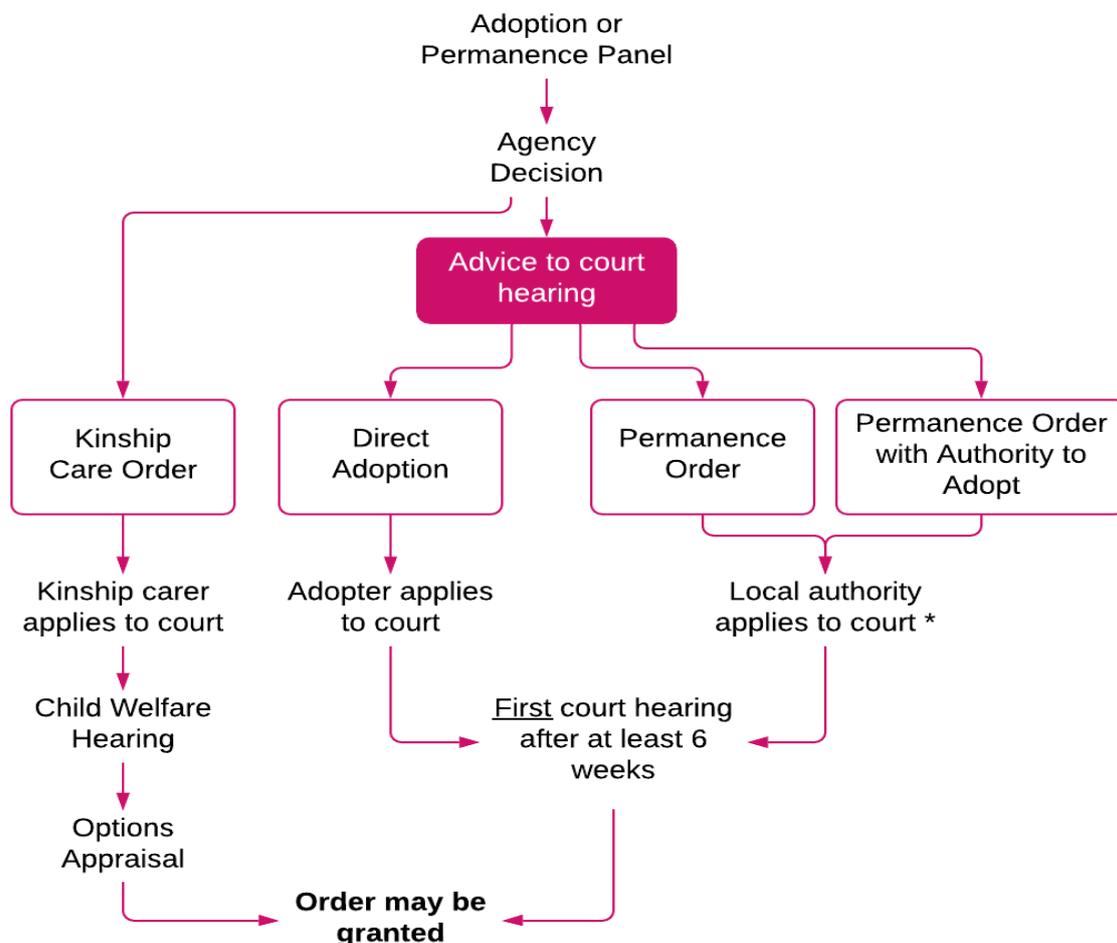
1. A **permanence order** (PO) is a court order giving the right to regulate the child’s residence and the responsibility to provide guidance to the child to the local authority (“the mandatory provisions”). Permanence orders are designed to be flexible to meet the needs of the individual child and therefore in addition to the two mandatory provisions, a permanence order can contain further “ancillary provisions” as the court considers appropriate. For example:
 - provisions regulating the child’s contact with an individual
 - extinguishing all, or some, parental rights and responsibilities held by another individual.



Only a local authority can apply for a permanence order. If the child is over 12 years old, he or she must consent to the order being made, before the court can make an order.

2. A **permanence order with the authority to adopt** (POAA) is similar to a permanence order but will also include a provision granting authority for the child to be placed for adoption. Only a local authority can apply for a POAA and while an adoptive placement does not need to be identified, the court must be satisfied that the child is likely to be placed for adoption. Where a POAA has been granted the court can go on to grant a future adoption order without the need for parental consent.
3. An **adoption order** is an order removing parental rights and responsibilities from one or more persons and giving them to another person or persons. An adoption order is sometimes referred to as the creation of a parent-child relationship by a court. Conditions can be attached to the order by the court, which can include conditions in relation to contact with the child's birth family. There are no restrictions on who can apply for an adoption order.

Steps to Permanence Away From Home





*Any changes to a Compulsory Supervision Order after a PO or POAA is lodged with the court require the permission of the Sheriff. See paragraph 9.36 below.

Procedure at advice to court hearings

9.24 The implementation authority must ask for a review of a Compulsory Supervision Order where the authority:

- intends to make an application for a permanence or adoption order
- intends to place the child for adoption
- knows that another person is making, or has made, an application for an adoption order.

9.26 As well as providing advice to the Sheriff, the hearing **must** also review the Compulsory Supervision Order, and the options open to the hearing in this respect are as detailed in the section on [review hearings](#).

9.27 The purpose of this children's hearing is to provide advice to the Sheriff and Local Authority in relation to the proposed application. The key question is whether the hearing would support this course of action for the child.

9.28 It is essential that the discussion around any proposed permanence plans, necessary to inform the provision of the hearing's advice to the Sheriff, does not determine the outcome of the hearing's review of the Compulsory Supervision Order. For example contact with the child's parent should not be reduced **solely** in order to further the local authority's plan for permanence for the child, even if the hearing's view is that permanence is the right option for the child. Therefore the hearing's discussion should be conducted in separate parts:

1. review the Compulsory Supervision Order

2. discuss and provide the advice to the Sheriff (once a decision has been reached about the Compulsory Supervision Order)

Advice

9.29 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 consider it is best for the child not to live with one or both parents for the rest of their childhood?
- Does the hearing support the way in which permanence for the child is being proposed, e.g. through a permanence order, with or without the authority to adopt, or an adoption order? Why?



9.30 In general terms, more detail should be provided to the Sheriff in advice from the hearing than would usually be included in the hearing's reasons for decisions. In answering the two key questions, Panel Members should structure their advice to include the following information:

- The child's history within the Children's Hearings System;
- The hearing's opinion of the parents' capacity to meet the child's needs and the evidence on which the hearing's view is based;
- The long term plan to meet the child's need for safety, stability and consistency, for example how the proposed order would benefit the child, or not;
- Whether the court should consider terminating the Compulsory Supervision Order if the Permanence Order is granted;
- Any views on whether ancillary measures should be included in the Permanence Order, for example in relation to contact; and
- Post adoption contact if adoption is being considered.

9.31 At the end of the hearing, in addition to completing the Record of Proceedings, the chairing member will prepare the written advice which the hearing wishes to give to the Sheriff in a prescribed form. The Children's Reporter will send this form to the Sheriff Court for the Sheriff's consideration, and send a copy to the implementation authority.

9.32 It is important that Panel Members make sure that the child, if of an age to understand, and relevant persons present understand that the information provided to the Sheriff is advice only. The Sheriff is not required to follow the hearing's advice.

9.33 The hearing's decision in relation to the review of the Compulsory Supervision Order can be appealed. The terms of the hearing's advice to the Sheriff cannot be appealed.

9.34 As with any review hearing, Panel Members have the option to defer the hearing which will delay the giving of advice and delay the child progressing to the next stage in the process.



Example

REPORT IN CIRCUMSTANCES RELATING TO PERMANENCE ORDER OR ADOPTION UNDER S.141(2) OF THE CHILDREN'S HEARINGS (SCOTLAND ACT 2011)

A Children's Hearing in relation to:

Name: David McGuigan

Date of Birth: 14/05/2017

Address: 19, High Street, Anytown

Having considered the child's case in relation to the proposed:

- application under section 80 of the Adoption and Children (Scotland) Act 2007 for a permanence order
- application under section 92 of the 2007 Act for variation of such an order
- application under section 93 of the 2007 Act for amendment of such an order
- application under section 98 of the 2007 Act for revocation of such an order
- placing for adoption
- application under section 29 or 30 of the 2007 Act for an adoption order in respect of the child

Provides the advice set out below

ADVICE

1. There is an extensive history of neglectful parenting by David's parents of both David and his two brothers (aged 6 and 8). There is also a history of substance misuse by the parents, domestic violence and violence between family members, which David and his siblings have been exposed to.
2. David's two older brothers have been permanently removed from their parents' care and are now living with adoptive families.
3. David's parents do not accept the extent of these issues and continue to minimise the impact of their behaviours on David. Both parents regularly test positive for illicit



drug use and the Police are regularly called to the family home following reports of domestic violence on the part of both parents.

4. The relationship between David's parents and the local authority is extremely poor, despite the extensive efforts of David's allocated social worker, and advice is only accepted when the parents choose to accept it. As a result it would be very difficult to monitor David's development if he were to be living at home.
5. Contact between David and his parents is currently arranged once per week for two hours. David's parents have missed approximately 30% of contact sessions arranged over the past year.
6. It is essential that David's future care is secured in a way to promote his well-being throughout his childhood and beyond. David's parents have demonstrated consistently their inability to prioritise David's needs above their own.
7. Given David's age the hearing considers that it would be in David's best interests for him to be adopted as soon as possible. The permanence order with authority to adopt should therefore be granted with the minimum of delay.
8. It would be in David's interests to have letterbox contact with his parents to aid his understanding of his birth family. The hearing also considers it in David's interests to maintain face to face contact with his elder siblings, which presently takes place four times per year. This will allow David to continue to build a relationship with his siblings.

Signed by: *Sarah Webster*
Chair of the Children's Hearing

On: 3rd June 2019

At: The Children's Hearings Centre, 1 West Street, Anytown

5. Application to Court

9.35 After the children's hearing, if the local authority's intention remains to pursue permanence away from home, the local authority will make an application to court. The court provides independent scrutiny of the local authority's application. It will review all the evidence including any oral evidence to satisfy the legal tests for granting a permanence order are met:

- Where there is someone who has the right to have the child live with them, the child's residence with this person is, or is likely to be, seriously detrimental to the welfare of the child
- The need to safeguard and promote the welfare of the child throughout their childhood is the paramount consideration
AND
- That it is better for the child that the order be made than that it should not be made.



9.36 When a **Compulsory Supervision Order** in place, it may or may not be terminated by the Sheriff if an order is made.

6. (if required) Decision-making by the hearing once a permanence order application has been made to the Sheriff

9.37 Where a hearing is reviewing a Compulsory Supervision Order and a [permanence order](#) application has been lodged with the court, the hearing is **not able to vary the terms of the Compulsory Supervision Order without the express permission of the court considering the permanence order application**. The need to make changes to an existing order may arise for example when the hearing wish to move a child to a prospective adopter's residence or alter contact arrangements.

9.38 This prohibition only applies where a **variation** is being considered by the hearing. The Compulsory Supervision Order can be continued without variation.

9.39 Where the hearing wishes to vary an existing order, Panel Members must defer the hearing and prepare a report for the Sheriff (often termed a "s95 report" as the requirement is laid out in [section 95 of the Adoption and Children \(Scotland\) Act 2007](#)), detailing the variations they consider necessary. The Children's Reporter will forward this report to the Sheriff with the decisions and reasons of the children's hearing which should clearly explain why a variation is required.

9.40 It is important that the chairing member ensures that the child and relevant persons understand that the hearing has made no change to the existing Compulsory Supervision Order. It therefore remains in place exactly as before the hearing. Any variations to the order proposed by the hearing can only be made if the Sheriff grants permission and these will be made by a further hearing.

9.41 This restriction does not prevent the hearing from making an interim variation to the Compulsory Supervision Order in circumstances of **urgent necessity**. For example, if a foster placement has broken down irrevocably, the panel may wish to vary the Compulsory Supervision Order on an interim basis to keep the child safe in an alternative placement in addition to writing to the Sheriff to request permission to vary the order officially.

9.42 If the Sheriff approves the request to vary the Compulsory Supervision Order, another hearing will be called and that panel **must** vary the Compulsory Supervision Order in accordance with the Sheriff's authorisation. No additional changes are possible; if more variations are required to the Compulsory Supervision Order, another s95 report will be required.



Example

REPORT BY CHILDREN'S HEARING TO THE COURT UNDER SECTION 95(2) OF THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

To: The Sheriff Clerk,
Anytown Sheriff Court,
High Street,
Anytown

Court Ref. No: B63/14

A Children's Hearing in relation to:

Name: John Jones

Date of Birth: 03/04/2012

Address: 123 Some Street, Anytown

Proposes to:

- make a Compulsory Supervision Order
- vary under section 138(3)(b) of the Children's Hearings (Scotland) Act 2011 an existing Compulsory Supervision Order

Provides the court with a copy of the reasons for the hearing's decision and the report of the proceedings of the children's hearing prepared in accordance with Rule 77 of the Children's Hearings (Scotland) Act 2011 (Rule of Procedure in Children's Hearings) Rules 2013, as well as the following information.

(a) The terms of the proposed Compulsory Supervision Order

1. John is to reside with Mr and Mrs Smith at 93 Mid Street, Anothertown.
2. John is to have contact with his mother, Jane Jones, a minimum of twice per month for 2 hours.
3. Anytown local authority is to provide supervision and support to John.

(b) The terms of any proposed variation of the current Compulsory Supervision Order
dated: *(copy attached)*

1. The measure that John is to reside with Miss James at 33a Top Place, Anytown is to be varied to John is to reside with Mr and Mrs Smith at 93 Mid Street, Anothertown.

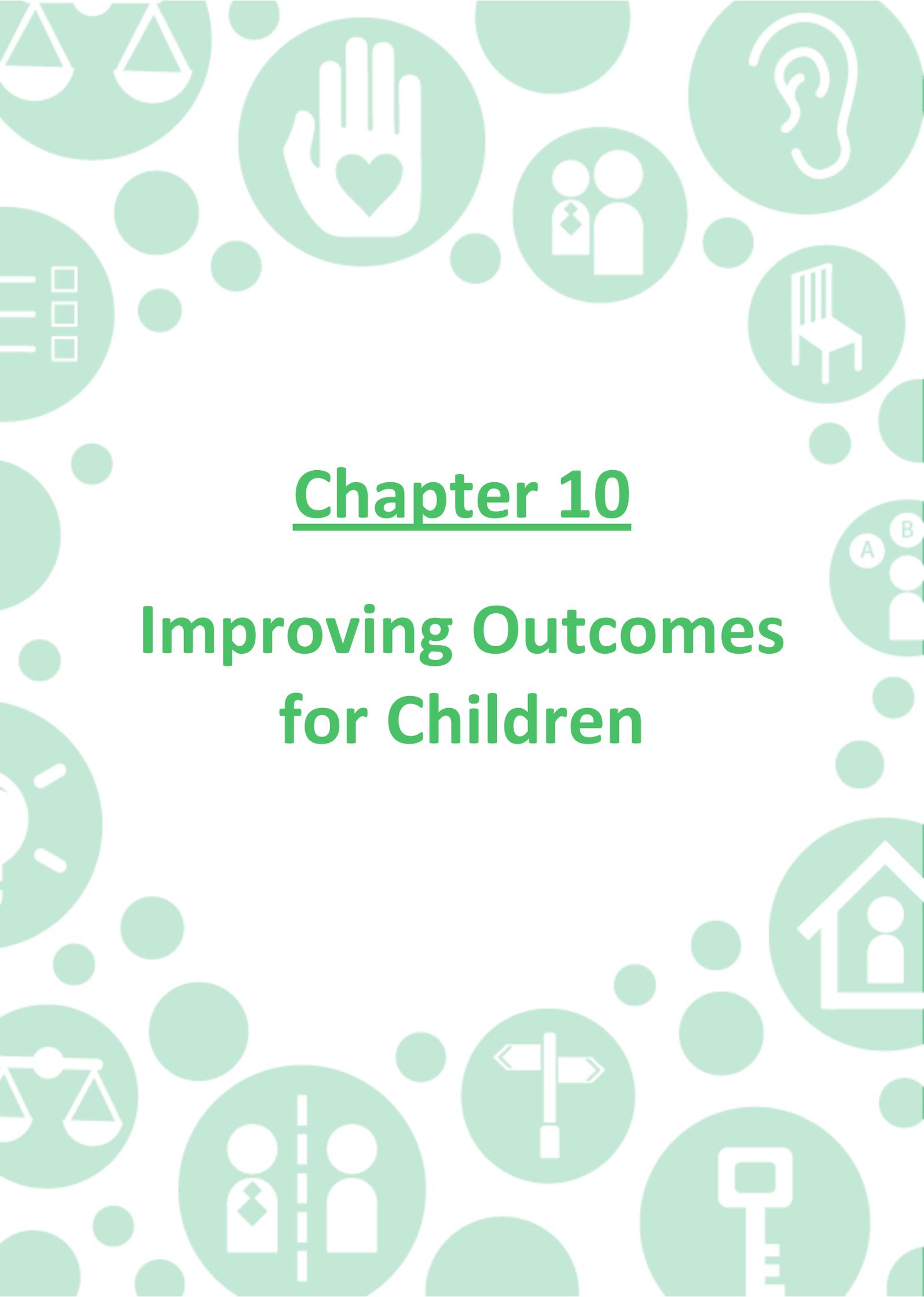
Signed by: **Julie McGregor**
Chair of the Children's Hearing
At: The Children's Hearings Centre, Low Avenue, Anytown

On: 15/07/2014



Further Reading

- [Permanently Progressing? Building secure futures for children in Scotland](#) is the first study in Scotland to investigate decision making, permanence, progress, outcomes and belonging for 1,836 children who became 'looked after' at home, or were placed away from their birth parents when they were aged five and under.
- [CELCIS](#)'s website contains resources and examples of tested methodologies to develop knowledge of permanence and deliver efficient permanence processes. CELCIS are also commissioned by the Scottish Government to deliver their PACE programme.
- [Permanence and Care Excellence \(PACE\)](#) PACE supports local authorities and their partners - in health, Children's Hearings, the Scottish Children's Reporter Administration and the courts – to identify areas of blockages or difficulties in securing permanence for looked after children and to reduce delay where it is appropriate to do so.



Chapter 10

Improving Outcomes for Children



Summary

The unique ethos of the Children's Hearings System is that children and young people in trouble and those who require care and protection have the same underlying needs and these should be addressed in an integrated way in one decision-making system with equal access to supervision and support.

Behaviours linked to distress and unmet needs in younger children often attract more sympathetic responses than distressed behaviours and actions in older children which can be interpreted as requiring control or punishment, rather than behaviour which also communicates that the child needs additional support.

This chapter should be consulted whenever Panel Members are making decisions about a child who has committed an offence, when a hearing is considering secure accommodation, or when the hearing relates to an older child, including review hearings where the hearing may consider terminating a Compulsory Supervision Order.

a. Protecting children – it's everyone's job

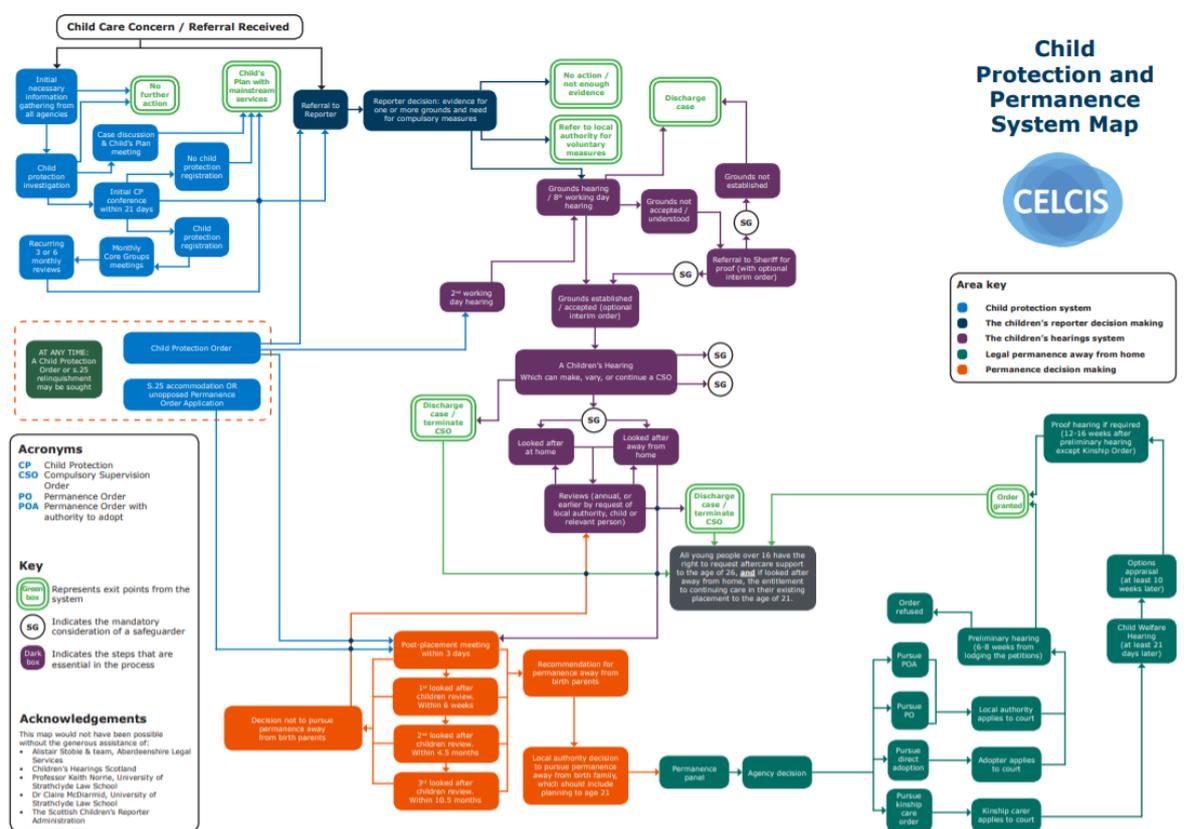


Summary

The Children's Hearings System is part of a wider landscape of inter-agency work to respond to concerns about children, and keep them safe and well cared for. This section provides information on Getting it Right for Every Child, Child Planning Meetings, the Child Protection Register, local authorities duties to provide accommodation for children and young people under section 25 of the Children (Scotland) Act 1995, and the legal framework for Permanence Orders.

This section will provide you with an understanding of how agencies work with families before a referral to the Children's Reporter, what they may do alongside or instead of making a referral to the Children's Reporter and after a Compulsory Supervision Order has come to an end.

The flowchart below gives an overview of how different planning and decision-making systems link together, and how they relate to the Children's Hearings System.



[Available online here](#)

Getting it Right for Every Child (GIRFEC)

10.1 *Getting it Right for Every Child* or GIRFEC is the Scottish Government’s national practice framework for inter-agency work with children and young people to support their welfare and well-being. It is a framework that allows organisations who work with and support children and their families to provide consistent, evidence-based help and intervention. GIRFEC aims to ensure that services working with children and young people – social work, health, education, police, housing and voluntary organisations – adapt and streamline their systems and practices and work together. GIRFEC encourages professionals and agencies to intervene when problems emerge to avoid crisis situations at a later date.

10.2 The GIRFEC framework arose from a national review of child protection in Scotland and a review of the Children’s Hearings System. These reviews highlighted that too much effort was being invested in identifying whether a child was at risk of coming to harm or in need of compulsory measures of supervision. They identified that, to improve outcomes for children and young people, agencies needed to intervene earlier in a more integrated way in response to identified needs and risks.

10.3 The Children and Young People (Scotland) Act 2014 enshrines in law key elements of the Getting it Right for Every Child approach.



10.4 The GIRFEC framework allows agencies to assess a child's needs and identify strengths and risks against key indicators of positive well-being in different parts of their lives so that professionals can offer services and support to the child and their family to enable the child to grow up feeling loved, safe and respected and to realise their full potential. At home, in school or the wider community, every child and young person should be:

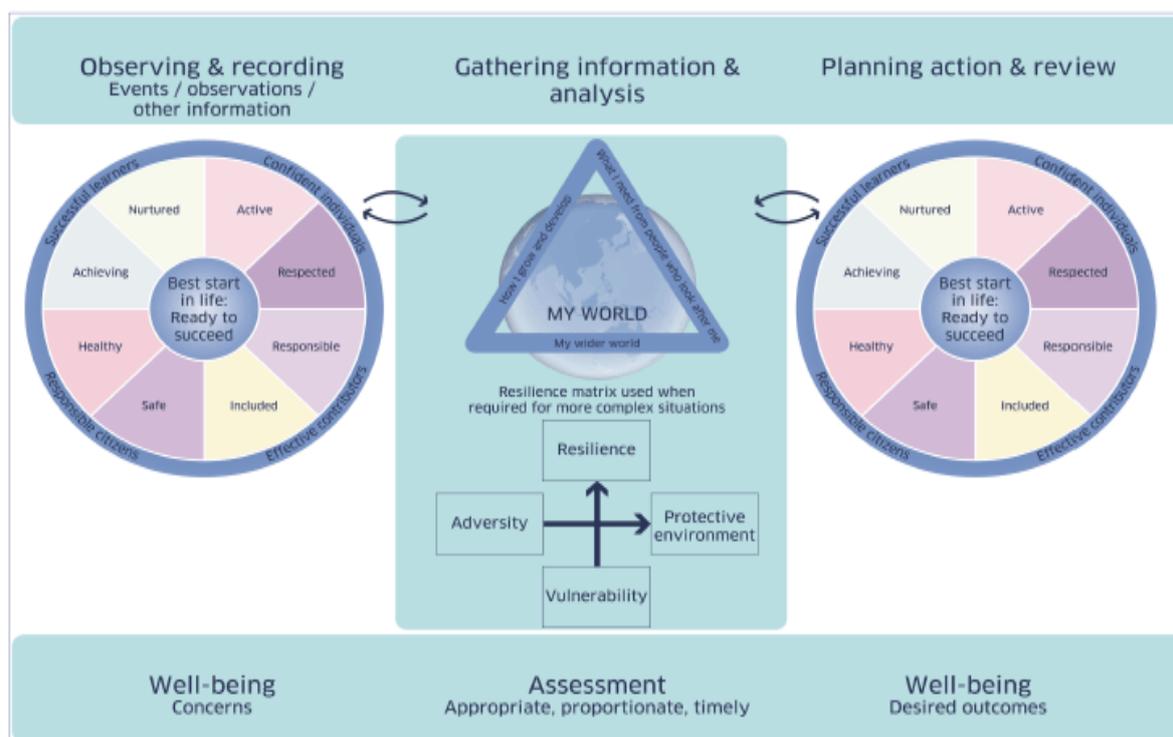
- Safe
- Healthy
- Achieving
- Nurtured
- Active
- Respected
- Responsible
- Included

These eight key indicators are often referred to by their initial letters – SHANARRI.

10.5 These wellbeing indicators help make it easier for children and families and the people working with them to discuss how a child or young person is doing at a particular point in time, identify if there is a need for support and, if so, what should that support be.

National Practice Model

10.6 The GIRFEC National Practice Model is an assessment framework for practitioners and agencies to gather, structure and analyse information consistently so as to better understand a child or young person's needs, the strengths and pressures on them and their family, and to describe what support they might need. The National Practice Model defines a child's needs and the risks to their healthy development and well-being as two sides of the same coin. It promotes active participation of children, young people and families in every aspect of gathering information, interpreting the information gathered and making decisions about what to do next.



10.7 The National Practice Model is a dynamic process of assessment, analysis, action and review. It provides a systematic way to identify for each professional involved with a child what outcomes are needed and what they and their agency should do to help achieve them for individual children or young people.

The Child's Plan

10.8 Health visitors, nurseries and schools are often the first agencies to identify welfare and wellbeing concerns about a child or family. If they cannot resolve the concern directly, they will get in touch with other services such as social work, specialist education or health services or other professionals (for example in voluntary agencies) who will work with the family to work out the best way to help the child and family tackle any problems in Child Planning processes. These are underpinned by GIRFEC, and use the National Practice Model to shape assessments and Child Plans.

10.9 The Child's Plan is a core component of GIRFEC now enshrined in the Children and Young People (Scotland) Act 2014. While this is not mandatory, it is often used by local authorities to plan progression. These usually form part of the reports submitted by the local authority to children's hearings. Panel Members are already familiar with the form and content of the Child's Plan which is co-ordinated and developed by the child's social workers. The Child's Plan should describe the professional support required for children who need extra help to make sure that they are able to achieve a satisfactory level of health, development and well-being. Child planning processes support children in a range of different circumstances. Not every child who has a Child's Plan will be at risk of coming to harm through a lack of parental care.



10.10 Planning meetings (sometimes referred to as meetings of the 'Team around the Child') involve the child, key family members and all the professionals working with the family. These will take place on a regular basis for children who have a Child's Plan, usually every three to six months. These meetings help services to make sure that help offered to a child and family is well co-ordinated and tailored to meet their specific needs and circumstances.

10.11 The inter-agency meetings to agree, record and review the Child's Plan are designed to make sure the right support is available to every child who needs it. Many children and families who receive support are never referred to the Children's Hearings System at all. But if supports put in place are not effective, or families decline them, and if professionals think there is a need for compulsory measures of supervision to protect the child from harm they may decide that a referral to the Children's Hearings System is needed. After a child has been referred to the Children's Hearings System, professionals support and the inter-agency network will continue to plan and deliver support and their work will inform the local authority's report to a children's hearing.

Case conferences and the Child Protection Register

10.12 If the Child's Plan includes actions to address the risk of significant harm, it should incorporate a child protection plan. A child protection plan will be agreed by all agencies involved with a child at a Child Protection Case Conference. A Child Protection Case Conference (CPCC) is held if a child is assessed as being at risk of child abuse or neglect. The function of every Child Protection Case Conference is to enable agencies to share information about actual or potential risks to a child's safety and well-being and decide what each professional or agency should do to reduce or remove these risks.

10.13 The local authority social work department is responsible for arranging and chairing all Child Protection Case Conferences. A first CPCC must take place within 21 days of a referral to the police or children's social work service. If professionals at the initial case conference decide a child is at risk of significant harm the child's name will be placed on the local authority's Child Protection Register and the CPCC will draw up a child protection plan.

10.14 Child Protection Case Conferences are chaired by senior social work staff with experience in child protection. The chair, wherever possible, should not directly supervise the social worker who is the casework for the child at risk, so that there is an objective perspective brought to the discussion at the conference.

10.15 The Child Protection Register (CPR) is a confidential list of all children in the local authority area who have been identified as being at risk of child abuse or neglect and in need of a multi-agency child protection plan. If a child is added to the child protection register at a Child Protection Case Conference they must also have a child protection plan, which sets out what action needs to be taken by whom and when, in order to safeguard the child and promote their welfare.



10.16 The Child Protection Case Conference will identify a 'Core Group' of professionals and parents and carers who will identify and carry out the work needed to implement the Child Protection Plan. The Core Group will include the child or young person where this is appropriate. Although the social worker has lead responsibility for the development and implementation of the Child Protection Plan, all members of the Core Group are jointly responsible for carrying out actions outlined in the plan, reviewing the plan as needed, and monitoring progress against the planned outcomes.

10.17 After the child has been placed on the Child Protection Register, the Core Group will meet within 15 calendar days of the initial Child Protection Case Conference. The Core Group will then continue to meet no less than every four weeks whilst the child is subject to a Child Protection Plan.

10.18 Where the Initial Child Protection Case Conference (ICPCC) is held in respect of an unborn baby, the first Review Conference is required to take place within 10 working days of the baby's birth or within three months of the ICPCC, whichever is soonest. This date will be set at the Initial Child Protection Case Conference. In all other cases, the first Review Case Conference is required to be held within three months of the Initial Child Protection Case Conference. After the first review, subsequent Review Case Conferences must be held within six months of the previous Review Case Conference until the Child Protection Plan is removed and the child is no longer on the Child Protection Register.

10.19 Child Protection Case Conferences will take place at regular intervals until the child is no longer considered at risk of significant harm, or until they are removed from the situation in which they are at risk.

10.20 A Child Protection Case Conference may decide that compulsory measures of supervision are needed to ensure the child is protected. The professionals may think that there is a need for a measure of residence enabling the child to be looked after in foster or residential care. When this happens, the child is referred to the Children's Reporter who will decide if there needs to be a children's hearing for compulsory child protection measures.

10.21 The planning and decision-making processes which are managed by the Child Protection Case Conference and compulsory measures of supervision are separate processes. Children may be named on the Child Protection Register without being referred to the Children's Hearings System and vice versa. If parents/carers are willing to work with professionals voluntarily and accept services and support and no compulsory measures of supervision are necessary, then the support and supervision provided by the Core Group will meet the care and protection needs of the child.

Children in care without a Compulsory Supervision Order

10.22 Children can become looked after and accommodated without referral to a children's hearing. [Section 25 of the Children \(Scotland\) Act 1995](#) outlines that the local



authority has a duty to accommodate children when ‘*the person who has been caring for them is prevented (whether or not permanently, for whatever reason) from providing them with suitable accommodation or care*’. This may entail placing the child with foster carers or in a residential placement if this is available.

10.23 When children are accommodated the arrangement is not compulsory and the local authority need the child’s parents or carers to agree to any steps to support the child. They are still in charge of making decisions about a child’s welfare. They can withdraw their consent and agreement at any time. If a parent were to withdraw their agreement social work and the other professionals involved in supporting the child would assess whether they thought the child would remain safe at home. If a parent withdraws their consent to the support being provided or their child being accommodated, the local authority may seek a Child Protection Order, if the risks are significant and immediate, or a Compulsory Supervision Order through referral to the Children’s Hearings System.

10.24 When a child is accommodated the local authority must hold regular reviews of the child’s case (‘looked after child reviews’) whether they are looked after under a Compulsory Supervision Order or whether they are looked after with parental agreement under section 25 of the Children (Scotland) Act 1995. These Reviews involve the professionals in a child’s life, such as their social worker and teacher, and their birth parents or other important family members, and those looking after them such as foster carers or residential social workers.

10.25 In some circumstances, a child accommodated under a s25 agreement can be made subject to a Permanence Order, direct adoption or a kinship care order, without the involvement of the children’s hearings system. If the child’s parents (and the child, if the child is over the age of 12) do not oppose the Permanence Order Application, then permanence away from home can proceed via this route. The section on [Permanence](#) provides more information about permanence pathways.

b. Whole system approach

Children aged between 15 and 17 in the Children’s Hearings System

“Children and young people involved in patterns of offending, or more serious offending, are often our most vulnerable, victimised and traumatised children. It is essential that we ensure their wider needs are being met as these are often the drivers underlying their offending behaviour.”

Centre for Youth and Criminal Justice, 2016

10.26 The Scottish Government’s ‘whole system approach’ ([WSA](#)) is designed to ensure more streamlined and consistent planning, assessment and decision making for children at risk or involved in offending behaviour so that they receive the right help at the right time. The principles of Whole System Approach are grounded in Scotland’s national approach to improving children’s well-being, [Getting it Right for Every Child](#), UNCRC and the Council of



Europe's standards and guidelines for [Child Friendly Justice](#).

10.27 The WSA is based on treating young people under 18 years of age as children first, rather than offenders, and, wherever possible, [diverting](#) children away from formal youth justice processes such as the Children's Hearings System and the criminal justice system. It also places responsibility upon the agencies and systems around the child rather than locating this within the child and has a focus on building capacity of these systems and the child to meet needs in a less harmful way.

10.28 The years between 15 and 17 can be a time of significant transition for children. They may need additional support to ensure that they reach their potential and are diverted from behaviours which are harmful or potentially criminal. Whilst they may physically resemble young adults, children are not mini adults, but are undergoing a period of rapid development regarding identity, personality, confidence and which includes changes in their [brain](#) structure and functioning. Research tells us that the brain is not fully developed with all the hallmarks and capacity for adult thinking until around the mid-20s. Healthy development can be compromised by exposure to [adverse childhood experiences](#) either before or during this period of change.

10.29 The whole system approach is a way for **all agencies** to work together to keep children under the age of 18 out of the adult criminal justice system wherever possible by using the following strategies:

Early and Effective Intervention (EEI)

10.30 Police Scotland adopt a flexible approach to offending behaviour by children rather than charging them with offences unnecessarily or always referring them to the Children's Reporter. EEI enables the Police to alert other agencies to concerns about the child's wider context which may be communicated through their behaviour and impacting upon their well-being. This helps address needs which may be driving the offending behaviour and prevent future offending or antisocial behaviour by providing timely and proportionate interventions.

Diversion from Prosecution

10.31 Bringing young people into the criminal justice system for low-level offences often results in increased offending because formal system contact is a significant factor in further offending behaviour. Offering alternatives to formal prosecution can change young people's behaviour by targeting the underlying cause of the offending e.g. anger management, substance misuse or childhood trauma. It also provides, as in EEI, an opportunity for quicker responses that are individualised and bespoke to the individual child and their situation.

10.32 When it is necessary for offending behaviour to be addressed in a formal justice setting, the WSA promotes remittal to a children's hearing as a preferred option ([s.49 Criminal Procedure \(Scotland\) Act 1995](#)) including for the High Court and Sheriffs in



response to a child brought before the court for offending. However, this is only available for children up to the age of 17 years and six months and not available if a child has been convicted of an offence for which the sentence is fixed in law. The [Young Person Journey](#) provides a full and detailed interactive resource regarding the child's journey through justice.

The Children's Hearings System

10.33 Children's hearings and Panel Members play a vital role in ensuring that all children receive the right support to make successful transitions into adulthood and independence. To achieve the best outcomes for all children, Whole System Approach encourages agencies to adopt the following practices:

1. More children remitted from court to the Children's Hearing System for advice and disposal. Where the [court](#) remits a case to a children's hearing for advice or decision-making by the hearing, the hearing should provide the court with clear information about what intervention by the local authority is available and planned to tackle offending behaviour. Where aspects of a child's behaviour pose risk of serious harm to others, multi-agency risk procedures such as Care and Risk Management (CARM) should provide clear and evidence-based processes and strategies for managing and reducing risk so that decision-makers can be confident that children's services can safely manage any assessed risk from the child to others or self within the community.

2. Ensuring children continue to be subject to a Compulsory Supervision Order (CSO) beyond aged 16 (and up to age 18) when this is justified and appropriate. Compulsory Supervision Orders are ended when the child no longer requires compulsory measures of supervision, and in reaching a decision on this, Panel Members should consider the [overarching principle](#) that an order is to be continued if it is considered better for the child than if no order was in place.

It is recommended that Compulsory Supervision Orders are **not** terminated when the following criteria apply:

- **the child has any outstanding offences** which might lead to their being brought into the criminal justice system and potentially into the prison system without any consideration of their underlying welfare needs.
- **the child is not engaging with services or workers;** non-engagement can be a signal of other problems and a reason to ensure compulsory measures of supervision are in place.
- **the child is being prosecuted in the criminal court or has been given a short custodial sentence;** if a child subject to a Compulsory Supervision Order is concurrently prosecuted in court, a continuing Compulsory Supervision Order can provide them with additional support, even if they are reluctant to accept that



support, when going through the complex adult court system. It may also prompt the court to seek the advice of the children's hearing before disposing of the case, allowing the option of remittal back to the Children's Hearings System for disposal.

3. Remaining on a Compulsory Supervision Order enables the child's needs for guidance, care and protection to continue to be addressed alongside work to tackle challenging or offending behaviour and enables work with family members to continue. If the child commits further offences (especially if committed whilst in secure care/custody) these are more likely to be dealt with through children's hearings.

Maintaining the Compulsory Supervision Order can provide a significant amount of continuing social work support during what may be a difficult [transition](#) from residential or secure care, or custody, into the community. Offending may indicate underlying [needs](#) which a Compulsory Supervision Order can address.

Early termination of a Compulsory Supervision Order can hinder access to support from [continuing care and aftercare](#) services and asking or expecting a child to actively seek out support is not always realistic. If a Compulsory Supervision Order is terminated for a child aged 16 or over, re-referral to a children's hearing may not be available. In addition to thinking about the child's current circumstances, Panel Members should consider the potential benefits of compulsory measures of supervision in the medium and longer term.

4. Other factors that will bring about better outcomes for children:

- Continuing careful consideration by children's hearings of alternative options to secure care; The 2011 Act requires Panel Members to consider alternatives to secure, such as a [movement restriction condition](#) (MRC), before a secure care authorisation is made. Inquiries should always be made as to what services and support are available locally from the local authority before considering removing a child from their home and community.
- Work is undertaken with the child, based on their needs and risks which are recorded in the child's plan in order to achieve more positive outcomes.
- End of care planning decisions should be based not just on a child's age or whether they are involved with the court system, but on meeting the developmental needs of the individual.

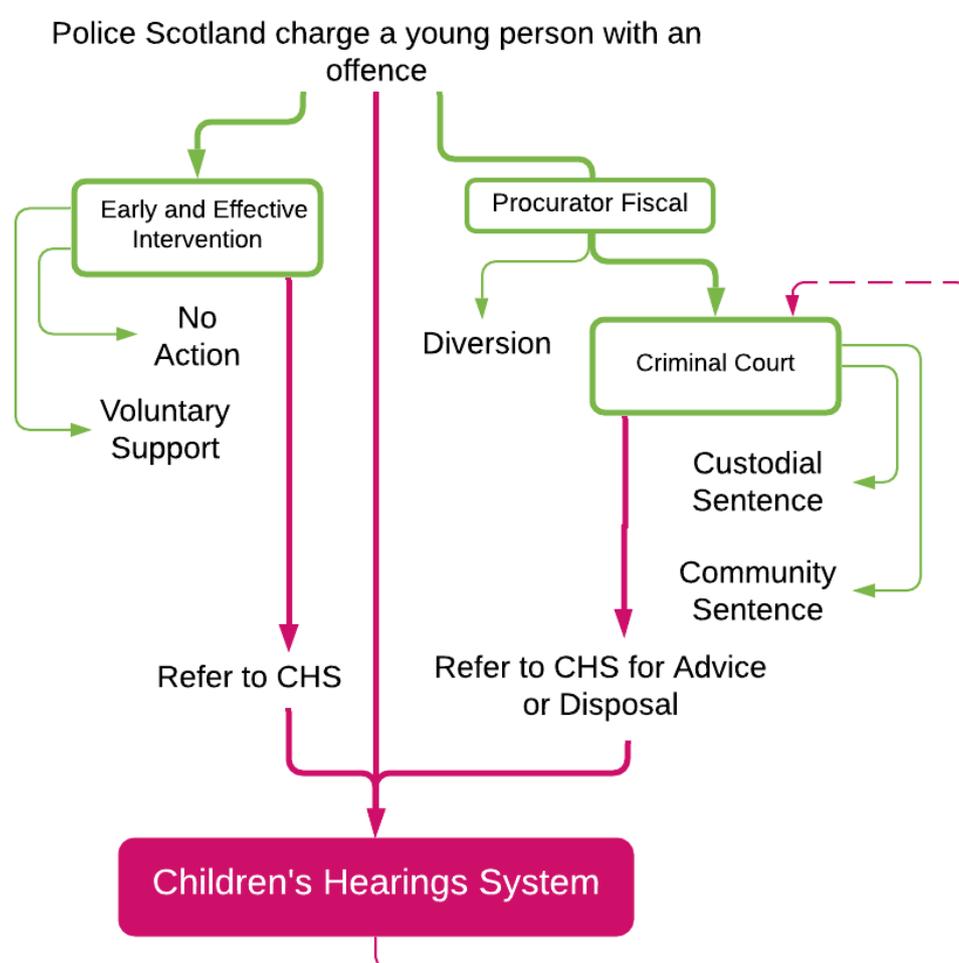
5. Alternatives to secure care such as Movement Restriction Conditions can be used to disrupt a pattern of offending behaviour. They should form part of a coherent and individualised plan of intervention. Movement Restriction Conditions will not be appropriate for all children at risk of secure care, however, Panel Members must consider Movement Restriction Conditions as an alternative to secure accommodation and say why this has been ruled out or included in a Compulsory Supervision Order in their written decisions.



Movement Restriction Conditions could be used as part of a plan to support a child’s return and reintegration into their family after a period of separation.

It is vital that local authorities provide Panel Members with care plans that detail the strategies and supports which are or will be put in place to reduce the likelihood of the young person engaging in further harmful behaviour. The care plan should include contingency plans to ensure that a secure care recommendation is only made when it is the most appropriate and proportionate option.

Youth Justice Routes to the Children's Hearings System



c. Secure accommodation

10.34 Secure care is the most intensive and restrictive form of alternative care. A young person is detained in a secure care centre, designed to keep safe those children and young people who pose a very high risk to themselves or/and others at a certain point in time. The



numbers of children and young people secured each year in Scotland are small. Nevertheless the decision to restrict any young person's liberty is significant and has an immediate impact for that young person, and for their family, friends and wider community.

10.35 Children who require secure care have often experienced significant levels of trauma in their lives which may not yet have been addressed. Research by Kibble and [Rossie](#) secure care centres found that the children they looked after had extremely high levels of Adverse Childhood Experiences (ACEs); physical abuse, emotional abuse, sexual abuse, emotional neglect, domestic violence, parental imprisonment, parental separation/divorce. They may have lived with mental illness or substance misuse at home (Johnson, Dan (Kibble) and Mitchell and Barron (Rossie). Further information on ACEs can be found on the [CHS Learning Academy online course](#). Research shows a nurturing, compassionate and therapeutic approach is required to overcome early adverse experiences, rather than criminalisation or a punitive approach, especially when the level of experience reaches the level of significant childhood trauma.

10.36 Secure care is not a punishment. It should never be used as a threat or as an automatic option of last resort; it should be the most appropriate option for a young person who needs intensive support to recover from the trauma they have experienced, or be a risk-assessed as the level of restriction required to keep a child, or others, safe.

10.37 The same needs-based approach should be used for children who are involved in offending behaviour; the options open to Panel Members are the same regardless of the reason for referral. Panel Members should avoid creating an artificial distinction between 'offending' and 'welfare' hearings; all children should be treated as children above all else. Research conducted by the [Edinburgh Youth Transitions and Crime Study](#) strongly supported the children's hearings as originally envisaged where needs were addressed alongside deeds, and specifically highlighted violent behaviour as 'symptomatic' of a broad spectrum of vulnerability.

10.38 The research revealed that 15 year olds involved in violent offending were significantly more likely than their non-violent peers to be victims of crime and adult harassment, be involved in self-harming, take risks with their own health, have weak relationships with their parents and education, have personality issues (often impulsivity and risk taking), have experienced family turbulence and social deprivation, and have friends involved in offending.

Secure Care Centres

10.39 There are currently five secure care centres in Scotland, offering 84 places. Four are independently run by charitable organisations which home children from all local authorities and one is operated by the City of Edinburgh Council with space for six children.

- [Rossie Young People's Trust](#) in Montrose (capacity 18)
- [Kibble Education and Care Centre](#) in Paisley (capacity 18)



- [Good Shepherd Centre](#) in Bishopton (capacity 18)
- [St Mary's Kenmure](#) in Bishopbriggs (capacity 24)

10.40 Placement in secure accommodation separates a young person from their family and community, schooling and familiar routines. Due to the limited number of secure centres, often the distance between the place of secure residence and the young person's home and most important relationships can be substantial. Local authorities, secure centre staff and the young person's family may all need to invest significant time, effort and resources to support and maintain these relationships so that the young person can make a successful transition back into their community at the end of the placement.

10.41 Article 37 of the United Nations Convention on the Rights of the Child states that deprivation of liberty "shall be used only as a measure of last resort and for the shortest appropriate period of time" therefore secure care should only be employed when there is no ability to manage the risk to, or from, the child within the community and must be reviewed within three months.

10.42 When considering the placement of a child away from home, and at every review of secure accommodation authorisation, Panel Members must consider what support services are available in their community, whether these services are able to meet their needs and the risks and vulnerabilities associated with the individual child. The minimum intervention principle must be at the forefront of Panel Members' decision-making.

10.43 At every hearing where secure care is being considered, the [procedures and test for secure accommodation authorisation](#) must be consulted and applied.

d. Transitions from the Children's Hearings System

10.44 This section gives information for Panel Members to consider when making decisions about when to terminate a child's Compulsory Supervision Order and what happens thereafter.

"Care leavers often struggle on their journey into adulthood. For many the leap from care to independence is just too great, and too many continue to experience problems that lead to poorer outcomes than the general population."

Scottish Care Leavers Covenant, CELCIS, October 2015

10.45 Children who have had a background in care are more likely than their peers to have poorer educational attainment. More commonly they experience long-term unemployment in later life. Care leavers can also encounter higher levels of social problems such as homelessness, contact with the criminal justice system, mental health problems and self-harming behaviour. A child who ceases to be looked after is likely to continue to need support as he or she moves into adulthood. This should be an important consideration at the point of leaving the Children's Hearings System.



10.46 A Compulsory Supervision Order will usually be brought to an end in one of the following two ways:

- if a children’s hearing decides it is no longer **necessary for the protection, guidance, treatment or control of the child** that an order be continued, the order should be terminated
OR
- a Compulsory Supervision Order will expire automatically on the child’s 18th birthday irrespective of the young person’s needs and circumstances.

Termination of a Compulsory Supervision Order

10.47 There are many reasons why a local authority may recommend that a children’s hearing terminate a Compulsory Supervision Order. Panel Members should consider the [overarching principle](#) that an order is to be continued if it is considered better for the child than if no order was in place; a hearing **should not** base a decision to terminate a child’s Compulsory Supervision Order solely on the following factors:

- **The age of the child.** Children should continue to be supported on a Compulsory Supervision Order between the ages of 16 and 18 years when this is in their best interests. Termination of a Compulsory Supervision Order may increase the vulnerability of a child living in a placement provided by a local authority. If they decide to leave the placement of their own volition, and are unable to manage to live independently, they may not be able to return.
- **Failure to engage with services.** Non-engagement with services which have been assessed as necessary is a reason for compulsory measures to be in place. Every effort should be made to provide a range of services with which the child can engage, considering their individual needs and views, rather than terminating the Compulsory Supervision Order.
- **The child has outstanding offences.** Termination of a Compulsory Supervision Order may mean that any offending behaviour by a child is much more likely to lead to the young person being prosecuted in the adult criminal justice system, than if they continued to be supported by the local authority, foster carers or residential staff. Also, the existence of a Compulsory Supervision Order, or not, may determine the place where a child aged 16 or 17 years will serve a custodial sentence or period of remand, for example in secure accommodation rather than a young offender’s institution.
- **The child has been given a custodial sentence by a criminal court.** A child can be prosecuted and sentenced through the criminal court system while subject to a Compulsory Supervision Order. If a child subject to a Compulsory Supervision Order is simultaneously prosecuted in court, remaining on a Compulsory Supervision Order can provide them with additional support, for example mental health or



addiction services, whilst going through the complex adult system. It could allow for the child's wider care needs to be addressed, family work to continue and could also result in any further offences being dealt with through the Children's Hearings System.

- **To meet third-party requirements.** A Compulsory Supervision Order which includes a measure of residence will state the place in which the child is legally required to reside. Some providers of private housing and/or residential care may not provide accommodation for a child subject to a Compulsory Supervision Order which stipulates residence in their premises. If a measure within a Compulsory Supervision Order is making it difficult for the child to reside in a specific place, the hearing can continue the Compulsory Supervision Order without such a measure. This should enable the child to move into supported lodgings and receive the support and protection of a Compulsory Supervision Order while not removing the discretion of the throughcare provider to terminate the placement if that is necessary. In those circumstances the local authority is responsible for providing appropriate housing for the child. As always, a measure is only to be included if it would be better than not including the measure.

Planning for transition

10.48 Under the 2011 Act if a children's hearing terminates a Compulsory Supervision Order it must:

- (a) consider whether supervision or guidance is needed by the child, and
- (b) if so, make a statement to that effect.

On terminating the Compulsory Supervision Order, if the hearing determines that supervision or guidance is still required, this should be recorded as a statement in the Record of Proceedings.

10.49 A children's hearing should not terminate a Compulsory Supervision Order without a clear plan setting out how the child will receive any necessary support, supervision or guidance in the future. Implementation authorities have a legal duty to provide a hearing with a **Pathway Plan** when making a recommendation to terminate a Compulsory Supervision Order. This plan may form part of the larger Child's Plan but should contain an assessment of the child's on-going welfare needs and include proposals for how these will be addressed immediately after the Compulsory Supervision Order ends, and into adulthood.

10.50 As many care leavers will need ongoing support, the involvement of adult services and contingency plans should be included within the Pathway Plan. A hearing considering termination of a Compulsory Supervision Order should explore what plans and/or safeguards are in place to ensure that the young person will still be able to access support



after the Compulsory Supervision Order ends.

e. Aftercare and continuing care

10.51 The national average age at which young people leave home is now approximately 25 years old. The average age at which young people leave care in Scotland is between 16 and 18 years old. The 2014 Act aims to close this gap by extending the age up to which care leavers can receive support from their local authority. Continuing Care and Aftercare provisions allow children and young people in care to benefit from the same financial and emotional stability as their peers who are supported by family members.

10.52 Legislation defines any child or young person subject to a Compulsory Supervision Order, as 'looked after' whether they are residing at home or away from home. Legislation defines 'Care leaver' as a young person aged 25 years or under who ceased to be looked after by a local authority on, or at any time after, their **sixteenth birthday**.

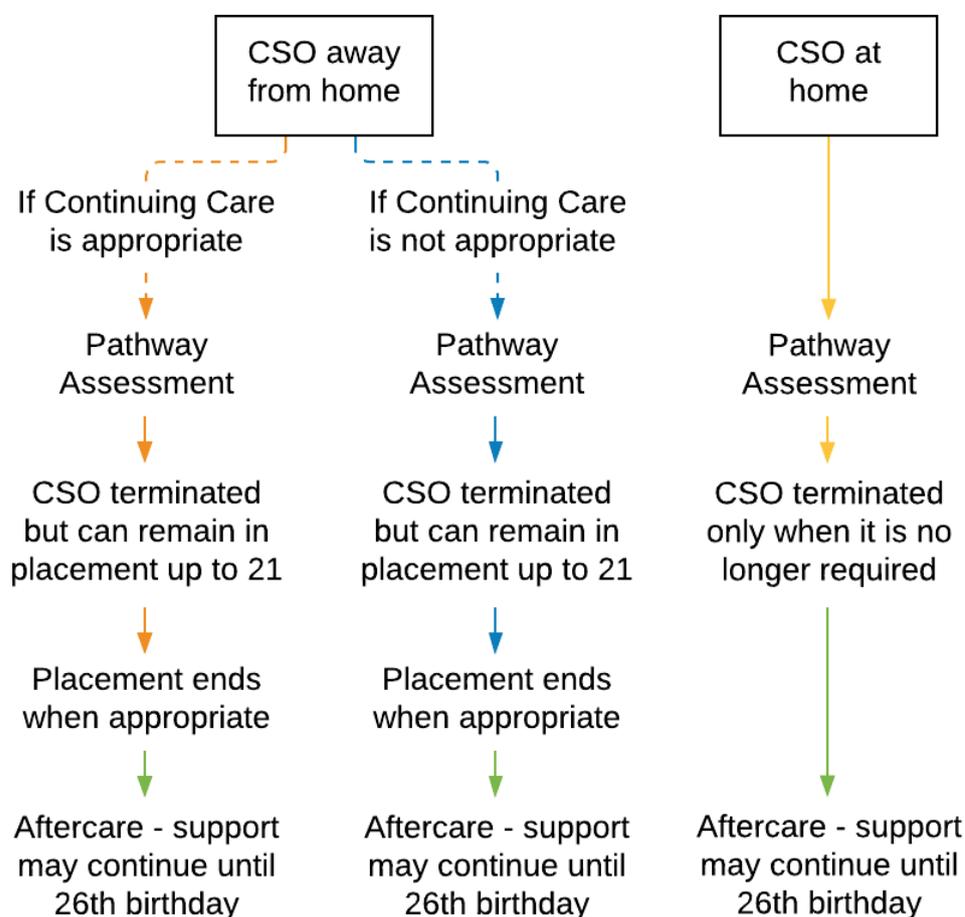
10.53 When considering termination of a Compulsory Supervision Order, particularly when the child is approaching their 16th birthday, Panel Members should be aware of care leavers' entitlements to aftercare and continuing care.

Aftercare and Continuing Care Flowchart

10.54 If a young person is subject to a Permanence Order or is accommodated voluntarily under s.25 of the Children (Scotland) Act 1995 on their 16th birthday, different legal provisions apply. More information on the different legal provisions can be found [here](#). This flowchart shows the support available to young people within the Children's Hearings System.



Legal Status on the Child's 16th Birthday



Aftercare

10.55 'Aftercare' is the term used to describe support services provided to a child or young person by a local authority to help them to make a successful transition into adulthood. It is defined as "advice, guidance and assistance" and may include supported accommodation, help to find accommodation, financial support or educational support such as literacy and numeracy courses or employment opportunities such as help with job applications or interviews.

10.56 A local authority is legally required to provide advice, guidance and assistance to young people who have ceased to be subject to a Compulsory Supervision Order on or after their 16th birthday until their 19th birthday unless they are satisfied that the child or young person's welfare does not require it. In April 2015 eligibility for aftercare services was extended to care leavers up to the age of 25 years. The 2014 Act empowers care leavers aged between 19 and 26 to ask for help by way of aftercare services. Although legally not



required to do so, a local authority has the power to continue providing aftercare to care leavers beyond their 26th birthday.

[Part 10](#) of the 2014 Act sets out the law about aftercare. A quick guide for children and young people can be found [here](#).

Continuing care

10.57 ‘Continuing care’ is a legal term established by the 2014 Act. Continuing care is a young person’s **right to remain** living in the place where they are settled and with people with whom they have existing relationships. It applies to children and young people subject to a Compulsory Supervision Order with a measure of residence away from home in kinship, foster or residential care.

10.58 Continuing care means the local authority is legally obliged to continue to provide the accommodation (placement) and other assistance that was being provided to a care leaver immediately before their Compulsory Supervision Order was terminated until the age of 21 years. The only exception is that young people do not have a right to continuing care in secure accommodation.

10.59 **When considering whether to terminate a Compulsory Supervision Order with a measure of residence the hearing should explore whether continuing care in the child’s existing placement is necessary and what arrangements are in place or being considered. If the local authority is not recommending continuing care what is the alternative plan?** If the placement is no longer viable the local authority has a duty to identify and provide a satisfactory alternative and any other support necessary to ensure the child’s continuing welfare.

10.60 **Research tells us that positively delaying the age of leaving care is a critical factor in improving outcomes for care leavers.** Continuing care is designed to support a care leaver’s gradual transition out of a local authority placement whilst enabling maintenance of strong and positive relationships between a child and the adults looking after them into adulthood.

[Part 11](#) of the 2014 Act addresses aftercare. A quick guide for young people can be found [here](#).

10.61 The following examples demonstrate how aftercare and continuing care can operate to help improve longer term outcomes for young people:



Example

David has been living in a residential home since he was 14. David is now 17. His social worker is recommending the hearing terminate his Compulsory Supervision Order which presently contains a measure of residence. He has been actively encouraged to stay in his placement and delay moving on to more independent living until he is ready. David understands that making too many changes at once may not help him in the long term. David has just left school and has obtained an apprenticeship as a joiner. His key worker is helping him explore future housing options. When David is ready to make a move to new accommodation, his trusted key worker will provide him with on-going support. David knows he will be welcome to return for meals and will be included in the 'extended family' activities of the residential home as a matter of course.



Example

Claire has been living in her foster placement since she was 10. She is about to celebrate her 18th birthday. Her Compulsory Supervision Order with a measure of residence is due to expire. Claire has a place at a local university. Claire and her carer have agreed a plan with her social worker that she will continue to stay with her carer at weekends and holidays (as most students with families would be able to do). The Local Authority has already registered Claire's foster carer as a 'supported carer' and will maintain the carer's financial allowance to make sure that she can continue to accommodate and support Claire.

Further Reading

- [Centre for Youth and Criminal Justice](#) (CYCJ) based at the University of Strathclyde. The CYCJ website contains useful information aimed at supporting improvement in youth justice in Scotland including:
 - [The Young Person's Journey](#)
 - [Youth Justice Practice Guide](#)
 - [The Journey through Justice](#)
 - [Secure Care in Scotland: Young People's Voices](#)
- [Right to Care Flowchart](#), The Children and Young People's Commissioner Scotland (CYPCS). CYPCS and Who Cares? Scotland have created a detailed flowchart to explain young people's rights to continuing care and aftercare.
- [Scottish Care Leavers Covenant](#), CELCIS (2015). This document was created by an alliance of organisations to support the implementation of aftercare for young people.



- [Staying Put Scotland](#), The Scottish Government (2013). These principles inform local authority practice and decision making when planning transitions for young people.
- [Whole System Approach to Young Offending](#), The Scottish Government (2011). A further explanation of the Scottish Government's Whole System Approach to working with young people who offend.

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