

The Children's Hearings System in Scotland 2002

Training Resource Manual

Revised 1st edition



SCOTTISH EXECUTIVE

Making it work together

The Children's Hearing System in Scotland

1st Rev. Edition

Training Resource Manual

History

Foreword & Content

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Child Family

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Foreword

'The children's system has a vital and continuing part to play - at the centre of child care in Scotland'. This clear view of the future was expressed in the Government White Paper *Scotland's Children* in 1993.

Children's panel members play a crucial part in that system. They make decisions which are very important in the lives of children and their families. It is for this reason that great care is taken over their selection. It is essential that they are provided with first class training and good reference material which will enable them to do their job confidently and well.

In 1996, in view of all the developments over the preceding years, The Scottish Office commissioned a complete revision of the existing guidance manual for panel members in order to bring it up to date, in particular for the new legislation. The Children (Scotland) Act 1995 was implemented in April 1997 and the Human Rights Act 1998 has since been introduced. Experience of working with the new legislation has brought about best practice guidelines. In view of the changes in practice the Scottish Executive decided that there should be another revision of the manual which can be used not only as a resource for the training of panel members but also Children's Panel Advisory Committee members and safeguarders.

This Manual is not only about the legal framework, important as that is. It is about children - their needs, the problems that some of them face, how best to communicate with them and adults who come to hearings. The panel member's task is not only to make decisions fairly and in accord with the statutory requirements but to take full account of the individual needs of every child who comes to a hearing. This Manual aims to provide information to widen the understanding of panel members about the circumstances and enable them to make sound, well-informed decisions.

It is hoped that panel members will find the Manual a valuable supplement to their training and as a source of constant reference during their service.

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December 2002.

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PART ONE

Section 1

History and Principles

The shortcomings which cause dissatisfaction within the present juvenile justice system (and this is no reflection on those who serve in such courts), seems to us to arise essentially from the fact that they seek to combine the characteristics of a court of criminal law with those of a specialised agency for the treatment of juvenile offenders, proceeding on a preventive and educational principle. On that principle, the offence, while the essential basis of judicial action, has significance only as a pointer to the need for intervention
(*The Kilbrandon Report*, 1964, para 71)

From the earliest age of understanding, every child finds himself part of a given family and a given environment – factors which are beyond his or society's power to control. During childhood the child is subject to the influences of home and school. Where these have for whatever reason fallen short or failed, the precise means by which the special needs of this minority of children are brought to light are equally largely fortuitous. The individual need may at that stage differ in degree, but scarcely in essential character, and such children may be said at present to be, more than most, in a real and special sense 'hostages to fortune' ..
(*The Kilbrandon Report*, 1964, para 251)

In any case which a court has to decide it is simply a working hypothesis born of human experience. Men and women have always drawn on their own experience in everyday matters of family life and in any given society people will tend to share certain views about them. In language of unsurpassed beauty that has echoed down the ages, Proverbs and the Wisdom of Solomon give expression to the views on the upbringing and welfare of children which were current in ancient Israel. While we can never hope to emulate their poetry, we too, as a society in twenty-first century Britain, must hold certain common values and assumptions as to the upbringing of children.
(Lord President Rodger, *White v White*, March 2001)

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1 INTRODUCTION

The children's hearings system, Scotland's unique system of juvenile justice, commenced operating on 15 April 1971. It has proved to be capable of meeting changed circumstances and challenges. The history of the children's hearings system, and the principles on which it is based are outlined in this section.

The system is centred on the welfare of the child. A fundamental principle is that the needs of a child should be the key test and that children who offend and children who are in need of care and protection should be dealt with in the same system. Most cases of children who require compulsory measures of intervention are considered by an independent panel of trained lay people.

The rights of parents and children are protected by the legal framework which provides for decisions relating to the child's welfare to be decided by the panel of lay people while disputed facts and appeals are dealt with by courts.

One of the strengths of the hearings system is that it has been able to adapt to changing social and political climates. The fundamental principles on which it is based have been maintained while account has been taken of international conventions on rights. These include the specific rights for children contained in the United Nations Convention on the Rights of the Child and the general human rights contained in the European Convention on Human Rights.

2 HISTORICAL CONTEXT

Children and courts

The first legislation to recognise the need for juvenile offenders to be dealt with separately from adults was the Children Act 1908. In Scotland the minimum age of criminal responsibility was seven years and a child was classified as a juvenile up to the age of seventeen years.

Following the recommendations of a committee appointed in 1925 under the chairmanship of Sir George Morton KC to enquire into the treatment of young offenders and children requiring care or protection, the minimum age of criminal responsibility was raised to eight years in 1932. The Morton Committee also recommended the transfer of jurisdiction of cases of children and young offenders to specially constituted justice of the peace juvenile courts. It was intended that cases would be considered by justices who by knowledge and experience were specially qualified in such matters.

By 1961 when another review body was set up, children were being dealt with inconsistently in different types of courts. There were considered to be inherent difficulties in a model which tried to combine the processes of a criminal court with treatment of children who offended on a preventive and educational basis.

The Kilbrandon Committee: remit and report

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 were four justices of the peace, four 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'.

No-one could have envisaged the innovative and radical recommendations that the Kilbrandon Committee would produce and which led to the setting up of the children's hearings system.

The Committee's report was presented to Parliament by the Secretary of State for Scotland in April 1964. With comparatively minor adjustments, the proposals survived three changes of government during the period of consideration and initial implementation, as well as a major restructuring of local government arrangements which included a complete revision of the way in which personal social service provision was organised.

The Kilbrandon Committee: conclusions

At the time the Kilbrandon Committee was considering the way forward, juvenile delinquency was a much greater problem than cases in which children were the victims of cruelty or neglect.

The Kilbrandon Committee concluded that:

- despite distinguishing circumstances, there was a basic similarity in the underlying situation of children who appeared before the courts. This was their common need for special measures of education and training as *'the normal upbringing processes'*, for whatever reason, had failed or fallen short. The treatment measures operating at the time of their deliberations were based on an educational principle which recognised and aimed to strengthen and build on natural influences which through education and training would assist the child to develop into a mature and useful member of society
- the most powerful and direct of these influences lay within the home and any measures to treat children had to involve, as far as possible, working closely with parents. However, the Committee rejected any suggestions that parents should be subject to direct sanctions, such as supervision, restitution or fines, as it believed these measures were incompatible with the educational principle
- a process of social education was required which, on the basis of persuasion, sought to strengthen, support and build on natural family instincts by engaging the co-operation of parents. A special agency – a social education department – should be established as a division of the education authority to undertake this work
- the arrangements for dealing with children appeared to have developed in response to particular local situations, rather than on the basis of conscious principles. There was an underlying conflict and incompatibility between the principle of establishing guilt and innocence and appropriate punishment and introducing future preventative measures. The balance between these concepts was particularly acute in relation to juveniles. The common law recognised that the element of youth might be a mitigating factor. Statute law placed increasing emphasis on the need to have regard to the child's future welfare and to provide measures of education and training in the child's best interests
- if juvenile courts were expected to take into account circumstances outside of the actual offence, then treatment measures might appear to the child and parents to be out of proportion to the nature of the offence. This might affect the successful application of measures identified as necessary on an educational principle. The matter was complicated further by

the fact that juvenile courts were also dealing with situations where children required care and protection and where a different standard of proof was required. The conviction of parents for criminal neglect or situations of serious moral danger (actual or potential) to the child, were commonly recognised as being possible precipitating factors towards future delinquent behaviour.

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 were 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.

3 THE PROPOSALS FOR JUVENILE PANELS

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.

The panel would be essentially a lay body, comprising persons who either by knowledge or experience were considered to be specially qualified 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 modify or vary measures appropriate to the individual child.

What distinguished panels from the juvenile courts then in existence was the manner in which their powers would be exercised. The criterion for action would be the child's need for special measures of education and training. 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.

Jurisdiction

Panels would be empowered to exercise a continuing jurisdiction over all children referred to them subject only to a statutory age limit. Within that period, they would have the widest discretion to alter, vary or terminate measures initially applied in the light of the child's progress and response.

Rights of appeal

As the proposed powers represented a substantially greater measure of intervention in the lives of the families affected by them, a right of appeal to the appropriate judicial authority would be available.

Compulsory intervention

Whenever possible, informal or voluntary measures of supervision or assistance within the local community should be used so that only in the most problematic cases would compulsory

measures be required. If they were, the juvenile panels would have the widest discretion to vary treatment measures, including the power to remove a child from home.

The Crown's right to prosecute

The Crown retained overriding discretion to prosecute in exceptionally serious matters. Otherwise, the prosecution of all children under the age of sixteen would be removed from the jurisdiction of the criminal courts. The Committee recommended the abolition of the minimum age of eight as the age from which a child might be held to be responsible for criminal actions.

Appointment of panels

It was recommended that panels in each education area should be appointed by the sheriff and panel members would receive appropriate instruction and training. This would include the opportunity to meet periodically at conferences at national level to provide both basic information and wider interchange of ideas and experience among members of the panels. In some of the largest urban areas, it was thought it might be appropriate to have full-time salaried chairmen of juvenile panels.

Premises

The premises used for sittings of the panels should be apart from, and entirely unconnected with, the criminal courts and police stations. Although it was appreciated that hours of sitting would be a matter for local arrangement, the Committee expressed the hope that, bearing in mind the desirability of securing both parents' attendance, there would be evening sittings and in some cases Saturday sittings.

Referrals to panels: the role of the reporter

Referrals to the panel would be at the instance of an independent official to be known as the reporter. As this official would act as gatekeeper to the system, it was thought that reporters should be competent to assess both the legal issues and also the wider question of public interest. A legal qualification, as well as a period of administrative experience relating to child welfare and educational service, were relevant requirements. In addition to handling referrals, reporters would have administrative responsibility for the general ordering of the panels' business, and would also act as clerks to the panels. (See section on Roles, Responsibilities and Resources.)

4 IMPLEMENTING THE RECOMMENDATIONS: THE SOCIAL WORK (SCOTLAND) ACT 1968

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.

A White Paper '*Social Work and the Community*' produced in 1966 retained most of the core proposals of the Kilbrandon Committee and introduced the specific terms 'children's panels' and 'hearings' for the first time. The White Paper included a range of possible decisions (known as 'disposals') that would be available to hearings. These included discharge of the case and home or residential supervision.

Significantly, the White Paper also linked juvenile justice to developments taking place in the organisation of social work. The aim was to create a new kind of social work department, bringing together the various specialised social work services – probation, the children’s departments and welfare departments of councils – in order to provide an effective all-encompassing system. The White Paper recommended that the newly organised social work departments should provide the supporting services necessary for the work of children’s hearings. This meant, essentially, that one of the fundamental planks of the Kilbrandon model was never put in place – that is, an integrated social education department. This led to education departments within local authorities passing off responsibility to social work departments with resultant tensions between departments about provision of appropriate resources for children deemed to be in need of compulsory measures of care.

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. This allowed time for the changes brought about by the reorganisation of social work to become established prior to the departments taking on responsibility for duties imposed in the legislation to deal with children in need of compulsory measures of care.

5 FUNDAMENTAL PRINCIPLES OF THE CHILDREN’S HEARINGS SYSTEM

The children’s hearings system was, from its start, underpinned by principles set out in the Kilbrandon Report. 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 courts
- 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 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
- 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 co-operation 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.

6 REVIEW AND REFORM

The first twenty-five years

In the early years there were many uncertainties. There were questions as to whether sufficient volunteer panel members would come forward. If they did, could lay people really be trusted to make such important decisions about the lives of children? Would 'supervision' be effective, or would it be a soft option? Once the first group of newly trained reporters and panel members began to put the pioneering legislation into practice throughout the country in 1971, the Kilbrandon vision of a welfare-based system of juvenile justice became a reality.

Children have been referred to reporters in ever-increasing numbers year by year and hearings take place across the length and breadth of Scotland. By 1996 when the twelve regional local authorities were reorganised into thirty-two single-tier authorities, there were approximately 2,000 panel members serving throughout Scotland and this number has continued to increase slowly.

The reporter service, which was placed within local authorities, became a separate agency, the Scottish Children's Reporter Administration, in early 1996.

The training of panel members, which has developed over the years, aims to encourage consistency of practice while allowing sufficient flexibility to take account of varying local needs.

Providing reports for hearings and giving effect to supervision requirements are a major part of the responsibilities of social work departments. A complex network of relationships has grown up among the different agencies involved in the children's hearings system.

Though not without its critics, the system gained in credibility and respect over its first twenty-five 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*'. The system has survived two radical reorganisations of local government in Scotland. A major ongoing concern is, however, the provision of adequate services for children and families in the light of growing demands on limited resources.

Initially children's hearings were concerned mainly with children who had committed offences, but in the late 1970s reported incidents of child abuse increased and in the 1980s child sexual abuse began to be acknowledged as a widespread problem. The number of care and protection referrals to hearings has grown steadily over the years. The system also had to adapt to social changes over this period which have put pressure on children and their families.

Review of the law

Recognising that change was needed, the Secretary of State for Scotland appointed a Review Group in February 1988 to consider options for improving child care law in Scotland. The Review Group's Report was published in October 1990 but action on the recommendations was delayed to await the results of two important inquiries – Lord Clyde's investigation of events surrounding the removal of a number of children from their homes in Orkney, and a report by Sheriff Brian Kearney, with Professor Elizabeth Mapstone, child care adviser, on child care policies in Fife. Both reports were published in October 1992.

The same year saw the publication of a review of residential child care by Angus Skinner, Chief Inspector of Social Work Services and a review of the functions and accountability of reporters to children's panels, by Alan Finlayson, a retired Regional Reporter.

In addition to these reports on aspects of child care, the Scottish Law Commission's Report on Family Law recommended that family law should give greater emphasis to the concept of parental responsibilities rather than parental rights and should stress that even if they cannot live together, both parents should normally have a role to play in their child's life. In addition, it was felt that the law should recognise and respect the views of children in matters affecting their upbringing. Adoption law and services for children and young people with disabilities were also reviewed.

7 THE CHILDREN (SCOTLAND) ACT 1995

In 1993 a White Paper '*Scotland's Children: Proposals for Child Care Policy and Law*', was published. This emphasised the confidence of the government in the children's hearings system and its commitment to it while recommending some reforms, particularly in relation to emergency protection of children.

The Children (Scotland) Bill followed in November 1994. While emphasising children's rights and needs and the importance of working in partnership with families, the government also stressed the need to ensure that young people who commit offences were dealt with effectively. The provision of care services must not shy away from the need to set clear boundaries for young people and point out the consequences of failing to respect the rights of others.

During the progress of the Bill through Parliament there was a substantial amount of consultation and amendment. The Special Standing Committee met in Scotland for the first time in February 1995 and took evidence from, amongst others, families and organisations concerned with children's welfare and rights. Royal Assent was given on 19 July 1995.

The Children (Scotland) Act 1995, implemented on 1 April 1997, marked a significant stage in the development of legislation on the care of children and largely replaced those parts of the Social Work (Scotland) Act 1968 which relate to children. It is centred on the needs of children and their families and defines parental responsibilities and rights in relation to children.

It established in Part I, the private law section of the Act, that in order to retain rights in respect of their children, parents were required to fulfil their parental responsibilities. In certain circumstances, parents may be deprived of their parental rights.

In addition to the legislative framework for the children's hearings system, the Act also sets out the duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it.

Principles and themes

The Act reaffirms that the positive development of child care should be based on clear principles. Thus, whilst retaining and building on the fundamental Kilbrandon philosophy and principles, it incorporates provisions which conform to commitments under the United Nations Convention on the Rights of the Child, which was ratified by the British Government in December 1991. (See Appendix 1)

It also sought to take account of obligations under the European Convention on Human Rights. (See Appendix 2).

The following key principles of the United Nations Convention on the Rights of the Child are implicit themes in the legislation or explicit requirements on decision-makers.

Every child has the right to be treated as an individual

Although some basic needs are universal, there can be a variety of ways of meeting them. Each child is unique. It is not in the interests of individual children to be treated as 'cases' or according to rigid rules. This has potential consequences for hearings and others, when a number of children in a particular family, are referred and their needs, as individuals, may differ.

Children have the right to express their views about any issues or decisions affecting or worrying them

The views and concerns of children should always be taken seriously and given due weight in reaching decisions. Child care policy should be based on listening to children.

Every effort should be made to preserve the child's family home and contacts

Children generally fare better in the long-term if they experience family life in the care of their birth parent(s). Authorities should make every effort to preserve the child's family home and contacts. A range of services should be available to sustain children safely in their family home through difficult periods. However, sometimes the risks to a child at home are so great that reception into public care is the best option. Removing a child from the care of his or her birth parent(s) is not an action which should be taken lightly. If a child is received into care, changes of placement should be minimised as they can be disruptive to the child's development.

Parents should normally be responsible for the upbringing and care of their children

Parents should be expected and supported to fulfil their responsibilities to their children. If a child cannot live at home either temporarily or permanently, parents should be encouraged to remain as closely involved as is consistent with the child's welfare. Responding to the needs of parents and working in partnership with them can be an effective and direct means of

promoting the child's welfare. Contact with a child living away from home, or one of the

parents, requires careful consideration and may raise complex issues when the parents' rights to maintain contact with a child are considered to be harmful for the child.

Children, whoever they are and wherever they live, have the right to be protected from all forms of abuse, neglect and exploitation

All reasonable steps should be taken by authorities to prevent children within their area suffering from any form of ill-treatment or neglect. The duty to provide any necessary protection must remain a top priority. Children in all settings may be at risk from trusted adults and some children, including those with disabilities, may be especially vulnerable.

Every child has the right to a positive sense of identity

The child's rights to a positive sense of identity can be encouraged through respect for the child's race, colour, sex, language, religion, disability and ethnic or social origins and the child being given appropriate information about his or her family background. Children should be treated without discrimination irrespective of their background. All children also have the right to expect that any personal information will be handled sensitively.

Any intervention in the life of a child or family should be on formally stated grounds, properly justified, in close consultation with all the relevant parties

Care should be taken to ensure that children and parents are fully aware of what is happening in any intervention by the State in their lives and that they are clearly informed of the time-scales involved in this process. The separation of children under sixteen from their parents against the wishes of any of them should take place only when a competent authority determines that such a step is necessary and where the action is subject to clear legal procedures and open to legal challenge. The welfare of the child should be the most important factor in all action taken in relation to children, whether it takes the form of compulsory or voluntary measures of intervention.

Any intervention in the life of a child, including the provision of supportive services, should be based on collaboration between all the relevant agencies

All children are entitled to expect good health care and education. Local authorities have a responsibility to provide services and assistance for children and families which will promote their general welfare. Children have the right to expect that professionals from social work, health, education, and other services will collaborate in a child-centred way by fulfilling their own roles while understanding and respecting the contributions of others. It is most important to ensure that the efforts of all those working for children benefit children.

The hearings system covers entry of children from birth to sixteen, although supervision may be continued up to age eighteen. The United Nations Convention on the Rights of the Child defines anyone below the age of eighteen as a child unless under national law majority is attained earlier.

Key principles underpinning decision-making

The Children (Scotland) Act 1995 requires courts and children's hearings to bear in mind the following central 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 should make an order relating to a child and no children's hearing should make a supervision requirement unless the court or hearing considers that to do so would be better for the child than making no order or supervision requirement at all
- 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 twelve or over are presumed to be sufficiently mature to be able to form a view.

The principles that underpin the hearings system do not stand alone. They require a sound framework of law, social policies and professional skills. These processes need to be supported and enhanced by comprehensive training. The application of apparently straightforward principles may be complicated in individual cases where there may be tensions between the needs, interests and rights of parents and child, between short and long term needs and goals, between fact and suspicion and where there may be uncertainty about the true nature of problems.

8 EUROPEAN CONVENTION ON HUMAN RIGHTS

Protection of rights

The European Convention on Human Rights was drawn up in 1950 and ratified by the United Kingdom in 1951. Its historical context is the second world war and the lowering of the 'Iron Curtain' across Eastern Europe. Forty European countries are party to the Convention and required to give effect to the rights which it sets out.

From 1966 British citizens had the right to apply to the European Commission on Human Rights if they felt their rights under the Convention had been infringed by the state. The Commission – if they found applications fell within their scope and had merit – could refer the case to the European Court of Human Rights for judgement. This could be a very lengthy process. Although the Commission has been abolished, the right to apply to the Court remains in force.

The Scotland Act 1998

In terms of the Scotland Act 1998, rights conferred by the European Convention of Human Rights have been binding on the Scottish Parliament and the Scottish Executive since 20 May 1999 when the Scottish Parliament came into being. Scottish legislation must be compatible with Convention rights.

The Human Rights Act 1998

Since 2 October 2000, when the Human Rights Act came into force, all 'public authorities' (which includes hearings, local authorities and the Scottish Children's Reporter Administration) were required to ensure that their actions are compatible with Convention rights. The fundamental difference to the previous position is that cases relating to alleged breaches of Convention rights can now be taken to domestic courts or tribunals in the first instance, and can be enforced by them. This provides the opportunity for easier access to courts to enforce rights and to speedier resolution of disputes. (See *S v Principal Reporter and Lord Advocate* below.)

Key articles affecting the hearings system

Unlike the United Nations Convention on the Rights of the Child, the European Convention on Human Rights was not drawn up with the rights of children as one of its explicit objectives. Not all the articles are relevant to the hearings system.

Key articles which are or may be relevant to the hearings system are:

Article 6: right to a fair trial

This Article deals with the concept of a hearing which is fair to all parties. Trials or hearings must take place within a reasonable time and be heard by an independent and impartial tribunal established by law. There is a presumption of innocence until proved guilty by law. Parties are entitled to be informed in a language they understand, where applicable to have the free assistance of an interpreter, and to have adequate time and facilities for the preparation of a defence. This process must include free legal assistance where the interests of justice so require.

In 1995 the European Court of Human Rights decided that the United Kingdom Government was in breach of Article 6 because the mother of a child subject to compulsory supervision in the hearings system was deprived of her right to participate in the decision-making process (*McMichael v UK*). The reason for this was that, at that time, parents had no right to see papers which panel members considered in reaching decisions, although the chairman of the hearing had a duty to disclose the substance of the information contained in the reports.

The judges in the *McMichael* case also considered that this might adversely affect the parents' ability to seek advice in order to appeal hearings' decisions. This matter was rectified in October 1996 when parents were given the right to receive the same papers that went to panel members. At that time, the right of children to receive papers was not tested.

Article 8: right to respect for private and family life

This Article provides that everyone has the right to respect for his private and family life and that there should be no interference with this right except what is proportionate in accordance with the law and necessary. Grounds for intervention need to be clearly stated, with clear justification. The father in the *McMichael* case argued that his rights had been breached because, as an unmarried father, he was deprived of the automatic right to be consulted in the care proceedings relating to his child. Neither the European Court nor Commission supported this view, although they have done so in later cases not connected with the hearings system.

Other potentially relevant articles:

Article 3: prohibition of torture

No-one shall be subjected to torture or to inhuman or degrading treatment or punishment. There have been considerable variations in the past as to interpretations by courts as to what is or is not 'reasonable chastisement' of children and courts may be called upon for a clearer definition. In addition, the issue of physical punishment of children is subject to ongoing consideration in the Scottish Parliament.

Article 5: right to liberty and security and Article 7: no punishment without law

There are potential implications in a number of respects. It is possible for police officers to detain 'unruly' children in cells if no suitable alternative accommodation is available in local authority premises. This might be perceived to be a breach of the child's rights but it is a power used only in exceptional circumstances.

Where children have been brought before adult courts charged with serious offences, the courts are requiring that the time scales for bringing the case to trial should be as short as possible consistent with the interests of justice. Hearings may specify in a supervision requirement that a child '*shall be liable to be placed and kept in secure accommodation*'. This specification is to last as long as the head of the establishment, in agreement with the chief social work officer of the local authority, considers necessary.

Article 14: prohibition of discrimination

This article states that the rights and freedoms set out in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. These prohibitions are similar to the principles and themes in the legislation which take account of provisions in the United Nations Convention on the Rights of the Child. For hearings, there may be issues about appropriate interpreters being available where a child or parents from a minority ethnic group appear at a hearing and English is not their first language. There are also considerations about placement of children in foster care or on adoption.

The First Protocol Article 2: right to education

This Article states that no person should be denied the right to education. There are potential implications for local authorities in relation to the exclusion of children from school, without alternative arrangements for ongoing education being provided. In addition, education and teaching should be provided which respects the parents' religious and philosophical convictions.

S v Principal Reporter and Lord Advocate

The first challenge to the hearings system in the domestic courts related to a case involving a fifteen year old boy charged with assault following an incident in which the boy's father was so seriously injured that he died some months later. The boy appeared before a children's hearing but did not accept the grounds for referral and a legal challenge was mounted on his behalf alleging that his human rights had been breached in a number of ways.

The issues in the case were considered in February 2001 by the highest civil court, the First Division of the Court of Session, headed by Scotland's senior judge, the Lord President. Crucial issues of principle were clarified by the Opinions of the three judges who concluded that:

- the children's hearings system falls within Article 6 of the ECHR (right to a fair trial)
- children's hearings are independent tribunals in terms of Article 6(1)
- when dealing with offence grounds for referral a hearing is not determining a criminal charge and, accordingly, it is not a criminal process to which Article 6(2) and (3) safeguards have to apply
- it is a process determining civil rights and, in so doing, some of the general protections of Article 6 have to be considered and implemented
- the availability of legal representation is desirable in certain circumstances where it is in the interests of justice – this might apply particularly with regard to the discussion of complex reports and where secure accommodation is being considered

- the Scottish Children's Reporter Administration's proposal to make papers available to children - outlined to the Court - was recognised as a significant development in line with Convention compliance but failure to implement such a scheme properly might lead to a breach of Article 6.

9 SUMMARY

The children's hearings system arose out of a set of coherent and rational principles contained within the Kilbrandon Report. In the years since it was inaugurated it has been able to adapt to many different challenges and to continue to deal in a caring manner with all children deemed to be in need of compulsory measures. The move from the Social Work (Scotland) Act 1968 to the Children (Scotland) Act 1995 enabled principles in the United Nations Convention on the Rights of the Child to be incorporated into the system and some account was taken of the need to comply with articles in the European Convention on Human Rights.

Perhaps the most crucial decision of the Court of Session in *S v Principal Reporter and Lord Advocate* is that hearings are independent tribunals. The foundation of the system thus remains stable and healthy so that the process of adapting to changed conditions can continue without fundamental principles relating to the common needs of all children being discarded.

10 FURTHER READING

- | | |
|-------------------------------|--|
| HMSO (1964) | <p><i>Kilbrandon Report: Children and Young Persons, Scotland</i>
Cmnd 2306</p> <p>The document on which the children's hearings system is based. Remains a fundamental statement of its philosophy and principles. Reprinted in the <i>Children in Society</i> series ed. Asquith S, 1995, HMSO Edinburgh.</p> |
| HMSO (1993) | <p><i>Scotland's Children: Proposals for Child Care Policy and Law</i> Cmnd 2286 Edinburgh</p> <p>The White Paper which led to the Children (Scotland) Act 1995</p> |
| Lockyer A &
Stone F (1998) | <p><i>Juvenile Justice in Scotland: Twenty-five years of the Welfare Approach</i> T&T Clark, Edinburgh</p> <p>History and analysis of the development of the children's hearings system.</p> |
| Martin FM &
(1982) | <p><i>The Scottish Juvenile Justice System</i> Edinburgh, Scottish Murray K Academic Press</p> <p>A series of articles reflecting on the first ten years of the hearings system.</p> |

Appendix 1

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Extract of Core Articles

Article 1 (definition of a child)

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2 (non discrimination)

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 (welfare a primary consideration)

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 5 (role of family and recognition of child's evolving capacities)

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 12 (child's right to participate in decision making)

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely 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.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a

representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Children's Hearings System specific articles:

Article 18 (parental responsibilities)

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19 (protection from abuse and neglect)

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37 (torture and deprivation of liberty)

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of

his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40 (administration of juvenile justice)

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Appendix 2

EUROPEAN CONVENTION ON HUMAN RIGHTS: KEY ARTICLES FOR CHILDREN'S HEARINGS

ARTICLE 3 – PROHIBITION OF TORTURE

No-one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 5 – RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditional by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6 – RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the

extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Everyone has the right to respect for his private and family life, his home and his correspondence.

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except in such accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 14 – PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

PART ONE

Section 2

Law and Procedure

No brilliance is needed in the law. Nothing but common sense,
and relatively clean fingernails.

(John Mortimer, *Voyage Round My Father*, 1971)

The child is a person and not an object of concern.

(Elizabeth Butler-Sloss, *Cleveland Inquiry Report*, 1987)

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1 INTRODUCTION

Most of the legal provisions which govern the children's hearings system are contained in the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Rules 1996. Other rules and regulations will be referred to as they arise in context. This section outlines the main provisions in the legislation and how they are implemented.

2 LEGAL FRAMEWORK AND BEST PRACTICE

Children's hearings can never be more than relatively informal, when compared with courts. Children and their families often have little knowledge or understanding of their rights or of the procedures to be followed at a hearing. While panel members are not expected to be legal experts, they need to be equipped with a competent understanding of the legal framework and how it is operated. Panel members are members of a legal tribunal and act independently of the State to protect children. They make decisions with the welfare of the child as their paramount consideration. In doing so panel members need to operate in such a way that they ensure the protection of the rights of the individuals concerned.

In terms of human rights legislation, the rights of parents and children may have to be balanced and hearings (and courts) must assess and consider competing rights and interests fairly and openly while bearing in mind their duty to regard the welfare of the child as their paramount consideration.

Over the years notions of best practice have been developed to supplement the formal procedures. It is the skill of panel members in implementing legal procedures, through best practice, that not only ensures protection of rights but also enables families to participate to the best of their ability in the decision-making process.

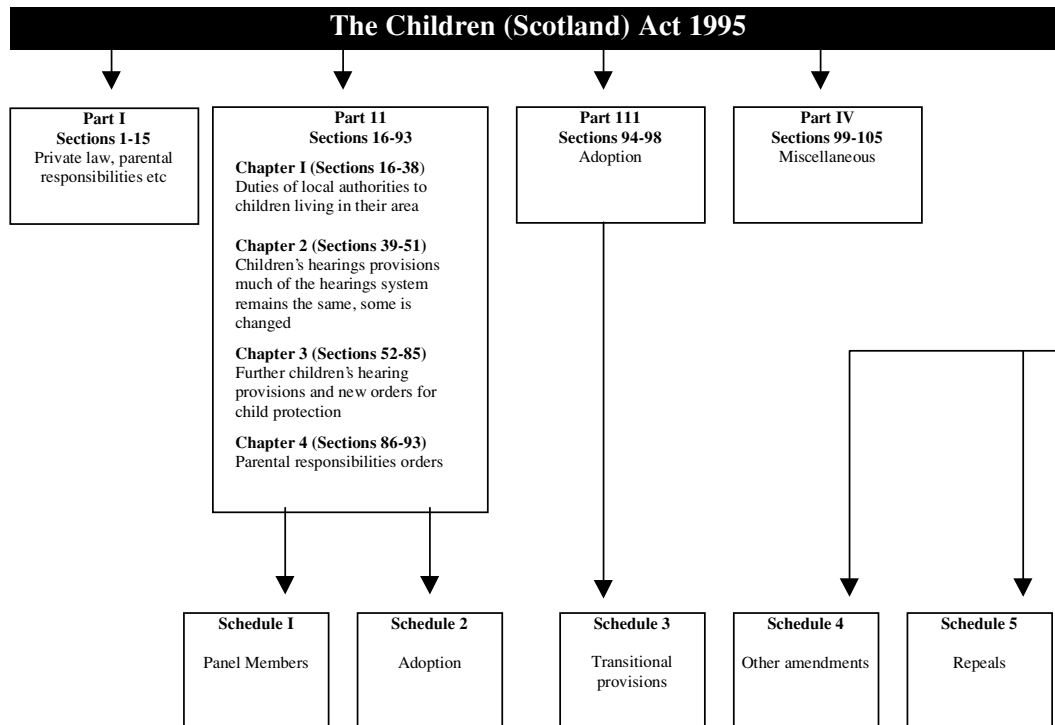
The Rules concern the operation of Part II of the Act and must be followed. However, there are certain circumstances where panel members may use their discretion (guided by the chairman of the hearing or in consultation with the reporter) in deciding how to interpret the Rules. There is therefore an important distinction between what must be done, what may be done, and what is desirable practice.

3 THE CHILDREN (SCOTLAND) ACT 1995

Structure of the Act

A diagram showing the different parts of the Act is given overleaf. Further information on the parts is given later in this section of the Manual.

The structure of the Children (Scotland) Act 1995



Fundamental principles of the Act

There are three child-centred principles which must be implemented by children's hearings and courts in most situations in which decisions relating to children are made. They are contained within section 16 of the Act.

- The welfare of the child throughout childhood is the paramount consideration. In adoption cases, decisions by courts must consider the child's welfare throughout his or her life. The only exception to this principle is to protect members of the public from serious harm.
- No court should make an order relating to a child, and no children's hearing should make a supervision requirement (or certain other decisions), unless the court or hearing considers that to do so would be better for the child than making no order or supervision requirement at all.
- The child must be given an opportunity to express a view, and regard should be given to it. Children over twelve are presumed to have sufficient maturity to express a view and children under twelve should, if they wish, be given a chance to express a view and this should be considered in reaching a decision.

These principles must also be adhered to by courts which are considering applications for parental responsibilities and parental rights under section 11 of the Children (Scotland) Act 1995, that is, the private law sphere. Local authorities in supporting children and families are also required to give effect to the principles.

4 CHILDREN, PARENTS AND GUARDIANS

Part I of the Children (Scotland) Act 1995 deals with private law aspects of the relationship between parents (or guardians) and children. It sets out the responsibilities and rights of parents and guardians towards children and also covers decisions about various family matters for example, where children should live when parents separate. It provides the framework for the relationship in law between parents and children. The shift in emphasis from automatic parental rights over children to the linking of rights with responsibilities brings the legislation into line with the United Nations Convention on the Rights of the Child.

Parental responsibilities

Parents have a number of responsibilities in respect of their children:

- to safeguard and promote the child's welfare until the child reaches age sixteen
- to provide direction and guidance in a manner appropriate to the stage of development of the child up to the age of eighteen
- to maintain personal relations and contact with the child on a regular basis (even if the child is not living with the parent) up to age sixteen
- to act as the child's legal representative until the child is sixteen.

These responsibilities must be implemented only so far as is practicable and in the interests of the child.

Parental rights

Parental rights set out in the Act are as follows:

- to have the child living with the parent or otherwise regulate the child's residence
- to control, direct or guide the child's upbringing in a manner appropriate to the stage of development of the child
- to maintain personal relations and direct contact on a regular basis if the child is not living with the parent
- to act as the child's legal representative.

It is clear from the above that parental rights and responsibilities are closely linked and flow from and into each other. In order to be able to exercise parental rights, the parental responsibilities must be met.

People who hold parental responsibilities and rights

Although the concept of parental responsibilities and rights underpins the belief that children are best looked after by their parents and that both parents should share an active role in raising children, even if parents separate or divorce, the position of the unmarried father is less favourable than that of the mother.

Parental responsibilities are held automatically by the following:

- a mother
- a father if married to the mother

- an unmarried father who by agreement with the mother has been registered in the Books of Council and Session as the child's father
- a guardian who is a person appointed by a parent to act in the parent's place in the event of his or her death.

An unmarried father with no parental responsibilities or rights still has an obligation to support his child or children financially.

Applications for parental responsibilities and rights

Applications can be made to court by any person for an order awarding all or some of the parental responsibilities and rights in terms of section 11 of the Act. A court may make an order depriving a person of some or all of his or her parental responsibilities or rights in relation to a child. It can also make an order imposing or giving some or all parental responsibilities or rights to another person. Such a person might include an unmarried father, a grandparent or other relative or person with an interest in the child. A local authority is not considered to be 'a person' in terms of Part I: applications by local authorities for parental responsibilities orders are made under section 86 of Part II of the Act.

Residence and contact orders

The Children (Scotland) Act 1995 replaced the concepts of 'custody' and 'access' which focused on the rights of parents over their child with residence and contact orders which are more child-centred and set out responsibilities in relation to the child.

A residence order regulates the arrangements made about where the child lives. This could include arrangements that the child should reside at different times with each of his or her parents and not just with one parent all of the time. It may also include residence with other persons.

Contact orders set down the arrangements which should be made to ensure the child has contact with people with whom he or she is not living, for example, a parent or other members of the family. The Act ensures that an order limiting or amending a parent's right to maintain personal relations and contact with the child is made only if it is in the best interests of the child. Both these orders last until the child is sixteen.

Consent to medical treatment

Under the Age of Legal Capacity (Scotland) Act 1991, reinforced by the Children (Scotland) Act 1995, children under the age of sixteen have the capacity to consent to their own medical examination and treatment where, in the opinion of the attending qualified medical practitioner, the child is capable of understanding the nature and possible consequences of the examination or treatment.

Instructing a solicitor

Children under sixteen who have a general understanding of what it means to do so, may instruct a solicitor in connection with any civil matter and can apply for legal aid. They are able to do this under the Age of Legal Capacity (Scotland) Act 1991 as amended by the Children (Scotland) Act 1995. A person of twelve years or more is presumed to be of sufficient age and maturity to have such understanding but even below that age some children may be sufficiently mature.

5 PROMOTION OF CHILDREN'S WELFARE

Scope of Parts II and III of the Act

Part II of the Children (Scotland) Act 1995 is divided into four chapters.

- Chapter 1 sets out the duties of local authorities in providing support for children and families. These duties may or may not relate to children who appear before hearings.
- Chapter 2 covers a range of issues relating to children's hearings, including the formation of children's panels and hearings, safeguarding children's interests, general provisions about the conduct of hearings – including privacy and rights of attendance, exclusion from hearings of specified individuals and appeals against decisions of hearings.
- Chapter 3 relates to the protection and supervision of children. It also sets out the reporter's investigative duties, the grounds upon which children may be referred to hearings, and the decisions that can be taken.
- Chapter 4 covers parental responsibilities orders and the circumstances in which courts may transfer parental responsibilities and rights to a local authority. This is different to the procedures in Part I of the Act which is concerned with private not public law.

Throughout Part II of the Act, there are references to the Principal Reporter. In practice, the Principal Reporter's powers and duties are delegated to other reporters employed by the Scottish Children's Reporter Administration. (See Roles, Responsibilities and Resources)

Part III of the Act makes amendments to the law on adoption of children.

There are five schedules and Schedule 1 deals with the appointment of CPACs, the recruitment and training of panel members, their expenses and the publication of their names.

Local authority duties

Local authorities have a range of general and specific duties to provide support for children and families. These include provision of services, advice and assistance for young persons formerly looked after by local authorities and a number of miscellaneous and general duties, including provision of short-term refuges for children. Chapter 1 contains sections 16 to 38 of the Act. This is dealt with in further detail in the section on Roles, Responsibilities and Resources.

General purpose of children's hearings

Children's hearings have been given extensive powers to make decisions about children who may be in need of compulsory measures of supervision. These measures may include protection, treatment, guidance or control (or a combination of these elements).

Definition of child

s93(2)(a) & (b)

A 'child' for the purposes of a hearing is a person who is:

- not yet sixteen years old (no lower age limit other than that the child has been born)
- over sixteen years but not yet eighteen and subject to a supervision requirement
- over sixteen but has not yet reached the school leaving age and has been referred to a hearing on the grounds that he or she has failed to attend school regularly without reasonable excuse

- referred to a children's hearing from a different part of the United Kingdom and is under a similar requirement or order to the ones made in Scotland.

Definition of a relevant person

s93(2)(b)

In everyday language we speak about children's parents. The Children (Scotland) Act 1995 introduced the concept of a relevant person. This does not mean 'relevant' in the way the term is commonly understood but is a specific legal term. In terms of the legislation, a 'relevant person' for the purposes of a hearing is:

- any person who has parental responsibilities under Part 1 of the Act. This will include a child's mother unless she has been deprived of parental responsibilities by a court. It will also include the father if he is married to the mother. It will not include an unmarried father unless there is a court order or unless he has registered an agreement with the mother under s4(1) of the Act giving him parental responsibilities and rights. A residence order with a condition that the child should stay with a father will give that father parental responsibilities and rights
- any other adult with parental responsibilities and rights. This could include grandparents who have a residence order, or a relative or friend appointed as guardian in a parent's will or by the court
- any person who appears to be a person who ordinarily has charge of, or control over, the child other than by reason only of his or her employment. This may include a step-parent or parent's partner or it could be a friend, relative or in certain limited circumstances a foster carer

Following the outcome of a case in the Court of Session, foster parents who have looked after a child for a period of approximately seven months, or longer, may be deemed to be relevant persons.

6 REFERRAL TO THE CHILDREN'S REPORTER

The processes under which a child may be referred to a children's reporter, the reporter's investigative powers and jurisdiction, the referral of children to hearings, and the decision-making powers of hearings, are outlined below.

s53&54

People who may refer a child

A local authority must refer a child to the reporter if they receive information which suggests that compulsory measures of supervision may be necessary if this is substantiated by enquiries into the case. This may be because the child is being neglected or harmed in some way or that the child's actions require to be considered. Reasons could include a child who is stealing, truanting, running away or abusing alcohol or drugs. Although the duty refers to the local authority, in practice most referrals come from social work, in particular, and the education services to a lesser extent. Other departments, such as housing, might also refer but are more likely to do so through social work.

s53(1)

Similarly, if police officers have reasonable cause to believe that compulsory measures of supervision may be required in respect of a child, they have a duty to pass that information on to the reporter.

s53(2)

Anyone can refer a child to the reporter. There is no limitation on who may do so – it may be a medical practitioner, health visitor, neighbour, youth club leader, friend, nursery or children's centre, or even the child or parents themselves. **s53(2)**

A court dealing with matters such as divorce, separation, parental responsibilities or parental rights, adoption or freeing for adoption, or proceedings against a parent for failing to secure regular attendance by his or her child at school, may, if satisfied that one or more grounds for referral to a hearing is established, refer the child to the reporter. **s54**

If a child has admitted being guilty or been found guilty of an offence in a criminal court, the court may have the case referred to a children's hearing with the grounds already established. **s49**

Initial investigations by the reporter

Having received information about a child, the reporter must make an initial investigation. He or she may request from the local authority a report on the child and the local authority is obliged to supply such a report. **s56(1)&(2)**

The reporter may seek information from other sources, such as the child's school or a nursery placement.

Once the reporter is satisfied that all the necessary information is available, he or she will consider two primary questions:

- is there sufficient, relevant evidence to support grounds for referral?
- are compulsory measures of supervision necessary?

Grounds for referral

s52

In order to reach a decision on whether or not a child requires compulsory measures of supervision, one of the tests applied by the reporter is to see if the concern referred 'fits' any of the conditions which need to be satisfied in order for there to be jurisdiction to intervene.

Section 52(2) of the Children (Scotland) Act 1995 states that a child may be in need of compulsory measures of supervision if at least one of a list of conditions is satisfied in respect of the child. These conditions are generally referred to as 'grounds for referral'. In common with most legislation the pronoun 'he' is used to include both he and she.

There are twelve conditions (or grounds) which may indicate that a child is in need of compulsory measures of supervision.

The child is beyond the control of any relevant person

s52(2)(a)

A relevant person has the responsibility of providing control for the child. This condition may be used when a child is behaving in such a way that he or she does not respond to the reasonable demands made by the parent(s), for example when a child is running away or continually staying out until the early hours of the morning without the consent of the parent.

The child is falling into bad associations or is exposed to moral danger

s52(2)(b)

The essential idea here is of a child being coerced, led astray, or otherwise exposed by an older person to such matters as drugs, drink, or sexual behaviour. It may refer to a child under eight years old (the age of criminal responsibility) who is involved in offences and cannot be charged with them.

The child is likely -

- (i) to suffer unnecessarily; or**
- (ii) be impaired seriously in his health or development, due to a lack of parental care**

s52(2)(c)

Generally, this condition refers to poor parenting over a period of time which may be due to alcohol or drug abuse on the part of the person who has parental care of the child. It may also refer to children living in filthy conditions or insufficiently fed. Emotional deprivation might also fall within this condition. There have been examples of the condition being used where parents have failed to seek medical treatment or to allow medical treatment. Lack of parental care might also result from low intelligence and lack of parenting skills rather than intentional behaviour and could also cover a parent's severe personality or mental health problems. 'Likely' means past or present lack of parental care but also refers to probable future lack of care.

The child is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed

s52(2)(d)

This condition relates to children against whom offences have been committed. These include sexual offences, assault, ill-treatment, neglect, exposure, abandonment, or wilfully exposing them to serious risk. It is not necessary to prove who committed the offence – it is sufficient for it to be established that the child has been a victim of such an offence. For the purpose of children's hearing proceedings, it is sufficient to prove on the balance of probabilities, i.e. it is more likely than not that an offence has been committed against a child. Even if someone has been acquitted by a criminal court, the ground for referral can be established (or stand) if there is sufficient supporting information.

The child is, or is likely to become, a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed

s52(2)(e)

This condition offers equal protection to all the children in the household for if one child in the household is a victim of an offence, then all the other children in that household may be referred to a children's hearing. It can be used to protect a new-born child joining the household. The definition of 'household' is wide and refers to persons held together by a particular tie, as for example, a married couple or another member of the family who may sometimes though not usually live under the same roof.

The child is, or is likely to become, a member of the same household as a person who has committed any of the offences referred to in paragraph (d) above

s52(2)(f)

This condition can be used to protect any child from birth if someone who has committed an offence mentioned in Schedule 1 becomes a member of the same household.

The child is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 2A to 2C of the Sexual Offences (Scotland) Act 1976 (incest and intercourse with a child by step-parent or person in position of trust) has been committed by a member of that household

s52(2)(g)

This condition protects both boys and girls growing up in a household where someone has committed a particular sexual offence. It is a ground which is rarely used as it is also covered in paragraph (f) above.

The child has failed to attend school regularly without reasonable excuse **s52(2)(h)**

The child must be of school age. Reasonable excuses are defined in section 42 of the Education (Scotland) Act 1980 and refer to difficulties with travel arrangements, health problems or special circumstances acceptable to the education authority or a court. Exclusion due to a child's disruptive behaviour does not constitute a reasonable excuse for not attending school. If the child is being appropriately educated at home however this is considered to be a reasonable excuse.

The child has committed an offence **s52(2)(i)**

This ground applies only to children who are above the age of criminal responsibility (eight years old) who have committed offences.

The main types of offences in which children are likely to be involved are:

<i>Theft</i>	Taking the property of someone else without their permission and appropriating it for own use; aggravated theft (greater degree of criminal responsibility than theft) e.g. housebreaking, or opening a lockfast place such as a locked room or cupboard. Attempted theft is also an offence.
<i>Reset</i>	Receiving property known to be stolen.
<i>Damage to property</i>	This may include malicious mischief, vandalism, and fire-raising.
<i>Offences against the person</i>	This may involve assault, possibly leading to injury; various sexual offences.
<i>Offences which might hinder the prevention of crime</i>	The most important offences in this category relate to the possession of offensive weapons, either used in a threatening manner or being carried of without legal permission.
<i>Traffic offences</i>	The most common offence which concerns hearings is the taking and driving away of a motor vehicle. There is also a range of statutory offences arising from driving under the permitted age.
<i>Miscellaneous</i>	Possession of air weapons in certain unlawful circumstances, or recklessly firing them; general breach of the peace; fraud or false pretences.

It is important to remember that anyone helping someone to commit an offence can be considered to be equally involved, for instance if he or she gives advice, provides tools or other materials, keeps a lookout or acts as a decoy. In addition, it has also to be established that the person has acted intentionally or recklessly. This is sometimes difficult for children to understand and requires careful explanation by the chairman of the hearing.

The Lord Advocate may decide that a child who has committed a very serious offence will be prosecuted in court, in the public interest. The Lord Advocate's Direction to Chief Constables sets out the circumstances when a child must be jointly reported to the procurator fiscal and the reporter. There is normally discussion between these officials prior to a decision being taken by the fiscal.

The child has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971 **s52(2)(j)**

This condition brings Scots law into line with Article 33 of the UN Convention on the Rights of the Child which expects its member states to take appropriate measures to protect children from the illicit use of drugs.

The child has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes **s52(2)(k)**

This condition covers solvent abuse and glue sniffing. It is used rarely.

The child is being provided with accommodation by a local authority under section 25, or is the subject of a parental responsibilities order obtained under section 86 of this Act and, in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest or the interest of others **s52(2)(l)**

This relates to children who are being looked after by the local authority who repeatedly abscond or endanger themselves or others by their behaviour. This might lead to consideration of the need for secure accommodation.

The reporter's decision

Depending on the answers to the following two questions:

- is there sufficient, relevant evidence to support grounds for referral?
- are compulsory measures of supervision necessary?

the reporter may decide to take one of three options.

1. Take no further action on the referral **s56(4)(a)**

If the reporter believes that the answer to one or both of these questions is no, he/she will inform the child, the relevant person and the person who brought the case that no further action will be taken.

This does not mean in every case that nothing has been done. The reporter may have met with the child and parents where it is believed that an offence has been committed by a child, and the child accepts he or she has committed the offence. There may be some agreed form of reparation to the victim – for example, paying back the cost of a broken window from pocket money, or a letter of apology. The child might be diverted to another agency for mediation and reparation work, or receive a police warning.

2. To refer the case to the local authority for advice, guidance and assistance **s56(4)(b)**

There may be evidence available to support the grounds for referral, but the reporter may consider that compulsory measures of supervision are not required. In this kind of situation, a family may be willing to accept advice, guidance and assistance on a voluntary basis and the reporter would refer them to the local authority for this to be provided. Advice, guidance and assistance does not constitute supervision which is compulsory intervention based on a decision of a children's hearing.

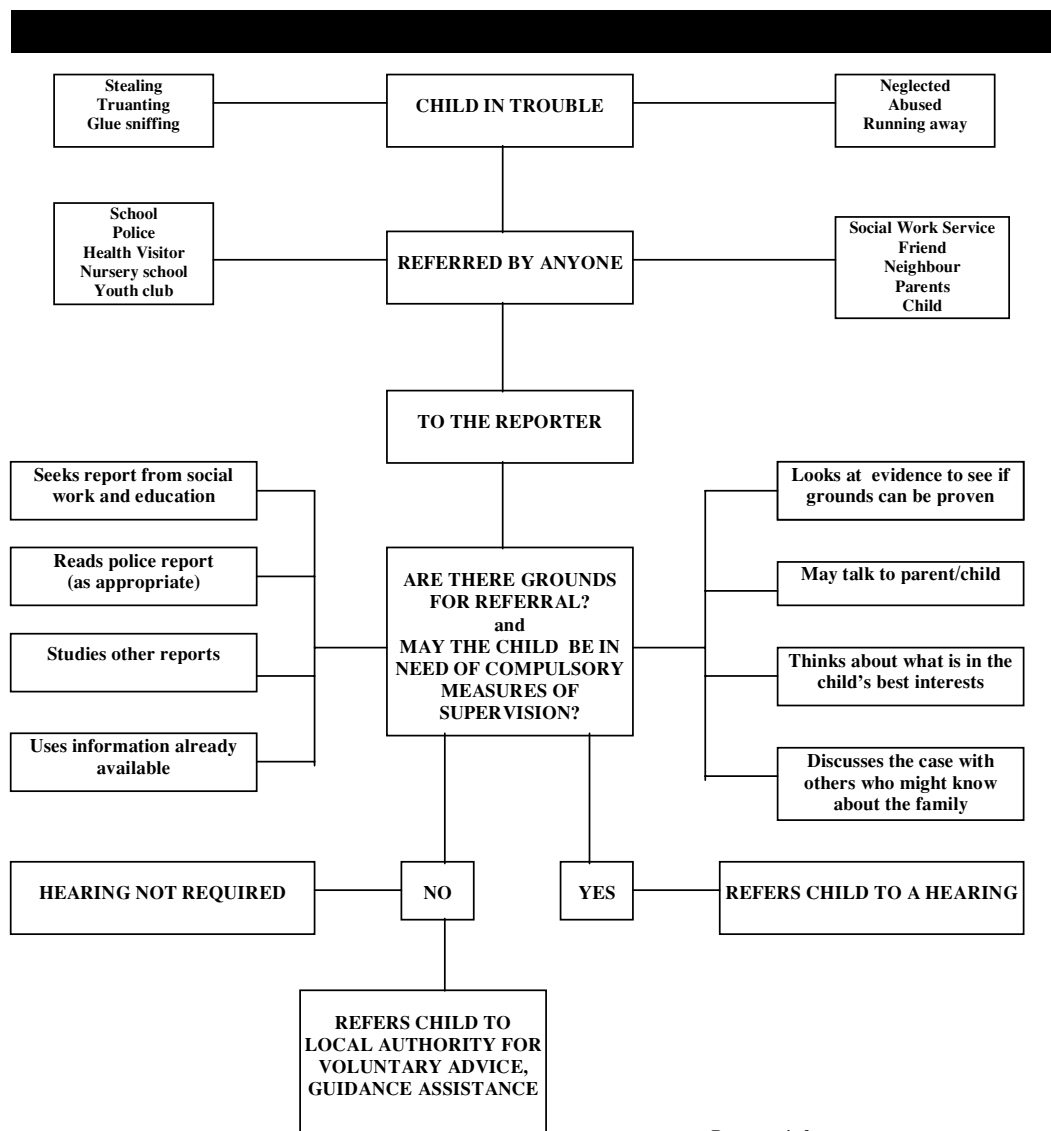
3. Arrange a children's hearing **s56(6)**

If the reporter believes that there are grounds for referral and that compulsory measures of supervision are necessary then he or she will arrange a hearing.

The reporter cannot subsequently refer a child to a hearing solely on the basis of information already considered. *s56(5)*

It is important to bear in mind that once the reporter has referred a child to a hearing, the decision-making passes to the hearing. In some cases, hearings may reach decisions which are different to those the reporter might have reached. However, that is the essence of what was intended by the legislation: a separation of the decision-making functions of the reporter, hearings and courts. Each stage in the process is designed to protect the rights of children and relevant persons and to provide a series of checks and balances.

The referral process



Reporter informs:

- *Child*
- *Relevant person*
- *Local authority or police if referred by one of them of his/her decision and course of action*

Notification of a children's hearing

Once the reporter has reached a decision to call a hearing he or she must whenever possible, give the panel members, child and the relevant persons concerned seven days notice in writing of the time and place of the hearing. The chief social work officer must also be informed when any hearing is arranged. **Rules 6, 7 & 8**

A safeguarder, where appointed, will also receive the same notice. **Rule 14(2)**

If a business meeting or hearing has appointed a legal representative for a child, the legal representative is entitled to the same notification and documentation as a safeguarder. ***The Children's Hearings (Legal Representation)(Scotland) Rules 2002, Rule 4(1) and (2)***

In certain emergency circumstances the seven day rule may be waived, for example when a child is detained by the police because he or she has run away or been moved from a place where he or she is required to stay in terms of a supervision requirement. In these circumstances, the reporter must give verbal notice to the child and relevant person. **Rule 7(5)**

In addition the child and each relevant person must receive a copy of the grounds for referral seven days in advance (except in certain emergency circumstances). This will enable them to have time to prepare for the hearing and seek legal advice if they wish to do so. **Rule 18**

If the child is being referred on the ground of having committed an offence, the reporter will send to the child and relevant person(s) a copy of a leaflet explaining the provisions of the Rehabilitation of Offenders Act 1974 and the 1975 Exceptions Order so that they have time to consider possible consequences of acceptance of the grounds. (See Appendix.)

Documentation for the hearing

Rules 5(1)(2)&(3)

Not later than three days before the hearing the reporter should provide the panel members and each relevant person with the following documents, as relevant:

- a report of a local authority on the child and his or her social background
- the statement of the grounds for the referral of the case
- any judicial remit or reference by a local authority
- any supervision requirement to which the child is subject
- any report prepared by any safeguarder appointed in the case
- any views of the child given in writing to the reporter.

(If the father of a child is living together with the mother of the child as if they were man and wife, then he is also entitled to receive a copy of the documentation). **Rule 5(3)(6)**

Although the present Rules do not permit children to have access to reports, as a consequence of the case of *S v Principal Reporter and Lord Advocate* this position will change. A pilot scheme has been run in three areas and children over the age of twelve have automatically received reports. It is expected that this practice will be rolled out nationally in 2003.

Confidentiality

The contents of the documents must be kept strictly confidential by panel members. They are responsible for keeping the papers safe and must not discuss any information concerning cases outside the hearing. No matter how complex, disturbing or perplexing the problems are, panel members must respect confidentiality and resist the temptation to discuss the case even with their

own families and close friends. Reports should not be highlighted or defaced. The documentation must be returned to the reporter at the end of the hearing. *s44, Rules 5(4)&(5)*

Panel members normally make brief personal notes to help their preparation or to assist during the hearing. These should be brief and hand-written. All personal notes should be handed to the reporter at the end of the hearing so that they can be destroyed.

7 PROCEDURES FOR CHILDREN'S HEARINGS

General duty of panel members

The chairman of the hearing and the other panel members have a legal obligation to follow the procedures laid down by the Act and the Rules. In addition to these legal duties, however, there are other steps in the conduct of a hearing which may be regarded as best practice to help children and families to understand and take part in the proceedings.

The chairman has a degree of discretion over who should be admitted to the hearing and the exact order of the proceedings, but must nevertheless ensure that all the legal requirements are fulfilled and the child and family informed of their rights. *Rule 10(3)*

The chairman of a children's hearing may, at any time during the discussion of the case, adjourn the hearing provided that the hearing sits again on the same day as the adjournment was made.

Rule 10(4)

Privacy of proceedings

A children's hearing is conducted in private. No-one should be present unless they need to be there for the 'proper consideration of the case' or else their attendance is permitted by the chairman of the hearing who has a duty to restrict the number of people present at any one time. This can be quite difficult to achieve in a complex case where it may be necessary to hear from a number of different parties who may assist the decision-making process.

ss43(1) & (2)

The publication of information about proceedings at a children's hearing is prohibited if it is intended that publication will, or is likely to, lead to the identity of the child being revealed, or the address or school of the child. *s44(1)*

This requirement may only be lifted by a sheriff in any proceedings before him, by the Court of Session when it is considering an appeal (under s51(11) of the Act) or by Scottish Ministers, and then only to an extent that is considered to be appropriate. *s44(5)*

Attendance at hearings

The law distinguishes between people who have a right and duty to attend the hearing and those whose attendance may be permitted by the chairman of the hearing (usually in consultation with the other two panel members). A third category covers those people whose attendance would be expected although they have no statutory right to be present.

People who have a right and duty to attend

Panel members

The Act stipulates that there must be a chairman and two panel members present at a hearing with both a male and a female present. **s39(5)**

It is the responsibility of the authority panel chairman to ensure that this requirement is carried out and to determine some method of deciding who will chair the hearing. This method varies from panel to panel. **Rule 10(1)**

When cases are continued, the reporter may inform the chairman of the panel so that at least one of the three panel members attending the original hearing may be at the continued hearing to ensure that relevant issues that were considered by the previous hearing are picked up.

If panel members find on receiving papers for a hearing that they are acquainted with the child and/or a member of the family, the chairman of the panel should be consulted about the best course of action. Depending on the circumstances it may well be that the panel member will be replaced by another panel member for that particular hearing. This is an issue not only about impartiality but also about possible embarrassment to the child or relevant person(s). If a panel member recognises the family at the hearing he/she must declare this information at the outset. The hearing should allow a brief adjournment so that the family may consider in private whether the hearing can go ahead. The decision reached should be recorded.

Child

The child has a right as well as an obligation to attend all the stages of his or her hearing. **s45**

However, a hearing may decide to release the child from this obligation if:

- the case concerns an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 and the child's attendance is not necessary for the just hearing of the case
- in any case where it is considered it would be detrimental to the interests of the child to be present at the hearing of the case.

If the hearing decide that the attendance of the child is not necessary, the reporter must still notify the child in writing of his or her right to be present. **Rule 6(3)**

If the child exercises the right to attend, he or she cannot be excluded from any part of the hearing. **s45(1)(a)**

The reporter has a duty to secure the attendance of a child at the hearing, and any subsequent hearing. **s45(3)**

If the reporter wishes to seek advice from a hearing on possible dispensation of attendance, a business meeting must be called in advance of the hearing. The decision of the business meeting is not binding on the actual hearing considering the child's case. If the child is not present and the hearing feels the presence of the child is required in order to reach a decision, the case may be continued to another occasion when the child will attend. On occasion, special management arrangements may need to be made to protect the child from encountering a particular person or persons, and the hearing may need to be conducted in stages.

If the child refuses to attend the hearing, or is prevented from doing so, steps can be taken to ensure the child's presence. (See Warrants below.) **s45(4)**

Relevant person

A relevant person has a right to attend all the stages of the hearing in relation to his or her child and must be notified that it is taking place. This right is also a duty. If the hearing is satisfied that

it would be unreasonable or unnecessary for the relevant person to be present then the obligation to attend may be dispensed with. *s45(8)*

This is a matter which may also be considered by a business meeting.

A relevant person may be excluded from any part or parts of the hearing for as long as it is in the interests of the child if the hearing are satisfied that:

- they must do so in order to obtain the views of the child. It may be that there is a conflict of interests, or the child will not talk in front of the relevant person, or it may be that the relevant person is answering for the child
- if his or her presence is causing or is likely to cause significant distress to the child. *s46(1)*

After the exclusion has ended, the chairman of the hearing must explain to the relevant person the substance of what has taken place in his or her absence. *s46(2)*

Business meetings

s64 and Rule 4

Business meetings will be arranged by the reporter to:

- consider procedural matters set out in Rule 4(2)
- obtain direction or guidance relating to the performance of his or her duties in relation to the proceedings.

Procedural matters may include:

- releasing a child, in specified circumstances, from obligation to attend a hearing
- releasing relevant person(s), in specified circumstances, from obligation to attend
- determining who is a relevant person for the purpose of notification.

Three panel members come together for a business meeting as they would for a hearing. A reporter is also in attendance.

Arrangements for business meetings (for which notification will be given in writing four working days before the date of the meeting) include:

- notification to the panel members (who do not need to be those who will be on the hearing) of the date, time and place of the business meeting
- notification to the child, relevant persons, safeguarder (if appointed) of the date, time and place of the business meeting
- provision to the panel members, the child, the relevant persons and any safeguarder of notice of matters to be determined, a copy of any relevant documents or information, a copy of the grounds for referral
- advice to the child, relevant persons and any safeguarder of their right to make their views of the matters known to the reporter either orally or in writing (oral views will be written up by the reporter), that the reporter will make these views known to the business meeting, that copies of the views will be given to the panel members, child, relevant persons and any safeguarder.

Before making any determination or giving advice, the business meeting will consider any views received. The determination or decision of a business meeting is not binding on the actual hearing which should formally consider the question of attendance of the child and/or relevant

persons. A copy of the determination or advice will be sent to the child, relevant persons, any safeguarder and any legal representative, if appointed.

An additional purpose of a business meeting may be to consider the appointment of a legal representative. This might be appropriate if the child may be deprived of his or her liberty (that is, be placed in secure accommodation) or if there are matters of legal complexity to be considered which the child may not understand and which would mean that the child could not participate effectively in the hearing. The interim scheme to provide state-funded legal representation for children in hearing, in limited circumstances, arises from the decisions of the Court of Session in the case of *S v Principal Reporter and Lord Advocate*.

The Children's Hearings (Legal Representation)(Scotland) Rules 2002

People who should attend a hearing

The reporter

The reporter has a duty to keep a report of the proceedings of the hearing and therefore is normally present at all stages of a hearing.

Rule 31

Responsibility for the procedural management of the hearing rests with the chairman of the hearing. However, the reporter has a role in supporting fair process without undermining either the decision-making function of the hearing, or the specific role of the chairman. At every stage in the hearing the reporter should alert the chairman to any procedural or human rights requirements that appear to have been omitted or carried out irregularly.

Social worker

A social worker will usually attend the hearing. If in exceptional circumstances a social worker is not present the hearing may proceed in his or her absence. It may be, however, that in these circumstances it may not be possible to reach a decision.

People who have a statutory right to attend

A safeguarder

A safeguarder is appointed to safeguard the interests of the child in the proceedings and has a right to attend all the stages of a children's hearing, including proof hearings in court, continued children's hearings and appeals to the sheriff. Once a decision on disposal has been taken, and any appeal process has been completed, the safeguarder does not have the right to attend review hearings, unless re-appointed for that purpose.

s41, Rule 14(3)

A legal representative appointed either by a business meeting or hearing

A legal representative appointed by a business meeting or hearing. The legal representative may not be excluded. The legal representative may attend the hearing even if the child has been excused from attending.

Representative of child and relevant person

A child and each relevant person has a right to be accompanied by one person to represent him or her at the hearing.

Rule 11(1)

This person may be a friend or relative or a lawyer. Lawyers have the same status as other representatives. There is no entitlement to legal aid for representation at a hearing, although families may seek legal advice before a hearing is convened. Any representative attending the hearing shall assist the child or relevant person whom he or she is representing, in the discussion of the case.

Rule 11(2)

The representative of a relevant person may be excluded from part or parts of the hearing, (with or without the relevant person) for the same reasons as the relevant person. **s46(1)**

The chairman of the hearing has a duty to explain the substance of what has taken place in the representative's absence after the period of exclusion has ended. **s46(2)**

The legislation does not refer to exclusion of the child's representative: this has been taken to imply that the child's representative may not be excluded. If there were, for example, a difficulty about the child's representative's behaviour, the chairman of the hearing would explain the difficulty of proceeding and might suggest a brief adjournment. The child may be accompanied to a hearing by both a legal representative and a representative.

Members of the Scottish Committee of the Council on Tribunals

A member of the Scottish Committee of the Council on Tribunals has a right to be present as an observer. **s43(3)(a)**

Any information or documents which the reporter makes available to the members of the hearing shall be given, on request, to the member of the Council on Tribunals attending the hearing.

Rule 5(6)

The press

'Bona fide' representatives of a newspaper or news agency have a right to attend hearings as observers. **s43(3)(b)**

They are not allowed to publish any information which would lead to a child being identified. **s44**

A hearing may exclude a member of the press from part or parts of the hearing if they believe that it is necessary to do so in the interest of the child in order to obtain the child's views or where the presence of that person is causing or likely to cause significant distress to the child. **s43(4)**

What constitutes 'significant distress' has not been defined and would therefore appear to be a matter within the discretion of the chairman of the hearing.

After the exclusion has ended, a chairman may, but is not obliged to, explain to the member of the press the substance of what has taken place in their absence. **s43(5)**

A police officer or a prison officer

A police officer or a prison officer is entitled to be present at a hearing if he or she has in custody a person who has to be at the hearing. **Rule 12(2)**

It may be necessary for the person escorted to be held in handcuffs for security purposes. This cannot be overruled by the hearing.

Unmarried father of a child who is living with the mother

The father of a child who is not married to the mother but is living with her and does not have charge of or control of the child, may attend hearings and receive documentation. He is not a relevant person. This may arise when the child is living elsewhere, either on a voluntary basis or in terms of a condition in a supervision requirement. The father will not, therefore, have the right to accept or deny grounds for referral or to appeal the hearing's decision. He may be excluded under the same circumstances as a relevant person. **Rules 5(3)(b) & 12(1)**

People who may attend at the discretion of the chairman

There are various other people who may attend hearings. They fall into two categories: those who attend as participants and those who are present as observers. The guiding principle in exercising this discretion is that the numbers attending be kept to a minimum, remembering that the essential character of the hearing is as informal as the circumstances permit, non-intimidating and private.

In addition, when deciding whether to allow the attendance of participants, consideration has to be given to the question: is their presence necessary in order to obtain information to reach a decision in the best interests of the child?

People in this category may include the child's present carers, including relatives, family friends or foster carers.

Other professionals working with the child

Other persons working closely with the child, e.g. teacher, psychologist, may have prepared a report for the hearing and will usually be invited to attend a hearing. They do not have a right to be there and the chairman has discretion to require them to attend only that part of the hearing which deals with their own reports.

CPAC members and clerk to CPAC

CPAC members may attend hearings as observers to monitor the performance of panel members. As with others with discretionary rights of attendance, the final decision in this regard rests with the chairman of the hearing. On occasion, it may be considered that it would not be in the interests of the child to have observers present at a hearing. **Rule 13(a)**

Any information or documents which the reporter makes available to the members of the hearing shall be given, on request, to the member of the CPAC attending the hearing. The documents must be returned to the reporter at the end of the hearing. **Rule 5(7)**

Trainee panel members and others

Trainee panel members observe children's hearings as part of the compulsory pre-service induction course. The norm is three sessions of hearings. The Rules do not permit papers to be sent to trainee panel members in advance of an observation session.

The chairman may also admit children's panel training organisers, social work students, people engaged in research relating to children who may be in need of compulsory measures of supervision, and anyone who the chairman believes has a legitimate interest or justification to attend. **Rule 13(b)(c)(d)**

The reporter will normally inform the panel members who has been invited to attend the hearing and who has arrived. This enables the chairman to check who is entitled to be present. It may be that the chairman will ask that some people (e.g. teachers and other professionals) remain in the waiting-room until an appropriate point in the hearing.

Summary of entitlement to attend children's hearings

A chart summarising the entitlement of people to attend children's hearings is given below.

Right and duty to attend	Should attend	Statutory right to attend	May attend
Three panel members (one of whom will act as chairman of the hearing) Child Relevant person(s)	Reporter Social worker	Safeguarder Representatives of child and relevant persons (one each) Father of child if living as man and wife with the mother of child (even if child living elsewhere) Legal representative <i>Observers</i> The press Member of Scottish Committee of Council on Tribunals <i>Escort only</i> A police or prison officer who is escorting a person who requires to be at the hearing	Other invited professionals Other people who have a close involvement in the child's life and who may be able to contribute to the decision-making process Substitute carers <i>Observers</i> Trainee panel members and children's panel training organisers CPAC members and clerk to CPAC Social work students and researchers Anyone else with a legitimate interest

Beginning the hearing

Panel members prepare on their own in advance of the hearing. In the pre-hearing phase together they consider procedural issues but not those of substance. This is dealt with in the section on Managing Hearings.

The opening stages of a hearing set the tone for what follows. A range of legal duties fall upon the chairman but the other two panel members can make a contribution by a pleasant greeting and active listening. If the opening stage is handled poorly, the whole hearing may be affected.

Introductions

When the family comes into the hearing room, the chairman should introduce him or herself and the others present, at the same time explaining each person's function. This will include introducing any observers present. The chairman should explain that each person present is aware that the proceedings are private and that confidentiality must be respected.

The chairman must check the age of the child to find out whether the child is a child within the meaning of the legislation. (It is not necessary to ask for the child's date of birth unless there is any uncertainty about the accuracy of the information). *ss47(1)&93(2)*

The reporter is obliged to keep a record of the hearing which will include the addresses of the child, the relevant persons and certain other parties. *Rule 31(2)*

Although the chairman is not obliged to check addresses, if there is any uncertainty about the accuracy of the information in the papers, it would be advisable for this to be clarified. This is to enable the reporter to keep an accurate record of the proceedings.

If relevant person is not present

If for whatever reason a relevant person is not present, the Act makes provision for the hearing to proceed without him or her. The hearing should ask the reporter whether the relevant person was properly notified and knew about the hearing, and whether it would have been reasonable to expect him or her to attend. *s65(10)*

If the obligation of attendance of a relevant person has been dispensed with by a business meeting, the hearing must consider the matter afresh and formally dispense with the relevant person's attendance. However, if the panel members consider that the relevant person's presence is essential to the decision, the hearing may be continued to a later date to allow that person to attend. Panel members would need to consider whether it is in the best interests of the child to do so, remembering that a relevant person cannot be compelled to attend. Panel members must weigh up very carefully the risks of delay against the value of a decision without the benefit of the relevant person's view of the situation or of the possible course of action to be decided. Relevant persons are entitled to appeal against the decision, even if not present at the hearing.

A relevant person who has been notified and fails to attend for no good reason may be prosecuted and fined in the sheriff court but this happens very rarely. *s45(9)*

If child is not present

If a child has failed to attend the hearing (or may have been prevented from doing so) and has not been released from his or her obligation to attend, the hearing may issue a warrant for the child to be found, kept in a place of safety and brought to a hearing. *s45(5)*

Explaining the purpose of the hearing

Unless a children's hearing consider the case of a child in the absence of the child, any relevant person and any representative, the chairman has a duty to explain the purpose of the hearing before the hearing proceeds to consider the case. *Rule 20(2)*

Obviously such an explanation will vary depending on the circumstances. A child and family appearing before a hearing for the first time may need more of an explanation and if it is a very young child then any explanation must be in language that can be readily understood. The substance of the explanation would be that it is the duty of the hearing to consider whether the child is in need of compulsory measures of supervision and that these measures involve the appropriate protection, guidance, treatment or control of the child according to the circumstances which face him or her.

It is good practice that any explanation, should include:

- what a hearing is

- the purpose of this particular hearing
- why the child and relevant persons have been summoned to attend
- what reports have been received and will be used as a basis for discussion
- that the child's views are particularly important
- that the child's welfare will be the main consideration in reaching a decision
- that they should question anything they disagree with or don't understand
- that they should feel free to participate in the discussion.

Appointment of a safeguarder

In every case the panel members must consider whether they should appoint a safeguarder in order to safeguard the interests of the child in the proceedings. This could be at any point during the hearing but the need for such a decision to be made may usefully be introduced in the early stages of the hearing.

If the hearing decides to make such an appointment they must give their reasons in writing on the form provided. *s41(1)(3), Rule 14(1)*

The reporter will make available to the safeguarder the same documents and information that the panel members received. *Rule 14(5)*

Explaining the grounds for referral

It is the duty of the chairman of the hearing to explain the grounds for referral to the child and relevant person. This includes explanation of the supporting statement of facts. *s65(4)*

Grounds for referral must be accepted or established before a hearing can go on to consider the child's case. It is, therefore, crucial that the grounds and statement of facts are communicated effectively and accurately, as the child and each relevant person must be asked whether they understand and accept them. Panel members must give time to the process and ensure that children and relevant persons are given a genuine option to accept or not accept the grounds. The chairman's explanation should enable the child and relevant persons to give a definite answer, without entering into discussion, and without putting him or her under any pressure to accept. This is particularly important when a child is referred on grounds of having committed an offence in the light of potential consequences in terms of the Rehabilitation of Offenders Act 1974 and the 1975 Exceptions Order. (See Appendix 1.) The purpose of this Act is intended to give a child who has offended the same benefits as anyone else who has a conviction.

Grounds not accepted

If the grounds are not accepted, the hearing has to decide whether to discharge them or direct the reporter to make application to the sheriff for a finding as to whether the grounds are established. This is generally referred to 'as sending the grounds for proof'. *s65(7)*

Grounds partially accepted

If the child and relevant persons accept part of the grounds, the hearing may decide to discharge those not accepted and proceed on the accepted grounds. There can be no discussion of the discharged grounds even if mention of them has been made in a report and they cannot be a factor in the decision reached. *s65(6)*

Depending on the nature of the grounds and other information available, the hearing may feel it is important to refer the non-accepted grounds to the sheriff for proof, since any decision about compulsory measures of supervision will be influenced by knowing whether or not they are established by the court. For example, if a child and/or relevant persons accepted grounds of failure to attend school but denied a serious assault, it might be considered that knowing whether or not the assault took place was crucial to a decision to be taken on the kind of supervision the child might need. The hearing will usually not proceed at that time on the accepted grounds.

s65(7)

In the event of any difficulties over acceptance the grounds for referral advice should be sought from the reporter. Grounds may be amended with the consent of the reporter in certain circumstances: for example a child may accept that he or she kicked someone but deny also having punched them.

Difficulty in understanding the grounds

The child may be incapable of understanding the grounds because of age or learning difficulty. If this is the case, the hearing must direct the reporter to apply to the sheriff for proof, unless it decides to discharge the referral.

s65(9)

Although the Act refers only to the child in this context, relevant persons too may be unable to understand the grounds and implications of acceptance. If this occurs, the advice of the reporter should be sought as it may be safer to send the grounds to court to be established.

Grounds referred to the sheriff for proof

The hearing asks the reporter to apply to the sheriff clerk for a time and a date when the sheriff can hear the evidence.

s65(7)

The sheriff must hear the application within twenty-eight days of it being lodged. *s 68(2)*

The chairman of the hearing has a duty to explain to the child and relevant person the reasons for referring the case to the sheriff and inform the child that he or she has a right and obligation to be present at the hearing before the sheriff. The child and relevant person are entitled to legal representation and may be eligible for legal aid.

s65(8)

Where the sheriff decides that none of the grounds for referral in respect of the application are established, he or she will discharge the matter together with any warrants connected to it.

s68(9)

If the sheriff is satisfied that the grounds are established then the case is remitted to the hearing for disposal.

s68(10)

Although it was established in the case of *S v Principal Reporter and Lord Advocate* that a child being referred on grounds of having committed an offence, s52(2)(i), is not facing a criminal charge, the grounds must nevertheless be proved to the criminal standard of beyond reasonable doubt. For all other grounds proof is to the civil standard of the ground being established on the balance of probabilities.

s68(3)(b)

If, for example, grounds of the child having been a victim of a Schedule 1 offence are denied but established by a sheriff, the hearing may proceed to consider the case even if the perpetrator is not identified or no criminal proceedings take place, or fail, because of the different standards of proof required. Once grounds are established by a sheriff, hearings can proceed to decide if the child requires compulsory measures of supervision.

The reporter may issue a notice of abandonment which means withdrawing the case e.g. if a witness is unavailable.

Warrant to keep child in a place of safety

When a children's hearing directs that an application be made to the sheriff for proof, the hearing may issue a warrant to keep the child in a place of safety. *s66*

When making a decision about issuing a warrant, the hearing must obtain the views of the child, as well those of any relevant person and of any safeguarder, if attending, on what arrangements would be in the best interests of the child. *Rule 15*

Grounds accepted

If the grounds are accepted, the hearing may proceed to consider the case. *s65(5)*

Summary

The hearing cannot proceed if:

- the child and/or relevant persons do not accept the grounds
- the child does not understand the grounds/or is incapable of understanding them
- the child and/or relevant persons accept the statement of facts but not the ground (e.g. if a child has been staying out late but did not see this as being beyond parental control)

but must decide either to discharge the referral or direct the reporter to apply to the sheriff for a finding as to whether the grounds are established.

If a child or relevant persons accept only part of the grounds for referral then the hearing may:

- proceed on the grounds accepted; **or**
- discharge the case; **or**
- refer the case to the sheriff for a finding on whether any or all of the grounds are established.

When sending a case to the sheriff for proof the chairman must:

- inform the child and relevant person of the purpose of the application
- inform the child that he or she has a right to be present at the hearing in front of the sheriff and is under an obligation to do so.

Consideration of the case

Consideration of reports

It is good practice for the chairman to tell the child and relevant persons what reports the panel members have and check with the relevant persons that they have also received a copy.

The hearing must consider the grounds and any report which has been made available to them; specifically the local authority report on the child and his or her social background, plus any report from a residential establishment if the child is resident there.

s69, Rule 20(3)(a)(b)

Panel members may decide not to proceed with a hearing if they and/or relevant persons have not received the necessary documentation three days in advance (unless it is an emergency hearing) or the child would be at risk, for example, by a supervision requirement or warrant lapsing.

The substance of the reports

The chairman has a duty to inform the child and any relevant person of the substance of the reports which may have a bearing on the decision to be made if it appears that this information is material to the manner in which the case of the child should be disposed of, and that its disclosure would not be detrimental to the interests of the child. **Rule 20(4)**

There are various reasons for this:

- the child may not have received a copy and should be made aware of what is written about his or her circumstances
- a relevant person might not be able to read
- the relevant persons might not have wanted to read the reports
- the relevant persons may have read the reports but may not have understood what was written
- the child and relevant persons should be able to give their opinion about the contents of the reports and challenge possible inaccuracies
- to make clear to the child, relevant persons and others present what the hearing sees as the main issues to be discussed
- other professionals at the hearing may not have seen each other's reports.

Any information given must be in the child's best interests and should not be damaging to the child.

Discussion of the case

It is the duty of the hearing to involve child, safeguarder (if present), relevant person and any representatives in the discussion in order to obtain their views on what arrangements would be in the best interests of the child. **Rule 20(3)(c)&(d)**

Good practice also dictates that panel members should discuss arrangements to be made with the social worker and any others present who can make relevant contributions.

A decision should not be made on an issue which has not been discussed. Sometimes, panel members may consider that part of report might upset the child or other members of the family present. In this situation, the best interests of the child must be the governing principle which will determine whether or not information is disclosed. In deciding that any information should not be disclosed it is not sufficient that panel members may find information embarrassing, distressing or distasteful or that there may be a danger of irritating those people who have prepared the reports or provoking anger on the part of the family. The most important consideration is whether or not the child will ultimately benefit from discussion of the contents of the reports. If 'delicate' information constitutes part of the reason for the hearing's decision then it must be aired.

Adjourning the hearing

Rule 10(4)

If some temporary circumstance prevents panel members from reaching a decision on the case being considered, it is possible to adjourn the hearing to allow the immediate problem to be resolved. This might, for example, be done if:

- a child or family member is very overwrought or distressed
- someone at the hearing feels temporarily unwell
- someone who should be attending is delayed
- panel members wish the social worker to seek some information which could affect the decision (e.g. to find out whether a residential place might be available).

Depending on the situation, the chairman of the hearing will judge whether an adjournment could be beneficial and for how long this should be. It might simply be a matter of waiting a few minutes for everyone to calm down, or, if a longer time will be needed, the hearing could be rescheduled to allow subsequent cases to go ahead. It is competent to adjourn a hearing until any time later the same day. Clearly the practicalities of this will depend on availability of panel members and other cases scheduled. If the hearing cannot restart the same day, then it must be 'continued' until another date.

Obtaining the views of the child

The reporter, when notifying the child of the hearing, will let him or her know that he or she is entitled to express his or her views. At the same time, the reporter will point out that any views that the child gives to the reporter before the hearing is held will also be given to the panel members, to any relevant person and to any appointed safeguarder. ***Rule 6(4)***

The hearing must give the child an opportunity to indicate whether he or she wishes to express any views, and if this is the case, give the child an opportunity to do so. ***s6(2),***

Rule 15

The hearing must not make any decision or take any action unless this opportunity is given to the child. ***Rule 15(3)(b)***

If a legal representative has been appointed by a business meeting or hearing, the legal representative may help ensure that the child's wishes are expressed and made known to the hearing.

The social worker may indicate in the social background report that the child wishes to share his or her views with the panel members. A safeguarder or child's representative may also indicate this and can themselves give the child's views to the panel members on the child's behalf. A child could also put views in writing, on audio or video tape or through an interpreter.

Rule 15(4)

Generally speaking, a child of twelve is considered to be mature enough to form a view but children under twelve may well be able to. Some children over twelve may not be mature enough for a variety of reasons to do so, including the fact that they may have learning difficulties.

s16(2), Rule 15(5)

Having obtained the views of the child, the hearing must take them into account when making their decision. ***s16(2)(c)***

A hearing must:

- give a child the opportunity to indicate whether he/she wishes to express any views
- listen to those views
- have due regard to them.

8 DECISIONS AND REASONS

The panel member's role

A panel member's primary role is to make decisions about whether or not a child requires compulsory measures of supervision. Hearings have far-reaching powers, including the power to remove a child from home, and their decisions have legal force. The aim of a hearing's decision is to intervene positively in a child's life in order to change behaviour or circumstances for the better. The decision-making task is complex and difficult and these responsibilities can never be taken lightly.

Principles for decision-making

The principles of the children's hearings system set out in the section on History and Principles, provide an underlying philosophy for hearings' decisions. In addition, the principles in the Children (Scotland) Act 1995, section 16, establish a broad framework for most of the decisions made by hearings:

- the welfare of the child throughout childhood is the paramount consideration
- the child's views must be sought and taken into account
- the 'no order' principle - hearings and courts need to be certain that making an order will be better for the child than making none at all.

Further themes highlighted earlier also act as signposts in the search for suitable disposals:

- every child has the right to be treated as an individual
- every child has the right to protection from all forms of abuse, neglect and exploitation
- parents should normally be responsible for a child's upbringing and every effort should be made to preserve the family home
- regard must be paid to a child's religious persuasion, racial origin and cultural and linguistic background and any disability
- any intervention by a public authority in a child's life must be properly justified and should be supported by services from all relevant agencies working together.

Protection of the public

s16(5)

Although the child's welfare must normally be the paramount consideration for hearings and courts, the Act nevertheless allows this priority to be waived if there is a serious threat to public safety. This decision, which could allow a child to be kept in secure accommodation, will not be taken lightly: it is only to be made '*for the purpose of protecting members of the public from serious harm (whether or not physical harm)*'. Controlling a child's behaviour may be seen as a protective measure. If a child is to be deprived of his or her liberty, a hearing or business meeting must consider appointing a legal representative.

Decisions open to the hearing

First and foremost, the hearing must decide whether or not the child is in need of compulsory measures of supervision. In other words, some action is necessary to promote the child's welfare and panel members do not consider that this can be achieved by voluntary means.

Once this decision is reached, the hearing has three main options: **s69(1)**

Following consideration of the case, three categories of decision are open to the hearing:

1. to discharge the referral
2. to continue the case to a subsequent hearing in order to seek further information (which may require the making of various kinds of warrant to ensure the child's safety in the interim)
3. to make a supervision requirement (possibly including conditions).

Discharge

If after careful consideration of accepted or established grounds the hearing feels that the child is not in need of compulsory measures of supervision, the referral may be discharged. Panel members may feel it appropriate to offer some information or informal advice (perhaps to suggest the possibility of some voluntary contact with the social work department). However, there is no obligation on the child or family to accept this advice. **s69(12)**

Continue the hearing (make an interim decision)

'Continuing' the hearing actually means postponing the decision to a future date to allow something to happen in the interim. There are various reasons why a hearing might decide to do this:

- *to seek further information* **s69(2)**

If after discussion it is considered that there is not enough information to make a decision, the hearing may be continued to allow this to be provided. If further reports are being requested (e.g. from a psychologist or medical practitioner or specialist assessment service) it is important to specify what particular issues the report provider should explore.

- *for appointment of a safeguarder*

The safeguarder's role is to protect the interests of the child: a safeguarder may be appointed when a hearing is not clear about the child's interests.

- *for further investigation* **s69(3),(4)&(5)**

If further information is needed before a decision can be reached, the hearing may be continued for up to twenty-two days to allow the child to attend or stay at a clinic, hospital or other establishment for the purpose of further investigation. This could entail staying away from home. If a child does not comply with this requirement, a further hearing may grant a warrant to ensure that it is carried out.

- *for appointment of a legal representative*

The Children's Hearings (Legal Representation)(Scotland) Rules 2002, Rule 3

- *to allow someone to attend the hearing*

If the child or anyone notified to attend the hearing does not appear on the stated date, the hearing may be continued to allow them to attend. (This may include granting a warrant to

ensure the child's appearance.) The hearing might also be continued to allow the attendance of someone whose participation will be crucial to the decision (e.g. a divorced father with whom the child is now expressing a desire to live).

- *to send a case for proof* **s65(7)**

If the hearing have decided to send the case for proof, it will continue the hearing pending the outcome. The proof will start within twenty-eight days of the application being lodged. If the sheriff finds the grounds established, he will remit the case to the hearing for disposal. If not, he will discharge the referral and the case will not come back to the hearing.

Warrants when a hearing is continued **s69(7)**

If panel members are concerned that the child may be at risk in the interim period, or if they believe that the child may not attend the subsequent hearing, a warrant may be issued to require the child to be kept in a place of safety. This warrant can last a maximum of twenty-two days. (See also Warrants below.)

The reasons for continuing the hearing should always be explained and some idea given, if possible, of when the family can expect the continued hearing to take place. If a child is away from home, it is also important to make clear what contact, if any, can take place between child and family during the interim period.

Make a supervision requirement **ss70 & 73**

In reaching a decision that compulsory measures of supervision are necessary for a child, the hearing should focus on what this will actually mean in practice and what it is intended to achieve. If a social worker is recommending supervision there should be a child care plan included in the report. This plan should outline the aims of supervision and what will be expected of the child and family. The hearing must be satisfied that making an order will be better for the child than making no order at all. A supervision requirement may require the child:

- to live in a specified place
- to comply with any condition contained in the requirement.

No supervision requirement shall last longer than necessary to promote or safeguard the welfare of the child.

The hearing cannot make a substantive decision unless a social background report has been received from the local authority.

Child's place of residence **s70(3)(a)**

A supervision requirement may specify where the child should live. This could be with one parent rather than the other, with another relative, with a foster carer, or in a residential establishment such as a children's home, a residential school, or, in certain circumstances, secure accommodation.

Panel members must not make a supervision requirement specifying residence other than with a relevant person unless they have received a report from the local authority that:

- (a) the place where the child is to reside and the persons who are to look after the child are suitable to meet his or her needs; **and**
- (b) the necessary checks have been carried out in compliance with Regulation 15 of the Fostering of Children (Scotland) Regulations 1996.

It will obviously be essential to seek the views of the child and family about any proposed placement away from home and to make sure that the plans are explained to them in as much detail as possible. In particular, the question of contact must be discussed. (See Contact below)

Foster care

Under the Fostering of Children (Scotland) Regulations 1996, a child may only be placed with a foster carer who has been approved by the fostering panel of the relevant local authority. The authority must carry out a series of checks on the suitability of the proposed carer(s). These relate to:

- age, marital status, health and personality
- particulars of the carer's house and other members of the household (adults and children)
- religious persuasion, racial origin, cultural and linguistic background
- employment, standard of living and leisure interests
- previous experience of caring for children
- any past criminal convictions
- the outcome of any previous applications to foster.

In recommending the placement of a child with a particular foster carer, the social worker must satisfy panel members that the checks have been carried out and that this placement is in the child's best interests.

Reg 20(6)

Emergency foster placements

Fostering Regs 1996 (reg 13)

In emergency circumstances, the best solution for a child may be a temporary placement in the home of a relative or friend who has not been approved under the regulations. In this situation, if a foster placement appears the most suitable way of meeting the child's needs, a temporary placement may be made once the social work department have interviewed the prospective carer and inspected the home. The carer must also give a written agreement to carry out specified duties in relation to the care of the child. If the child is to remain in this foster home, the full range of checks must be carried out as soon as possible, and, at the latest within six weeks following the placement. If such an emergency placement is being recommended to a hearing, the panel members will wish to have as much information as possible. They may also wish to stress the priority of certain of the checks (for example health and criminal record).

Secure accommodation

s70(9)&(10)

Decisions to place children in secure accommodation are regulated very strictly. Deprivation of liberty falls within the terms of Article 5 of the ECHR and children may require legal representation when decisions of this nature are taken.

Under section 70(9)(b) of the Act, a child may only be placed in secure accommodation if the following criteria are met:

- the child has a history of absconding (running away) and is likely to run away again unless kept in secure accommodation; **and**
- if the child runs away, his or her physical, mental or moral welfare is likely to be at risk; **or**
- the child is likely to injure himself/herself or some other person unless kept in secure accommodation.

A hearing may attach to a supervision requirement a condition authorising a child's placement in secure accommodation. However, the duration is for as long as is necessary as determined by the head of the establishment with the agreement of the chief social work officer of the relevant local authority. A condition of secure accommodation can also be attached to a warrant.

Under the Secure Accommodation (Scotland) Regulations 1996, a supervision requirement with a condition of secure accommodation must be reviewed within three months. This is to ensure that the child's case is reviewed at regular intervals by an independent tribunal and that the condition of secure accommodation is still appropriate.

Where a child who is subject to a supervision requirement with a secure condition attached, has not been placed in such accommodation during the preceding six weeks, the child or any relevant person may request a review of the supervision requirement. The reporter must arrange this review hearing within 21 days of receiving the request.

Emergency placements in secure accommodation

Secure

Accommodation Regs 1996 (regs 6-9)

If the criteria specified in s70(9) apply, the behaviour of certain children not subject to supervision requirements may require them to be placed in secure accommodation. The reporter must be informed immediately and the child must be brought to a hearing within seventy-two hours of notification being received. (In exceptional cases a further twenty-four hours will be allowed.)

Conditions in supervision requirements

Panel members can make their intentions for supervision more specific by adding a condition or conditions to a supervision requirement. Section 70 of the Act gives several examples of what a condition can achieve:

- require the child to submit to a medical examination or treatment
- prevent the child's address being revealed to any named person
- regulate contact between the child and any other persons
- specify a date for review of the requirement.

A condition must be stated separately from the reasons for decision. Child and family have the right to appeal against a condition.

Medical examination or treatment

s70(5)(a)

If a hearing believes that some particular medical examination or treatment is necessary for the child, but for some reason he or she will be prevented from receiving it, a condition requiring examination or treatment can be made. However, the Age of Legal Capacity (Scotland) Act 1991 gives children under the age of sixteen legal capacity to consent to any surgical, medical or dental treatment or procedure so long as they are mature enough to understand the nature and consequences of that procedure. A child cannot therefore be compelled to undergo treatment even when this is specified in a condition.

Withholding the child's address

s70(3)

The hearing can include a condition that the child's address should not be disclosed to any named person or class of persons. Though hearings are unlikely to use this power unless there is a real threat to the child's safety, it can make an important contribution to the protection of the child.

Contact

When a hearing is considering making, varying or continuing a supervision requirement, it must consider whether or a condition relating to contact is required. *s70(3)(b) and (5)(b)*

Article 9(3) of the UN Convention on the Rights of the Child states a child's right to personal relations and direct contact with both parents on a regular basis and the maintenance of regular contact is expressed in Part I of the Children (Scotland) Act 1995 as both a parental right and a parental responsibility. The presumption is that contact between child and parents (and other members of the family) is a basic right which should be protected unless the child's welfare dictates otherwise. Article 8 of the European Convention on Human Rights relates to private and family life and this must also be taken into account when decisions are made on whether contact should be restricted or terminated.

In the majority of cases, the long-term aim will be the return of the child to the family home and it will be crucial to maintain contact while the child is away.

Duty of the local authority to promote contact

s17(1)(c)

Where a child is looked after by a local authority, they have a duty to take steps to promote regular personal contact between the child and any person with parental responsibilities, as far as this is consistent with the child's welfare. Duties in relation to contact thus become an important part of implementation of supervision requirements by the social work department.

Arrangements for contact

When making, varying or continuing a supervision requirement, the hearing has a duty to consider what contact the child should have with his or her parents or any other family members. (Contact should also be considered in relation to child protection orders and warrants.) This will be particularly important for a child who is living away from home, but the condition could also specify contact with, for example, one parent who is absent from the family home where the child is living. Conditions can limit or prohibit contact between the child and any named individual, or specify that it should take place. Note, however, that a supervision requirement only has force in relation to a child and is not binding on an adult or another child. If an adult fails to maintain contact with a child, a condition, therefore, cannot compel him or her to do so. This applies also to siblings.

If no condition is included in a supervision requirement, it is assumed that reasonable arrangements will be agreed between the family and the child's carer and that these arrangements will be overseen by the local authority. If hearings feel some regulation of contact is necessary, they can specify arrangements (where and how often it should take place and whether or not it should be supervised). Care needs to be taken, however, not to impose conditions that are so specific as to be unworkable.

There will be some cases of child abuse where the hearing's main responsibility is the protection of the child. This may entail prohibiting contact with a particular person or persons. In this case, hearings should include a condition in the supervision requirement that the child shall have no

contact with a named individual. At a review hearing, panel members will need to be satisfied that there are no longer risks to the child's safety before contact can be restored.

Discussion of contact at the hearing

Panel members must make sure that the question of contact has always been fully discussed at the hearing. The social worker should be asked to explain any recommendations about contact, which should be set out in the child care plan, and what they would actually mean in practice. The child and parents must have an opportunity to express their views on the arrangements. This means there should be no ambiguity about expectations. If the hearing does not feel that a condition is required, they should, nevertheless, spell out very clearly expectations they have of all parties so that a future hearing can check if these expectations were met.

Decisions about contact are often difficult. There needs to be a balance between the importance of maintaining the relationship between child and family with potential risks to the child's welfare. Hearings focusing on the removal of a children from home are often fraught. Once the decision has been made, it needs to be explained clearly so the family leave the hearing understanding what is going to happen (even if they are not always happy about the arrangements). The chairman will also explain the right to appeal against the condition and the right to request a review of the supervision requirement, including any conditions, after three months.

Specifying a date for review

s70(7)

The hearing may include a condition specifying when the case must be reviewed within the duration of the supervision requirement. This power may be helpful in situations where a particular target or piece of work is being set for the child and the hearing decides that a specific time scale would be helpful. It may also be used when a particular event is occurring in the child's life and the hearing wishes to review the supervision to coincide with that event e.g. a parent being released from prison.

It must be remembered that the local authority may ask for a review to be held at any time. This would normally be the preferred course of action as the social worker is able to monitor the case and call for the review at the most appropriate time. Hearings should not use the power to call an early review as a way of monitoring the case as this should be the responsibility of the local authority and not the hearing.

Attending a hearing is in itself intervention in a child's life and applying the principle of only intervening when necessary in the best interests of the child should help panel members to decide when and when not, to set an early review date.

Other conditions

s70(2)

In theory, panel members may attach any condition they like to a supervision requirement, as long as they believe it to be in the child's interest. Attendance at a day nursery, for example, might be a way of achieving some stability in a young child's life, or participation in a group project could help a teenager to address his offending behaviour. The condition must relate to the child: a hearing has no power to impose conditions on a parent or any other person (though their co-operation may be helpful to the fulfilment of the condition on the child).

Conditions which cannot be implemented

Panel members should be careful not to include a condition which cannot be implemented. For

example, specifying regular attendance at school in the case of a chronic school refuser may be an impossible goal for a child to achieve in the short term and a condition like this would be worthless. In the same way, ruling that ‘Contact should take place on Mondays and Wednesdays between 2 and 4 p.m.’ would be unreasonably prescriptive, allowing no flexibility to take account of changing circumstances. It might be more appropriate just to state for how long and how many times a week the contact should take place.

Communicating the decision and reasons

When panel members are ready to make a decision, the chairman will ask each in turn to give his or her decision and the reasons for it. The chairman will give his or her own decision and reasons and then state the decision of the hearing (whether unanimous or by a majority), and the reasons, drawing on whatever has been said. It is essential that the reasons are explained as clearly as possible: the family may not agree with the decision, but at least they should be clear why it has been made. One of the most impressive features of children’s hearings is that the decisions are made openly and communicated on the spot to child and family: panel members do not retire to consider their decision. This is part of the spirit of openness and participation which lies at the heart of the hearings system.

When the hearing have made their decision disposing of the case, the chairman must inform the child and any relevant person, safeguarder or representative of:

Rule 20(5)

- the decision of the hearing **Rule 20(5)(a)**
- the reasons for the decision **Rule 20(5)(b)**
- the right of child and relevant person to appeal against the decision within three weeks **Rule 20 (5)(c) and s50(1)**
- and, where an appeal is lodged against the decision, of the right to apply for the suspension of the supervision requirement pending the outcome of the appeal **Rule 20(5)(c)**

If an application for suspension of a supervision requirement is made pending the outcome of the appeal, it is the *whole* supervision requirement, with conditions, which is suspended and careful thought must therefore be given to any risks to the child in the meanwhile.

Duration and review of supervision requirements

As a matter of best practice, the chairman should also inform the child, relevant persons and other parties about the duration of supervision requirements and arrangements for review.

The Act states that:

‘no child should continue to be subject to a supervision requirement for any period longer than is necessary in the interests of promoting or safeguarding his welfare’. **s73(1)**

The chairman will advise the child and relevant persons:

- that the supervision requirement cannot last longer than one year and the reporter will normally request a review hearing before that period elapses
- that the local authority has a duty to ask for a review hearing if there is a change in circumstances or if the supervision requirement or a condition is not being complied with
- that the child and relevant persons may request a review of the supervision requirement at any time at least three months after it has been made (or varied or continued).

The child and relevant persons should leave the hearing knowing:

- what decision has been made
- why it has been made
- what the decision will mean in practice
- what compulsory measures of supervision aim to achieve.

Written reasons

As soon as reasonably practicable after the decision has been made, the chairman is required to 'make or cause to be made' a report of the decision and a written statement of the decision of the reasons for it.

Rule 10(5)

Any minority decision and reasons should be recorded.

Best practice is for the chairman of the hearing to undertake the writing of the reasons with the assistance of the other two panel members.

It is essential that the reasons are clear and reflect the discussion during the hearing. The written reasons must be substantially the same as those given verbally to the family although where appropriate they may be expanded. For this reason, it is helpful if the chairman of the hearing or one of the panel members keeps a note as verbal reasons are given. (The family should be informed why a note is being taken at this stage). All three panel members should contribute to writing of the reasons which explain the decision of the hearing as a whole. They will then be signed by the chairman.

The chairman should advise the child and relevant persons that they will receive a copy of the written reasons from the reporter.

Notification of decisions

Rule 21

The reporter is required as soon as reasonably practicable after the hearing (normally five working days) to send to the child, the relevant persons, any safeguarder and the local authority a notice of the decision and copy of any supervision requirement, a copy of the statement of reasons for the decision, and notice of the right to appeal. The reporter should also give notice of the decision to any person with whom the child is residing and, where the information leading to the investigation of the case was given by a police officer, to the chief constable of the police area.

If a supervision requirement is made in respect of a child who is sixteen, or if a supervision requirement relating to a child of that age is terminated, the chief constable of the area in which the child lives must be informed.

Appeals

s51

It is a fundamental principle of the hearings system that decisions made by any court or hearing should be open to challenge. If the child and/or any relevant person disagrees with a hearing's decision, or if they believe the procedure has not been followed correctly, they have the right to appeal (separately or jointly) in writing to the sheriff-clerk within three weeks of the date of the decision being made. A safeguarder may make an appeal on behalf of a child.

At the end of a hearing, the chairman must inform the child and relevant persons of their appeal rights, and also, should they appeal of their right to apply to another hearing for suspension of

the requirement pending the outcome of the appeal. (In this case, the reporter must arrange another hearing 'forthwith' to consider this application.) The child and parents have a right to representation and may be entitled to legal aid. **Rule 20(5)(c)**

An appeal may be made against any disposal by a hearing (i.e. a final decision), against any condition attached to a supervision requirement, or against a warrant. (Appeals against warrants must be heard within three days of the lodging of the appeal and child and parents are entitled to legal aid.) Appeals are not competent against interim decisions by hearings, such as sending a case for proof, appointing a safeguarder, or continuing a hearing for further information.

The sheriff hearing the appeal has power to examine all the reports provided for the hearing, to call for additional reports and to hear evidence from the appellants, the reporter and the writers of any reports. Clearly stated reasons are particularly important in the case of an appeal, as they can explain to the sheriff what was in the mind of the panel members when they made their decision.

Possible decisions by the sheriff hearing an appeal

s51(4)-(6)

When the sheriff decides that the appeal has failed, he or she will confirm the decision of the hearing. If the sheriff upholds the appeal, he or she may:

- discharge the referral
- remit the case back to the hearing for reconsideration
- substitute for the panel members' decision any other decision which they could have made.

This provision, new in the 1995 Act has been used sparingly by the courts.

Historically, the number of appeals against hearings' decisions have been very small, and the number of successful appeals even smaller.

Appeals against decision by sheriff

s51(11)-(15)

The Children (Scotland) Act 1995 provides two routes for appeal by the child, the parents or the reporter against a decision by a sheriff: either to the sheriff principal and then (with his leave) to the Court of Session, or direct to the Court of Session. Appeals to the Sheriff Principal or Court of Session must be made by way of a stated case from the sheriff either on a point of law or in respect of any irregularity in the conduct of the case.

9 DIFFERENT TYPES OF HEARINGS

There are a number of different types of hearings. What follows is an outline of the main types of hearings and the decisions available to them. Panel members are encouraged as part of the pre-hearing preparation to check with colleagues and the reporter what legal options are possible. The special provisions relating to hearings dealing with child protection orders are dealt with later. Warrants are covered in detail later in this section.

New grounds for referral

s.52

Decisions available at first hearings where there are grounds:

- if grounds not accepted by child or relevant person - discharge or send for proof
- if grounds not understood by child - discharge or send for proof
- if grounds are accepted
 - discharge the referral

- continue the hearing for further information (with consideration being given to whether it is necessary to issue a warrant to keep the child in a place of safety)
- make a supervision requirement, with or without condition(s).

Review hearings

s73

Fundamental to the concept of compulsory supervision is the aim to promote change. The hearings system, therefore, has always provided for supervision requirements to be reviewed at least annually, or sooner if requested by someone with the right to do so. Intervention should be proportionate and necessary. Accordingly, the Act provides that:

- no supervision requirement may remain in force for a period longer than one year *s73(2)*
- a supervision requirement ceases to have effect when a child reaches the age of eighteen. *s73(3)*

Circumstances and timing of reviews

The local authority is required to refer the case of a child who is subject to a supervision requirement to the reporter if they are satisfied:

- the requirement ought to cease or be varied
- a condition in the requirement is not being complied with
- the best interests of the child would be served by their applying under section 86 of the Act for a parental responsibilities order, or applying under section 18 of the Adoption (Scotland) Act 1978 for an order freeing the child for adoption or placing the child for adoption, and they intend to apply for such an order. *s73(4)*

Additionally:

- where the local authority is aware that an application has been made or is pending under section 12 of the Adoption Act in respect of a child subject to a supervision requirement, the case must be referred immediately to the reporter *s73(5)*
- if a supervision requirement has been made specifying a place of residence for a child and the local authority is unable to give effect to this requirement, the reporter must be informed within twenty-two days and a review hearing must take place within a maximum of seven days of notification to the reporter than the requirement cannot be carried out. *Children's Hearings (Transmission of Information etc) (Scotland) Regulations*

1996, reg. 4)

A review will also be held:

- if the hearing making the supervision requirement specify a date for review *s70(7)*
- if the child or any relevant person request a review. They may do so at least three months after a supervision requirement is made, continued or varied *s73(6)*
- in a case of urgent necessity when a child subject to a supervision requirement is being transferred from one residential placement to another in the interests of that child or other children. It must be reviewed within seven days of the transfer *s72*
- when a relevant person proposes to take a child subject to a supervision requirement to live outwith Scotland *s73(7)*
- when a child already on supervision accepts new grounds at a further hearing. *s65(3)*

The panel members' task in review hearings

The hearing must consider what has happened since the original supervision requirement was made and decide whether a change is necessary. A suitable starting point is to look at the original reasons for decision and consider whether they are still applicable and whether or not compulsory measures of supervision are still required. As at the initial hearing, decisions will be based on available reports and on discussion with child, family and others present at the hearing. It is appropriate early on in the hearing to ask the person who called the review to explain the reason why this request was made.

Decisions available

The following decisions are available to the hearing:

- terminate existing supervision requirement
- continue the hearing for further investigation if necessary
- continue existing supervision requirement
- vary existing supervision requirement (e.g. by changing a child's place of residence, adding a new condition etc.).

Additional grounds for referral

If a child who is subject to a supervision requirement, is referred to a hearing by the reporter on fresh grounds, the hearing must proceed as with any new grounds but, at the same time, the supervision requirement must be reviewed. *s65(3)*

Child subject to condition of residence in secure accommodation

A review hearing must take place within three months of the condition being made or continued. If the child has not been placed in secure accommodation during the preceding six weeks, the child or any relevant person may request a review of the supervision requirement. The reporter must arrange this review hearing within twenty-one days of receiving the request. The procedure is as at any review hearing. *s75(5) –(6) & Secure*

Accommodation (Scotland) Regulations 1996, regs 11 and 12

Local authority unable to implement residential placement

If a local authority is unable to implement a supervision requirement naming a particular residential establishment in a condition within twenty-two days, the reporter must be informed and must arrange a hearing within seven days of notification. The hearing will review the situation, including the reason why the condition has not been implemented, and decide what action is appropriate in the child's best interests. *s73(4) and*

Children's Hearings (Transmission of Information etc.)(Scotland) Regs 1996, reg 4

Review of case of child arrested by the police

When the reporter is informed by the police that the procurator fiscal is not proceeding with charges against a child whom they have detained in a place of safety and the reporter nevertheless considers that compulsory measures of supervision are necessary, he or she must arrange for a hearing to take place not later than the third day after the information is received. This hearing has two decisions to make:

- whether to grant a warrant to keep a child in a place of safety for the same reasons and subject to the same conditions as under s.66 above

- whether to direct the reporter to arrange a hearing for the purposes of putting grounds to child and parent. (See also Warrants.)

Common practice is for the child to be brought from custody on the first working day. Grounds for referral will have been framed. Given the time-scales – and there are human rights implications in terms of Article 6 – the child and relevant persons may well deny the grounds. The hearing can either discharge them or send them to the sheriff for proof. The hearing will consider whether or not it is necessary to issue a warrant for the child to be kept in a place of safety. The hearing may also consider whether it is necessary to appoint a legal representative for the child for the next hearing.

Review by court of previous establishment of grounds for referral

s85

If new evidence becomes available in a case where grounds for referral have previously been established at court, the child or relevant person may apply to the sheriff to have the established grounds reviewed. If the sheriff decides that none of the original grounds for referral is established, he or she must discharge the referral and can order the supervision to be terminated. Alternatively, an interval before the termination or some variation of the supervision requirement could be specified to allow the child and family time to adjust to the new circumstances.

The hearing will have no part in this process. However, if the sheriff finds the original grounds not valid but decides that a different ground is established, the case can be sent back to the hearing to be dealt with on the basis of the new ground. The legislation is very complex and there have been very few reviews by the courts.

Remits from court

In certain circumstances, the court may send a child's case back to the hearing for disposal:

- when grounds sent for proof have been established **s68(10)**
- when a child under seventeen and a half has pled or been found guilty of an offence in the criminal court (see also Advice Hearings, below) **s49(1)**
- where an appeal against a previous hearing's decision has been upheld. If the sheriff decides to remit the case to the hearing for disposal, he or she is not entitled to give any directions as to how the hearing should dispose of the case. After reconsideration of the case, the hearing might therefore reach the same decision as the previous one. Note, however, that the sheriff is not bound to remit back to the hearing for disposal but may substitute a decision of his or her own. This power has been used very rarely. **s51(5)(c)(i)**
- if in the course of other proceedings involving children (e.g. divorce, parental rights orders, adoption orders, prosecution of parents whose children have failed to attend school) it appears to the court that grounds for referral to a children's hearing exist except for the offence ground (and presumably that there is enough evidence to establish them), then the court has discretion to refer the case to the reporter for investigation. If the reporter considers that compulsory measures of supervision are necessary, he/she will bring the case to a hearing which should treat the grounds as established. **s54**

At all these hearings, grounds are deemed to be established and do not need to be put to the child and relevant persons again. The reporter will explain the background to the case and why it was remitted. The hearing will then proceed to a full discussion.

Decisions available to the hearing

- discharge the referral
- continue hearing for further information
- make a supervision requirement, with or without condition(s).

Advice hearings

In the following circumstances, the courts may (or in some cases must) ask the hearing's advice before making a decision about a child.

Criminal cases

s49

Under the Criminal Procedure (Scotland) Act 1995, when a child (up to the age of seventeen and a half has been prosecuted in court and pled guilty or been convicted, the court may (and if the child is subject to a supervision requirement must) seek the hearing's advice about the most suitable disposal. Rules vary according to the court where the case has been heard, the age of the child and whether or not a supervision requirement is currently in force.

When a hearing's advice is sought, the reporter will explain the circumstances of the case. The case must be discussed with the child and relevant persons and the hearing will decide what advice to offer to the court. The options are:

- to advise the court to remit the child to the hearing for disposal if it is considered that the resources available to the hearing are appropriate for that particular child
- to advise the court to dispose of the case itself. The hearing may wish to suggest which of the disposals open to the court would be most suitable but only if they feel competent to do so.

At the end of the hearing, the chairman must inform the child and family what advice the hearing will be giving and the reasons for it. It is essential that the child and family should be aware that the hearing is being asked for advice only: the court is not bound to take it.

Disposals open to the sheriff

Children under sixteen

- *remit to a hearing for disposal*

This power may be exercised without the sheriff first calling for the advice of a hearing, but most sheriffs will not take this course without first obtaining advice.

- *absolute discharge*

This effectively means that the offender is left without any criminal record.

- *admonition*

This is in effect a warning – it counts as a conviction.

- *deferment of sentence*

The sheriff may defer sentence for any period of time – rarely longer than a year – for the offender to prove that he or she can be of good behaviour; conditions may be imposed. Sentence may be deferred on more than one occasion. At the end of the period of deferred sentence, the offender returns to court. The court's sentencing powers are as they would have been initially.

- *probation*

This is similar to a supervision requirement and the sheriff may add special conditions – period from six months to three years. The offender must be willing to accept the probation order and its terms and can be brought back to court and sentenced for the original offence if the order is breached.

- *fine*

In summary procedure, the maximum fine is £5,000. The fining of children is rare; parents cannot be fined on behalf of their children.

- *caution (for good conduct)*

This means lodging a sum of money which is repaid after a set period of time if no further offences have been committed. This form of disposal is very rare; parents cannot be made to find caution for the child.

- *compensation*

The court may make an order requiring the offender to compensate the victim of the crime. Rarely used in respect of children; as with fines and caution, parents cannot be order to pay compensation on behalf of their child.

- *residential disposals*

In summary procedure, the sheriff can order the child to be detained for a period not exceeding one year in local authority residential care. When the child is released from detention, he or she may be placed under supervision for a specified period. In more serious cases, the High Court of Justiciary, or the sheriff, can order detention for a specified period in a particular place and on such conditions as the First Minister may direct. The child may later be transferred to a young offenders' institution and then to prison but this is likely to apply only to someone convicted of a very grave crime, such as murder or culpable homicide.

Children aged sixteen to eighteen

All the above disposals apply with the exception of the residential disposal. Children over seventeen and a half will not be remitted to a hearing for disposal.

In addition, the following disposals are available:

- *Detention in a Young Offenders Institution*

Persons under twenty-one cannot be sentenced to imprisonment. The only custodial sentence for a person who is over sixteen but under twenty-one is detention in a young offenders' institution. The period of detention must not exceed the maximum period of imprisonment which might otherwise have been imposed. If the young person passes his or her twenty-first birthday in the YOI, then the rest of the sentence is served in prison.

- *Community Service*

The sheriff may require the offender to perform a stated period of unpaid work in the community (forty hours minimum, three hundred maximum). The social work department supervise the order and failure to comply will mean a return to court for an alternative sentence.

Permanency planning

s73(4)(c)&(5)

Under section 73 of the Act, a hearing must be arranged for a child subject to a supervision requirement whenever the local authority intend to apply to the court for a parental responsibilities order or when adoption or freeing for adoption are under consideration. The

hearing will review the supervision requirement and, following discussion with the child and family, must also draw up a report to provide advice to the court. This will focus on the suitability or otherwise of the proposed long term plans for the child and the court is obliged to consider the report before reaching its decision. Further information on permanency planning is in the section on Roles, Responsibilities and Resources.

Surrender to or execution of a warrant

Where a warrant has been issued for the child to be found, kept in a place of safety and brought to a hearing:

- if the child is found, the child will be brought to a hearing on the first working day after being taken to the place of safety *s45(7)*
- if the child voluntarily agrees to come to a hearing after a warrant has been issued, or a parent who has been withholding bring a small child to a hearing agrees to do so, the hearing will take place at the earliest opportunity.

The procedure in the hearing depends on whether it is a new referral with grounds or a review hearing. In both cases, the normal range of decisions applies.

Renewal of a warrant

The circumstances in which hearings may issue a warrant are outlined below. The reporter will arrange for a hearing to take place before the warrant expires. The hearing, in considering whether or not to renew a warrant, will consider the child's current situation, taking into account his or her well-being and any risk factors which may mean that the warrant needs to be renewed. As at any hearing, the views of the child and relevant persons will be sought and taken into consideration and the child's welfare is the paramount consideration of the hearing. It is also very important to consider issues relating to contact and whether or not there should be non-disclosure of the child's address.

Emergency transfers

If a child is required under a supervision requirement to reside in a specified place, and the child must be moved in any case or urgent necessity in the interests of the child, or of other children in the establishment or accommodation, the reporter must be notified and a hearing must be arranged within seven days of the transfer. *s72(2)*

If a child is moved to secure accommodation, the reporter must be informed immediately and a hearing will take place within seventy-two hours of the move (although it may be delayed for a further twenty-four hours in certain circumstances).

s75(1)(2) & Secure Accommodation (Scotland) Regulations 1996,

reg 6

The hearing will review the child's circumstances and supervision requirement, with the normal range of decisions being available.

Suspension of supervision requirement pending an appeal *s51(9)&(10)*

When a child or relevant person appeals against a hearing's decision to impose a supervision requirement, they may also apply to a further hearing to have the requirement suspended pending the sheriff's decision. The reporter must then arrange a hearing as soon as practically possible to consider whether or not the requirement should be suspended. As usual, consideration will be

given to the views of the child and family and the paramount consideration of the hearing will be the welfare of the child. It should be noted, however, that although a family may be appealing against a condition in a supervision requirement, if the supervision requirement is suspended, it is suspended in its entirety. Therefore, careful consideration must be given to any risk to the child. The purpose of the hearing is not to consider the merits of the original hearing's decision but to consider the child's best interests in the period before the appeal is heard. The hearing may either grant or refuse the application. There is no appeal.

10 EMERGENCY PROTECTION OF CHILDREN

The Children (Scotland) Act 1995 established a new framework for the emergency protection of children and introduced a series of new orders. Though wide powers are available to the authorities under this legislation, including the removal of children from home, strict criteria are laid down for the granting of these powers and a set timetable is established for their implementation. In addition, opportunities are available to child and family to challenge decisions at every stage in the process. These procedures are intended to protect the rights of individuals against unjustified intervention in their lives. This section explains what the procedures are and at what stage the hearing becomes involved.

Child protection order

s57

'Any person' believing that a child is in need of protection may apply to the sheriff for a child protection order (CPO). *s57(1)*

The criteria for granting it are as follows:

- (a) there are grounds to believe that the child is being so treated or neglected that he is suffering significant harm, or will suffer such harm, if he is not removed to and kept in a place of safety, or kept where he is presently being accommodated;
- and**
- (b) an order under this section is necessary to protect that child from such harm (or such further harm).

A sheriff may also grant a child protection order to a local authority who suspect that a child is suffering significant harm but their enquiries into the child's situation are being unreasonably denied. *s57(2)*

If the application is for a child protection order, the sheriff can grant no other order. If not recalled, the order lasts for a maximum of eight working days. (Working days are every day except Saturday and Sunday; 25 and 26 December and 1 and 2 January.)

Emergency measures

s61

If it is not practicable for a sheriff to hear an application for a child protection order, and in order to remove a child from an immediate source of danger, a justice of the peace may authorise removal from home or keeping of a child in a place of safety if the basic criteria for the granting of a child protection order are fulfilled. In similar circumstances, the police have authority to remove a child to a place of safety. Both these authorisations will lapse if not replaced by a child protection order within a maximum of twenty-four hours.

What can a child protection order do?**s57(4)**

A child protection order can:

- require any person to produce a child
- authorise a child to be removed and kept in a place of safety
- prevent the removal of a child from a specified place
- prevent the disclosure of a child's location.

Directions by the sheriff**s58**

In granting a child protection order the sheriff is obliged to consider whether any directions are necessary in relation to:

- contact between the child and family members
- the exercise of parental rights and responsibilities (in particular in relation to any examination or assessment of the child).

What happens following the granting of a child protection order?

The complex chain of events which take place once a child protection order has been granted is summarised on the chart on page 73. This also shows the choices being made at the various stages and the different paths followed as a result.

Application for recall or variation of a child protection order**s60(7)&(8)**

Specified persons (child, person having parental rights over the child, relevant person) may appeal to the sheriff within two working days of its implementation to have the child protection order or any attached direction recalled or varied. This application must be heard within three working days of it being made.

Advice to sheriff**s60(10)**

If an application is made to the sheriff to set aside a child protection order, the reporter may arrange a hearing in order to give advice to the sheriff as to whether the order should be continued, varied or set aside. This hearing must be held before the three day time limit for the sheriff to hear the application and may prove to be very difficult to arrange within this time. The hearing will offer advice to the sheriff as to whether the order (or any directions attached to it) remains necessary to safeguard the child's welfare.

The sheriff's options**s60(11-13)**

Having heard the application the sheriff can:

- confirm the child protection order and any direction attached
- vary the order
- give a new direction
- recall the order
- cancel any directions.

The reporter's power to 'liberate' a child**s60(3)**

If at any time before the start of the initial hearing (second working day, see below) the reporter considers that, in the light of further information or changing circumstances, the conditions for granting a child protection order are no longer satisfied, he or she must notify the sheriff who made the order and the person who implemented it of this view, and the order will cease to have effect. This provision covers the situation where the immediate emergency which led to the application for the child protection order has passed and there is no need to keep the child any longer in a place of safety. The reporter may still decide to refer the child to a hearing in due course under normal rather than emergency procedures.

Second working day hearing**s59(2)&(3)**

Unless immediate application has been made to the sheriff to recall or vary the child protection order or the reporter has decided to release the child from the place of safety, an initial hearing must take place on the second working day after the order has been implemented.

Grounds for referral will not be available at this hearing. There will, however, be some form of report - written or verbal - indicating the steps taken; why these steps have been taken; information on where the child is now and - where possible - an assessment of the parent/child relationship. The panel members' task is to decide whether or not the conditions for the making of the child protection order are established (i.e. that they exist). If so, the hearing may continue the order, with or without variation of any directions the sheriff may have imposed. One of the most likely variations is in relation to whether or not there should be contact and the relevant person(s) and in relation to non-disclosure of the child's address.

Eighth working day hearing**s65(2)**

Following further investigation, the reporter may decide that a child subject to a continued child protection order does not need to be brought to a hearing, in which case the order will cease to have effect. Where the reporter considers, however, that grounds for referral exist and that the child who is the subject of the continued child protection order is in need of compulsory measures of supervision, he or she must arrange for a full hearing to take place on the eighth working day after the order was implemented.

The grounds for referral will be put to the child (if present) and relevant persons at this hearing. In most cases, either because of the age of the child, or more probably denial of the grounds, the hearing will need to consider whether to continue and send the grounds to court for a proof hearing or to discharge the case. Given the short time-scales, it is very unlikely that a full social background report will be available to enable the hearing to reach a substantive decision, even if the grounds for referral are accepted by the child and relevant person(s). If the hearing feel that at this stage the child still cannot be returned home, consideration can be given to issuing a warrant for the child to be kept in a place of safety (for up to twenty-two days). The child protection order expires automatically.

Before issuing a warrant to keep the child in a place of safety, the hearing should be satisfied:

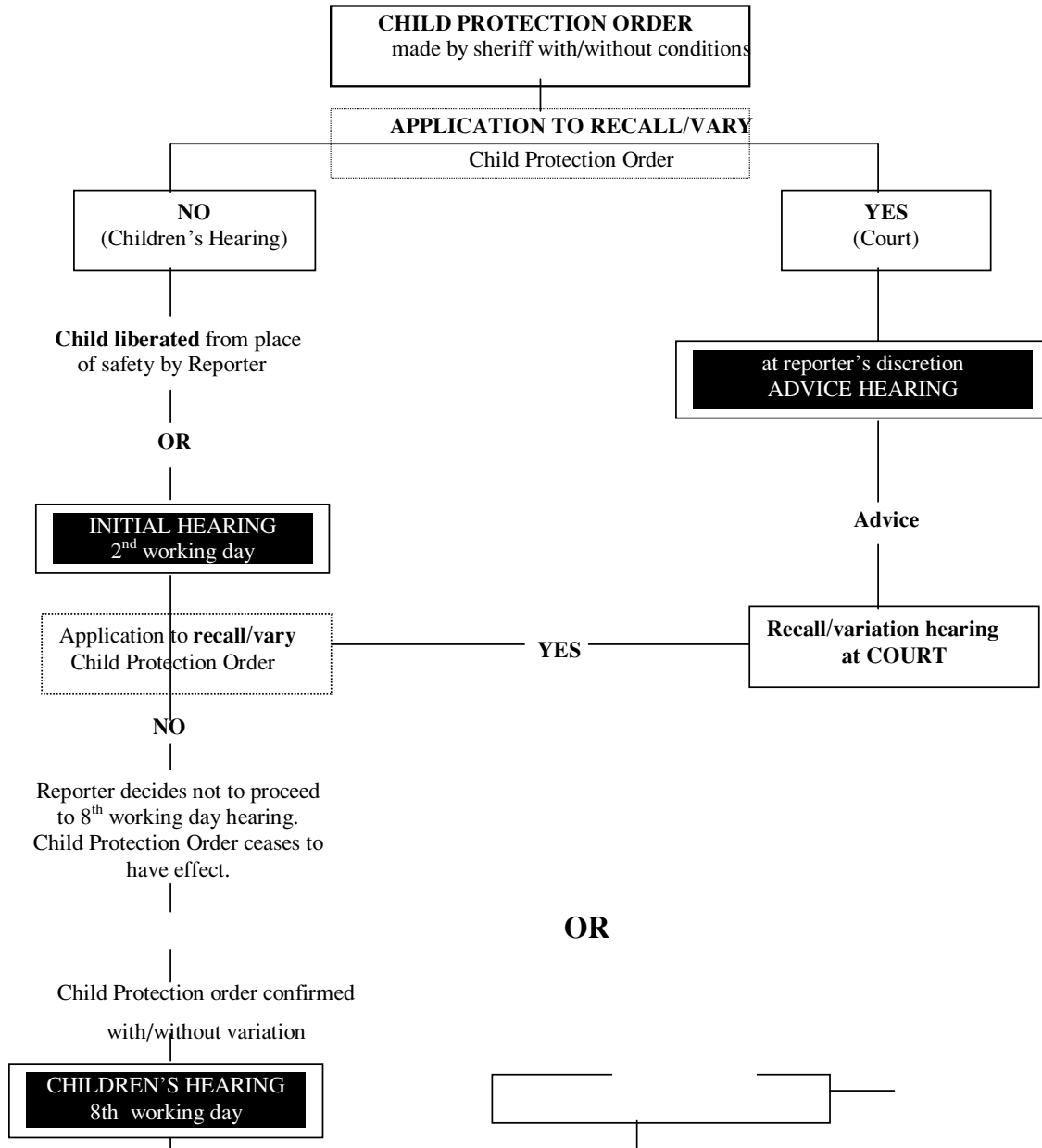
- that the risk in returning the child home is too great
- that the substitute care arrangements are adequate for the child's needs.

If a warrant is being issued, panel members should consider:

- contact arrangements and whether these should be regulated by way of a condition or agreed in discussion so that parents know what contact they can expect to have with each other

- if any conditions should be attached to the warrant: for example, non-disclosure of the child's present address

Because the time-scales are short, a subsequent hearing (or hearings) may take place when renewal of the warrant will be considered if it is due to expire. (See Warrants below.)



Other orders

It is important for panel members to know about two orders for the protection of children introduced in the Children (Scotland) Act 1995, although the hearing is not directly involved in their implementation.

Child assessment order

s55

This is intended to be less interventionist than a child protection order, for use when the local authority have reasonable cause to suspect that a child is suffering 'significant harm' through abuse or neglect and believe that an assessment of the child's health or development is necessary but is unlikely to be carried out without an order. Only a local authority can apply for a child assessment order and the sheriff may grant one if these conditions are satisfied.

The order will specify the date on which the assessment should begin and the duration of the order up to a maximum of seven days. It will require the person looking after the child to produce the child and to allow an assessment to be carried out in accordance with the order. If necessary, the child may be taken to any place and kept there for the purposes of the assessment. If this entails separation from his or her family, the sheriff may make directions regarding contact with them or with any other person. (N.B. s.90 of the Act protects the rights of children to consent or refuse to examination or treatment even when there is an order authorising this). The reporter must be notified of an application for a child assessment order but this will not necessarily result in a child being brought to a hearing.

If an application for a child assessment order has been made but the sheriff considers that the conditions for granting a child protection order are satisfied, s. 55(2) requires him/her to make a child protection order instead.

In practice, since the implementation of the Act in April 1997, very few applications have been made for child assessment orders.

Exclusion order

s76-79

An exclusion order has the effect of removing an alleged abuser from the family home and may be used as an alternative to a child protection order which removes the child. This is intended to reduce the possibly traumatic effects on the child of removal from home, in addition to the suffering already caused by the abuse. Only a local authority can apply to the sheriff for an exclusion order and three conditions must be satisfied before the sheriff grants such an order:

- (a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct of a named person
- (b) that the making of an exclusion order against the named person
 - (i) is necessary for the protection of the child, (irrespective of whether the child is for the time being residing in the family home)
 - (ii) that, if an order is made, there will be a specified person in the family home who can take responsibility for caring for the child and any other member of the family who needs such care.

Before an exclusion order can be made, the named person must have the opportunity to be heard by the sheriff, though if this cannot happen immediately, the sheriff has power to make an interim order to achieve the same result pending the full hearing of the case.

An exclusion order can last a maximum of six months and is thus not intended to be a long-term measure: it can offer a breathing-space while a longer term solution is sought to ensure protection for the child.

If an application for an exclusion order has been made but the sheriff considers that the conditions for granting a child protection order are satisfied, a child protection order may be made instead. *s76(8)*

Although exclusion orders were included as a protective measure for the child, there are so many practical difficulties relating to implementation and protection of the child, and also the rights of the person to be excluded, that in practice they have been used in a very limited number of cases.

Involvement of the reporter

The reporter will receive notification of an application for an exclusion order. The child concerned will not automatically be brought to a hearing, though it is likely that circumstances leading to the granting of an exclusion order would also provide grounds for referral and the need at least to consider compulsory measures of supervision.

11 WARRANTS

Consideration of issue of warrants

In some circumstances where the hearing is not immediately able to dispose of a case, (e.g. when grounds are sent for proof, when further information is being sought, to allow the attendance of a particular person, or at an initial hearing under a child protection order) panel members may have reason to believe that an additional degree of compulsion is necessary in the interests of the child. In this case, the hearing will need to consider granting a warrant. In decisions about warrants, hearings should be guided by the three s16 principles of the Act and must discuss with child, relevant persons and any safeguarder what arrangements would be in the best interests of the child. Issues relating to contact must always be discussed.

A hearing may also consider issuing a warrant if a child fails to attend a hearing, without good reason, or is likely to fail to do so, or if there is cause to believe that the child may be prevented from attending a hearing – usually more likely in relation to younger children.

Warrants are measures which may entail removal of children from home to a place of safety against their will, pursuit by the police, and/or placement in secure accommodation. Panel members should approach these decisions with caution and are unlikely to use their powers unless convinced that the risks to the child, or in some circumstances to others, offer no alternative. In reaching a decision, panel members should weigh the potential risks to the child and whether more harm will be caused by removal from home than by leaving the child in his or her current situation. When a hearing is considering the issue or continuation of a warrant, they should take steps to obtain the views of the child, and endeavour to obtain the views of any relevant person or of any safeguarder, if attending the hearing, on what arrangements would be in the best interests of the child. *Rule 25(1)*

Types of warrants

Different parts of the Act provide for warrants to be issued in the following circumstances.

Section	Reason	Purpose	Conditions	How long	Renewable
45(4)(5)	Child has failed to attend hearing	<ul style="list-style-type: none"> - to find child - to keep child in a place of safety - to bring child to hearing 	No	No time specified, but once the child is found in a place of safety, must come to a hearing immediately, or on first working day and not be in a place of safety for more than 7 days.	Not applicable
66(1)(5)(6)	Where hearing is unable to dispose of the case and have reason to believe that child; - may not attend future hearing, or - may fail to comply with a requirement under 69(3) (further investigation); or - that it is necessary to keep child in place of safety in order to safeguard or promote his or her welfare.	<ul style="list-style-type: none"> - to find child - to keep child in place of safety - to bring child to hearing at times specified in the warrant 	Yes – any but in particular <ul style="list-style-type: none"> - require child to submit medical examination or treatment; - regulate contact with specified persons - subject to criteria being met, order child to be placed in secure accommodation Hearing can order address of place of safety to be kept secret	Max 22 days	Yes – Max number of days child may be kept in place of safety 66 days (Section 47 – sheriff may renew this warrant on application by reporter Sheriff can set date for expiry and make any requirement or condition)
69(4)	Continuation for further investigation where grounds of referral are accepted or established and where child has failed to fulfil requirement under 69(3) (further investigation)	<ul style="list-style-type: none"> - to find child - to remove child to place of safety and keep there - to take establishment for investigation 	Yes – any but in particular <ul style="list-style-type: none"> - require child to submit medical examination or treatment; - regulate contact with specified persons - subject to criteria being met, order child to be placed in secure accommodation Hearing can order address of place of safety to be kept secret	As appropriate, but no longer than 22 days	No
69(7)	Continuation for further investigation where grounds of referral are accepted or established and keeping child in a place of safety: - is necessary in the interests of safeguarding or promoting welfare of child; or - there is reason to believe child may fail to attend subsequent hearing.	<ul style="list-style-type: none"> - to take child to place of safety - to keep child in place of safety 	Yes – any but in particular <ul style="list-style-type: none"> - require child to submit medical examination or treatment; - regulate contact with specified persons - subject to criteria being met, order child to be placed in secure accommodation Hearing can order address of place of safety to be kept secret	Max 22 days	No
63(5)	Child arrested by police and in place of safety and if hearing is satisfied that child; - may not attend future hearing, or - may fail to comply with a requirement under 69(3) (further investigation); or - that it is necessary to keep child in place of safety in order to safeguard or promote his or her welfare.	<ul style="list-style-type: none"> - to find child - to keep child in place of safety - to bring child to hearing at times specified in the warrant 	Yes – any but in particular <ul style="list-style-type: none"> - require child to submit medical examination or treatment; - regulate contact with specified persons - subject to criteria being met, order child to be placed in secure accommodation Hearing can order address of place of safety to be kept secret	Max 22 days	Yes – Max number of days child may be kept in place of safety 66 days.

Child failing to attend a hearing**s45**

If a child fails to appear at a scheduled hearing or there is reason to believe that he or she may not attend a future hearing, the hearing may decide to issue a warrant to ensure the child's attendance. This means that the child will be found and kept in a place of safety until brought to a hearing, which should, whenever practicable, be held on the first working day after the child is taken to the place of safety. The child may not be kept in the place of safety for longer than seven days.

Warrant when hearing unable to dispose of a case**s66**

If a hearing is being continued (e.g. when grounds are sent for proof or to allow attendance at the hearing by someone other than the child) hearings may decide to issue a warrant to keep the child in a place of safety if they are satisfied that any of the following conditions are met:

- a child may not attend a hearing
- a child may fail to comply with a requirement for assessment or investigation
- it is necessary to keep the child in a place of safety to safeguard or promote his/her welfare.

These warrants may last up to twenty-two days and may include conditions relating to medical examination or treatment, contact, the withholding of a child's address or any other condition the hearing may consider necessary. They may also include authorisation to keep the child in secure accommodation if the necessary criteria are met. A warrant may be renewed on further occasions, but under s66 the hearing may not authorise a child to be kept in a place of safety for a period exceeding sixty-six days in total.

Further extension of warrants by the sheriff**s67**

If it appears necessary to keep the child in a place of safety beyond sixty-six days, the reporter can apply to the sheriff for a further extension of the warrant. This can include any of the conditions included in the earlier warrant. No time limit is specified by the Act, but the sheriff must have regard to the child's welfare as the paramount consideration.

Warrant when hearing continued for further investigation**s69**

When grounds have been accepted or established but more information is needed before a decision can be made, the hearing may be continued. If necessary, a warrant may be issued if:

- it is necessary to promote the child's welfare
- panel members believe that the child may not attend the next hearing.

Warrants issued under this section of the Act also cover the situation where a child has failed to attend for some kind of investigation specified by a previous hearing. It may include the conditions specified under s66 above, including authorisation for placement in secure accommodation. It can last a maximum of twenty-two days and may not be renewed.

Review of case of child arrested by the police**s63**

One of the tasks at this type of hearing is to consider whether to issue a warrant for the child to remain in a place of safety under the same conditions as warrants issued under s66. (See also Different Types of Hearings, above.)

Appeals against warrants

s51

The child or relevant person (or both) may appeal against the granting or renewing of any warrant, within twenty-one days of its issue. Legal aid is available on application to the sheriff. Any appeal against a warrant must be heard within three days of being lodged with the sheriff clerk. If the sheriff upholds the appeal, the warrant will be recalled.

12 SUMMARY

This part of the Manual has set out the legal powers and responsibilities imposed on hearings, reporters and others in dealing with children who may require compulsory measures of supervision. The powers available to hearings are extensive and must be balanced with consideration of the welfare of the child and the rights of children and relevant persons.

13 FURTHER READING

- | | |
|----------------------------|---|
| Cleland A (1995) | <i>Guide to the Children (Scotland) Act 1995</i> Glasgow, Scottish Child Law Centre.
Outlines the major changes in law introduced by the Act and how they may be used to promote the welfare of children and young people |
| HMSO (1995) | <i>The Children (Scotland) Act 1995</i> |
| HMSO (1996) | <i>The Children's Hearings (Scotland) Rules 1996</i>
The Rules governing the practical operation of the children's hearings system under the Act. |
| Kearney B (2000) | <i>Children's Hearings and the Sheriff Court, 2nd edition</i>
Butterworths/Law Society of Scotland, Edinburgh |
| The Scottish Office (1995) | <i>Scotland's Children A Brief Guide to the Children (Scotland) Act (1995)</i> Edinburgh, HMSO.
An outline of the purposes, themes and structure of the Act, produced for the benefit of all those who use the law as it affects the care of children. |
| Norrie K McK (1995) | <i>Children (Scotland) Act 1995</i> Green/Sweet & Maxwell, Edinburgh.
A clause by clause analysis of the Act, highlighting important changes and giving guidance on interpretation. |
| Norrie K McK (1997) | <i>Children's Hearings in Scotland</i> Greens/Sweet & Maxwell, Edinburgh
Description of the roles and responsibilities of the people and agencies involved in the hearings system. An introduction to the range of resources and services available for children and families. |

Appendix

THE REHABILITATION OF OFFENDERS ACT 1974

This note explains how the above Act may affect you or your child in the future. If you require any further information or explanation, do not hesitate to contact a reporter.

What is the purpose of the act?

It is intended to limit the time during which a person must reveal that they have a 'criminal conviction', especially when applying for a job.

Is any appearance at a children's hearing a 'criminal conviction'?

Normally no, the appearance is in private and the press, even if present, cannot publish details of any child. Children and their parents do not need to tell anyone about it except for the circumstances defined in the Act. Children's hearings are not part of the criminal court system but records of decisions taken at children's hearings are kept by the police on the national computer system. They cannot formally become a 'previous conviction' in any later appearance before a court but they may be mentioned in background reports to a court.

What does the Act say?

An appearance at a hearing becomes a 'criminal conviction' under this Act if grounds for referral involving the commission of an offence by a child are admitted or are proved before the sheriff.

For how long do 'criminal convictions' have to be revealed?

The Act talks about a 'rehabilitation period' after which the conviction does not have to be revealed. It becomes a 'spent conviction'. This rehabilitation period is six months from the date the grounds were accepted or proved. When this has led to the child being placed on a supervision requirement, it is one year from the date it was made. If the child is on supervision for more than one year, then it is on the date it is terminated. This can be quite complicated if the child has had several appearances over time for various offences. You may want to ask the reporter to give you guidance on this.

AFTER THIS PERIOD, YOU DO NOT HAVE TO TELL AN EMPLOYER ABOUT THE OFFENCES. BUT...

Are there any exceptions to this rule?

Yes. As you can imagine, there are a number of jobs and situations where it is considered that even a child's previous behaviour is very important to know about. There is a list of these stated in law. They are printed below and if any one of them applies, then every 'criminal conviction' must be revealed, not matter how long ago it was.

What will a prospective employer do?

If a child does reveal any 'conviction', then it does not mean that there is an automatic bar to the job, licence etc. Any employer or agency must use the information fairly and sensibly. Many children who have 'convictions' gain employment in the jobs or professions listed below.

'Spent convictions' may be a proper reason for refusing a person employment, dismissing him from his employment, demoting him within his employment or in any other way prejudicing him in his employment if the employment is or relates to the following:

- Judicial appointments
- Employment in the office of the Director of Public Prosecutions
- Employment in the office of a Procurator Fiscal or District Court Prosecutor or in the Crown Office
- Justice's clerks and justice's clerks' assistants, and their equivalent in Scotland
- Constables, police cadets, military, naval and air force police and certain posts involving police work or assisting the police
- Employment in the prison service, including appointment to a Board of Visitors or in Scotland to a visiting committee
- Traffic wardens
- Probation officers
- Teachers in schools or establishments for further education
- Other employment in schools and establishments for further education which involves access to persons under 18
- Proprietors of independent schools
- Employment connected with the provision of social services which involves access to the young, the old, the mentally handicapped or physically handicapped or the chronic sick or disabled
- Employment concerned with the provision of health services, within the National Health Service or otherwise, which involves access to patients
- Employment by a youth club, local authority or other body which is concerned with the promotion of leisure or recreational activities for persons under the age of 18 and which involves access to persons under 18
- Employment within a cadet force, which involves access to those under 18
- Firearms dealer
- Any occupation requiring a licence, certificate or registration from the Gaming Board for Great Britain
- Dealer in securities
- Director, controller or manager of an insurance company
- Any occupation concerned with the management of an abortion clinic or the carrying on of a private hospital or nursing home

- Any occupation concerned with carrying on an establishment for which registration is required by section 37 of the National Assistance Act 1948 or section 61 of the Social Work (Scotland) Act 1968
- Any occupation for which a certificate of fitness to keep explosives is required.

‘Spent convictions’ may be taken into account in considering a person’s suitability for admission to the professions listed in the following paragraph. A person may be refused admission to the roll or register of these professions because of a ‘spent conviction’. Such convictions are also admissible as evidence in disciplinary proceedings against a member of any of these professions. The professions referred to are:

- Medical practitioner
- Barrister (in England and Wales), advocate (in Scotland), solicitor
- Chartered accountant, certified accountant
- Dentist, dental hygienist, dental auxiliary
- Veterinary surgeon
- Nurse, midwife
- Ophthalmic optician, dispensing optician
- Pharmaceutical chemist
- Registered teacher (in Scotland)
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act.

‘Spent convictions’ may be taken into account in relation to any application for the following licences etc:

- Firearms certificates and permits, shotgun certificates and registration as a firearms dealer
- Licences to employ abroad a person under the age of 18
- Certificates of fitness to keep explosives for private use
- Licences, certificates and registration granted by the Gaming Board of Great Britain
- Licences to deal in securities, orders declaring a person to be an exempted dealer and orders declaring a unit trust scheme to be an authorised scheme
- Approvals of abortion clinics by the Secretary of State, and the registration of private nursing homes
- Registration of homes for the elderly, the disabled and the mentally or physically handicapped and (in Scotland) children’s homes
- Certificate of fitness to keep explosives.

PART ONE

Section 3

Managing Hearings

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1 INTRODUCTION

There is a limited amount of time for a hearing to come to a decision that is in the best interests of the child. It is essential therefore that the hearing has a structure which is understandable to all present and which allows everyone to make a contribution. Although the chairman of the hearing has particular responsibilities, the other panel members present also take a share by being aware of what is happening and working as a team. This section will consider ways in which hearings might be managed by looking at them in the various stages: pre, beginnings, middles, endings and post. It should be read in conjunction with the sections on Law and Procedure and Communication.

2 PRE-HEARING

Preparation

Good and thorough preparation is essential. It means that every child and family should receive as fair and well conducted a hearing as possible. Every panel member will have their own way of preparing but the following are some of the issues that should be considered in advance.

- What is the purpose of the hearing?
- Who is likely to be present? Should everyone be present for the beginning of the hearing?
- Will the child need protection from encountering a particular person or persons? If so, should special arrangements be made to see parties separately if their presence in the same room could cause the child distress?
- Have the child and family been to a hearing before? If they have not, more care will need to be given about explaining the purpose of the hearing and what will be happening.
- If there are grounds of referral, how might they best be explained to the child and relevant persons?
- What are the main points in the reports that are likely to affect the hearing's decision? What is going to be the best way to inform people about these? Is there any information that could be detrimental to the child that should not be raised in their presence?
- What might be the best way to find out the views of the child? Consideration should be given to the age of the child and his or her stage of development. Is it likely that a relevant person may need to be excluded?
- Are there likely to be any sensitive issues and, if so, how might they best be tackled?
- If a supervision requirement is being considered, the issue of contact will need to be raised - is this likely to be contentious?
- What options are possible? What decisions are open to the hearing and what are consequences of making each of these decisions?

In order that the hearing flows well it is important to set an agenda for the discussion of the reports. It will also make it clear to everyone present what is to be discussed, provide a structure

for the hearing and will help panel members to give the reasons for their decision at the end. Each panel member should list the main points arising out of the reports that they wish to discuss, remembering that these should be '*material to the manner in which the case of the child should be disposed of...and would not be detrimental to the interests of the child*'. (Rule 20(4) The Children's Hearings (Scotland) Rules 1996.

It may be helpful to cluster these into groups which is logical and should allow the hearing to flow, for example:

- purpose of the hearing
- issues arising out of grounds for referral or, if a review, the reasons for the last hearing's decision
- issues relating to family matters
- how the child relates to the community, e.g. friends
- performance and attendance at school
- issues of contact if considering making or continuing a supervision requirement
- assessment of risk
- options.

Where the case is concerned with the consideration of the renewal of a warrant for a place of safety the main points for the agenda would be what has changed since the last hearing which issued the warrant and to review or insert any conditions.

When they receive notification of the hearing, panel members should observe general guidance and signal before the hearing whether they know an individual. If that knowledge and familiarity is likely to be seen as prejudicial to the conduct of the hearing, the panel member should withdraw.

Before the hearing starts

Panel members should arrive about ten to fifteen minutes before the first hearing is scheduled to start. This helps panel members to gather their thoughts and to start promptly.

Panel members should check with the reporter:

- who is coming and their entitlement to attend (has there been a business meeting to excuse the presence of child/relevant person?)
- if there are there any observers who may attend at the chairman's discretion. The chairman should consider whether their attendance would be detrimental to the best interests of the child. The chairman should also arrange for the views of the child and relevant person to be canvassed before the observer comes into the hearing.
- if any problems are anticipated, e.g. aggressive parents, parent in custody
- what is the purpose of the hearing and the legal options.

In addition, panel members should check with each other:

- whether they all have the same papers - e.g. reports, decisions of previous hearings
- if there are late reports, the best way of managing this for the family members and the hearing generally

- the main points to be discussed at the hearing i.e. agenda items. This should be topic only and not the substance. The detail of the case should not be discussed at this point
- if the child needs protection from encountering a particular person/s whether the hearing should be conducted in stages
- whether everyone should be in the room for the start of the hearing e.g. teacher
- any seating arrangements that might need to be considered
- how they should participate i.e. way in which panel members enter the discussion during the hearing. This may be important if the panel members have not sat on hearings with each other before.

3 BEGINNINGS

The main responsibility for the first part of the hearing falls to the chairman of the hearing but the other panel members should be aware of the process and observe the reaction of the family.

There are certain legal requirements that must be covered (see Law and Procedure) and these should be done as clearly and succinctly as possible so that all understand what is happening and why. Children and families will have a better understanding of the process if the chairman introduces him or herself, the other panel members and the reporter then checks who else is present and makes it clear in what capacity they are there.

After making the basic introductions the chairman should explain that:

- panel members are trained volunteers and independent of everyone present
- the reporter is an independent official who arranged for the hearing to be held
- the reporter decided (if it is a first hearing) after making investigations, that the child should be at a hearing
- during the hearing, the reporter will keep a record of the proceedings and provide factual advice as required but will not take part in the decision making process
- any observer present knows to keep information confidential
- during the hearing there will be a discussion of the reports with the child, family and professionals present - the hearing can decide to talk to the child on his or her own
- a safeguarder, someone who is also an independent person, may be appointed if the hearing think it is necessary to help them come to a decision
- if anyone is unsure about what is being said or going on, people can ask for things to be explained

and check that:

- the papers were received within the specified time-scales
- if there are grounds for referral and they relate to offences by the child, he or she has received information about the Rehabilitation of Offenders Act 1974 sent out by the reporter.

The tone that is set at the beginning can influence how the rest of the hearing is conducted.

If a panel member discovers at a hearing that individuals are known to him or her, he or she should declare this at the outset of the hearing. The chairman should give the family the

opportunity to consider the issue in private and to object. However, knowledge of individuals cannot always be avoided. The existence of possible conflict should be identified and addressed by the chairman at the outset, and the views of the child and family taken into account. A hearing may proceed if it is necessary to safeguard the best interests of the child.

4 MIDDLES

Once the beginning part of the hearing has been dealt with and any grounds put have been accepted, the hearing can progress to consider the reports and discuss with all present what decision is in the best interests of the child. The chairman should start by going over the main points to be raised during the hearing and ask the other panel members, the child and parents if there are any additional issues they think should be included. It is good practice for the chairman in particular to make a note of these as it will reassure the family that their points will be addressed.

The main skills required during this part of the hearing are related to communication and teamwork. Although the chairman has some duties in the middle stages of the hearing many of the legal obligations during this part are for the hearing as a whole. This is when the three panel members should be operating as a team, sharing the load and working together to address all the relevant issues. While the chairman 'holds the reins' each panel member makes a contribution and plays an important part in ensuring that the hearing is productive. There are various things that need to be borne in mind:

- structuring the hearing through the use of the identified issues as an agenda
- keeping the hearing on track and ensuring that it does not drag on unnecessarily or keep going over the same ground. Panel members must remember that they need sufficient and relevant information to reach a decision
- summarising at various points lets people know what stage has been reached. This should include the main points discussed, points agreed on, points not agreed on, and views of the child, family members and professionals
- making sure everyone is given the opportunity to have their say. This may mean asking relevant person/s to leave to allow the hearing to obtain the views of the child. This is the decision of the hearing and should not be given to the child, although the child might request it
- involving all three panel members
- checking that the child and relevant persons are understanding what is happening and being said
- prior to the hearing coming to a decision, asking the child and family if they have any last comments to make. This is important, not only because of fairness but if an appeal is made, the reporter will be able to state that the family had an opportunity to raise any point they wanted the hearing to consider.

Managing difficult situations

Hearings often centre on situations of conflict. Individuals and families will be coping with background tensions that are certainly not lessened by the stress of coming to a hearing. Though it is valuable to know people's true feelings, a hearing dominated by uncontrolled outbursts of aggression and emotion is unlikely to fulfil its primary aim of making the best possible decision about a child's life. Above all, panel members need to keep their own emotions under control.

Strategies to avoid conflict

The following list offers some practical strategies for panel members which may help to reduce this kind of destructive conflict to a minimum.

- Prepare thoroughly in advance and be familiar with all the details of the case, especially names and relationships. Getting these wrong can be very off-putting for the child and irritating for the family.
- Check the physical surroundings. Are there enough chairs? Are there toys in the hearing room in case small children get bored? Are there tissues in case someone is very upset?
- Keep to time if at all possible. Nothing increases tension more than being kept waiting. If the previous hearing has overrun an apology should be given to the next family.
- Consider changing the chairman. It may be helpful to have a panel member who has met the family before chair the hearing (or not, depending on their last encounter!) If one member of the family is known to be loud and aggressive, it may be necessary to have a chairman with a dominant voice. Alternatively, someone with a quiet, gentle approach might have a calming influence. Panel members need to weigh up these possibilities (always remembering that it is possible to get it wrong).
- Limit the numbers in the room. There is a legal obligation on the chairman to ensure that the number of people present is kept to a minimum.
- Set the tone. How the family are received into the hearings room and how introductions are made are crucial to how the hearing develops.
- Be confident of procedures and options. If the case is confusing, check details with the reporter before the hearing starts and do not hesitate to seek clarification on legal points when necessary. A feeling that the panel members know what they are doing, with the chairman firmly in charge will communicate itself to the other people present and help them to settle down.
- Watch body language. People struggling to control themselves will often give clear physical signs (going red in the face, clenching their fists) before bursting into a rage.
- Do not preach to parents. Although the child's problems may be caused by their attitudes or behaviour, they are likely to feel antagonised and act aggressively if they think that panel members are telling them what to do. Panel members should try to focus the discussion about the child.
- Continue the hearing to another date. If one family member is obviously under the influence of drink or drugs and in no fit state to take part, there may be the option to continue the hearing to another date.

- Acknowledge distress. If someone is very distressed panel members should not ignore it but make it clear that they recognise the reasons why and that this is OK. Make an offer to take a short break to allow them time to recover their composure.
- Keeping calm! However nervous and stressed panel members are feeling they should remember it is much worse for the family.

Strategies for coping with conflict that does occur in the hearing

Despite all sensible precautions and planned tactics, conflict will occasionally flare up between individuals at hearings. This may not necessarily be a bad thing. It allows people to let off steam and express their true feelings. However, panel members need to be prepared for the unexpected and develop some strategies for managing conflict. Many of these are to do with good communication skills and are described in more detail in that section. In summary, they involve repeating messages quietly and calmly; being an understanding referee; and for the panel members to be assertive and 'keep their cool'.

Some of the following ideas may be useful in particular circumstances.

- The broken record. One of a panel member's most important tasks and legal obligations is to get across clearly to families what is actually happening, what stages of the process they are at, and what the options are. When people are overwrought, they are often unable to take in what is being said to them on a rational level. This may call for great persistence by panel members in getting their message across. One way of doing this is simply to repeat the message quietly and calmly until it has been received, e.g. to a parent who is still denying the grounds of referral which have been established in court:

Chairman: As you know we are here to discuss Tommy's case in the light of the grounds for referral which were established at court last week.

Parent: But that's ridiculous, none of those things ever happened....

Chairman: Well from the point of view of the panel, Mrs Smith, we have to consider the case on the basis of the established grounds.

Parent: What's the point of talking about them if they are not true?

Chairman: I can only explain to you that from our point of view, the grounds are established and that will be the starting point of this hearing. We hope that you will be willing to participate on that basis.....

And so on. The important thing here is for panel members to hold their ground and to go on repeating the message as calmly as possible until they can move on to the next stage.

- Turn down the volume. This is a technique to respond to loudness and aggression by deliberately speaking more and more quietly. It is hoped that this will have a calming effect, causing the angry person to moderate his or her tone.
- The understanding referee. If a family member indulges in a violent outburst, it will be necessary for a panel member to intervene to stop it after a 'letting off steam' period. This may call for a firm interruption by a panel member, if necessary backed up by the other two, but it is likely to be more effective if it also shows some understanding of the point of view being expressed.

Mr Brown, we can all understand why Ian's behaviour makes you so angry, but we'll probably get further if we try to talk about it a bit more calmly.....

I see you don't agree with the social work department, Mrs Jones, but in order to make a decision we have to hear everybody's point of view....

Anyone would be upset and angry if that had happened to them, Shona, but shouting and swearing isn't the way to help us understand what you think should happen next...

- Keeping their cool. It is essential for panel members not to be drawn into any conflicts that may arise. However hard it may be to remain detached, becoming involved in a heated argument with anyone else at the hearing is not going to be productive. This may mean not reacting to extreme provocation.
- Supporting the child. Witnessing conflict between parents is distressing for a child, and if the hearing becomes very difficult panel members may decide to adjourn the hearing to allow everyone time to calm down, carefully explaining what is happening and why. Once reconvened and the circumstances arise again, the hearing could exclude the parents, or suggest in extreme circumstances to the reporter that the police may need to be called.
- Knowing their own powers. If all techniques for defusing aggression fail and the situation deteriorates completely, the hearing has the authority to take firm action:
 - ask the aggressive person to leave the hearing room. The child and his or her representative cannot be excluded but they may however react to a tactful request
 - adjourn the hearing if the atmosphere is becoming very heated, tense, distressing - it can be a good idea to suggest a break in the hope that everyone will calm down and return in a more amenable frame of mind
 - although incidents where a real emergency occurs and physical violence takes place in the hearing room are very rare, it is important that there should be agreed local procedures for handling such situations. There should be clear understanding of these between the reporter and panel members.

European Convention on Human Rights (ECHR) challenges

If an ECHR issue is raised during a hearing it will need to be considered by the panel members with the decision reached recorded with reasons.

There could be several areas of concern that might be raised.

How the child or family has been treated up to that point in the hearing.

The panel members must consider whether they have acted compatibly with ECHR.

If the answer is 'yes' then the chairman of the hearing should indicate that the hearing is operating in accordance with the Children (Scotland) Act 1995, the Children's Hearings (Scotland) Rules (1996) and good practice guidance.

If the answer is 'no, the hearing should clarify the concern and try to address it. If the hearing cannot agree on the appropriate course of action then the hearing should be continued to another date, unless a decision has to be taken immediately in the best interests of the child.

If the hearing agrees to proceed and the complainant continues to hold the view that their rights have been infringed, the chairman must advise him or her of the right to appeal.

A concern relating to the procedures and legislation within which the hearings system operates

The chairman should indicate that the hearing is operating in accordance with the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Rules (1996) and good practice guidance. If the person considers that there is an ECHR issue, he or she may appeal. Meantime, the hearing will consider the welfare and needs of the child and proceed to reach a decision. Pending any appeal, the decision of the hearing will stay in force, unless another hearing suspends a supervision requirement (if made or continued).

An alleged breach is the responsibility of others

This means the failure on a part of an authority to follow key procedures or to provide essential services to the detriment of the child's basic rights. The hearing should consider whether the alleged breach has a direct bearing on the substance of the discussion in relation to the child. If it does, the hearing then has to consider the alleged breach along with all the other relevant factors which have a bearing on the best interests of the child and proceed to make a decision.

If the hearing considers that the alleged breach is fundamental to the hearing's consideration and if a continuation will be in the child's best interests, the hearing may act to allow the breach to be addressed and additional reports submitted to the hearing.

Making decisions

The hearing is a decision-making process. Although the ultimate aim is to make a disposal, a series of decisions are in fact being made throughout the hearing. These may include who should be present at the hearing, whether or not a safeguarder be appointed and/or whether disputed grounds be sent for proof. Decisions may also be made on when and whether certain parties should be excluded from the hearing or parts of the hearing.

The child and family also have choices to make and it is important that there should be meaningful options. For example, do they accept the grounds or not? Does the child wish to express views or not?

While it is hoped that a consensus will come naturally from the discussion in the hearing, differences of opinion may emerge and these must be carefully considered and discussed. If general agreement proves impossible to reach, there may come a point when panel members must simply impose their views and make a decision even if this is not welcomed by the family, or some members of it. If the process of the hearing has been clear, with explanations and summing up at every stage, the decision should never come as a shock to the child and the family even if they do not agree with it.

In order to make a decision panel members will take into account the following issues.

Information about the case

This is gained from social background reports and discussion during the hearing.

The views of other people

Hearings have a duty to seek the child's views and to encourage participation by parents in the decision-making process. Panel members will also take into account the views given in the reports and those expressed during the hearing.

Panel members' knowledge and judgement

This comes from panel members' own experience of children, families and the community, background reading, knowledge of the hearings system, discussion during training and many other sources. One important aspect is knowing what legal options are open to the hearing in any particular case, and what resources are available to meet the child's needs.

The aims of the decision

Hearings' decisions need to be forward looking, identifying how a child's circumstances can best be changed in order to solve current problems, whilst taking into account possible future developments.

Personal attitudes and values

Inevitably, panel members' personal attitudes and values will colour decisions. Common sense is an essential ingredient here but it is important that panel members are aware of their own prejudices or pre-conceptions. One of the strengths of the system is that the views of all three panel members will contribute to the decision. Panel members should not feel they must agree with their colleagues: it is essential that each panel member makes up his or her mind honestly and independently in reaching a decision.

A framework for decision making

When reaching decisions, panel members should:

- consider: child's basic physical needs
child's developmental level
other relevant information
- identify: which needs are being met
which needs are not being met
- establish: which many needs could be met
whether failure to meet the needs amounts to abuse
- decide: on the course of action which will best meet the child's needs.

Key questions in meeting the needs of young people

When reflecting on the needs of a young person and whether a supervision requirement is necessary, panel members should consider:

- is the young person generally within adult control?
- is the young person being looked after by adults who can use authority consistently, offer suitable example etc?
- does the young person have a home base offering appropriate structure, routine and supervision?
- is the young person attending school and making reasonable educational progress?
- is leisure time suitably structured?
- are there opportunities for reasoned discussion and responsible behaviour?

If the answer to any or all of these questions is no, then panel members will need to decide whether compulsory measures of supervision are required to offer the necessary protection, guidance, treatment or control.

Assessment of risk

Many of the decisions panel members will be making involve balancing risks. In order to do this, they will need to take account of the following questions:

- is it safe for the child to go home?
- do the possibly damaging effects of separation from family outweigh the risks of leaving the child at home?
- may the parents' negative reaction to intervention in their lives actually make the situation worse for the child?

The most important thing for panel members to remember is that if they feel that a child is at risk, they should take whatever steps are necessary to protect that child from danger. If the risks are caused by the child's own behaviour, hearings may also need to take into account the protection of other people. It is important that they remember that compulsory supervision may include measures taken for protection, guidance, treatment or control of a child.

5 ENDINGS

The chairman of the hearing normally asks the other panel members first for their decision and reasons before giving his or her own. Then the chairman informs the family of the hearing's decision and their reasons for it. This should be done clearly and in language that is understood by the child and relevant persons.

It is most important that verbal and written decisions and reasons are communicated accurately and effectively so that everyone at the hearing understands exactly what they mean. This is not an easy task, especially following a complicated hearing.

A set of 'good reasons' is likely to contain:

- some statement of the problem, drawing on various sources of information, often referring to the grounds, the family situation and any particular concerns about the child
- options considered and rejected
- an indication of the outcomes and why this particular decision will help to achieve them
- the type of supervision thought to be necessary i.e. protection, guidance, treatment or control
- an indication why the child needs compulsory measures of supervision.

Good reasons are essential for:

- the child and family, so they can understand why a particular decision has been made
- the local authority, whose duty it is to give effect to any supervision requirement
- the next hearing, so the panel members know why the previous decision was made and what the expectations were

- the sheriff, so that if there is an appeal he or she will know what was in the mind of the panel members
- the reporter, who has to explain the decision on appeal
- the panel members themselves, to focus their minds on their own decision-making process and ensure that they take all relevant factors into consideration.

Decisions and reasons should be forward looking, the starting point for any supervision requirement and a yardstick by which to measure progress when the case comes for review. If a child comes to hearings over a period of time, the reasons from successive hearings will chart his or her progress through the system.

6 POST-HEARING

There is no statutory definition of when the hearing is concluded. However, best practice dictates that the child and relevant persons be asked to leave after the verbal statement of the reasons and the rights of appeal have been given.

Once the child and family have left the hearings room, the chairman should write the reasons or ask one of the other panel members to do so. Ideally, the writing of the reasons should be undertaken by the panel members working as a team. It is not the time for panel members to talk about their holidays and leave the chairman to do all the work!

On occasion something might have occurred during the hearing which one or more of the panel members may wish to have raised elsewhere. Each children's panel has its own specific procedures for dealing with this, but generally speaking it involves the panel member writing a note of the points for the attention of the chairman of the children's panel. He or she will then raise the matter with the appropriate service concerned.

Panel members should take the opportunity to 'debrief' after each hearing. This might be particularly important where the hearing was very distressing or when a panel member felt that he or she was unable to make a contribution. Such sharing and support should enable the panel members to learn from their experiences and become more competent in their task at future hearings.

7 SUMMARY

Although the chairman of the hearing carries specific responsibilities for the conduct of the hearing, all three panel members have a role in ensuring that the hearing flows effectively.

8 FURTHER READING

Norrie K McK (1997) *Children's Hearings in Scotland* Greens/Sweet & Maxwell, Edinburgh
Description of the roles and responsibilities of the people and agencies involved in the hearings system.

PART TWO

Section 1

Child, Family and Society

No child is born a criminal; no child is born an angel he's just born.

(Sir Sydney Smith, Professor of Forensic Medicine, Edinburgh University 1928–53)

Modern parenthood is too demanding and complex a task to be performed well merely because we have all been children.

(Mia Kellmer Pringle, *The Needs of Children*, 3rd edition, 1986)

When we look only at the surface of the child we see only the shadow of the real child. The 'real' child lies unobserved behind the surface features that we can see directly. The real child is a complex network of feelings, thoughts, motivations and psychological processes, none of which can be observed.

(Professor Alan Fogel, Professor of Child Psychiatry, University of Utah)

The level of civilisation attained by any society will be determined by the attention it has paid to the welfare of its children.

(Billy F. Andrews, MD, 1968)

CHILDREN LEARN WHAT THEY LIVE

If a child lives with criticism, she learns to condemn.

If a child lives with hostility, he learns to fight.

If a child lives with ridicule, she learns to be shy.

If a child lives with shame, he learns to feel guilt.

If a child lives with tolerance, she learns to be patient.

If a child lives with encouragement, he learns confidence.

If a child lives with praise, she learns to appreciate.

If a child lives with fairness, he learns justice.

If a child lives with security, she learns to have faith.

If a child lives with approval, he learns to like himself.

If a child lives with acceptance and friendship, he or she learns to find love in the world.

Health Education Board for Scotland, redesigned by permission of Parents Anonymous Inc. USA

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1 INTRODUCTION

The twin focus of the hearings system is that it regards all children as individuals, but also considers them in the context of their families and communities. This section of the manual will provide basic information about child development and some of the social and economic factors that may influence the lives of children growing up in Scotland today.

Children are referred to hearings as the result of problems and difficulties in their lives. The task of those involved in the hearings system is to seek the solutions that best meet each individual child's needs and is in the child's best interests. In making such decisions the welfare of the child is the paramount consideration except in exceptional circumstances when regard must be taken of public safety. In order to do so it is necessary to estimate what the child is able to understand; how past experiences have affected the child; how the child sees the world and what the child needs.

Children are born with different temperaments – the placid happy child, the crying child, the slow to warm to child, and each child has different abilities that may influence the care they receive. Some children are noticeably gifted and this can affect their skills and self-esteem, in others these gifts can remain unnoticed and children never realise their full potential. Some children have disabilities, which they are able to overcome; others struggle and fail.

2 CHILD DEVELOPMENT

As soon as a child is born it begins to develop relationships, initially with mother and the rest of the family. As they grow new relationships are formed and these 'key systems' in the child's life influence his or her development and how they see the world.

Children also learn from birth how to seek the attention they need and how to gain the attention of the important adults in their lives. A loud cry quickly brings mother and nourishment. As with their key systems children learn how to adapt and use 'controlling mechanisms' as they develop from infancy to adulthood.

Infancy

- key systems – immediate family
- controlling mechanisms/reactions – crying

The first year

New-born babies are totally dependent for their physical and emotional needs. The primary developmental task at this stage is building feelings of safety, security and trust in other human beings. It is the quality of the day to day experiences between parent and child that helps children develop physically and mentally. During the first year children are learning how to learn. They make tremendous gains in physical development. Their rate of growth is very great and at no other time in a person's life are the developmental changes from month to month so noticeable. Babies triple their

bodyweight during the first year and add twelve to fifteen inches in length before they are two years old. There are relatively few differences between boys and girls in early physical development.

Children gain control over their bodies in progression from head to foot and from the central part to the extremities. In the first two to three months babies will smile at any face but soon learn to identify their main carer, usually their mother. Around six to nine months children distinguish between family members and strangers; they demonstrate fear or anxiety when approached by a stranger. Securely attached children appear to be more socially skilful, more curious and persistent in approaching new tasks.

Second year

During this period children begin to develop a sense of self worth. This is the time of rapid motor development. They now have the ability to move away from the main carer and begin to explore and find ways to achieve what they want to do e.g. climb for a toy which is on a table. This is also the time when verbal communications begin. Most children by the time they are one year old are using the words 'mama' and 'dada' and a few others. They respond to 'no'. By eighteen months most children have a vocabulary of about ten words and by the age of two can combine words into phrases or short sentences. The vocabulary of the average two-year-old is about three hundred words. As the second birthday approaches, toddlers are more able to perceive things and to imitate behaviour. They enjoy copying what their parents do. This is the time sex roles start to develop. Around eighteen months children become afraid of separation from their parents and cry when they see a parent leave.

Early childhood

- key systems – immediate and extended family
- controlling mechanisms/reactions – tears, food refusal, tantrums, clinging

From the age of two to three and a half children develop a higher level of understanding of themselves and of others. They play alone or in parallel with other children but are not yet ready to share. Between twenty four to thirty six months, children go through a period where extremes are the norm: they are either very aggressive or passive; very helpful or very stubborn. They develop the perfect smile to encourage affection or throw a tantrum when not allowed to be boss. Their moods swing very quickly. This phase of development is often called the 'terrible twos'.

Toilet training starts at this stage and most children are dry during the day by the time they are three.

Three years

From three to five years, children become more efficient and proficient. Play is the major part of their activity and they use intellectual power and imaginative skills as they play. From the age of three, the child's need to be physically near a parent is no longer important. They can feel secure with people they know while in the presence of their parents. This is also a period of increased socialisation and other adults e.g. nursery teachers become other important adults in the child's life.

In general three-year-olds are usually happy and contented, normally friendly and helpful. They can dress and undress themselves, are less rebellious and begin to share. They can give their full name and sometimes their age.

Four years

Four-year-olds begin to have a sense of past and future. Children are talkative and give long explanations in answer to questions. They enjoy silly talk, silly names, silly showing off and they love dramatic and imaginative play. When they misbehave they tend to blame others or deny responsibility. Questions why? and how? are very frequent. They can count by rote and have learnt the names of colours. By this stage all parts of speech have been mastered. They are likely to return to some physical aggression as well as being verbally aggressive. By five there are the beginning signs of individual friendships.

Middle childhood

- key systems – family, neighbourhood and school
- controlling mechanisms/reactions – hyperactivity, anger, aggression, acting out fears in play

Five years

In general at five, children are more self-contained and independent but still remain egocentric. They appreciate the meaning of clock time in relation to their daily programme. Drawing and dramatic play are more realistic but there is still a magical rather than logical quality to their thinking – dark colours are heavier than light; and quantity is visual - try convincing a five year old that the small fat glass and the tall thin glass have the same amount in them if the levels are not the same! They are less frustrated and less aggressive. When angry they may stamp their feet or slam the door. 'I hate you' is a common verbal expression of anger. Verbally five-year-olds sound quite grown-up. They enjoy brief separations from their home and parents and start to develop new role models in teachers and friends. The statement 'but MY teachers said...' alerts parents that their role has changed.

Six years

Six-year-olds tend to be very active. They can become very frustrated and screaming and tantrums may occur. They are good at starting things but poor at completing them. They depend on positive direction and guidance from adults. Not infrequently six-year-olds may go back to behaviour normal at an earlier age - talking baby talk, sucking their thumb. They are more fearful than when they were five and are more conscious of danger. Infectious illnesses are most common at this age.

Seven years

By the age of seven children usually calm down. They are beginning to find ways of coping with their own fears. They can become very absorbed in what they are doing and normally have learnt how to screen out distractions and concentrate on one thing. Their attention span has noticeably increased. Most can tell the time and recite months of the year. Most children have high expectations of themselves and may be

frustrated or disappointed by their own performance. They have not yet learned to lose and frequently cheat in order to win. 'It's not fair' is a common expression at this time. Children at this age will still have difficulties talking about their feelings, instead they act out when they feel strongly. They may be able to talk about things in retrospect.

Late childhood

- key systems – family, neighbourhood, school, peer group
- controlling mechanisms/reactions – anger, aggression, destructiveness, name calling, fears of the future

Eight years

At eight children may be selfish, at times demanding considerable attention and at other times happy and cheerful. They can be impatient with themselves and with others. A sense of connection between past, present and future is emerging and they are interested in their past history. Deductive and inductive reasoning skills begin to emerge. They are developing a sense of humour. When they feel attacked or criticised, they are most likely to respond with hurt feelings and verbal aggression.

Nine years

By the time children reach the age of nine they appear to be more stable and are becoming more independent. They are also more responsible, co-operative and dependable. They are capable of concentrating for several hours. If children cannot read, use basic maths concepts and write by the time they are approaching ten, it is unlikely these skills will be acquired without considerable special effort on the part of the child and the school. Nine-year-olds like to plan ahead and, although they may appear absent-minded, they are usually busy thinking. They like to classify, identify and order information so hobbies that involve collecting are common in this age group.

At nine children are beginning to learn to function within a group and to put their own interests second. They work and play hard. They become interested in competitive sports and learn to lose. They know how their parents expect them to behave and are no longer so dependent upon the immediate presence of an adult. They are more likely to worry than be afraid.

Ten years

At ten children generally seem relaxed and casual. They can participate in discussions of social and world problems. Friends come into direct competition with the family for the child's interest and time. Boys may fight, wrestle, shove and punch to show friendship, while girls hold hands, gossip and write notes to each other. Crying is a common response to frustration.

Eleven years

Eleven-year-olds can show similarities to the early toddler stage and to children around six. They are emotionally unstable, curious, investigative, talkative and

sociable. They have a vast appetite for food and experience and tire easily. This is the age for getting on with brothers and sisters. They dislike work and commonly spend more energy avoiding tasks than it would take to accomplish them. They become angry, shout and slam doors.

Early adolescence

- key systems – family, school, peer group
- controlling mechanisms/reactions – verbal and physical aggression, self assertion, swearing, sarcasm, sexual experimentation

This is seen as the period of transition from childhood to adulthood and teenagers continually remind their parents that they are no longer children. It is a time of rapid biological change – hormonal, sexual development, growth and aggression. Adolescence is accompanied by physical, intellectual and psychological maturation, and is a time when a young person will gain the skills necessary for becoming a successful adult.

Adolescents are moody. They can alternate between being unreliable and being dependable and responsible. As they begin to separate psychologically from the family, they are likely to oppose family rules, values and expectations. Their allegiances change from family to friends. These are turbulent years – both for the young person and the family. Adolescents experience emotions in a particularly intense manner. Most abused and neglected young people come from families where adults have had problems coping with their own emotional states. Interpersonal conflict is inevitable and one of the most needed skills of parents and teenagers is that of conflict resolution.

Some of the physical and emotional changes that mark this stage of life usually start during the pre-teen years, particularly for girls who, on the whole, mature physically two years ahead of boys. In early adolescence, until almost sixteen, the focus is on becoming comfortable with body changes, psychological separations and gaining self-control. Adolescents try to work out questions about themselves: ‘Who am I?’, ‘Where do I belong?’, ‘What can I do?’, ‘What do I believe?’. As very young children feel the world should revolve around them, so do adolescents, seeing their own needs as paramount and other family members’ needs as secondary to their own. This is a time for experimenting, rebelling, testing boundaries and using extreme behaviour.

Twelve years

Twelve-year-olds are less insistent and more reasonable and try to win the approval of others. Their peer group is important to them; they are less competitive. At school they are more able to work independently and they have the capacity for learning facts. Children at twelve have a great enthusiasm for things they like and a hatred of things they dislike. They often assert themselves by talking back to parents. At this stage their self-esteem can be fairly low.

Thirteen years

Thirteen-year-olds spend a lot of time thinking about experiences and long periods of time in front of the mirror reflecting on changes in their physical appearance. Both

boys and girls show an increasing interest in the opposite sex. They are often critical of their parents and will argue about everything. However, if they are interested in school, they will do well as their concentration is more sustained and they have more self-control. They tend not to be demonstrative. Sulking is common and they tend to withdraw physically when angry.

Fourteen years

The tendency at this age is to be outgoing and less withdrawn. Fourteen-year-olds appear to enjoy life. They are friendly at home and away from it. They are capable of looking at both sides of an issue. Physical responses to anger and crying are less common than previously. Leaving the room is common at this age, often with the young person muttering under her/his breath. Because of spurts in physical development at this stage, coupled with an increase in aggressive impulses, parents and teenagers may become locked into patterns of family violence, particularly if the parents themselves have problems with aggression.

Fifteen years

At this age, young people frequently seem to be lazy or indifferent and don't appear to expend much energy. They are experiencing a growing self-awareness, trying to sort out their own potential and limitations.

Sixteen years

By this stage, they tend to be more self-assured and self-reliant. In general there are fewer arguments between them and their parents and they should have their emotions under more control.

Late adolescence

- key systems – peer group, school/work, family, community
- controlling mechanisms/reactions – verbal aggression; self assertion, swearing, sarcasm

During later adolescence, preparing for independence, while still emotionally connected to the family takes precedence. This may also be a period when the family itself is facing life changes – middle life crisis, empty nest, employment changes and caring for elderly parents.

Seventeen plus

This is the stage when many young people leave home and start to live independently of their families. More young people today will continue in some form of higher or further education and others go directly into employment. At this stage although family is still important it is being replaced with new relationships both socially and at work.

Young people cannot successfully develop through adolescence without parenting figures playing a helpful and supportive role. Families need to be able to facilitate the need for independence. Without positive family role models, adolescents are vulnerable and their behaviour may well cause concern. Parents too need a life together to get back to after children leave home!

3 CHILDREN'S NEEDS

Parents are responsible for creating an environment that enables their children to develop physically, intellectually and emotionally. Children are unlikely to fulfil their potential unless their needs are met. In her book *'The Needs of Children'* (first published in 1975), Mia Kellmer Pringle identified, in addition to obvious physical needs, four basic needs which must be satisfied if children are to develop to their full potential. She then went on to consider the likely results in a child's life if these are not met. The quotations that follow contain some of her key ideas. For many of the children, who come to hearings, there has been failure to meet these needs at many levels.

Love and security

The need is met by the child experiencing from birth onwards a stable, continuous, dependable and loving relationship with his parents (or permanent parent-substitutes), who themselves enjoy a rewarding relationship with each other.¹

First and foremost, this need is met by giving the child the security of stable family relationships where attitudes and behaviour are consistent and dependable; the security of a familiar place; and the security of a known routine. All these make for continuity and predictability in a world in which the child has to meet and come to terms with so much that is new and changing.²

When this need [for love and security] is not met adequately, then the consequences can be disastrous later on, both for the individual and for society.³

Anger, hate and lack of concern for others are probably reactions to being unloved and rejected. Vandalism, violence and delinquency are not infrequently an outward expression of these feelings.⁴

A child from a discordant home is liable himself to become emotionally disturbed or antisocial.⁵

New experiences

New experiences are a prerequisite for mental growth as essential to the mind's development as food is for the body.⁶

Some adolescent escapades, which result in crime, are child's play conducted with adult means.⁷

The urban environment is hostile to the young: there is little freedom or safety to explore or experiment, particularly without adult supervision. In seeking - legitimately - for the excitement of new experiences . . . the forbidden, risky or dangerous are liable to acquire an aura of daring and excitement. What may start

¹ Pringle MK., *The Needs of Children* 3rd edition London, Hutchinson, 1986 p35

² p37

³ p81

⁴ p82

⁵ p86

⁶ p41

⁷ p90

*as a lark, giving vent to high spirits and the desire for adventure, can then all too easily turn into vandalism and mindless destruction.*⁸

Praise and recognition

*Because growing from a helpless baby into a self-reliant adult requires an enormous amount of emotional, social and intellectual learning . . . a strong incentive is needed. This is provided by the pleasure shown at success and by the praise given to achievement by adults who love the child and whom he in turn loves and wants to please.*⁹

*If this need is inadequately met or remains unsatisfied, then in the long term the effects are destructive of self-respect and of confidence in tackling new situations, tasks or relationships.*¹⁰

Responsibility

*How can responsibility be given to the immature and to the irresponsible? There is no way out of the dilemma that unless it is granted, the child cannot learn how to exercise it. Like every other skill, it needs to be practised under adult guidance which then gradually diminishes during adolescence and adulthood.*¹¹

*The fact that during adolescence many youngsters rebel against parental standards and seek to find their own way of solving problems in no way changes the need for parents to make clear what they regard as desirable or acceptable standards.*¹²

*The child who is denied opportunities to exercise responsibility will fail to develop a sense of responsibility for himself, for others or for material objects.*¹³

4 CHILDREN'S RIGHTS

Milestones are important to children. Part of the process of growing up is the gradual acquiring of rights and responsibilities. Most people can remember when they weren't allowed to do something because they were too young. But sometimes it seems as if society can't make up its mind about what it means to be a child and there is no rhyme or reason behind the different age limits that are set.

In different parts of the world there are huge variations in attitudes to children and to rights accorded to them. The United Nations Convention on the Rights of the Child, formally adopted by the UN General Assembly in 1989 and ratified by UK in 1991, attempts to set minimum international standards relating to children's civil, political, economic, social and cultural rights. The European Convention on Human Rights (ECHR) was ratified by the UK in 1951 but was not formally adopted into UK law until the introduction of the Human Rights Act in October 2000. ECHR affords rights to all and does not specifically afford rights to children. (See History & Principles.)

⁸ p152

⁹ p53

¹⁰ p98

¹¹ p56

¹² p40

¹³ p103

Views about children have changed over time. In 19th century Britain, very young children were employed in factories and little boys were used as chimney sweeps because they could climb into narrow spaces. Education was not universal nor considered necessary. Children were expected to be seen and not heard. Bad behaviour was dealt with by severe physical punishment.

Now strict labour laws control the hours and conditions of children's work. Corporal punishment is no longer permitted in schools (but there is still heated debate about whether it should be illegal for parents to hit their children). Children's rights to instruct solicitors and to refuse consent to medical treatment are now recognised in law. The principle is gradually becoming accepted that systems and services, such as law, the health service, residential care and so on, should be adapted for children rather than the other way round, though in many cases there is still a gap between principles and practice.

Market forces have recognised children and teenagers as consumers with the right to choose their own styles of dress and entertainment. At the same time there has been a gradual shift towards recognising the rights of children to make choices and to express views about other aspects of their lives. However, the powerlessness of children to do this in certain situations, particularly where they are being abused or bullied, has also been realised. Agencies such as the Scottish Child Law Centre, ChildLine and Who Cares? offer advice to children and young people, inform them of their rights and help them to make their voices heard.

The Children (Scotland) Act 1995 stresses the idea of parental responsibilities towards children rather than rights over them. The importance of seeking and taking into account their views is enshrined in the Act. The hearings system has a crucial part to play in putting these principles into practice. It is important that all involved in the hearings system protect the rights of children, whilst recognising the rights of others.

Children's rights embodied in the Act are the right to:

- be treated as an individual
- have a view
- have that view taken into consideration
- protection from all forms of abuse, neglect or exploitation
- family life whenever possible
- have any intervention fully justified
- attend their own hearing
- know what decisions are being made and why

Children's rights and responsibilities

AGE	RIGHT / RESPONSIBILITY to
From birth	have a bank account; be employed as an actor / actress – with a licence; be referred to a children's hearing – on care and protection grounds
5	start to receive education; be given alcohol in private at home; pay a child's fare on public transport; go to a U / UC film – although the manager can refuse admittance
7	take money out of a Giro account; go to a 'U' certificate film
8	be considered capable of committing an offence – in England you would have to be 10 and 14 in Germany!; go to a PG (parental guidance) film
12	buy a pet; give consent to or refuse adoption; make a will; give consent for medical treatment – applies earlier depending on level of understanding; be considered to have a view to express in legal proceedings; pay full fare on scheduled aeroplane flights – charter flights can be different; apply to the Child Support Agency
13	get a weekday job (2 hours only); a Saturday / Sunday job between 7am and 7pm
14	go into a bar (if the owner does not object) but cannot buy drink; own/ borrow an air rifle – but must be supervised by someone over 21 if in public
15	use a shotgun – if supervised by someone over 21
16	leave school, home, get married; consent to homosexual relationship (but not with someone in a position of trust); pay full fare on public transport; consent to sexual intercourse (girls); buy or be given a drink (not spirits) with a meal at the manager's discretion; buy cigarettes, liqueur chocolates, fireworks; get a full time job – pay income tax and national insurance and get a national insurance number; join a trade union; claim some benefits; instruct a solicitor; get a licence for a moped, tractor; get a glider pilot's licence; buy premium bonds, lottery tickets; open a Giro account; enter a legal contract; apply for a bank account, mortgage, passport; be legally responsible when babysitting (though it is not illegal to leave children with someone under 16 – parents would be held responsible if something untoward happened); join the armed forces (males need parental consent); be a community councillor (in some areas); be dealt with in the district / sheriff court; be sent to a young offender's institution
17	get a licence to drive a car / motor cycle; apply for a firearms certificate; join the armed forces (females); hold a pilot's licence
18	vote in an election; claim income support; get tattooed; place a bet; drink alcohol in a pub; serve on jury duty; see any film; drive a lorry (up to 7.5 tonnes); carry a donor card
21	drive any vehicle; obtain a liquor licence; run a betting shop; stand for election as a councillor / MP; be sent to prison

5 CHILDREN AND FAMILIES

At the centre of the hearings system is the idea that children should, wherever possible, grow up and be looked after in their own families. Parents, if relevant persons, have a right to attend hearings in order to participate in decisions being made about their children, and the focus of any supervision will very often be to support the family.

The Kilbrandon Report¹⁴ (paragraph 35) clearly expressed confidence in the family:

‘The principle . . . is . . . intended, wherever possible, not to supersede the natural beneficial influence of the home and the family, but wherever practicable to strengthen, support and supplement them in situations in which for whatever reason they have been weakened or have failed in their effect’.

The Children (Scotland) Act 1995, in keeping with the UN Convention, underpins the belief that children are best looked after by their parents and emphasises parental responsibilities towards their children rather than rights over them. (See Law & Procedure)

When problems arise in a child’s life, the first attempts should be to support him or her in the context of the family. Only if this fails should alternative measures be sought. The principle stated in section 16 of the Act,

‘no court or hearing should make any order or requirement unless they consider that this will be better for the child than no order/requirement at all being made’

is a protection against unnecessary intervention in the lives of children and families.

Those involved in the hearings system need to be aware of their own attitudes and values. These may be very different from those of the family attending a hearing. There is a need to try to remain non-judgemental, while still retaining the idea that the child’s welfare is paramount – often a delicate balance.

Families in Scotland in the new millennium

At the time of the setting up of the Kilbrandon Committee the conventional family still existed; family meant mother, father, siblings and an extended family nearby for support. In the intervening years the definition of family has changed. If we bear in mind what children need from their parents, then perhaps the structure of the family is not important, but how the family functions, whatever it’s composition, is.

The 1999 figures issued by the General Register Office for Scotland recorded a Scottish population of 5.1 million, of whom 21% were children aged 0-15. The total number of children and the percentage of children in the population were both dropping. Black and minority ethnic groups made up 1.6% of the population.

The legal framework of the children’s hearings system is based on the idea that children belong in families. The following figures show how family structures have changed over the last thirty years:

- in 1970 – 43 adults in 1000 married – in 1999 only 30 in 1000

¹⁴ Kilbrandon, Lord (1964) *Report of the Committee on Children and Young Persons* Edinburgh, HMSO

- in 1970 – 8% of children were born outside marriage. In 1999, the figure was 41% (but over 60% of these births were registered by both parents living at the same address)
- 80% of children live with both their natural parents
- 8% of children live in step-families.

Divorce, separation and new relationships

It is still true, therefore, that the vast majority of children are born into families headed by two parents. However, family break-up has become much more common:

- in 1971 the annual number of divorces in Scotland was 4,500. By 1999 this had risen to 12,000
- one in twenty-five children see their parents divorce before they are aged four; one in four by the time they are sixteen years old
- one in six fathers live apart from their dependant children.

The emotional reality behind these figures is that many children are growing up with experience of the stress and insecurity which inevitably precede family break-up and are then being incorporated into new family structures which often involve a series of complex step-relationships. The Act emphasises the responsibility on parents to maintain personal relations and regular contact with their children following a separation, but in practice this may not be a realistic option.

Lone parents

Many children are now brought up in lone parents households:

- in 1999, 20% of children in Scotland were being brought up in lone parent families
- 6% of women are lone parents compared to 1% of men
- two-thirds of lone parent households were the result of divorce, separation and widowhood
- less than one third were single women
- only 15% of single parent women are in employment compared to 35% overall
- two in three mothers with dependant children work, or are looking for work; twenty years ago it was less than half
- the number of children living in 'worker-less' households is decreasing from 19% in 1997 to 16% in 1999.

For many reasons, especially the problem of arranging affordable childcare, lone parents find it particularly difficult to combine bringing up their children with working outside the home. There is therefore a strong link between lone parenthood and poverty that becomes the day-to-day experience of many children.

The government has introduced initiatives to support mothers seeking affordable childcare through the Education in Early Childhood initiative.

Family tensions

All children have, at different times in their lives, concerns regarding their family and the following suggests some of the concerns which might arise in different family context but these may well overlap.

The 'conventional' family

In the 'conventional' family children worry about their relationships with parents, relationship between parents, with brothers and sisters and between them. A change in family structure – new baby or an older sister/brother leaving home is very unsettling. Sadly many children are drawn in to the problems of the family – they can be piggy in the middle or the scapegoat for problems and many children witness domestic violence, alcohol / drug abuse, and some become the victims of child abuse.

Separation and divorce

Separation and divorce can have a major effect on children. They face the possible loss of parent, or brothers and sisters and also the extended family. They can also feel they cannot speak about the absent parent and may be concerned about seeming to be disloyal. The adjustment to a new family takes time and needs careful handling by the adults concerned if children are not to feel they are left out and that they may now lose any contact they had with the separated parent. Children need permission from all the adults concerned to settle in new families.

Lone parents

Children living in lone parent families may face additional difficulties. If death or divorce has been the cause they may feel guilt and grief. They may feel they have no opportunity to share their feelings because these issues will also affect their parent. They may also feel they are now responsible for their parent. Many children living in lone parent families are more likely to become carers – looking after parents who are depressed, abusing alcohol / drugs and the related illnesses.

Step families

The move to a new family unit also brings difficulties for some children – this can mean a new family; new baby; new everything. They have the problems of fitting in, perhaps getting on with new brothers or sisters. If they are happy in this new unit they may be feeling disloyal - letting a parent down by liking a new partner. The opposites are also true they may feel they are being pushed out in favour of new step brothers / sisters, being scapegoats for problems within the new relationship and losing contact with their extended family.

Single gender families

Some children today are being raised in gay and lesbian families and society has to some extent become tolerant of such new family structures. The success of such families adds weight to the argument that how families function no matter the family structure is more important to children.

Summary

To help them understand and come to terms with changes in their lives children need:

- information
- to keep in contact with their families
- not be drawn into the arguments
- to be allowed to talk, express feelings
- to be listened to!

6 CHILDREN AND SOCIETY

Housing

As a result of changes in housing legislation, between 1979 and 1999 the percentage of owner-occupied houses in Scotland increased from 35% to 66% of the estimated stock of all dwellings, with a corresponding fall in homes being rented. Much of the remaining public housing stock was in poor condition and local authorities have lacked the funding to upgrade and maintain it or to finance new housing projects. Further initiatives have seen much of the local authority housing stock being transferred to housing associations.

Scottish Executive figures show that there were 45,700 homeless applications in 1998-9. Of the applications in 1999/99, one in four were from young single people between the ages of sixteen and twenty-four, very many of whom were not re-housed and ended up in emergency accommodation or sleeping rough. Figures from the Scottish Council for the Single Homeless for 1993 showed that two out of five of young homeless people in emergency accommodation projects had previously been in care.

Poverty

The UN Convention of the Rights of the Child, ratified by the British Government in 1991 states:

‘the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’.

The Convention makes it clear, in order not to be poor, a child has to experience a standard of living that enables her or him to participate in society. Child poverty implies exclusion from main stream society and a denial of opportunities that are available to other children.

Definitions of poverty

Absolute poverty

Refers to the attempt to define a level of income which will support basic minimum needs for food, fuel, housing and clothing. Most people accept that what is regarded as ‘the minimum’ inevitably changes over time.

Relative poverty

Looks at poor people in relation to the society to which they belong. The quotes from Professor Peter Townsend and the EC Council of Ministers illustrate relative definitions of poverty. Relative definitions address the problems that lack of income entail: a lack of adequate diet and housing lead to social isolation and exclusion from activities that are accepted in a particular society.

'Individuals ... can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and have the living conditions and amenities which are customary ... in the societies to which they belong'. (Professor Peter Townsend)

'The poor shall be taken to mean persons, families and groups of persons whose resources (material, cultural and social) are so limited as to exclude them from the minimum acceptable way of life in the member state to which they belong' (European Council of Ministers, 1984)

Unlike many other European countries Britain has no official definition of poverty, or for that matter a definition for a minimum standard of living. However measurements which are commonly used to identify poverty are:

- households living with below 50% of average earnings taken from the Households Below Average Income
- those dependent on Income Support.

The *Breadline Britain* surveys were attempts to get a consensual agreement about what it means to be poor. Those conducting the survey presented a cross section of the public with a list of items, and asked them what they considered to be necessities. Forty-four items were suggested and those named by 50% of those taking part in the survey were considered to be necessities. Anyone who lacked three of the necessary items could be defined as poor.

The last survey was conducted in 1999 and these are some of the conclusions:

- 2 million children (18%) lack at least two basic necessities
- 26% of the population cannot afford necessities
- the proportion of people living in poverty grew from 14% in 1983 to 24% in 1998
- 9.5 million people cannot keep their homes heated, damp-free, decorated
- 4 million people are inadequately fed
- 6.5 million adults are without adequate clothing
- 17% consider themselves to be in absolute poverty
- there is a £30 gap between benefits paid and what people actually need.

The impact of poverty on children

In matters of health there is well documented evidence to suggest that in deprived areas children are more susceptible to childhood diseases and this has an impact on their long term life chances. Recent research also highlighted that children who are socially and economically disadvantaged have a greater risk of being seriously injured in road traffic accidents.

Educationally, children who come from deprived areas are less likely to do well at school and therefore more likely to be disadvantaged as adults.

Using the Department of Social Security's own measure (50% below average income after housing costs), since 1979 the number of people in the UK living in poverty has risen from five million to fourteen million, or 25% of the population. One in three children (a total of 4.3 million) now live in poverty. As well as lone parents, other groups likely to find themselves unemployed or occupying low paid jobs are people with disabilities, people from black and ethnic minority groups and the under twenty-five age group.

The Benefits System

The benefits system is extremely complicated. Because entitlements vary according to individual circumstances, it is not possible here to give meaningful figures in cash terms.

Child benefit

A universal non-means-tested benefit paid weekly to mothers of children up to the age of sixteen (or eighteen if they remain in full-time education). The 2000/1 level was £15 per week for the first child (£17.55 for lone parents) and £10 for subsequent children.

Income support

The means-tested benefit available to all those who are unemployed or unable to work. The amount is dependent on family size and type, with additions for certain claimant groups such as lone parents, disabled people, carers and pensioners.

Working Families Tax Credit

A means-tested, in-work benefit available to low paid workers with children. Applicants must work over sixteen hours per week and it is awarded for twenty-six weeks at a time. Some claimants may be only marginally better off in work than unemployed, owing to the withdrawal of housing benefit and council tax benefit as their incomes increase. The loss of other benefits, such as free school meals, may also reduce their actual disposable income.

The Child Support Agency

Introduced in 1993 to implement the Child Support Act. It determines the level of child maintenance for parents who live apart. Lone parents claiming various types of benefit are obliged to authorise the Child Support Agency to pursue their absent partners for maintenance as a condition of receiving benefit. If payments are not regular, this can cause increased insecurity for the family. There is also evidence of greater tension between former partners. Fathers required to pay higher levels of maintenance may no longer be able to afford to visit their children as often as before and lose contact with them. The absent parent's new second family may also suffer as a result of the increased demand for maintenance payments.

The Social Fund

This was introduced in 1988 to replace the old system of single payments. Two-thirds of payments are dispensed in the form of repayable loans. Payments are made to meet essential items and for living expenses in emergencies. The annual budget is cash-limited and applications that meet the required criteria may be refused if the money has already run out.

Young people

The options for young people aged between sixteen and seventeen are either to remain in education, to get a job or to enter a training scheme where they will be paid an allowance. (In many parts of the country, there is a shortage of places.) The large numbers of this age group without employment have no automatic entitlement to benefit and will receive support only in cases of extreme hardship. Many of them have no financial means of support apart from family or friends. The eighteen and twenty-four age group are entitled to reduced levels of benefit.

Religion, race, culture and language

The Children (Scotland) Act 1995 places a duty on local authorities and others to consider the religion, race, culture and language of children when making arrangements for their care. These new legal duties reflect the importance of recognising the diversity of the Scottish population. The following information is aimed at providing an understanding of some of the areas which may affect a child and when discussing the placement of ethnic minority children.

The Act refers specifically to local authorities to: *'have regard so far as is practicable to the child's religious persuasion, racial origin, cultural and linguistic background'*. This duty is placed upon local authorities and courts (Sections 17, 22, 95), but this may be an issue for panel members when considering the long term care of a child.

Religious persuasion

This refers to the child's religious persuasion not the parents. It refers to the system of beliefs and faith that a child is brought up with or adopts. However those taking decisions about a child should *'have regard (as far as is practicable) to any wishes of the child's parents'*.

Racial origin

This can be the child's own country or area or that of their parents, grandparents or ancestors, their culture, their language etc. The more usual term is 'ethnic origin'.

Language

This term means the language of common use within the family. For some children in Scotland English is not their first language.

Culture

This refers to the shared habits and beliefs including values and social norms as well as family structure, ceremonies, dress, diet, music etc.

Racial identity

It is important for all children to develop a positive self-image and, for children from ethnic minorities, this includes a positive racial identity. It can be undermined by negative messages from the white society about being 'black':

- research has shown that children as young as two are aware of racial differences
- it is important to acknowledge the child's needs will be different
- children may also face racism within the 'care environment'
- most carers of ethnic minority children are white.

Racism

This is the term used to describe prejudice and discrimination towards black and minority people on the basis of their skin colour, culture, language and religion. Racism exists in Scotland today and takes many forms – graffiti, verbal and physical attacks, bullying and harassment.

Sectarianism

Sectarianism stems from strongly held views about religion and can take the same forms as racism. Traditionally in Scotland it is associated with divisions between Catholic and Protestants. It is also present in anti-Semitism and in divisions between the Asian communities.

Asian culture - general

Family

- Traditionally extended family, daughters leave home to live with husband's family
- Traditionally decisions taken together as a family
- Family responsibilities more important than individual wishes

Religion

- Pakistan is an Islamic state and most Pakistanis are Muslim
- Most Indians are Hindu, but also a large number of Sikhs, Muslims, Christians and also Jains and Parsees
- Most Bangladeshis in Britain are Muslim

Language

- there are about 20 main languages
- languages used by the main groups in Britain include Urdu, Gujarati, Punjabi, Hindi, Bengali, Tamil and Malay

Hindu culture

Hindu religion

- Often defined as a way of life rather than a religion
- Worship (Puja) centred on the home - performed by eldest member of the family, and this part of the home should not be entered unless invited to do so
- The temple – Mandir is also a centre for worship and these shrines usually face towards the rising sun.
- After worship visitors may be offered fruit or sweets – it is impolite not to accept.
- Worship Brahma – the Creator; Om - God; Vishnu – the Preserver and Shiva – the Destroyer
- The scriptures are called Vedas
- Hindus believe in rebirth or reincarnation and the new life will be determined by how the current life is led
- All adult Hindus are usually cremated – only children under five are buried
- The eldest son (no matter how young) is expected to take the lead
- The caste system determines social position :
 - Brahmin - the priestly caste
 - Kshatriya - the warrior or ruling caste
 - Vaishya - the farmer, merchant and craftsman caste
 - Shudra - the servant caste

Hindu festivals

- **DIWALI** festival of lights at the end of October - this is a special time for children who receive toys and clothes - Diwali is the start of the Hindu New Year and is celebrated with fireworks
- **HOLI** - festival of colours celebrated in March - celebrated by the buying and throwing of natural dyes
- **NAVRATI** - autumn festival - 10 days of celebration - devotional music and religious processions

Hindu food

- Most Hindus are vegetarian and orthodox Hindus will not eat fish or eggs
- Those who are non-vegetarian restrict the diet to chicken and lamb
- The cow is a sacred animal
- Orthodox Hindus do not smoke or drink alcohol
- Special emphasis on personal hygiene, methods of cooking and eating food

Hindu dress

- Women wear saris or shalwar
- Married women wear a red spot on their forehead and some wear a streak in their hair parting

Hindu names

- All Hindus have a first name followed by their father's name and ending in the surname e.g. Amul Rakesh Munshi
- On marriage a girl adopts her husband's name and surname
- The title Shri (Mr) and Shrimati (Mrs) are sometimes used

Muslim culture

Muslim religion

- Islam governs not only religion, morality, but also social, economic and political relationships
- The Mosque is the centre of religious and community life, animals are not permitted within the Mosque
- There are five pillars of Islam
 - the declaration of faith – Kalima
 - five daily prayers at appointed times - Namaz
 - 2% of man's wealth given to the poor - The Zakat
 - fasting during Ramadan - Roza
 - making a pilgrimage to Mecca - Hajj
- Holy book is the Koran or Qur'an
- At birth prayers are said into the child's ear by her/his father (baptism)
- Shaving of a child's head within a month of birth
- Circumcision of boy children
- It is a requirement to bury as quickly as possible usually within 24 hours – cremation is forbidden

Muslim festivals

- Eid-ul-Fitr - loosely equated to Christmas; Eid-ul-Adha loosely equated to Easter
- These festivals are extremely important and in Britain more and more employers etc. are allowing leave from work to celebrate these festivals
- Marriages are mostly arranged by the families

Muslim food

- Pig in all forms is forbidden
- Meat not ritually slaughtered is forbidden, can eat Kosher meat
- Foods containing lard is unlawful
- All alcoholic drinks forbidden
- The correct etiquette is to eat with the right hand

Muslim dress

- Most women wear the shalwar and kameez
- Women keep their legs covered
- Strict Muslim women will not speak to men outside their family

Muslim names

- The naming system is complex and has many variations
- Women do not adopt their husband's name; therefore there can be many names in one family
- Men usually have two or more names the first being a religious title with origins in the Koran – Allah, Mohammed, Shad, Ullah
- The second a personal name – Rafiq, Bashir
- Sometimes there is also a family name – Shah, Chaudrey, Khan
- It is disrespectful to address a Muslim by his religious name alone – the personal name can be used alone but the use of the full name is more polite and formal.

- Muslim women traditionally have two names – a personal name – Ayesha, Kulsun; followed by a female title – Begum (Mrs) or Bibi (Miss)

Sikh culture

Sikh religion

- The youngest of the world's religions
- There are two categories of Sikhs - Saihajdhris (the apprentices not required to be very orthodox) and Amritdharis (must keep rigidly to their religion and observe the 5k's)
 - Kesh - long hair
 - Kanga - comb
 - Kara - steel bracelet
 - Kirpan - small sword or dagger
 - Kachha - special undergarment
- The Holy book is the Guru Granth Sahib and the temple the Gurdwara
- Sikhism asserts equality and brotherhood
- Sikhs are cremated and ashes scattered in a river or the sea,

Sikh festivals

- A number of feast days are held during the year to celebrate the birthdays of the ten Gurus
- Sikhs also celebrate Diwali
- The most important festival is Guru Nanak
- The April festival of Baisakhi commemorates the formal institution of the Sikh community

Sikh food

- Most Sikhs eat meat but not Kosher or Halal
- All intoxicants forbidden
- Smoking is forbidden

Sikh dress

- The Turban has no religious significance but does have a practical use. It holds up uncut hair which does have religious significance. It is considered a symbol of authority and responsibility.
- Women wear the shalwar and kameez
- Wedding bangles and ring have the same significance as British wedding rings.

Sikh names

- All Sikh men take the name Singh (lion) and women Kaur (princess)

- All Sikhs have a personal name followed by Singh or Kaur and then the name of the subcaste – Sandhu, Sondh – although sometimes the subcaste name is dropped.

Buddhist culture

Buddhist religion

- The faith centres on Buddha and is a way of life and a religion
- To become Buddha prayer, meditation, retreats and virtuous conduct is essential
- There are Four Holy Truths
 - Suffering is universal
 - The cause of suffering is desire
 - Suffering will end by awakening from ignorance and seeing truth (Dhamma)
 - Dhamma is achieved by taking the middle way between self indulgence and self denial
 - No killing, lying, stealing
 - No sexual misconduct
 - No use of intoxicating substances

Buddhist festivals

- Commemoration of Buddha's birth, death, Enlightenment and First Sermon.

Buddhist food

- Varies according to individual belief
- Fasting days New Moon and Full Moon

Chinese culture

Chinese religion

- background of ancestral worship
- most Chinese have an altar or shrine in their home
- way of living governed by an ethical code
 - Ying - Human Kindness
 - "Yi" - Integrity
 - Li - Courtesy
 - Tze - Wisdom
 - family education very important

Chinese festivals

- New Year - end of January beginning of February and each New Year carries the name of an animal - children receive 'lucky money in a red packet'
- Moon Festival - middle of August - moon cakes are made and children have lanterns at night
- Lion Dance - chases away bad luck and attract good luck - performed at big ceremonies e.g. weddings, opening a business moving into a new house

- Dragon Boat Race - held on 5th day of 5th lunar month (June or July)

Chinese food

- like to eat freshly prepared food
- eat all foods

Chinese dress

- no restrictions
- red is lucky, black is unlucky

Chinese names

- surname or family name is written first
- surnames relate to family's village area
- after the surname there are usually two personal names

African and Caribbean cultures

- Black Africans in Britain are mainly from Nigeria
- West Indians from the Caribbean

African and Caribbean Religion

- most African are Islamic
- African Christians have formed sects - their religion informs their whole life
- most West Indian worship is Pentecostal

Rastafarian movement

- religious sect emphasises black identity - believe in the divinity of King Haile Selassie
- Rastas grow their hair in long dreadlocks and often wear large woollen hats
- Red, green and gold are the Rasta colours
- Rastas eat 'ital' food - excludes pork and salt - some eat only fruit and nuts
- Ganja-herb or marijuana is smoked as an act of religion

African and Caribbean festivals

- Christians celebrate Christian Festivals, Muslims celebrate Eid

African and Caribbean dress

- less emphasis on straightening hair more on plaits and beads and afro-cut
- many Africans wear traditional dress on special occasions

African and Caribbean food

- Afro-Caribbean parents prefer tropical foods - young people are more westernised
- Muslims and Rastafarians don't eat pork

Judaism

Jewish religion

- A belief in one universal God
- A wish to carry out the ten commandments embedded in the Pentateuch – the first five books of the Old Testament
- To practice charity and tolerance to all
- Sabbath begins before nightfall on Friday until the sighting of the three stars on the Sabbath.
- Cremation is forbidden
- Family mourning period of seven days – family do not leave house but are visited by family and friends morning and night for prayers
- Ten men should be present for these prayers
- A small prayer scroll – Mezuzah – is attached to the door lintel of Jewish homes

Jewish festivals

- Yom Kippur – the day of atonement – involves twenty five hour fasting and falls in late September / October according to the lunar calendar
- Passover – lasts for eight days during March / April. Only bread eaten during this time is unleavened. Matzos (water biscuits) are produced for this festival.

Jewish food

- Only eat meat which is kosher
- Pig and horse are totally forbidden
- Observant Jews will not take meat and milk at the same time and usually wait three hours in between each type
- Do not eat shellfish or fish without scales and fins

Jewish dress

- Normally reflects current fashion
- Some men wear the KIPPAH – skull cap at all times
- Orthodox Jewish boys don't have a haircut until their third birthday

Implications for hearings

It is important that those involved in the hearings system remember that in treating every child as an individual they must consider the child in the context of his or her family, race, gender, class, culture religion, language and ability when making decisions. The Arrangements for Looked After Children (Scotland) Regulations 1996, which includes children on supervision requirements, state that if such a child is being placed away from home these factors are considered. At any review of a looked after child, the following issues that should be explored include:

- has the child been able to discover/express views about ethnic/cultural background?
- is the child in touch with his or her background?
- if not what steps are being taken?
- can the child practise his or her religion?

- are the staff working with the child aware of these needs and how to address them?

Some useful hints

- **DO** check out how to address people, family, relations
- **DO** avoid terms, jargon. slang which can be considered offensive
- **DO** appreciate that it may not be the custom to shake hands and that cultural differences in body language may cause misunderstandings
- **DO** remember that in some communities women may not wish to be in the same room as a man who is not family
- **DON'T** use terms of endearment
- **DON'T** ask for 'Christian' names
- **DON'T** assume that speaking English is the same as understanding it
- **DON'T** make assumptions – ask questions, explain what you want to be sure you understand.

When making decisions about children with racial, religious, cultural and linguistic needs, appropriate information should be contained in reports. The child, family and others involved with the child should be able to address the issues or provide additional support to ensure they can be implemented.

7 CHILDREN AND EDUCATION

School is an important part of children's lives and today 80% of children stay on past sixteen years. There have been many changes in the Scottish education system in recent years aimed at achieving a wider ability range and recognising the value not only of academic progress but also of vocational achievement. The years of compulsory schooling in Britain are from five to sixteen. The summer leaving date (31 May) is for those children whose sixteenth birthday falls between 1 March and 30 September. The Christmas leaving date is for those children whose sixteenth birthday falls between 1 October and 28/29 February.

In order to make sense of school reports and to understand what stage a particular child is at, it is important for panel members to have an understanding of the current structure. Some of the terms in current use regarding class composition and examinations follow.

Class composition

While primary school children are taught in mixed ability classes, secondary pupils may be grouped in the various ways.

Mixed ability

Pupils of different levels of ability are taught together in the same class. A variety of materials will be used to enable pupils to work according to their individual abilities.

Setting

When pupils are grouped in classes according to their ability by subject area. All use the same materials and work at the same pace.

Streaming

When pupils across the whole year group are divided according to ability across all subjects to produce a hierarchy of classes within the same year.

Examinations**Standard Grade**

These are taken at the end of S4 following a two year course and consist of a mix of formal externally assessed exams and project work. Pupils work at three levels - Credit, General and Foundation - and grades indicate a particular quality of achievement rather than pass or fail.

Highers and National Qualifications Modules

These are usually taken at the end of S5, following a one or two year course. Highers consist of academic courses which may lead to higher education. National Qualification modules offer more vocational courses, leading to further education

Higher Still

These begins in S3 and are amalgamate structures of higher and module teaching approaches. Higher Still is aimed at bridging the academic/vocational divide.

The award contains two components – Unit Assessment an internal assessment and Course Assessment the external component.

Table 1 on the next page charts a child's progress year by year and Table 2 gives a summary of the grading system in schools.

TABLE 1
School Structure

	<i>Birthday during school year</i>	<i>Class/ year group</i>	<i>Syllabus</i>
<i>Primary</i>	5	P1	5-14 syllabus
	6	P2	
	7	P3	
	8	P4	
	9	P5	
	10	P6	
	11	P7	
<i>Secondary</i>			Access
	12	S1	Access 1, 2, 3 usually for pupils who will not gain Standard grade foundation
	13	S2	
	14	S3	Standard Grade Higher Still
	15	S4	Intermediate 1 and 2 Highers Advanced Higher
	16	S5	
	17	S6	

TABLE 2 – Grading

5 – 14		
Level A	should be attainable in the course of primary 1 – 3 by <i>almost</i> all pupils	
Level B	should be attainable by <i>some</i> pupils in primary 3 (or earlier) by <i>most</i> pupils in primary 4	
Level C	should be attainable by <i>most</i> pupils in primary 4 – 6	
Level D	should be attainable by <i>some</i> pupils in primary 5 – 6 by <i>most</i> pupils in primary 7	
Level E	should be attainable by <i>some</i> pupils in primary 7 – secondary 1 by <i>most</i> pupils in secondary 2	
Standard Grade – secondary 3 – 4		
Level - Credit	Grade 1 or 2	(this is the most demanding)
Level - General	Grade 3 or 4	
Level - Foundation	Grade 5 or 6	
	Grade 7	(course completed)
Higher Still – secondary 5 – 6		
Access and Intermediate 1 and 2	Foundation	
	General	
	Credit	
Higher / Advanced Higher	Grade	A (the highest) to C

Guidance

In secondary schools every pupil is allocated a guidance teacher. The organisation of guidance will vary from school to school but the tasks common to all guidance teachers will include:

- building relationships/personal support
- curricular guidance
- personal and social education
- careers education and guidance
- pupil behaviour.

Pupil profile

For every pupil the school completes a profile of each pupil, detailing his/her progress throughout the school years.

Discipline and exclusion

Corporal punishment is not permitted in Scottish schools. Pupils are disciplined in various ways, ranging from punishment exercises and detention to exclusion. The three basic criteria for exclusion are:

- physical assault on pupils, physical or verbal bullying
- deliberate damage to buildings or equipment
- extreme behaviour towards staff, including assault and verbal abuse.

Exclusion will range from short-term (one to three days) to permanent. Return to school may depend on the pupil and/or parents agreeing to abide by certain conditions. Children and parents may appeal exclusion.

Exclusion is a last resort and schools should set up strategies to provide inclusive education. These include:

- well planned support strategies for children with social, emotional and behavioural difficulties
- a development a whole school ethos with procedures to identify possible difficulties
- an ability to adjust curriculum
- consideration of the need for on site bases or units
- an evaluation of the existing provision.

The power to exclude a child rests with the local authority, although this can be delegated to the school. Children can be excluded when

- the child (and or parents) are refusing or failing to comply with the rules, regulations and disciplinary procedures
- the school believe that the child's presence in the school is to the detriment of the order and discipline of the school and or the educational well-being of other pupils

Children and parents have the right of appeal over any exclusion.

Truancy

Schools have a duty to record pupils' attendance. Formal procedures for dealing with unexplained absences involve the school, parents and the local authority education service. Parents can be prosecuted and fined for non-attendance at school by their children. A child may be referred to a hearing on the grounds of failure to attend school without reasonable excuse. Reasonable excuse is defined as:

- when a child if under eight years old lives more than two miles (three miles over eight) from the nearest school and the local authority is unwilling/unable to provide public transport
- when the child is unable to attend through illness
- other circumstances which in the opinion of the education authority ‘... *afford a reasonable excuse.*’

Truancy is a very complex issue and the reasons children give are very varied. Some reasons offered range from boredom, to play the computer or to avoid punishment or bullying. Some truancy can also be condoned by parents, e.g. needing someone to baby-sit, or to go on holiday.

The indicators of potential risk of truancy include:

- abused children who may express anxiety by truanting
- disruptive behaviour by a child
- patterns of non attendance carried from primary school
- very strict enforcement of school rules
- poor parent/teacher relationship.

High achieving children are less likely to truant.

Bullying

Bullying is not new but attitudes have changed and it is no longer acceptable. Both boys and girls bully. Bullying should always be taken seriously. All schools will have developed an anti-bullying policy.

Contact between schools and hearings

There is no formal contact between panel members and the schools in their community. Any formal contact is between the reporter and the school. Panel members may meet guidance and other staff as part of their training. Pupils may learn about the hearings system as part of a modern studies project and panel members are sometimes invited into schools to talk to children and staff.

Schools are asked to provide reports for hearings where relevant. Teachers are also invited to attend hearings if appropriate, to expand upon their reports. Although attendance is more common now it is not always possible.

8 CHILDREN AND DISABILITY

It is estimated that over 33,000 children in Scotland have some form of disability and over 14,000 have special educational needs. Not all children affected by disability will need (or want) help through social work departments. However, it is important to consider what impact disability may have on a child and the family. It is also true that not all children with special educational needs will have a Record of Needs.

Under s22 of the Children (Scotland) Act 1995 local authorities have a duty to safeguard and promote the welfare of children in need in their area and this includes disabled children. The Act refers to a child in need as a child who is:

- unlikely to achieve or maintain (or have the opportunity to do so) a reasonable standard of health or development unless provision is made for him or her
- likely to be impaired in health or development without provision of resources
- is disabled
- is affected adversely by the disability of another family member.

This duty includes the provision of services that minimise the adverse effects of the child's disability and allows the child to lead as normal a life as possible. These services should be appropriate to the assessed needs of each child. In order to fully meet these duties the local authority must work in partnership with all agencies both within e.g. social work and education, and outwith the authority e.g. health services, voluntary agencies.

Assessment

When assessing a child's needs local authorities should consider whether they must not only make provision for the needs arising from disability, but also the child's needs in the widest context. Such an assessment should be in collaboration with other agencies in order to ensure that the child's needs in terms of health, development, education, gender, racial origin, religious persuasion, cultural and linguistic background are considered.

The family, parents and siblings, may also be affected by the child's disability and their needs should also be assessed and appropriate support provided. An effective assessment will allow children a real opportunity to contribute, take account of the child's views, and consider the child in the widest context - at home, at school, at play and as an active member of the community. The views of the child's parents and other family members should also be sought and considered when making decisions about the planning and delivery of services to the child.

Some children with disabilities may also have problems in communication and efforts must be made to establish the views of the child. Some children may also have difficulty in saying what they want in front of parents, and indeed, they may want very different things from their parents. It is also essential that whilst children are being encouraged to participate in planning their future they are not left feeling the responsibility is their's alone.

Learning with care

Children with learning difficulties/disabilities should normally attend a local mainstream school. In order to facilitate this it is recognised that this will involve provision not only for the child's educational needs but also for the health needs of the child. Under the Standards in Scottish Schools etc Act 2000 it is clear that the circumstances in which a child would be provided with education outwith mainstream 'arise exceptionally'. The local authority must then ensure adequate and efficient provision of school education. (Section 1 of the Education (Scotland) Act 1980.)

Some children may have special educational needs which stem from neurological or physical disability, sensory impairment, social, emotional or behavioural problems; or mental illness. Local authorities need to assess the child to identify the child's learning difficulties and determine whether the child will require a Record of Needs. This assessment allows for the development of long term educational strategies for the child and have regard for the child's educational, medical and psychological needs.

Although 20% of children may at some time have special educational needs only 2% will require a Record of Needs.

A learning difficulty is present if the child:

- has significantly greater difficulty in learning than the majority at that age
- is unusually nervous and withdrawn
- suffers from a disability which prevents or hinders them from taking part in mainstream schools
- if under the age of five needs 'special educational needs provision' to ensure that they will not have a learning difficulty.

Assessment to identify special educational needs is governed by national guidelines.

Dyslexia

Dyslexia is a specific learning difficulty which affects 10% of the population. Children suffering from this condition have difficulty in reading, spelling and writing, e.g. mixing up *b* and *d* and have poor sentence structure. They may also have difficulty in understanding spoken language, comprehension and have poor handwriting. This condition can also affect other subjects, e.g. mathematics – multiplication tables.

However children with the disorder can also be articulate, descriptive, good lateral thinkers and have an average or high IQ.

Behavioural difficulties

Today it is recognised that many children who in the past may have been dismissed as naughty, bad, lazy, impaired, disruptive may in fact be suffering from a disorder that affects their behaviour. The broad diagnostic term is 'autistic spectrum disorders' or 'pervasive developmental disorders'. These disorders impair several areas of development especially those involving social interaction, language development and communication skills. A description of some of these disorders follow.

Autism

This is a lifelong development disorder that affects the way children communicate and relate to others and has implications for how the child learns. Children within the autistic spectrum experience the world differently and build up their own meaning of the world as they see it. They become isolated and are often said to be 'living in a world of their own'.

Autistic children

- find difficulty in social interaction with other children appearing indifferent or aloof and usually preferring their own company.
- have problems with communication skills - both verbal and non-verbal
- do not understand the meaning of gestures, facial expressions or tone of voice therefore may not pick up happiness, sadness, disapproval or anger and will not be able to respond appropriately.
- lack curiosity and will repeat words and phrases parrot-fashion
- have limited ability to take part in imaginative activities and display repetitive obsessive behaviour
- hate changes to their routine.

Asperger's Syndrome

A neurological disorder often described as a milder form of autistic disorder. There are a number of traits common to Autism – difficulty in social relationships, communication and creative play but with fewer language problems. The most characteristic trait of Asperger's is a pedantic monotonous speech pattern. They have normal cognitive abilities and less severe social and communication skills than children diagnosed with autism.

Asperger's children

- usually start to show the symptoms at the age of three and the average age of diagnosis is eleven
- want to be sociable and enjoy company but are often clumsy
- find it hard to interpret gestures and facial expressions.
- speak fluently but are very poor listeners and may appear insensitive
- sound over precise and can take words literally and miss jokes – may be frightened by 'bit my head off'
- excel in learning facts and figures but may have difficulty with abstract concepts
- love routine

Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD)

ADHD is a neuro-biologically based developmental disability which is estimated to affect up to one in a hundred school-age children. Boys are more commonly affected than girls. Children suffering from ADHD display excessive inattentiveness, are impulsive, and may also suffer from other autistic spectrum disorders. ADD children display the same behaviours as children with ADHD but without the hyperactivity. These disorders affect the child's family life, social life and education. Children often fidget, leave the classroom and talk excessively which has an impact on education and learning.

ADHD and ADD children

- have low self esteem; poor social skills
- lack motivation
- are over sensitive to stress.
- find normal games and turn-taking impossible
- can be isolated (as can their families)
- are careless in schoolwork; activities
- don't complete tasks, chores
- don't seem to listen, follow instructions
- are poor organisers; lose things

Tourette Syndrome (TS)

This is a neurological disorder characterised by tics (involuntary sudden movements). The range and complexity of tics and tic-like symptoms is very broad: eye blinking, head jerking, throat clearing, yelping etc. The majority of people suffering TS are not significantly disabled by their tics, but they may have additional problems such as learning difficulties, sleep disorders and hyperactivity.

Apart from their disability children may also have other problems:

- health issues
- provision of appropriate respite services - day care, overnight services, shared care, residential care.

Further information regarding all of these issues can be found in The Children (Scotland) Act 1995 Regulations and Guidance Volume 1 – Support for Children and Families.

9 OFFENDING BEHAVIOUR

Delinquency: *'an offence or misdeed usually of a minor nature, especially one committed by a young person'* Oxford Dictionary.

'The human infant has no sense of 'right' dress, safe driving speeds, moral sex or any of the norms of society, whether custom or law. Conformity, not deviation has to be learned.'

F

Ivan Nye, 1958

The Kilbrandon Committee's main remit was to address the problems of what was then known as 'juvenile delinquency'. One of their pioneering conclusions was that children involved in offending behaviour and children who were victims of abuse or neglect should be treated within the same system according to their individual needs. In the early years the majority of children appeared at hearings on the grounds that they had committed offences. From the late 1980's onwards, however, the balance of

referrals has changed and both the law and social services have become increasingly preoccupied with child protection issues. However, the problem of offending by young people has not gone away. The news is full of reports of crimes committed by children, and what to do about juvenile offending remains high on the political agenda. Demands for severer punishments often seem to find favour with the public.

The 1993 White Paper Scotland's Children acknowledged that '*tackling juvenile crime is one of the most important tasks facing the Government*'. Since the vast majority of children charged with offences pass through the hearings system, the system needs to be able to show that its welfare-based approach can tackle the problem effectively.

A study, '*The Evaluation of the Children's Hearings in Scotland: Children in Focus*' which was undertaken by the University of Edinburgh between 1995 and 1997 considered the background and circumstances of a group of children referred to the reporter in February 1995. One finding from that report which has significance for any consideration of offending behaviour is that children referred on offences had come into the system between five and eleven years of age for non-offence grounds. Offending children are also non-offending children.

In 1999 the Scottish Executive set up an advisory group to conduct a review of youth crime. In the spring of 2000 the report '*It's a Criminal Waste*' was published. This study, as with other studies, has supported the notion that young offenders should continue to be dealt with within the welfare approach of the children's hearings system. However it is suggested that hearings have to be more imaginative in their dealings with young people who offend, considering both their needs AND deeds and have a better range of programmes and services at their disposal.

In 2002 the Scottish Executive published Scotland's Action Plan to Reduce Youth Crime. This plan seeks to

- increase the public's confidence in the ability of the justice system to reduce youth crime by developing preventative approaches by various agencies
- improve the effectiveness the hearings system – Fast Track Hearing Pilots
- have better assessment and service
- strengthen the position of Youth Justice teams
- and increase awareness of what works.

As people involved in the hearings system, panel members may be as angry, distressed or frightened as anyone else if they are the victim of a crime, and may well find their commitment to the welfare approach tested. They need to keep a cool head in this debate and try to look carefully at what the problem really is and what can be done about it.

Who are young offenders?

Many children and young people will use their offending as a means of gaining friends, being part of a crowd, obtaining money for drugs, alcohol, clothes.

Amongst the key factors that have been identified that lead to offending behaviour are:

- being male - 56% of boys referred in 1999/2000 for alleged offences – for girls the figure is 23.5%
- being young – the peak age of offending for boys is eighteen and girls is fifteen
- being disadvantaged – poverty, low educational attainment, unemployment
- having family members who offend
- having friends who offend
- misusing drugs
- being excluded from school.

What is the problem?

It is first of all important to realise that, whatever the tabloid press may say, offending by young people in Scotland is not spiralling out of control. Only 8% of the children in Scotland commit offences. There is a problem in that a small number of children carry out a disproportionate number of crimes. The following are important points.

- In 1999/2000 over 14000 children were referred to the reporter on offence grounds
- Most children who offend do so only once
- There are a small number who are responsible for a disproportionate number of offences – in 1999/2000 890 children had 10 or more offences reported to the children's reporter
- Young people themselves are more likely to be the victims of personal crime than adults.

One problem is the difficulty of building up an accurate picture of what is really going on. Crimes which are unreported cannot be included in statistics so we are not totally sure of the full picture. There is no denying that teenagers do get into trouble. Studies based on information given by young people themselves indicate that offending can be an accepted part of life for young people at a certain stage. It is often a group activity, and evidence suggests that many children commit offences during the hours when they should be at school.

The kind of offences they commit are usually non-violent and relatively minor – vandalism, shoplifting, thefts from vehicles – but still serious enough to have a high nuisance value within their communities. The peak age of offending amongst boys is eighteen and girls is fifteen, and the vast majority of them will grow out of this kind of behaviour within a few years, whatever action may or may not be taken by the authorities. There is a strong link between violent behaviour and under-age drinking and young people involved in drug abuse commit offences to finance their habit.

There is a widespread view that a small number of 'persistent offenders' are responsible for a high proportion of the crime committed in certain communities. However it is hard to pinpoint the young people who actually belong to this group, as the difference between offenders and persistent offenders seems to be one of degree.

The main characteristics of persistent offenders are:

- a lack of maturity
- low IQ
- low family income
- low school achievement
- a history of offending in the family
- risk takers

Causes

There is much public concern about lawlessness and violence in society but little agreement about the causes. The absence of moral and spiritual values, lack of discipline, break-up of families, influence of television and film, drugs, alcohol are all suggested. The Kilbrandon view was that it was not useful to categorise children on the basis of their offending alone, but to look behind the presenting problems to find the underlying causes in the life of the individual.

In so far as it has been possible to identify them, research has demonstrated that the backgrounds and experiences of young people with a pattern offending often have several factors in common:

- having poor childhood experiences
- a lack of guidance and supervision from parents
- having been abused/neglected; come from broken homes
- education interrupted by truancy, exclusion
- living or mixing with family/friends who offend – the peer group can give a sense of identity
- periods spent in care – inconsistent care and frequent moves
- substance, drug, alcohol abuse
- problems which although identified early were not addressed.

What does the system do about it?

The very small number of children who commit serious crimes may be prosecuted and sentenced by the courts. The Social Work Services Inspectorate report on secure accommodation, '*A Secure Remedy*', published in 1996, shows that the number of children found guilty of serious crimes and sent to secure accommodation is very small indeed.

The majority of children committing offences continue to come through the hearings system. The hearing's task is to identify measures of supervision which address the problem of offending and lead to a reduction in and hopefully a stop of future offending. The recommendations in the report '*It's a Criminal Waste*' should see the hearings system working more effectively with young people's offending behaviour.

A new Fast Track Hearing will be introduced in pilot areas in 2003, and it is hoped this will bring a better balance between dealing with needs and deeds; welfare and

justice. This will bring young people who meet the criteria of 'persistent' to a hearing quickly. The hearing process will not change but new resources and initiatives will be introduced to meet the young person's needs and address their offending behaviour. A second initiative of 'youth courts' is also envisaged – these two new projects will hopefully address the problem – if not these young people will move into the adult system of justice and could well end up in prison.

It is ironic that in Scotland, with its welfare-based juvenile justice system, the use of custody for offenders over sixteen is amongst the highest in Europe. There is no evidence to show that highly punitive systems, including imprisonment, are effective, except in as far as they remove offenders temporarily from society and thus limit their ability to commit further crimes.

Does anything work?

Despite the admitted difficulties, there has been evidence in Scotland e.g. Freagarrach Project, Aberlour Crannog Project and elsewhere in recent years that some approaches can be effective in changing the behaviour of young people and significantly limit their offending. The key to this is whole problem; structured programmes which focus on behavioural change, addressing offending behaviour, and skill development rather than loose models of counselling and support.

Effective intervention

The most effective intervention will include:

- a variety of approaches – work with individuals, groups and families
- focus on the nature and consequences of the offending behaviour, including the victim's perspective and the impact on communities
- emphasis on problem solving and the development of thinking and reasoning skills
- concentration on personal and social skills to build self esteem
- community based rather than residential supervision
- work with parents to involve them in the supervision process.

Restorative justice

Restorative justice models embrace the above key points and aim to repair the harm done – to victims, offenders and communities. The main elements of restorative justice are:

- responsibility – holding young people to account for their misbehaviour and to develop responsible behaviour
- restoration – exploring the possibility of making amends to victims and/or the community
- re-integration – providing the support, assistance, guidance to enable the young person to grow into a responsible adult.

This problem solving approach can include everyone affected by the behaviour of the young person. It can include the victims, offenders and their communities. It enables victims and offenders to communicate directly or indirectly and for the offender to volunteer to make reparation to the victim or the community. Communication and dialogue, and the empowerment of all parties, contribute to the prevention of further offending.

10 DRUG AND ALCOHOL ABUSE

Drugs

There has been a significant increase in the last fifteen years in the use of illegal drugs by young people. The Scottish Crime Survey found that 25% of children between sixteen and nineteen had used a prohibited substance. The Health Behaviour in School Age Children (HBSC) Report also showed that those who had used drugs had tried them as early as twelve years of age. Cannabis is still the most widely used illegal drug amongst school age children, and the majority of young people who use cannabis do not progress to other drugs. The misuse of drugs by parents is also a concern. The Scottish Centre for Infection and Environmental Health (SCIEH) survey found that amongst drug injectors in Greater Glasgow, 60% were parents.

Types of drugs

There are many drugs in circulation but they can be grouped roughly into the following three types.

Stimulants

These make everything seem as if they are going faster, including thoughts, speech and the body. Drugs include ecstasy, amphetamines, cocaine and crack, and amyl and butyl nitrites.

Depressants

These slow everything down, including thoughts, speech and the body. Heroin, tranquillisers, methadone, volatile substances including solvents are within this group.

Hallucinogens

These alter the way a person sees, hears and feels things, causing hallucinations and confusion. LSD, cannabis and magic mushrooms come into this category.

Points to remember

When considering the issue of young people and drug misuse it is helpful to remember that:

- many young people try drugs but not all of them become problem users
- for children and their families there is a fear that, in seeking help, child protection measures might be taken

- there is a fear of being stigmatised
- any intervention must address the underlying reasons for the misuse.

Alcohol

Despite the concern about drug misuse in Scotland, alcohol is still the most commonly used drug. Alcohol is likely to be a concern in 40% of social work cases involving children. Despite licensing laws more than 50% of children between thirteen and seventeen are likely to have bought drink. In the thirteen to sixteen age group almost one third of young people drink at least once a week – mainly in the home and usually small amounts.

Children's whose parents drink heavily are at risk of physical / emotional abuse or neglect. This leads to unhappy stressful childhood and potentially serious problems in adult life.

Living with a problem-drinking parent is very difficult; it can remove childhood and force children into becoming the carers in the family. If parental drinking is an issue, children can become removed from normal living – afraid when coming home from school, unable to bring friends to the house worrying about what might cause the next row. Children find different ways of coping with the situation. They may try to avoid it by staying out late or even overnight; they may feel it is their fault; they may act out and their education too can suffer.

11 CHILD ABUSE AND PROTECTION

Child abuse is a term that covers a wide range of different conditions from neglect to sexual abuse. It is also a concept that had changed over time.

*'Throughout history there are accounts of the customary extremes in the chastisement of children. Pepys beat his boy until he (Pepys) was out of breath: John Wesley, Frederick the Great, Lady Jane Gray, and many others in adult life complained bitterly of their treatment in childhood. It is always taken for granted that the parents and guardians of children had every right to treat their children as they saw fit.'*¹⁵

Knowledge of the different ways in which adults abuse children has developed greatly since the identification in America by Kempe in the 1960s of 'the battered baby syndrome'. This was greeted with horrified disbelief around the world. The mid 1980's saw the gradual public recognition of sexual abuse of children. The same pattern of high profile media attention and widespread public denial followed by gradual acceptance of the existence of the problem starting with the Maria Caldwell Inquiry in 1974, to the Cleveland, Rochdale and Orkney Inquiries in the 80s and 90s and most recently the Victoria Climbié Inquiry which commenced in October 2001.

During the thirty years of the hearings system, statistics have shown a dramatic change in the balance of referrals to the children's reporter. In the early years most children referred to hearings were alleged to have committed an offence. By 1991

¹⁵ S K Radbill, *A History of Child Abuse & Infanticide* 1968 p4

this balance had shifted and more children were referred on care and protection matters than for offence grounds.

By their very nature, cases involving neglect or abuse are likely to require compulsory intervention to protect children and are therefore the most likely to be referred to hearings by the reporter. They will probably also be the most complex and difficult cases to handle, and the most stressful for all concerned.

What are we protecting children from?

The following list is intended to give an idea of the range of ways in which adults may abuse children and the possible effects of this abuse. This should not be thought of as a check list for the 'diagnosing' of abuse, but may help to place certain problems presented by children who come to hearings in the context of the experiences they have undergone.

Categories and possible effects of child abuse and neglect

Physical injury

This involves the actual or attempted physical injury to a child, including the administration of toxic substances, where there is a knowledge, or reasonable suspicion, that the injury was inflicted or knowingly not prevented.

Possible effects include - stunted growth and failure to thrive; a state of 'frozen watchfulness'; fear of strangers; solitariness; aggressive behaviour; learning difficulties.

Emotional abuse

The failure to provide for the child's emotional needs such as to have severe impact on the behaviour and development of the child. Emotional abuse may include a complete absence of affection shown to a child; unrealistic demands for achievement by the child; the 'scape-goating' of one child in a family; gross over-protection; role-reversal where a child is required to look after an adult; manipulation of a child in marital disputes.

The possible effects of such abuse are a failure to grow and to thrive; delay in language development; withdrawal; attention-seeking behaviour; anxiety; inability to express feelings; lack of self-esteem; resistance to trying new experiences; inability to make choices.

Physical neglect

This occurs when a child's essential needs are not met and this is likely to cause impairment to physical health and development. Such needs include food, clothing, shelter and warmth. A lack of appropriate care including deprivation of access to health care may result in persistent or severe exposure, through negligence, to circumstances that endanger the child.

Possible effects of neglect include a failure to grow and to thrive; delay in language and cognitive development; failure to develop self-sufficiency in personal care; low self-esteem; lack of security; risk of accidents through lack of supervision; failure by child to learn discipline and limits of behaviour.

Sexual abuse

Any child may be deemed to have been sexually abused when any person(s) by design or neglect, exploits the child, directly or indirectly, in any activity intended to lead to the sexual arousal or other form of gratification of that person or other person(s) including organised networks. This definition holds whether or not there has been genital contact and whether or not the child is said to have initiated, or consented to, the behaviour.

Possible effects include bowel or bladder symptoms; unwanted pregnancy or sexually transmitted disease; inappropriate sexualised behaviour; low self-esteem; passivity or compliance; absconding; self-injury; depression.

Non-organic failure to thrive

Children who significantly fail to reach normal growth and developmental milestones, where physical and genetic reasons have been medically eliminated and a diagnosis of non-organic failure to thrive has been established.

Possible effects include lack of physical growth; poor weight gain; delay in motor, social and intellectual development.

Multiple abuse

Children may experience a combination of several of these types of abuse. Emotional abuse, for example is usually a feature of other types of abuse.

Children as abusers

Children may come to hearings on grounds that they have committed offences against other children. They may well be in need of skilled professional help and panel members need to know where this is available. If offences have been committed against younger siblings, panel members will have to consider the welfare of these children and the effect of the events on the whole family.

Domestic abuse

This constitutes 25% of all crime. Strathclyde Police reported a 75% increase in incidents in the year 2000 and Women's Aid reported a 16% increase in requests for assistance.

However domestic abuse does not only affect the adults concerned. Where women are abused, in over 50% of cases so too are their children, and 90% of violent situations are witnessed by children. Children themselves can be assaulted because they just get in the way, they are victims of a separate assault or it is a combined assault. In a third of cases children are trying to protect their mothers.

Effects of domestic abuse on children include: feelings of guilt; shame; powerlessness; anger; responsibility; feelings of fear/anxiety leading to low self esteem and lack of confidence; nightmares; disrupted sleep patterns; bed wetting; eating disorders; depression; withdrawal; passivity; aggression; disruptive behaviour; disruption at school - too bruised to attend; caring for mother/siblings; moving home suicidal/self harm feelings. It can also involve isolation from friends. Children may act out violence with friends/family and feel betrayal when their mother supports the

abusing partner. For some children the answer is running away or leaving home as soon as they can.

Coming to terms with own reactions

When dealing with hearings involving child abuse or neglect, the first reaction to the facts of the case may be shock, anger, disgust and revulsion. Panel members may then feel embarrassment, wondering how to discuss these matters in the hearing. It is important in their preparation that panel members try to come to terms with these strong and very natural feelings so that they can act calmly and rationally to seek the best solution for the child. In thinking about their own feelings, it may also help them to realise how much worse it must be for the child.

The child protection system

The processes for referral and investigation of alleged child abuse involve a large number of agencies: social work, police, health, education, the reporter and the courts. (See Roles, Responsibilities and Resources, and Law and Procedure).

Children's hearings are only one link in a complex chain of events. The number of agencies involved can mean that child and family become lost within the system. As Elizabeth Butler-Sloss wrote in the Cleveland Inquiry Report in 1989 (page 245):

'There is a danger that in looking into the welfare of children believed to be the victims of child sexual abuse, the children themselves may be overlooked. The child is a person and not an object of concern.'

Following a series of public inquiries in Scotland and England which catalogued mistakes made by agencies severely under stress, real efforts have been made to reduce the complexities of the child protection systems and make them more child-friendly. Attempts are made to keep the number of interviews and medical examinations which children are required to undergo to a minimum. Many of the changes to emergency protection procedures in the Children (Scotland) Act 1995 were introduced to take account of recommendations made by Lord Clyde following the Orkney Inquiry in 1992.

Guidance was issued by the Scottish Executive in 1998 and in the forward to 'Protecting Children – A Shared Responsibility' Donald Dewar said:

'As a responsible society we must accept that it is our duty to ensure as far as possible that children are not exposed to the risk of harm. A number of statutory agencies and voluntary organisations assist children in a variety of ways. Dealing with child abuse is not, however, the preserve of any one public or voluntary service. If they are to protect children effectively, they must collaborate closely.'

Investigation or therapy?

Child protection remains an emotive subject. It produces strong reactions which may cloud the issues in the search for systematic responses. Legal systems struggle to balance conflicting rights of children and adults. The search for evidence sometimes delays or takes precedence over help being offered to the child.

It is often difficult to collect enough evidence to prosecute adults who abuse children.

However a child may be referred to a hearing and for grounds to be established on the balance of probabilities. In other words, the incident is more likely to have happened than not. This may be the case where there would not be sufficient evidence to prove a criminal case against an adult beyond reasonable doubt. It is important to understand the ordeal which child witnesses have to endure when giving evidence in any legal proceedings, especially if this includes confronting an alleged abuser. Many children are not able to give their evidence at the critical moment. Various arrangements now exist to support and protect child witnesses, but these vary from court to court due to resources.

Decision-making in child protection cases

Because it involves the child and the family, a hearing can be a very effective setting in which to make a decision about how to protect the child. As in all cases, decisions will be based on all the information available from reports and discussion in the hearing. Hearings have to decide whether compulsory measures of supervision are necessary, and if so, what these should be. This will entail knowledge of what resources are available locally and careful examination of the social worker's recommendation. Can the necessary protection be assured for the child at home, or do the existing risks make removal the only option? If the child is to live away from home, detailed discussion about the arrangements for contact between child and family is essential.

In order to make decisions in child protection cases, members must:

- be well-prepared in order to understand the circumstances of complex cases
- be confident of procedures
- know powers and the decisions that can be made
- be able to control feelings in stressful and difficult hearings
- show sensitivity in communicating with children and families
- know what suitable resources are available
- assess risk.

12 PERMANENT PLACEMENT AWAY FROM HOME

*'However adverse a home, the child lives in familiar surroundings and is looked after, however inadequately, by familiar people. Being taken from it means the collapse of a world he has accepted and trusted as the only one he knows. The younger the child, the greater the distress at being removed to an unfamiliar environment. The more limited his understanding of verbal explanations, the greater is his likely bewilderment and the more difficult the task of restoring his sense of security; also he may feel that it was his naughtiness which led to his being sent away.'*¹⁶

The right to be brought up in a loving family is enshrined in the UN Convention on the Rights of the Child. This right is further endorsed by the Children (Scotland) Act

¹⁶ Pringle MK, *The Needs of Children* 3rd edition London, Hutchinson 1986 p133

1995, and the European Convention on Human Rights. The need to be brought up in a stable secure environment is essential for all children and for most children this will be their biological family. For some children alternative families have to be found. The legal process is explained in the section on Law and Procedure and the resources that are needed are covered in the section on Roles, Responsibilities and Resources.

Attachment

*'Children differ in the way they respond to being separated from their parents. This response varies from severe depression in children who are well attached to their parents and then abruptly separated from them, to almost no reaction in children who have been emotionally neglected and have virtually no attachment to their parents.'*¹⁷

The key to healthy emotional development lies in the development of good attachments for the child. Attachments develop:

- by the child having a primary carer who is available for the child and responds reliably to the child's expressed need
- by having a carer who initiates positive interactions
- by the primary carer ensuring someone else known to the child can respond to their needs if the carer is not there.

Attachments help children to attain their full social, intellectual and psychological potential, develop a sense of conscience, become self-reliant and handle the world. Attachments are developed through touch, sound and visual contact.

Attachment is defined by Kennell as *'an affectionate bond between two individuals that endures through space and time and so serves to join them emotionally.'*

Children have the right to stay with their own family whenever possible since this unit should provide the stability and security for their development. However, for some children subject to abuse and harm, removal from home is a necessary step to protect them. In some cases, where there is a commitment to change by the parents, children can be rehabilitated back home. For other children where the parents cannot/will not make the necessary changes and offer consistency in their responses to their child, a decision about moving to a permanent new home where care and security can be provided has to be taken.

Although children may have been subjected to abuse of some form, they nevertheless will have some form of attachment to their biological family. When assessing attachments consideration should be given to the responses of the parent to the child, the parent's reaction to their child's distress – is there physical contact and eye contact and pleasure in each other's company? Attachments also affect the child – does he or she expect a response from the adult, appear afraid, show distress, react to brief separation and avoid close contact?

Where there is no commitment to change and the decision is for the child to move to a permanent placement, consideration must be given to contact between the child and its biological family. The move to a permanent placement is intended to achieve the stability, continuity and security of care for the child that is currently missing.

¹⁷ Fahlberg V., *Fitting the Pieces Together* London, BAAF, 1988 p 40

Decisions about permanent care will need to be made more quickly with younger children to enable them to develop the attachments necessary for healthy development.

When rehabilitation plans have failed and consideration is being given to a move to a permanent placement, panel members need to know that an assessment has been based on:

- the child's age and stage of development
- previous separations and how the child was helped
- the nature and quality of the child's attachments
- what work is being undertaken to build a secure attachment
- strengths and resilience of the child and the parents
- the child's behaviour
- the child's relationship with carers.

Loss and separation

Children involved in the hearings system may also have experienced loss and separation. Their reactions will vary considerably depending on their age and understanding, on their carer's ability to explain what is happening and on the quality of their attachment to a primary carer.

Children can be helped through loss and separation by sensitive preparation, clear explanations, assistance to express feelings and fears and by secure and loving care in the absence of their primary carer. Often families will be able to offer that within the extended family network but for others it may well be foster carers who will try to meet the child's needs.

Children, despite often serious losses and deficits in care, may have resilience in a range of areas. For children who may be separated for a long period it is important they have a coherent story about what has happened to them, why it happened (so that they don't blame themselves for all the problems). The carer must be prepared to go over and over the story of their early years and recent events.

Contact

Decisions about a parent's contact with a child are matters that require serious and careful thought. The views of the child need to be considered carefully, along with those of the parents and any agencies involved with the family. In order to make good decisions about contact those involved should be able to evaluate the impact of past events, relationships and circumstances. Contact decisions should always be based on the child's best interests including safety. They have to have a clear purpose: to enhance the psychological and developmental progress and well being of the child and to help the child with 'Who am I?' and 'Why am I here?'.

Contact need not be face to face but may take the form of telephone calls, letters, cards, and gifts. Contact by phone can be very hard to supervise. It may cause considerable distress to the child without carers being able to know what it is that a parent is saying.

Contact with others should also be considered. Although there may be a need to cease contact with one member of the family there may be others with whom the child should remain in touch – brothers, sisters, grandparents, extended family and friends. For children moving back home or into a new home contact with foster carers who have been in their lives for some time may be essential if the child is to move on.

The location of the contact, timing and frequency may also need to be considered. It may be necessary for the contact to be supervised if there are concerns about the safety of the child, both physical and emotional.

Contact is most likely to work if all those involved are in agreement. Contact needs to help the child build self-esteem and that he or she has permission to grow in their new family.

Arrangements should be kept under review. If distress to the child increases or if it is impeding the establishment of good attachments elsewhere, questions need to be asked about whether it continues to meet their needs. If contact is problematic because there are fundamental problems in the parent-child relationship, attention will need to be given to ending it.

13 SUMMARY

When making decisions about children at hearings, panel members have to consider each child as an individual. This means taking account of age, stage of development, family circumstances, health, ability and social environment. All these external and internal factors affect children as they grow and will have an impact on their past, present and future.

Sometimes children put themselves or other people at risk by their own behaviour. Often it is other people's behaviour that causes children to be at risk. Whatever the reason for the child's appearance at a hearing, panel members must remember to consider the child 'as a whole'.

14 FURTHER READING

- | | |
|---|---|
| Bain O, Saunders M (1990) | <i>Out in the Open, a guide for young people who have been sexually abused</i> Virago, London
A short book intended to help victims and those supporting them. Cuts through many of the common myths about sexual abuse. |
| Cleland A
Sutherland E (2001) | <i>Children's Rights in Scotland</i> W Green, London
A comprehensive guide to the law and practice to children's Rights in Scotland |
| Daniel B, Wassell S
Giligan R (1999) Kingsley, | <i>Child Development for Child Care and Protection Workers</i> London
Considers current thinking on child development and links theory and practice in dealing with children who have been abused |

- Fahlberg VI (1994) *A Child's Journey Through Placement* London, BAAF
A clear, informative book, full of practical ideas about children who are placed away from home.
- ISDD (1999) *Drug Abuse Briefing* London, Institute for the Study of Drug Dependence
Provides basic information on drugs.
- Lindon J (1993) *Child Development from Birth to Eight* National Children's Bureau, London
A very easy to read book covering all aspects of child development looking at child development in terms of physical, communication, cognitive and personal development
- Lindon J (2001) *Growing Up: from eight years to young adulthood* National Children's Bureau, London
The sequel to Child Development considers the changes facing children from middle childhood to the brink of adulthood. A very useful and practical guide for use by parents and professionals alike.
- Pringle MK (1986) *The Needs of Children* Hutchinson, London
3rd edition
A 'classic'. Easy to read and combines deep concern with profound insight into many of the problems that present themselves in the course of a child's development.
- Rutter M, Giller H
Hagell A (1998) *Antisocial Behaviour by Young People* Cambridge University Press, Cambridge
Provides an international review of all aspects of antisocial activity by young people
- Scottish Executive (2001) *Scotland's People : 1999 Scottish Household Survey* Scottish Executive, Edinburgh
Data on various aspects of Scotland and its people.

PART TWO

Section 2

Roles, Responsibilities and Resources

Any intervention in the life of a child, including the provision of supportive services, should be based on the collaboration between all relevant agencies.

(White Paper, Scotland's Children, 1993)

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1 INTRODUCTION

The organisation and running of the children's hearings system in Scotland is a highly complex process. The system is both broad and flexible, and it demands contributions from a number of different public agencies (for example, police, social work, education and health) as well as specialist bodies constituted expressly for the purpose and individuals with specific appointments.

This section gives information about the agencies, the administrative groups and the individuals who support the system as well as the part they play in determining a child's experience of a hearing. In addition it includes information about the resources that are available for children in need.

A large number of people all over the country carry responsibilities in connection with the children's hearings system and their various duties are wide. It can be rather difficult at first to understand how the whole system works, and how all these people and the posts they occupy relate to each other. More is explained in the section on Law and Procedure about the legal responsibilities of the various individuals concerned. This section of the manual gives a general picture of their role.

2 THE ORGANISATION OF THE HEARINGS SYSTEM

Scottish Ministers

Scottish Ministers are responsible for the operation of the system and appoint members of children's panels who may only be removed from office with agreement of the Lord President of the Court of Session. Scottish Ministers also appoint the chairman and depute chairman of each of the panels and the chair and some of the members of the Children's Panel Advisory Committee (CPAC). In general Scottish Ministers have the power to make rules governing the arrangements for and procedures at children's hearings. They also have certain legal powers which are very rarely exercised; for example they can allow the media to publish the details of any case.

Children and Young People's Group (C&YPG)

The Children and Young People's Group is based at the Scottish Executive headquarters at Victoria Quay and it is to the Children's Hearings branch of this group that Scottish Ministers delegate the overall responsibility for the running and monitoring of the system. The staff of C&YPG are administrative civil servants and are closely involved with all parts of the hearings system. For example they gather information from which they produce circulars offering guidance, advice and direction on particular aspects of procedure. They form the principal body responsible for:

- advising the drafting of legal rules for hearings
- making recommendations on how to operate changes in legislation
- advising Scottish Ministers on appointments and re-appointments to panels and to CPACs
- co-ordinating training provision
- providing general advice on the hearings system.

Social Work Services Inspectorate (SWSI)

The Social Work Services Inspectorate is also part of the Scottish Executive. In addition to their responsibility to inspect the quality of social work services across Scotland, the inspectors work closely with C&YPG to monitor and assess what national policies are achieving and help decide how policy is monitored. They also provide professional advice and information when new policies are being developed.

Children's Panel Advisory Committees (CPAC)

The main responsibility for the recruitment of panel members is delegated to the Children's Panel Advisory Committee. A CPAC is appointed for each of the local authorities in Scotland although local authorities may form joint CPACs. Each CPAC has a minimum of 5 members. Scottish Ministers appoint the chairman and 2 members drawn from a variety of backgrounds. A significant number have been panel members at some time in the past. The other 2 appointments are made by the local authority concerned. In practice they are usually councillors who are members of their council's social work committee. The clerk to the CPAC is usually based in the Law and Administrative Department (or its equivalent) of the council. Up to a further 5 members may be appointed at the request of the local authority.

The main duties of the CPAC are as follows:

- to submit names of possible panel members to Scottish Ministers
- to advise Scottish Ministers on the suitability of the people referred to them as potential panel members
- to give advice to Scottish Ministers about whatever matters relating to the administration of panels they may refer to them.

In order to be able to make recommendations regarding the appointment of panel members for a further period at the end of their term of appointment, CPAC members attend hearings to monitor the performance of serving panel members.

The characteristics sought by the CPAC include a genuine motivation to help young people in trouble and an ability to communicate with them and their families. Each panel must also represent the community in general, as to age, gender, and socio-economic background. The age range is 18 to 60 at the time of appointment.

Individual CPACs have developed special local arrangements for dealing with certain issues, for example recruitment campaigns for new panel members and arrangements for monitoring panel members' performance. A CPAC may decide to appoint members to a sub-CPAC to help them perform these duties more effectively.

When appointed, each CPAC and sub-CPAC member receives notes of guidance from Scottish Ministers on aspects of the role. They are also expected to undertake pre-service training before taking up their duties.

Children's Panel Advisory Group (CPAG)

CPAG was established in 1983. Its membership comprises the chair and clerk of each CPAC. It discusses matters of common concern and gives advice to Scottish Ministers as required.

Children's panel members

There are about 2,500 panel members throughout Scotland. The recruitment and selection of panel members takes place every autumn. The needs of authorities vary. Glasgow for example has the highest number of panel members at any one time, around 450, and among the smallest are the island panels with about 16 members each. Not every panel requires new members each year.

The initial period of appointment of a panel member is 3 years. Appointments can be renewed. There is no statutory maximum period of service. Panel members must normally retire when they reach the age of 65. The CPAC has an important role to play in seeking a balance between the need to maintain a core of experience in any panel and the need to bring in new members.

The names and addresses of panel members must be made available to the public. Each local authority is responsible for publishing a list of these in its own area. This is usually kept where an electoral register is also available for people to see, for example in the public libraries and also at the principal offices of the local authority.

The work of panel members is voluntary but they receive allowances for travel expenses and subsistence from the local authority. Panel members are entitled to take time off work for panel duties and are excused jury service during their period of service and for a period after their panel membership ends. Loss of earnings are paid, where appropriate.

Appointment as a panel member is conditional on satisfactory completion of the pre-service training programme. Panel members are also expected to complete the course of new member training which includes specialist training for chairing hearings and in-service training which continues throughout membership of the panel.

Value requirements

Because of the responsibilities that panel members carry and the influence and impact that they can have on the lives of vulnerable people, they must also meet particular value requirements. As well as being skilled and knowledgeable they must treat people with respect and be honest, open and reliable. They must be self aware and critically reflective.

Competences

The following standards apply to panel members completing pre-service training. Before beginning to serve on children's hearings they should be able to:

- fulfil their statutory responsibilities and work within procedures
- work effectively as an individual and as part of a team at a children's hearing
- communicate purposefully at a children's hearing
- assimilate and analyse information in order to assess the needs of the child and make a reasoned decision
- consolidate experience, knowledge and understanding in order to develop own skills.

The following standards apply to panel members completing new member training. Before beginning to chair children's hearings they should be able to:

- fulfil their statutory responsibilities as the chair of the hearing and work within procedures
- chair hearings effectively.

The chairman of the children's panel

Each of the 32 panels has a chairman and depute chairman appointed directly by Scottish Ministers and both should be experienced panel members. The sole statutory duty of the panel chairman is to select members and chairmen for hearings. However the chairman of the panel undertakes many other duties, including attending CPAC meetings, dealing with matters involving individual panel members, participating in the planning of training and having close and regular contact with all agencies involved in the hearings system, particularly in relation to the development of the local authority's Children's Service Plans.

Children's Panel Chairmen's Group (CPCG)

This group is made up of the chairmen of the all the panels in Scotland. It meets about six times a year to discuss any matter which relates to the hearings system. It is always consulted by the Scottish Executive about the introduction of changes to the system. It provides a forum for raising common issues and for promoting consistency throughout Scotland.

Scottish Association of Children's Panels (SACP)

The SACP was established in 1977. It is made up of representatives from the panels throughout Scotland. It has no statutory remit but has evolved purely out of the interest and concern of some serving panel members. It aims to provide a forum for communication of views among panel members and to promote understanding by those outwith the system.

Children's Panel Training Organisers (CPTO)

The statutory duty for training panel members, CPAC members and safeguarders rests with the local authority. Scottish Ministers exercise their discretionary power to assist training by financing the provision of Children's Panel Training Units in four universities (Aberdeen, Edinburgh, Glasgow and St Andrews). Each unit, headed by a Children's Panel Training Organiser is responsible for the training of panel members, CPAC members and safeguarders in a group of authorities. Pre-service and new member training, whilst adapted to fit in with local needs and resources, follow training guidance issued by the Scottish Executive. In-service training is planned in conjunction with the local authority training committees and the training organisers work in close liaison with C&YPG. Panel members, CPAC members and safeguarders are also expected to attend refresher training.

Training involves a combination of discussions, group work, lectures, reading, visits of observation, meetings with people who work within the hearings system. National Schools are held annually for CPAC members, panel members and safeguarders. The broad aims of training are to help participants to discover the ways in which they can turn their experience into informed practice and to give them the necessary knowledge and skills to help them to fulfil their statutory roles.

Safeguarders

Each local authority has a duty to maintain a list of safeguarders in consultation with the sheriff principal and the chairman of the children's panel. Safeguarders are independent of all agencies and are selected from various backgrounds - lawyers, social workers and ex-panel members or people who have had some experience of working with children in other capacities. They are paid a fixed fee for each appointment and receive expenses from the local authority.

A hearing or a court may appoint a safeguarder if satisfied that it is necessary to safeguard the interests of the child in the proceedings. The safeguarder must produce an independent written report for the hearing. He or she may interview the child, members of the family and any other person who may provide information. In addition, a safeguarder may have access to records held by professionals. The contents of a safeguarder's report are not defined in law but there is an expectation that it will reflect interviews with the child, family and any other significant people; put forward the views of the child, identify relevant issues and make a recommendation based on the interests of the child. If appointed by a court a safeguarder may become a party to the proceedings.

Safeguarders are expected to attend hearings, not to speak for the child, although they may present the child's views, but to represent his or her best interests. This may sometimes mean making a recommendation to the hearing with which the child does not agree. Once the hearing has made its final disposal, and the appeal period is over, the safeguarder has no further contact with the child.

Safeguarders have the right to:

- receive copies of the papers which were considered by the hearing which made the appointment and any subsequent hearings during the period of appointment
- receive copies of the reasons for the decision to appoint a safeguarder
- be present at all stages of the hearing
- be informed of the decision and reasons of the final hearing and to be given a copy of those reasons in writing.
- appeal against the decision of the hearing on behalf of the child
- have their views considered in advice and warrant hearings.

Legal Representatives

A hearing may appoint a legal representative for a child if satisfied:

That secure accommodation is an active issue, i.e. the child is already in secure accommodation or the hearing is considering making a decision which may involve placing a child in secure accommodation;

OR

That the child is unable to effectively participate in the hearing because of the legal complexity of the case.

The role of the legal representative is to attend the hearing with the child and to present the child's views to the hearing. He or she will also protect the child's rights in the proceedings. Once the hearing has made a decision the role of the legal representative ends. He or she is not involved in the appeal process, representation under the Legal Aid scheme is available for this purpose. Legal representatives must be legally qualified with a current practising certificate and be one of the following:

Safeguarder (see above)

Curator ad litem

A curator ad litem has a similar role to a safeguarder but is only appointed in cases which involve court. S/he must act independently and represent the interests of the child. A sheriff may appoint either a curator ad litem or a safeguarder at proof hearings or at appeals. A curator appointed by a court would not have right to attend a children's hearing (neither would a safeguarder appointed by the court).

Reporting officer

A reporting officer is appointed by the court to report to the court. In adoption cases the role is defined by statute and is to ascertain whether the person whose consent is required gives that consent. In other cases a reporting officer would be asked to report to the court either on the general circumstances of the child's case or on something more specific such as contact.

Children's Hearings Representative Group (CHRG)

This is a consultative body, formed in 1983, which allows discussion on all matters relevant to the children's hearings system. It has representatives from:

- | | |
|---|-------|
| • Children and Young People's Group | C&YPG |
| • Social Work Services Inspectorate | SWSI |
| • Children's Panel Advisory Group | CPAG |
| • Children's Panel Chairmen's Group | CPCG |
| • Scottish Association of Children's Panels | SACP |
| • Children's Panel Training Organisers | CPTO |
| • Scottish Safeguarders Association | SSA |
| • Scottish Children's Reporter Administration | SCRA |
| • Association of Children's Reporters | ACR |
| • Association of Directors of Social Work | ADSW |
| • Convention of Scottish Local Authorities | COSLA |
| • The Association of Chief Police Officers | ACPO |
| • The Association of Directors of Education | ADE |
| • Health | |

The Group normally meets twice a year and is usually chaired by a member of staff from C&YPG.

The Council on Tribunals

The Council on Tribunals is an independent body, established by Act of Parliament in 1958, whose functions include keeping under review the large number of different kinds of tribunals which have been placed under its general supervision. In exercising this watch-dog function, a member of the Scottish Committee of the Council has an absolute right, under the Children (Scotland) Act 1995, to observe a children's hearing and to read the papers.

3 THE PROFESSIONALS WHO SERVE THE SYSTEM

Children's Reporters

The children's reporter is an officer of the Scottish Children's Reporter Administration (SCRA), a national body with a statutory function to deal with children in trouble. The reporter is independent from all other agencies and has absolute discretion in decision making. The Principal Reporter, as professional head of SCRA, carries overall responsibility for reporters' decision-making. The management of the service is overseen by a board whose members are appointed by Scottish Ministers. The SCRA has its headquarters in Stirling and Reporter Managers, based in different parts of Scotland, have a responsibility for a geographical area of the country. Working under them are authority reporters with teams of reporters and support staff as required.

Qualifications

No qualifications are specified for the job but in practice, most reporters have qualifications and experience in either law or social work. They also need a working knowledge of the law relating to the children's hearing's system and an understanding of child development and welfare.

Referrals

The reporter has several duties laid down by law. The reporter receives referrals from any source about children who it is believed may be in need of compulsory measures of supervision (legal intervention in their lives). Although most referrals are received from the police, social work departments and schools, they are also received from parents, neighbours and children themselves. All are given the same level of consideration. There must be reasons, specified in the law, why a child may be in need of compulsory measures of supervision. They are called grounds for referral. (For details see Law and Procedure).

Investigation

When a referral has been received, the reporter is under a legal duty to carry out an investigation. The extent and type of investigation is for the reporter to decide. This is done by obtaining reports from a child's school, social work services and, if necessary, other agencies who may have knowledge of the child or the child's family such as doctors, psychologists, health visitors etc.

The investigation normally takes five or six weeks but can take longer in certain circumstances. Reporters welcome the assistance of children and parents in this process. (See appendix for the codes of practice which govern the referral and decision making processes.)

At the beginning of the investigation the reporter asks the local authority for an Initial Enquiry Report (IER). This includes the following:

- child's name, address and date of birth
- reason for report request
- whether child and or family are currently known to social work services
- if so the basis of the contact including duration and details

- comments/issues
- advice on whether further action/enquiry is considered appropriate.

If the reporter feels that further information is required s/he may ask for an Initial Assessment Report which includes the following:

- child's name, date of birth, sex, address and school attended.
- basis of report – level of contact including external / other agencies
- family composition
- family details: brief background – duration of marriage/relationships; any moves of address; any particular issues, especially around child's health and developmental history.
- circumstances of referral: child and family's response to this; any concerns surrounding this.
- school issues: attendance; behaviour; attainment; parental contact from child and family's point of view.
- significant issues for child/ family: supports, involvement in activities, any risk factors, family functioning. Contact with other agencies.
- child and family's view of current needs and the best way forward.
- conclusion: recommending no further action/ full assessment/ advice, voluntary support.

The reporter's decision

The reporter is required to make one of three decisions:

- not to proceed further with the referral (approximately 65%)
- to refer the child and family to the local authority to make arrangements for advice, guidance and assistance on a voluntary basis (approximately 10%)
- to refer a child to a children's hearing for consideration and determination (approximately 25%).

Hearings

The reporter can only refer a child to a hearing if s/he is satisfied that compulsory measures of supervision in the form of protection, guidance, treatment or control are necessary. At a hearing the reporter will keep notes on the hearing, complete relevant forms and may advise panel members if requested on points of law and procedural matters when appropriate. After the hearing is over the reporter will inform all relevant agencies of the decision of the hearing and provide a copy of the decision and reasons to the child and relevant persons. If a child or relevant person wishes to appeal against the decision of the hearing the local authority will advise them on how to do this.

If the reporter arranges a hearing s/he will request a Social Background Report (SBR) from social work services. This includes:

- name, date of birth, sex, address and religion of the child and school attended.
- reason for report request
- basis of report (level of contact): - number of home visits
- which family members seen

- reference to reports compiled by other professionals
- information obtained from other

professionals/agencies.

- family composition
- financial situation
- other agencies involved
- matters of concern
- elements of a comprehensive assessment:
 - what is the nature of the concern and how is this manifested?
 - emotional and physical development of the child
 - education
 - family composition and family history; including information about any absent parent(s)
 - relationship with significant adults
 - individual profile of the parents/carers
 - child and family's view of current needs and way forward
- conclusion and recommendations.

Panel members and relevant persons must and children may receive this report along with any grounds for referral and any safeguarder's report at least three days in advance of the hearing.

The reporter in court

The reporter may attend court for two reasons:

1. When the grounds for referral are denied or not understood and the hearing directs the reporter to make an application for proof, the reporter has to conduct the case in the sheriff court by presenting evidence and calling witnesses.
2. If the child and or relevant person appeals against the decision of the hearing, the reporter presents the decision of the hearing and the reasons for it to the sheriff.

The Police

If the police arrest a child under 16 for any reason and believe the case needs further consideration, they will refer that child to the reporter. If the police receive notification of a child who has been abused or may need protection from harm, they may remove a child temporarily to a place of safety. This is normally done in co-operation with the local authority, who will then refer the child to the reporter to arrange a children's hearing.

If the police decide to refer a child to the reporter, they must provide the legal evidence which will uphold the grounds for referral. They may also provide a brief report which may include information about the child's family background.

Each police force, through its Community Involvement branches, deal with issues relating to young people who offend. Their aim is the prevention of delinquency by intervention and diversion at an early stage.

Young people involved in offending or whose personal safety is at risk are likely to come first to the attention of a police officer on the beat e.g. young people wandering late at night, experimenting with drugs or alcohol, and mixing with known trouble makers. The officer notifies the Community Involvement Branch after giving the young person an informal warning. If more action is required a police officer may have contact with the young person and the family to give advice about where the family might go for help.

Police warning

A child may be eligible for a formal police warning where:

- the crime or offence is not serious enough to warrant referral to the procurator fiscal
- referral to the reporter is likely to result in a 'no further action' decision
- the child has not been formally warned on more than one occasion
- the crime or offence is admitted and the child and parents agree to co-operate.

The children's reporter may also refer a child for a police warning.

The child and parents are requested to attend at a police station in connection with the charge. The child is seen by a designated police officer, in the presence of a parent, and is asked if he or she admits the charge. If responsibility is denied or disputed the report is usually forwarded to the reporter for any action he or she may care to take. If the child admits responsibility the police officer will administer a formal warning. Discretion is used in the selection of cases for warnings, based on the criteria described above.

Child protection

In recognition of the need for close co-operation in cases of physical and sexual abuse where a crime may have been committed against a child, a joint investigation is carried out by police and social work staff. Some areas have special child protection units which are jointly staffed by police and social workers, but all areas have police staff who work particularly in areas of domestic violence and child protection. Police officers involved in this work do not normally wear uniforms.

Procurator Fiscal

The procurator fiscal is a legal officer who performs the functions of public prosecutor.

Police must report the following to the procurator fiscal:

- serious offences
- road traffic offences
- offences by 16 and 17 year olds subject to a supervision requirement.

Authority to prosecute and policy

S42(1) of the Children (Scotland) Act 1995 allows prosecution of children under 16 only with Lord Advocate's authority. There is a presumption that under 16s will be referred to the reporter. There is also a presumption that 16 and 17 year olds will be dealt with by the Procurator Fiscal, but with liaison with the reporter. Specific instructions cover children who commit offences between the ages of 8 and 13, 13 to 15 year olds and children who commit an offence whilst acting with an adult.

Prosecution options

Prosecution options are age dependent but for children the general options are as follows:

- no proceedings
- warning
- diversion
- fixed fine
- proceeding (but no child in District Court).

Diversion from prosecution

Various options exist for the procurator fiscal to divert the accused from prosecution:

- deferred prosecution model
- reparation and mediation.
- referral to social services or mental health services.

Offences which must be referred to the procurator fiscal

The Lord Advocate has laid down certain categories of cases which must be referred to the procurator fiscal including:

- treason, murder, rape, and other serious crimes
- offences alleged to have been committed by a child whilst acting along with an adult
- certain categories of road traffic offences
- offences alleged to have been committed by a child over 16 years old who is the subject of a supervision requirement.

With the exception of very serious crimes the procurator fiscal has a discretion to pass such cases to the reporter. Only the Lord Advocate can authorise criminal proceedings against a child under 16. However, if this does occur and even if the criminal court does find a child guilty, it may still refer to a hearing for advice on how the child might be treated, or indeed for disposal.

Courts

It is important to remember that one of the prime aims of the hearings system is to remove children from the formality of the court setting. The separation of proof from disposal allows the hearing to concentrate upon deciding on appropriate measures to promote the welfare of the child. However the children's hearings system is part of Scotland's justice system and there is an inter-relationship between the hearings system and the courts at various times and for a number of different purposes.

All criminal prosecution in Scotland is the responsibility of the Lord Advocate, through the Crown Office in Edinburgh. The Lord Advocate is normally represented in the High Court of Justiciary by the Solicitor General (his/her depute) and by the advocates depute, advocates who join the Crown Office for a period of time. The senior advocate-depute is known as the Home Depute. In the Sheriff Court, prosecutions are brought by procurators fiscal, acting on behalf of the Lord Advocate.

Scottish Courts operate at three levels:

The District Court

This court has only criminal jurisdiction and deals with relatively minor offences such as minor assault, breach of the peace and petty theft, including shop lifting. It also deals with minor road traffic offences. The case is presented by the procurator fiscal and heard by a lay justice of the peace, with a legally qualified clerk in attendance. The district court does not have jurisdiction over children under the age of sixteen.

If a sheriff is not available to consider an application for a child protection order, a justice of the peace (who is authorised to sign warrants) may, if satisfied that the conditions for making a child protection order exist, authorise a temporary warrant to hold a child for twenty-four hours in a place of safety until the matter can be brought before a sheriff.

The Sheriff Court

Sheriff courts are presided over by legally qualified sheriffs who exercise both criminal and civil jurisdiction. Sheriffs have been either advocates or solicitors and each of the six sheriffdoms is presided over by a sheriff principal.

(a) Civil jurisdiction

The majority of civil actions are raised in the sheriff court. Most divorce cases are heard in the sheriff court and undefended actions may be dealt with on affidavit evidence without personal attendance. Where there are children of the marriage sheriffs will decide on issues relating to residence and contact. A sheriff, in considering cases relating to separation, divorce, parental responsibilities and rights and freeing for adoption or adoption, or the securing of a child's attendance at school, can refer the child or children to the reporter if s/he thinks the child may require compulsory measures of supervision. The reporter investigates in the normal way but the grounds will be deemed to have been established if the reporter takes the case to a hearing.

Referrals from children's hearings to the sheriff are civil proceedings although it is recognised by the courts that they fall into a special category of their own. Cases are heard in private and many sheriffs do not wear formal court dress and may sit at a table in the well of the court, or in chambers, with the child and others who are present.

If grounds for referral are referred to the sheriff court for proof the case must be started within 28 days of the application. In an offence case, the grounds must be proved beyond reasonable doubt. In all other cases a different standard of proof (on the balance of probabilities) applies. The family are entitled to legal representation if they wish and they may be eligible for legal aid.

If a child, relevant person or safeguarder (on behalf of the child) appeal to the sheriff against a decision of the hearing the appeal must be lodged initially in writing to the sheriff clerk within 21 days of the decision being made and the reporter then has to provide all the appropriate papers to the sheriff. The appeal is heard in private and again the family is entitled to legal representation and may be eligible for legal aid.

The law allows various legal actions to be taken by the sheriff to protect children. These include child protection orders, child assessment orders and exclusion orders. (For more information see Law and Procedure.)

There is a right of appeal from the sheriff's decision on a point of law to the sheriff principal or to the Court of Session. The sheriff may appoint a curator ad litem or a safeguarder to look after the child's interests and parents and children may apply for legal aid.

(b) Criminal jurisdiction

Most of the less serious cases of crime are dealt with in the sheriff court. Where the sheriff deals with a case on his own, summary procedure is followed. Under solemn procedure the sheriff sits with a fifteen person jury and has much wider powers of sentence.

Only the procurator fiscal can decide if a trial will proceed on summary or solemn procedure. In the majority of cases when a young person appears in the sheriff court s/he will be dealt with by summary procedure. In certain circumstances the sheriff may, or must, refer the cases to hearings for advice. (See Law and Procedure)

Sheriffs may deal with criminal cases where children are alleged to have been harmed or abused by someone. Although grounds for referral may have been established on the standard of the balance of probability, the sheriff must apply the criminal standard of beyond reasonable doubt in dealing with the alleged abuser; in terms of Scots law this requires corroborative evidence and hearsay evidence is not admissible. For this reason there are comparatively few successful prosecutions but the child can still be protected by the children's hearings system.

The High Court of Justiciary/ Court of Session

(a) Civil jurisdiction

The Court of Session exercises civil jurisdiction as a court of first instance and also as an appeal court. It hears appeals of decisions by a single judge of the Court of Session or by a sheriff. As an appeal court, a minimum of three judges sit together. Although appeals to the House of Lords may be allowed, this does not apply to appeals from children's hearings. The Court sits in Edinburgh. Although most cases relate to matters like contract, debts, damages and property matters, the judges may also consider matters relating to divorce or aliment.

Appeals relating to children's hearings are taken against a sheriff's decision (or sheriff principal's decision on appeal) on a point of law or in respect of any irregularity in the conduct of the case.

(b) Criminal jurisdiction

The High Court of Justiciary is the supreme criminal court in Scotland. There is no appeal in criminal cases to the House of Lords. The Court sits in Edinburgh and other towns or cities in Scotland when it goes on circuit; there is a permanent circuit sitting in Glasgow. As in solemn procedure a judge sits with a fifteen person jury. Appeals which may arise out of the district court, sheriff court or High Court are normally held by a bench of three judges sitting as the Court of Criminal Appeal. All appeal cases are heard in Edinburgh. There is no jury in appeals.

The High Court deals with the most serious crimes. It has exclusive jurisdiction for murder, treason, incest and rape and also deals with other cases which, in the opinion of the Lord Advocate, may merit a sentence of more than three years' imprisonment which is the maximum penalty of the sheriff court.

When children are prosecuted in the High Court, the Court may, but need not, refer the case to a children's hearing for advice or remit it to a hearing for disposal following a plea or finding of guilty. The only exception is murder which has a mandatory sentence of detention.

Social Workers

Although the responsibility for implementing supervision is the duty of the local authority, the main responsibility normally rests with social work services. Social workers provide a link within the system between referral and disposal and between the child, the hearing and the community in general. They have a statutory duty to provide reports for hearings and to implement supervision requirements. Often this function is difficult to carry out in practice: for instance, in writing reports social workers may experience some degree of conflict between providing the best information for the panel members while still continuing to maintain the trust of the child and the rest of the family. They are also able to refer children to the reporter and call for a review of supervision requirement.

Preparation of a background report for the hearing

An important task is the preparation of a social background report. When a reporter decides to refer a child to a hearing the local authority is asked to provide a report and is legally obliged to do so. A social worker will meet with the child and family and other significant people as required, in order to gather information. The report is the main source of information for panel members and contains details about the child's background and difficulties. The social worker who provided the report generally attends the hearing along with the child and family. If something prevents him or her from doing so then another social worker will be in attendance.

The content of a social background report should follow the guidelines issued by SCRA. A report should include an evaluation of the child's needs. It should deal with the functioning of the child and the family together with the social, economic and environmental influences acting on them. Appropriate weight should be given to health, educational and community factors as well as emotional development and family relationships. Any assessment should consider the child's religion, racial origin and cultural and linguistic background. Wherever possible, any assessment should be done while the child remains in his or her normal family and school environment.

Information and views need to be put together from all those who are involved with the child. Where the child and family are already receiving support from the social work service, an assessment will be required of how far that support is being effective and what changes to the level and type of support appear to be needed.

Further information

Sometimes hearings are continued for further information because panel members do not consider that the assessment provided by the social worker is full enough to enable them to make their decision regarding the future care of the child. This assessment is usually carried out with the child remaining at home. Whatever method of assessment is used, the objective will be to obtain a fuller understanding of the child and his or her circumstances, to identify the factors that may be amenable to change and to indicate possible methods of achieving such change.

When panel members have continued the hearing for further information it may be that the child appears to have such major difficulties in home and school that a placement outwith the home may be required as may assessment in a residential setting.

Education staff

The education service of the local authority may make referrals to the reporter, particularly in cases of children failing to attend school. If a child who is to appear at a hearing is of school age, then the reporter usually asks for a school report, providing a form for this purpose. This contains information on the educational performance and behaviour of the child in school and a record of attendance. Sometimes a representative from the school will attend the hearing but there is no obligation for them to do so. As part of a supervision requirement a hearing may attach a condition that the child receive a particular education service that the authority has to offer.

In some areas additional services provided by education departments include school based social workers and educational welfare officers.

School reports

In secondary schools the person with special responsibility for preparing a report is the child's guidance teacher who will collect the material from other members of staff. In primary schools, reports are usually completed by the head teacher in consultation with the class teacher.

Educational psychologist

The education services of the local authority have a responsibility to provide a school psychological service. Their work covers everything to do with children, their development, progress and 'educational career'. They also have a statutory duty with regard to 'special needs' children in the assessment of their 'special' educational needs to allow the child to get the best out of the system and to attain their full potential.

Educational psychologists work with children, their families and teachers where a child is displaying behavioural problems which cannot be easily managed in the school, or where the child has a learning difficulty. Educational psychologists may provide reports and make recommendations to the hearing. They also provide support and advice to school staff in their work with children. They will see a child individually with parental agreement. In some areas, rather than working directly with the schools, psychologists provide a consultancy service to schools within the local authority area.

Medical staff

In cases of child abuse or neglect, general practitioners and consultants will provide reports to the reporter to support the grounds for referral and sometimes will also provide reports to the hearing. They can appear as witnesses in court should the grounds for referral go to the sheriff for proof. The health visitor too may have valuable information to offer and may in certain circumstances attend a hearing.

Psychiatrists are medically qualified doctors who specialise in mental illness or mental disability. Clinical psychologists are part of the mental health team. They are 'problem solvers' who use their skills to help individuals or families with problems such as phobias, anxieties, depression, learning difficulties, conduct disorders and neurological disorders.

As part of an assessment, a hearing may request that a child be seen by a medical practitioner, specialist paediatric consultant, a clinical psychologist, or in certain cases by a psychiatrist. In exceptional circumstances assessment might involve a period of time in a psychiatric

establishment run by the health service. If necessary, a health service resource may be required as part of a supervision requirement.

4 RESPONSIBILITIES TO CHILDREN AND THEIR FAMILIES

Duties of local authorities towards children and young people

There is a general duty placed on local authorities in the Children (Scotland) Act 1995 to promote the social welfare of people in their area by providing advice, guidance and assistance. Local authorities have a duty to safeguard and promote the welfare of children who are 'in need' by providing a range and level of services appropriate to their needs.

Children 'in need'

Section 22 of the Act defines a child as being in need of care and attention if;

- he or she is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless services are provided for him/her by the local authority.
- his or her health or development is likely to be significantly impaired, or further impaired, unless such services are so provided.
- he or she is disabled, or is affected adversely by the disability of a member of the family.

Children affected by disability

The local authorities have additional duties to children with disabilities. Services must be designed to give children with disabilities the chance to lead as normal a life as possible, and to minimise the effects of their disabilities. The services must also minimise the effect on the children of someone else's disability in the family. It is acknowledged that hardship and stresses within a family caused by a child's or parent's disability can also disadvantage another child within the family.

When a child has a disability, is chronically sick or mentally ill, or when someone else in the family has a disability and it seems that the disability is affecting the child's quality of life, parents and guardians have a right to ask for an assessment of the child's and family's needs. The local authority must carry out this assessment which will indicate what services they should provide to fulfil their welfare duty to the child.

'Looked after' children

Under previous legislation, children were described as being 'in care'. Now children and young people who are being provided with accommodation by the local authority, who are subject to supervision requirements or who are under child protection orders or warrants are all described as 'looked after'. This means that the local authority has a duty to:

- safeguard and promote the child's welfare (by, among other things, preparing the child for leaving care)
- provide family support services where the child is at home
- promote contact between the child and his/her parents

- ascertain and take account of the child's views and the views of parents and relevant adults
- have regard to the child's religion, race, culture and linguistic background
- review the child's case at regular intervals.

The care plan

Each looked after child is required under the Arrangements for Looked After Children (Scotland) Regulations 1996 to have a care plan in which certain matters are addressed:

- the local authorities immediate and longer term plans for the child
- details of any service to be provided to meet the care, education and health needs of the child.
- the respective responsibilities of the local authority to the child, any person with parental responsibilities for the child and any other relevant person.

Where a child is subject to a home supervision requirement, in addition to these statutory matters to be addressed, the care plan should also record:

- details of the supervision requirement
- timescales for meeting objectives and reviews
- how disagreements are to be dealt with
- occurrences that would lead to a review hearing being called
- any other plans (for example child protection or Record of Needs) relevant to the child.

Care reviews for looked after children

Local authorities are required to review cases of all children who are looked after by them. This includes children who are subject to a supervision requirement wherever they are living. Review practice must aim to avoid delay and drift. The overall objectives of the care review will be:

- to provide an opportunity to take stock of the child's needs and circumstances at regular, prescribed time intervals
- to consult formally with parents and children
- to assess the effectiveness of current plans as a means of securing the best interests of the child
- to provide an opportunity to oversee and make accountable the work of professional staff involved
- to formulate future plans for the child.

The format and formality of the review will vary depending on the child's circumstances. A review should be seen as helpful rather than intrusive by a child and his/her parents. The review should focus on progress and positive developments in the child's circumstances and emerging talents, skills and abilities as well as dealing with problems that arise.

Status of reviews

Where the child is not subject to a supervision requirement the review will be the forum where decisions, except where adoption becomes a consideration, are made about future work with and care of the child.

Where a child is subject to a supervision requirement the review does not have full decision making powers. It may formulate recommendations to be presented to a children's hearing which will make the decisions. However, within the scope of the supervision requirement, many matters may be left to be determined by the local authority and the child's parents; for example, contact arrangements, school changes or the allocation of responsibilities to different persons for the various aspects of the work.

Frequency and timing of reviews

Where a child is looked after by the local authority and placed away from his/her own home:

- first review within 6 weeks
- second review within 3 months of the first review
- subsequent reviews every 6 months.

Where a child is on home supervision:

- first review within 3 months
- subsequent reviews within 6 months from the previous review.

Additional reviews may need to be called if there is a major change of circumstances and if plans are failing to achieve the desired outcomes etc. Where a child is subject to a supervision requirement each review should consider whether the supervision requirement continues to be necessary and where the local authority is satisfied that it is no longer needed they should refer the case to the reporter to call a review hearing.

A review should be conducted prior to a children's hearing considering a case when the local authority feel that the best interests of the child who is subject to a supervision requirement would be served by:

- the supervision requirement ending or being varied
- referral to the reporter because a condition in the requirement is not being complied with
- applying for a parental responsibilities order
- applying for a freeing for adoption order
- placing a child for adoption
- an application has been, or is about to be, made to adopt the child.

When the care review considers that adoption or freeing for adoption are options, the adoption panel will also need to consider the case prior to the review hearing.

Where a child or relevant person has requested a review, or a relevant person proposes to take the child to live outwith Scotland, the local authority must hold a review if it is practicable, which will depend on the time available before the review hearing is held.

Attendance at the review

- A chairperson who ideally should not have line management responsibility for the case.

- Children aged twelve or over should be invited to attend, and the attendance of younger children considered in the light of their age and understanding.
- Those with parental responsibilities in relation to the child should normally attend.
- Key professionals with the ability to make a significant contribution to the review. The child's social worker, foster carer or key residential worker should always attend.

Attendance by other professionals depends on the contribution they can make to the functions of the meeting.

Matters to be addressed at reviews

- The nature of the child's placement will determine the matters to be addressed.
- Home supervision - is care plan proving workable and are the necessary arrangements and resources in place to meet the conditions of the supervision requirement?
- Looked after children away from home - fuller preparation will be needed prior to these reviews and a pro-forma has been recommended by the Scottish Executive.

At all reviews following the initial review, the basic information required should include a description of any changes and developments that have been made. Both problems and progress should be recorded. In addition, there should be an overview of future tasks - what remains to be done, what needs to be done differently and who will take responsibility for the work.

Records

A written record must be kept of the review for future use. The child, parents and carers or key workers should have copies of the review decisions. Other professionals should receive information relevant to their role in working with the child and family. The child's privacy should be respected.

Assistance for young people who were formerly looked after by the local authority

The Act places a duty on the local authority to provide advice and assistance to prepare a child for when he or she is no longer looked after by the authority. This underlines the importance of throughcare for young people who are looked after by the local authority. These aftercare responsibilities are with the local authority as a whole not one particular department. In many instances the social work department will take the lead role but those of the housing and education departments are also important. A young person should not move on to independence too quickly and must be consulted about decisions concerning his/her life.

In addition to this general duty to help a child, the local authority must advise, guide and assist any child under 19 who was looked after by a local authority at any time after he or she ceased to be of school age. However, if a supervision requirement is terminated before the child reaches school leaving age, he or she will miss out on automatic entitlement to this support.

The Act also gives the local authority the powers to extend this support to young people up to the age of 21 years who request advice or guidance. However, the local authority is not obliged to make the help available.

Supervision

The Children (Scotland) Act 1995 specifies that compulsory measures of supervision may include 'measures taken for the protection, guidance, treatment or control of the child'. The

child's circumstances established through assessment and discussion at the hearing will dictate whether all or some of these aspects will be the focus of the work with the child.

A local authority must 'give effect' to a supervision requirement made by a hearing. This means that it is the whole authority who carries the responsibility and not just one department. Social work and education in effect are the two main services who will be involved but others may have some relevance, for example, housing and leisure and recreation. Housing is particularly relevant for young people of 16 and over who are in need of accommodation. The leisure and recreation service may be able to provide a diversionary provision.

The objectives of supervision whilst the child is living at home are to:

- provide effective measures of care for children living at home with their families
- enable children and their families to recognise and tackle successfully the difficulties and problems which led to the child being referred to a children's hearing.
- reduce offending behaviour where this is an issue.
- provide protective measures for the child where this is an issue
- help ensure school attendance where this is an issue
- provide programmes of supervision which will maintain the confidence of panel members and the public in the effectiveness of supervision as a decision of a hearing
- provide programmes of supervision which aim to integrate the child in the community and maintain the confidence of the community.

Supervision requirements

In assessing the child's and the family's circumstances a social worker should consider whether the objectives can be achieved by voluntary provision of services rather than by compulsory supervision. The role of the hearing is to consider options in the light of discussions and to decide on whether or not to make a supervision requirement. A hearing must decide whether:

- the voluntary co-operation of the child and family with services offered by the social worker and other agencies is unlikely to be sufficient and that a supervision requirement would be better for the child than no order being made
- the child's needs can best be met at home or in another setting
- a condition relating to contact between the child and any other person should be attached to any supervision requirement
- there is significant risk by the child continuing to live at home.

What is the purpose of supervision?

The programme for supervision should be linked to the statement of reasons for the hearing's decision so that the child, parents and social worker are clear about the basis for it. A plan should be drawn up by the social worker in conjunction with the child and family (together with other professionals where appropriate) and should set out:

- the purpose and specific issues to be addressed through supervision with the child and family
- the proposed methods by which the supervisor and others will approach these issues

- what the parents undertake to do
- what the child undertakes to do
- the timescale for the plan
- the process for reviewing progress.

How is supervision carried out?

Supervision objectives are achieved through the choice of the right techniques and services. A range of different approaches can be used in any supervision programme and it is the responsibility of the social worker to ensure that they are properly co-ordinated and effective in their delivery. Collaboration between agencies and within the authority is essential. It does not mean that the social worker will be the person who is undertaking all the work with the child and family. It may be that the majority of contact will be with another professional or service, e.g. educational psychologist and school, but the social worker will probably act as the co-ordinator.

Methods of supervision

The methods used in supervision may include:

- *Family based work* which may encompass family casework, family therapy, mediation and behavioural problems in support of the more effective functioning of all members of the family together.
- *One-to-one approaches* involving casework, counselling, problem-solving, personal learning (of skills and knowledge), and work aimed at behavioural change or attitudinal change where the emphasis is on the support and development of the individual.
- *Groupwork techniques* for children, parents or for whole families focusing on mutual support, problem solving, skills development. They can also be used for confidence building, project development or similar goals where the contribution of other people facing similar difficulties can be productive.
- *Resources in the community* for instances family centres, day care, befriending, specialist schooling, home care, community education, intermediate treatment, youth services, and voluntary groups.

The role of the social worker in supervision

The role of the social worker in home supervision is to:

- maintain contact at the level agreed in the care plan
- undertake direct work with the child and ensure that the child's views are sought and listened to concerning intervention in his/her life
- work closely with the child's family, listen to their views and to ensure the child's needs are met and welfare ensured
- oversee the implementation of the care plan and ensure the focus of work is on achieving its objectives
- co-ordinate the work of other professionals with the child and family as agreed in the care plan

- ensure a review of the plan is undertaken at least at the statutory minimum of a first review within three months from the date when the authority began to look after the child and thereafter every six months

Whatever the key issue may be in the supervision requirement (e.g. offending behaviour; child protection; failure to attend school) the role of the social worker is to focus on matters related to that key issue.

Children's service plans

To ensure that services are tailored to meet the particular needs of children in their area, each local authority is required, in consultation with health authorities and trusts, voluntary organisations, housing agencies, the reporter and chairman of the children's panel, to prepare and publish plans for the provision and development of services for children. The authority also has a duty to publish information about the children's services which it makes available. Whilst the social work department will inevitably constitute a major part of the plan, contributions from other departments, particularly education but also housing and recreation and leisure will have an important part to play.

Social services resources

There is a range of resources available for children and families. Included here is some information about those generally provided. However, not every authority will have access to all and some will have others not mentioned here.

Child or family centres

Child or family centres encompass a very wide range of projects. Most have a specific focus on children in need, with some providing specialist services for children with disabilities. The age range will vary, although many cater for children below their teenage years and some take only children below school age. The aims are also varied, although they will usually include some of the following: encouraging improvements in the child's health and development; preventing abuse or alleviating the effects of abuse; improving parenting skills; and providing respite for parents. Some will offer an outreach service to families in their own homes.

Family helpers

These are people employed by the social work service to give assistance to families. This may include help with the care of children, budgeting or home making skills.

Day care

Day care covers various services for both pre-school and older children. The primary role is one of enhancing the development of young children but also contributing to a child's well-being by providing support and to help carers. After school provision is a good example of this. Such schemes not only provide a safe environment for children whose parents may be at work but also enable children to develop a broad range of interests and adopt a positive approach to the use of leisure time.

Day care also fulfils an important preventive role by providing a range of resources from mutual self-help to parent-craft training and health education. The local authority has a duty to provide day care for pre-school children in their area who are 'in need'. In practice, this usually means day nurseries, play groups and daily minders.

Nurseries

These services are offered for children usually up to the age of 5 years by the private and voluntary sector as well as by the local authorities. The nurseries offer structured and unstructured play and help promote the child's social, emotional, physical and cognitive development. A nursery can also relieve stress on the parents/carers. Some nurseries offer their facilities for supervised and unsupervised contact visits between a child and parent specified by a court or hearing.

Befriending schemes

Children may be befriended by volunteers on an individual basis. Children are matched to selected and screened volunteers who spend time with them and involve them in recreational activities. Most of the schemes require local authority support and funding. The aim is to provide the child with an additional non-professional form of adult support.

Youth support projects

These projects are set up in particular geographical areas where young people may be at risk of offending or being excluded from school. The aim is to prevent behavioural problems arising and to encourage the children to succeed at school, remain within the family and abide by the law.

Intermediate treatment

These are planned programmes in which groups of young people become involved in various forms of activities ranging from discussions on issues to outdoor activities in an attempt to help them to recognise and understand their difficulties and so change their behaviour. They may include group and individual work. Many projects confront the young people with the consequences of their actions, particularly offending, whilst aiming to break the pattern and maintaining them within their own community.

Children away from home

While the services and support described above may meet the needs of some children and their families, other children will benefit from additional care outwith their family. Local authorities are obliged to assist children in such situations and they can 'accommodate' children in a wide range of circumstances. This may be with another family or in a residential home or school. For some, this will be a short term requirement, but others may require substitute care for many years. Whilst it is very important that young people and children should not be in care any longer than it is necessary, it is also important that their experience of care should be a beneficial one.

If the decision of the hearing is that a child should live away from home it is the responsibility of the local authority to put this into effect. Before making a recommendation to a hearing that a child should reside in a particular residential establishment, the local authority must be satisfied that the residential placement proposed is appropriate to the child's needs.

Children's homes and hostels

These are often provided and maintained by the social work service of the local authority but in addition use is made of the resources of the voluntary organisations to meet the demands. Often voluntary organisations can provide a specialist service which the authority is unable to

provide. Establishments vary in size. Some specialise in a particular age range of children, e.g. preparing young people about 16 years old for living independently. Each establishment will have a statement of its functions and objectives which will be readily available. Children entering residential care should have a clear understanding of what is involved and it is important that they should be aware of their rights and responsibilities.

The number of children and young people in residential care has decreased over the years as more emphasis has been placed on keeping children in their own homes with appropriate support or by placing them with foster or community carers.

Fostering

Fostering is one of the services which local authorities provide or commission voluntary agencies to provide under their duties to looked after children. Foster carers are recruited locally and are assessed, trained and formally approved as foster carers before they begin to care for children. Applicants' assessments take account of the following:

- experience, attitudes, expectations, understanding and perception of fostering
- capacity to work in partnership with the child's family
- capacity to provide a foster child with protection, nurture and opportunities for development
- ability to work with the fostering agency
- preferences and suitability as a foster carer for any particular group of children or for any particular fostering tasks.

Many children live temporarily, or sometimes permanently with their relatives or a family friend without any intervention by the local authority. Where, however, a child is looked after by the local authority, and is placed with a friend or relative the friend or relative must be approved as a foster carer except:

- where the placement is an immediate placement and lasts for less than six weeks
- where the placement is a condition of a supervision requirement made by a children's hearing.

Fostering panel

Each local authority or voluntary organisation must appoint a fostering panel or panels which consider whether to recommend approval of foster cares. Where the panel recommends approval they must also recommend whether approval is for any child, for certain categories of children, for instance in a particular age range or those needing emergency care, or for a particular child or children, for instance a child already known to the potential foster carers. Most prospective carers will be assessed as having strengths and an interest in a age range or particular type of fostering. The fostering panel recommendations are made to the fostering agency who must make the decision.

The composition of fostering panels is for the local authority to determine but one member must be a medical adviser and it is good practice for both sexes to be represented and for three people to represent a quorum. The chairperson should have considerable child care knowledge and be experienced and skilled in chairing meetings. Members who have been parents, foster carers or who have been fostered as a child are valuable. The panel should, where possible, reflect the backgrounds and heritage of children who are likely to need placement and the carers likely to seek approval.

Placement of children with relatives or friends

The local authority can arrange for a child to be cared for by a relative (grandparent, brother, sister, uncle or aunt, whether of full blood or marriage) or friend. Before placement the social worker must:

- interview the potential carer
- inspect the accommodation
- obtain information about the potential carer and any other persons in the household
- be satisfied that the potential carer is a relative or friend of the child
- get a signature from the carer on a Regulation 14(2) agreement
- be satisfied that the placement is the most suitable way of meeting the child's needs
- provide the potential carer with relevant information including that relating to the child's background, health and emotional development.

Once placed the child must be reviewed within 6 weeks of the placement. This is a Looked After Child Review. The social worker must immediately start to consider the options because the placement can only last a maximum of 6 weeks. The options are:

- refer to the children's reporter
- move the child to approved foster carers
- have the carers (relative or friend) approved as foster carers by the Adoption and Fostering panel (this may take longer than 6 weeks)
- discharge the child from care if appropriate, i.e. all is going well and being accommodated is no longer necessary.

Respite care

Respite care schemes are intended primarily for children with disabilities although it can have a wider application. It may include respite care away from the child's home, in order to give his or her family a break, to extend the range and quality of the child's experience and give him or her opportunities to develop increasing autonomy and independence. The arrangements vary greatly from provision within the child's home, daytime care, occasional overnight stays and regular periods of care with an approved family or foster carer, or in a residential home.

Refuges

It has been recognised that vulnerable young people should have a place to go on a short term basis if they feel themselves to be at risk. The local authority may provide a refuge either in a residential establishment or a local authority household for a child who appears to be at risk. The establishment or household must be designated for this purpose. However, authorities are not obliged to provide them. A child must ask to go into a refuge and can only stay for 7, or in exceptional circumstances, 14 days.

Secure accommodation

Secure accommodation provides residential care where a child may be locked up or otherwise supervised in a way which physically prevents him or her from leaving the premises without approval. This type of accommodation has to be approved by Scottish Ministers. It is provided for children who are a danger to themselves and others in the community. It is designed to rehabilitate them and to protect the public. This involves controlling the child, including taking away their freedom; assessing the child's behaviour and needs; providing care, education and treatment.

Several specialist units are registered to provide secure accommodation for children aged between 8 and 18. Each unit must have an open wing and provide education.

Key requirements for child care services

The key features which should be taken into account in looking after any child or young person (particularly those away from home) are as follows:

- *Individuality and development*

Young people and children in care have the right to be treated as individuals who have their own unique relationships, experiences, strengths, needs and futures, irrespective of the needs of other residents. They should be prepared for adulthood and supported until they are fully independent.

- *Rights and responsibilities*

Young people, children and their parents should be given a clear statement of their rights and responsibilities. They should have a confidential means of making complaints. They should be involved in decisions affecting them and in the provision for their care. Their rights should be consistently respected.

- *Good basic care*

Young people and children should be given a high standard of personal care. They should be offered new, varied and positive experiences of life and should be included in the wider community.

- *Education*

Young people and children should be actively encouraged in all aspects of their education, vocational training or employment and offered career guidance. Their individual educational needs should be identified and met.

- *Health*

Young people's and children's health needs should be carefully identified and met; they should be encouraged to avoid health risks and to develop a healthy life-style.

- *Partnership with parents*

Young people and children in care should be cared for in ways which maximise opportunities for parents' continued involvement, and for care to be provided in partnership with parents, wherever this is in the interests of the child.

- *Child centred collaboration*

Young people and children should be able to rely on a high quality of inter-disciplinary teamwork amongst the adults providing for their care, education and health needs.

- *A feeling of safety*

Young people and children should feel safe and secure in any care setting.

Complaints

Young people need to be able to make their complaint in confidence particularly if they are being accommodated by the local authority. All local authorities have established complaints procedures in line with the government requirements which are sometimes part of the local inspection units. These units have a responsibility for inspecting all children's homes regularly. Young people are increasingly involved in the work of inspection, both locally and nationally.

Education resources

Special Educational Needs

Wherever possible children with special needs will be maintained within mainstream schools. Children and young persons have special educational needs if they have a learning difficulty which calls for provision for special educational needs to be made for them. A learning difficulty is said to be present if children:

- have significantly greater difficulty in learning than the majority of those of their age; or
- suffer from a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for those of their age.

Learning difficulties may be related to a physical or neurological disability or barriers to learning caused by social, emotional or behavioural problems, or mental illness. Children with special educational needs should be integrated in their local mainstream schools wherever possible.

A Record of Needs is an official document which may be opened for a very small number of children when the circumstances are serious enough to justify the child's needs being watched over regularly. It facilitates the identification of a child's learning difficulties so that long term educational plans may be made. Special facilities and resources may be provided such as auxiliary class room assistants.

Residential schools

In the main these cater for children between the ages of 8 and 16. The emphasis in these schools is on providing an education for the children at the same time as helping them with their behavioural problems which cannot be managed in their home base. Each school may achieve these aims through different methods and it is important that you discuss these methods with the social workers at a hearing in order to help you decide where the most appropriate placement for the child might be.

Establishments operate individual regimes which, combined with group care, are designed best meet the needs of each individual child. These may involve nurturing care, remedial education, vocational training, and opportunities for children to gain in self-esteem by recognising and developing their own abilities. Some schools for example provide care for 7 days a week. It is important that you find out what type of care is being offered. Not all schools are run by the local authority. Some are independent, with their own management boards and some are part of voluntary organisations, such as the Church of Scotland or Barnardos.

Education for looked after children

Following a review of arrangements for the education of looked after children HM Inspectors of Schools and the Social Work Services Inspectorate published a report '*Learning with Care*' (March 2001) which made the following recommendations.

- Local authorities should carry out a full, multi-disciplinary assessment involving education and social work personnel, and others as appropriate, around the time a child becomes looked after. This assessment should provide a baseline for future educational progress. Points for action should be identified in the care plan and placement agreement.
- Local authorities should implement the quality assurance procedures to ensure that statutory requirements are met effectively. Local authorities should ensure that all looked after children have care plans and placement agreements as specified in the legislation.
- Except in exceptional circumstances, all looked after children should have permanent full-time education, however that may be organised.
- Schools should take particular care to identify the learning needs of all their looked after children, set them challenging but realistic educational targets and systematically monitor the progress made. A senior member of staff in each school should maintain an overview of looked after children's progress and take responsibility for ensuring that appropriate measures are in place for supporting the children's education.
- Local authorities should develop an integrated policy covering education and social work which ensures that the educational needs of looked after children are met effectively. They should also provide joint professional development for education and social work staff, and carers, to ensure that they are able to contribute effectively towards the implementation of the policy.
- Unless there are compelling reasons to the contrary, parents having contact with their children should receive regular information about their children's progress in school, including end-of-session reports.
- As part of their quality assurance procedures local authorities should undertake an audit of their residential units to assess how far they are educationally rich environments and, where shortcomings are found, make plans to take appropriate action.

- Local authorities should include explicit and targeted consideration of the education of looked after children in Children's Services Plans and reviews.
- Local authorities should keep accurate statistics on a range of aspects of the education of looked after children as agreed in the Social Work Information and Review Group document '*Local and National Information Requirements for Social Work*'.

Voluntary organisations

There are many voluntary organisations which provide a service to children and young people. These may be 'one off' organisations which deal with a small number of children on a very local basis to a large national voluntary organisation which may provide a network of provision. Most organisations work in partnership with the local authorities and if they provide residential accommodation or day care are required to be registered with the local authority.

Agencies working together to protect children

In all investigations or child protection plans, the child's welfare is the paramount consideration. Child care services and child protection work in particular require good inter-agency co-operation. It is important for all professionals to combine an open-minded attitude to alleged concerns about a child with decisive action when this is clearly indicated.

Child Protection Committees

Local authorities are required, either on their own, or in collaboration with other authorities, to have inter-agency child protection committee. The committees have clear procedures and guidance for dealing with child protection referrals and for providing training and advice across the agencies. They have the task of developing, monitoring and reviewing child protection policies, and promoting effective and harmonious co-operation between the various agencies involved. The committees are made up of representatives from all the main agencies, statutory and voluntary, which are involved in child protection work in the area and who have authority to speak and act on the agency's behalf. The children's reporter is usually a member of the committee.

Child protection guidelines

These provide a rapid reference for staff of all agencies involved in child protection in an area. They are the result of multi-disciplinary consultation and are approved by the Area Child Protection Committee for use by all agencies in that area. They contain sections on the definition, classification and identification of abuse and spell out the recommended action to be taken by each professional group in the event of child abuse cases coming to their attention.

Child protection case conferences

These are central to the child protection procedures which each local authority will have. They are convened by the social work service to bring together the professionals concerned and provide them with an opportunity to exchange information and make plans together. They assist planning to help families and welfare agencies ensure that a child at risk is properly protected from harm and, when necessary, to ensure that concerns are registered. Parents and carers and, where appropriate, children are encouraged to attend case conferences.

Account is taken of the child's views and feelings having regard to their age and understanding.

Care and protection or other services for the child and family should be based on a comprehensive assessment of the child and family's needs including an assessment of the level of risk to the child. Child protection plans are formulated to protect the child from harm or further risk of harm.

Amongst the options available to agencies is the convening of a case conference about an unborn child if there appears to be a risk of significant harm to the child when s/he is born. The case conference may decide that the child's name should be placed on the child protection register when s/he is born and agree an inter-agency child protection plan. The conference may recommend that the local authority seek a child protection order at birth.

Decisions of a case conference may be subject to a subsequent children's hearing decision - the case conference can only make a recommendation to the children's hearing. Throughout the child protection process, the work is conducted on an inter-agency basis. The case conference is the prime forum for:

- sharing information and concerns
- analysing risk and formulating the plan for the protection of the child and for the provision of services to the child and family
- monitoring what is happening.

The child protection register

Local authorities are responsible for maintaining a central register known as the child protection register. This lists all the children in the area who are currently the subject of an inter-agency protection plan. It ensures that the plans for these children are formally reviewed at least every 6 months. The register provides a central point of speedy inquiry for professional staff who are concerned about a child and want to know whether the child is the subject of an inter-agency plan. Registration does not of itself provide any protection. The inclusion of a child's name on the child protection register will normally only occur following a child protection conference. A child's name is usually only removed from the register when a case conference agrees that formal inter-agency working is no longer necessary to protect the child.

The register is maintained by the social work service and must be held separately and in secure conditions. Access to the register is available twenty-four hours a day. The keeper of the register (a designated local authority official) should notify other local authorities in writing when a registered family moves out of their area. The keeper may also be responsible for attempting to trace a registered child whose whereabouts have become unknown.

Joint investigation

Joint investigation is a process whereby social work, police and health professionals plan and carry out their respective tasks together when responding to complex or substantial child protection referrals. In any such investigation the welfare of any child or children at risk is the paramount consideration.

The police and social services should share and evaluate jointly all relevant information at an initial planning meeting, involving health services where possible since medical information and assessment may assist the planning and management of any injury. Planning should

consider the child's needs, risk to the child and the conduct of child protection inquiries including any criminal investigation.

Agencies should adopt a measured approach when dealing with allegations of abuse by adults. They should make sure that their investigations do not prejudice efforts to collect evidence for criminal prosecution of any alleged abuser(s).

5 PERMANENCY PLANNING

The right of a child to be brought up in a loving family is enshrined within the UN Convention on the Rights of a Child. For most children this will be the family they were born into. For a small number of children, however, this will not be possible and alternatives may have to be explored. Where the possibility of a 'looked after' child returning to live with the birth parents has been ruled out and placement with the extended family is unable to meet the needs of the child, alternative plans need to be made as quickly as possible.

These plans will initially be discussed at a care review. Permanency planning is the term for the process that follows. The available options will be considered and legal advice sought. If the review has identified that the child is in need of long-term care, security and stability away from his or her birth family there are three options for securing legal responsibility for a child until they are sixteen.

There are various routes to securing permanent care via the court:

1. Parental Responsibilities Order (s.86) This can only be applied for by a local authority. It transfers parental responsibilities and rights to the local authority except the right to consent to adoption.
2. Adoption Order An application is made by the prospective adopters. The order legally terminates all responsibilities and rights of birth parents and transfers them to the adoptive parents.
3. Freeing for Adoption Application is made by the local authority. It transfers parental responsibilities and rights to the local authority with the longer term goal that adoptive parents will be found. Once freed for adoption there is no further requirement of the court to have birth parent/s consent to adoption.
4. Section 11 Order A person may apply for an order granting specific parental responsibilities and rights. This person is usually a wider family member, foster carer, friend of the family. The order does not transfer the right to consent to adoption and can be revoked.

Adoption panels

An adoption agency, which is usually the local authority is required to have an adoption panel.

Functions of the panel

- To consider whether adoption is in the best interests of a particular child and if so whether a freeing application should be made.
- To provide a written report of the consideration given by them to alternatives to adoption

and in circumstances where adoption with parental contact is recommended, why adoption is recommended rather than an alternative course of action.

- To consider whether a prospective adopter is suitable to be an adoptive parent;
- To consider whether a prospective adopter would be a suitable adoptive parent for a particular child. A recommendation cannot be made about prospective adopters being suitable for a particular child unless a recommendation has also been made that adoption is in the best interests of the child.

The Regulations give agencies the discretion for adoption panels to:

- consider permanency plans for children;
- consider plans to place siblings together or separately
- monitor and review the implementation of plans for children
- review after a specified time approved adoptive parents who have not been linked to a child
- consider reports on the disruption of any adoptive placement and make recommendations about whether adoption is still in the best interests of the child
- consider matters relating to financial assistance of adopters.

Full reports are considered by the panel before making a recommendation to the agency decision maker. The agency decision-maker is independent of the panel, a senior member of staff and should be knowledgeable about adoption matters. He or she must make a decision within fourteen days of the panel recommendation and the parents and prospective adopters notified of it within a further seven days.

Membership of the panel

Regulations specify a minimum of six members but in practice agencies tend to have more. Numbers, qualifications and experience of members should enable the panel to discharge its functions effectively and both men and women should be represented. There should be knowledge amongst the members in relation to adoption and separated children and parenting experience, particularly as an adoptive parent. There should be a balance between representatives from agency staff, management committee members or elected representatives of the agency and representatives from the communities served by the agency. Membership should also, where possible, reflect the racial and cultural heritage of the children and adopters considered.

The panel must also have a medical and a legal adviser. The medical adviser will interpret medical information for the panel and advise on its relevance for a child's placement for adoption, or on prospective adopters' suitability to adopt a child, or on the eligibility of a child, on health grounds, for an adoption allowance. The legal adviser will be able to advise members on the legal issues of each case and to clarify the alternatives to adoption.

The views of the child

The panel must take into account the views of the child about any plan for his or her future when making a recommendation. Generally these will be represented by the social worker and the carer, and the child may be offered the opportunity to write something about himself or herself and the plans. Children aged twelve or over will be required to agree to adoption so consideration of their views is essential.

Parental responsibilities orders

Who may apply

Only a local authority may apply to the sheriff court for a parental responsibilities order. No time span is prescribed over which children must be looked after by a local authority before an application may be made.

The planning process

Depriving a parent of his or her parental rights and responsibilities is a very serious step and should be applied for only when it is clearly in the child's best interests to do so. Guidance from the Scottish Executive indicates that local authorities, in reaching the decision whether or not to apply for an order, should have considered and be able to demonstrate:

- where a child is away from home, returning the child to his or her parents or extended family is unlikely to be in the child's interests, or has been tried and failed and further attempts are unlikely to be in the child's interests
- where the child is accommodated, the child's immediate and long-term needs cannot be met by a reliable accommodation arrangement with the parents
- where the child is subject to a supervision requirement, a variation of the conditions of the requirement would not meet the child's immediate and long term needs; or that to attend a children's hearing at least annually would create needless instability and uncertainty for the child
- if the child is to remain with current foster carers, whether or not the foster carers are willing to apply for a residence order which would give them parental responsibilities and rights. Depending on the nature of the order applied for or obtained, these might or might not be shared with a parent or some else with parental responsibilities and rights.
- whether the child's best interests would be better met by adoption either by his or her current foster carers or in a new family
- if one or both parents of the child is dead, whether there is there anyone with an interest in the child who should be encouraged to apply to be the child's guardian and whether this would meet the child's needs for someone to exercise parental responsibilities.

Before making any decision the local authority should:

- ascertain the views of the child's parents or any other person who has parental rights in relation to the child where this is reasonably practicable
- discuss the plans with the child so that he or she can understand the effects of a parental responsibilities order.
- have regard, as far as practicable, to needs arising from a child's racial, religious, cultural and linguistic background when they look after a child. They should consider whether the making of a parental responsibilities order would positively or negatively affect their ability to meet the child's needs. If negative, alternative plans should be made to meet those needs.

Full consideration should be given to the question of an application at the statutory care review. In practice this responsibility is usually passed to the Adoption or Permanence Panel of the local authority (see below). Where the conclusion is that a parental responsibilities order will meet the child's best interests, a recommendation to this effect is

made to the designated senior officer within the local authority. It is this officer who makes the decision to make an application informed by legal advice.

Court application

The sheriff must be satisfied that each person who is a parent or a person who for the time being has parental rights in relation to the child freely and with full understanding of what is involved agrees unconditionally to the making of the order.

If there is no agreement, the sheriff may dispense with the consent if that relevant person:

- (i) is not known, cannot be found or is incapable of giving agreement; or
- (ii) is withholding such agreement unreasonably; or
- (iii) has persistently failed, without reasonable cause, to fulfil one or other of the parental responsibilities to safeguard and promote the child's health, development and welfare, or, if the child is not living with him or her, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or
- (iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of ill-treatment or for some other reasons, unlikely.

When an application is made, the sheriff must appoint a reporting officer and curator ad litem (this can be the same person) who will also visit the child, family members, carers etc and compile a report.

The sheriff must:

- consider all the reports
- consider the welfare of the child throughout his or her childhood
- take account of any views expressed by the child;
- only make an order unless it would be better for the child than not making an order.

An order cannot be made which allows one of the relevant persons to retain his/her rights and responsibilities.

There is no right of appeal under the Act, but parental responsibilities orders are subject to the ordinary sheriff court appeal system, i.e. to the sheriff principal and/Court of Sessions and the House of Lords.

Referral to a children's hearing

Where a local authority intends to apply for a parental responsibilities order and the child is subject to a supervision requirement the case must be referred to the reporter prior to making the application. The children's hearing is required to consider the case and within seven days of the hearing send a report to the court, the local authority, the child, any relevant person and any safeguarder who was appointed in the proceedings, outlining its advice on the appropriateness of the order. At the same time the children's hearing must review the supervision requirement and may continue, vary or terminate it.

Where the children's hearing reports that it is not in favour of the making of a parental responsibilities order, the local authority should take this advice into consideration before deciding whether to proceed with an application.

Effects of a parental responsibilities order

- The local authority assumes all the responsibilities and rights which were formerly held by the relevant persons **except** the right to agree, or decline to agree to the child being freed for adoption or to being adopted. These rights remain with the person who had them prior to the granting of the parental responsibilities order. Parents lose their right to attend a children's hearing.
- The making of the order means that the child is a 'looked after' child and the local authority will therefore have duties towards the child as well as rights and responsibilities.
- A child will be allowed reasonable contact with anyone who formerly had parental responsibilities or with whom he or she lived. This is subject to the court making an appropriate order about contact on the application of the child, local authority or others. Contact can therefore be restricted or refused altogether.
- The child may be placed with a parent, guardian, relative or friend, either for a fixed period or until they decide to end the arrangement, if it is considered this would benefit the child. A sheriff may attach conditions to any parental responsibilities and has the power to vary or discharge the order.

Variation, discharge or termination of the order

An application to discharge or vary the order may be made to the sheriff by the child, local authority or any person with an interest.

Duration of a parental responsibilities order

- If not varied or discharged, the order continues until the child is 18 years old, although all parental responsibilities and rights except that to provide guidance end on the child's 16th birthday.
- The order also ends if the child is adopted, is freed for adoption or there is a decision under the Child Abduction and Custody Act 1985.

Adoption orders

All provisions to do with adoption are to be found in the Adoption (Scotland) Act 1978 as amended and The Adoption Agencies (Scotland) Regulations 1996 and The Adoption Allowance (Scotland) Regulations 1996.

All local authorities are obliged to provide an adoption service in their area and have a duty to meet the needs of children who have been or may be adopted and those of the parents and guardians of such children as well as those who have adopted, or may adopt a child. There are two categories of adoption agency: local authorities and adoption societies.

Adoption agencies in making any decision in relation to the adoption of the child must:

- have as their paramount consideration the need to safeguard and promote the welfare of the child throughout his or her life
- so far as is practicable take account of the views of the child, if the child wants to express them, and in doing so take account of the child's age and maturity
- so far as is practicable take account of the child's religious persuasion, racial origin and cultural and linguistic background

- so far as is practicable take account of the wishes of a child's parents or guardians about the religious upbringing of the child
- consider for every child whether adoption is in the best interests of that child or whether there is a better practicable alternative.

Agencies must also provide post-placement support for children, adoptive parents and, birth parents and other family members if this is required.

The planning process

If a child care review has ruled out the possibility of the child returning to live with the birth parents and a placement with extended family is unable to meet the needs of the child, alternative plans need to be made without delay. The agency should consider the available options and seek legal advice. A thorough assessment of the child is necessary, both for the decision making process and for preparing court reports at a later date. Alternatives to adoption must be considered and the agency must be clear that adoption is the best provision that can be sought for the child.

Where a child is looked after and a return to his or her family no longer seems appropriate, it is important that parents are informed of the likely direction of the agency's planning well before the child care review at which the option of pursuing an adoptive placement is discussed.

The racial, religious, cultural and linguistic aspects of the child's heritage should be identified. Generally, it is easier for a child to feel knowledgeable, confident and comfortable about his or her racial, religious, linguistic and cultural background if this is shared by his or her adopters.

Where it has been decided that adoption is the best course of action for the child, the adoption agency must decide on the most appropriate route to adoption: an application may be made to free the child for adoption, followed by an adoption application by the prospective adopters (local authority adoption agencies only); or an adoption application.

Freeing orders

The adoption agency must apply for a freeing order. Such an order may be helpful if:

- rehabilitation is not in the child's interests and the child needs the security of adoption, especially very young children and those of primary school age
- where the above is the case and a placement has not yet been found
- where parents are so hostile as to make it necessary for the agency to pursue the matter through the court protecting the identity of any adoptive family. A placement could then be made in which anonymity is protected for the child's benefit and the carers' peace of mind
- where the wisdom of the adoption plans needs to be tested in court without the child being placed with a family and with whom s/he may not be to remain (thus avoiding unnecessary trauma for the child). Non-disclosure of address of a new placement may be considered when providing a child with a 'secure base' and parents cannot be trusted not to compromise the child's safety or security because of serious threats or actual violence.

Adoption orders

An application for an adoption order is made by the prospective adoptive parents. The decision about when to lodge the petition in court to adopt a child should be made by the

prospective adopters in consultation with the agency. Prospective adopters may be single individuals; couples who are 'strangers' to the child, i.e. new placements; current foster carers who have been caring for the child for some time and who now wish to adopt, usually with the support of the local authority.

Criteria for granting an order

An adoption order or freeing order is made by the sheriff. When an application is made, the sheriff must appoint a reporting officer and curator ad litem (this can be the same person) who will also visit the child, family members, carers, prospective adopters etc and compile a report.

The sheriff must:

- consider all the reports
- consider the welfare of the child throughout **his or her life**
- take account of any views expressed by the child
- only make an order unless it would be better for the child than not making an order.
- be satisfied that the birth mother and father who have relevant rights or the guardians agree freely and unconditionally to an adoption order being made. The court may dispense with the need for agreement if the parent or guardian:
 - (i) is not known, cannot be found or is incapable of giving agreement; or
 - (ii) is withholding such agreement unreasonably; or
 - (iii) has persistently failed, without reasonable cause, to fulfil one or other of the parental responsibilities to safeguard and promote the child's health, development and welfare, or, if the child is not living with him or her, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or
 - (iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of ill-treatment or for some other reasons, unlikely.

Effect of the granting of the orders

If a freeing for adoption application is granted, all the parental responsibilities and rights in relation to the child are transferred from the birth parents to the adoption agency. Before a child can be freed for adoption, the court has to be satisfied that the child has either been placed for adoption with prospective adopters or is likely to be placed.

If, after twelve months, a child freed for adoption has not been placed or adopted, the birth parents must be informed. The parent may then apply for a revocation of the freeing order.

Adoption Orders cannot be challenged at a later date by birth parents.

Children subject to a supervision requirement

If a child is subject to a supervision requirement and the local authority has decided to pursue adoption or a freeing order, it must within a specified process, notify the reporter of its plans.

In all cases the agency must send to birth parents a memorandum outlining what the application for freeing for adoption or adoption order means together with a form for them to sign stating they are in agreement with the application to go forward.

If agreement is not given within 28 days **and** the child is subject to a supervision requirement, the agency must notify the reporter within 7 days. The reporter must then arrange a children's hearing to sit within a further 21 days to give advice on the application.

Where the birth parents are in agreement with the plan **and** the child is subject to a supervision requirement the reporter is notified and he/she will then arrange for a children's hearing to give advice on the matter. No time scales are laid down for the notification or the calling of the hearing in these cases.

The children's hearing in either situation must consider all plans for adoption and freeing for adoption and write a report giving advice as well as review the supervision requirement. The report will be sent within seven days to the court, the local authority, the child, any relevant person and any safeguarder who was appointed in the proceedings. The hearing may continue, vary or terminate the supervision requirement depending on its consideration of the plan and the thinking of the local authority.

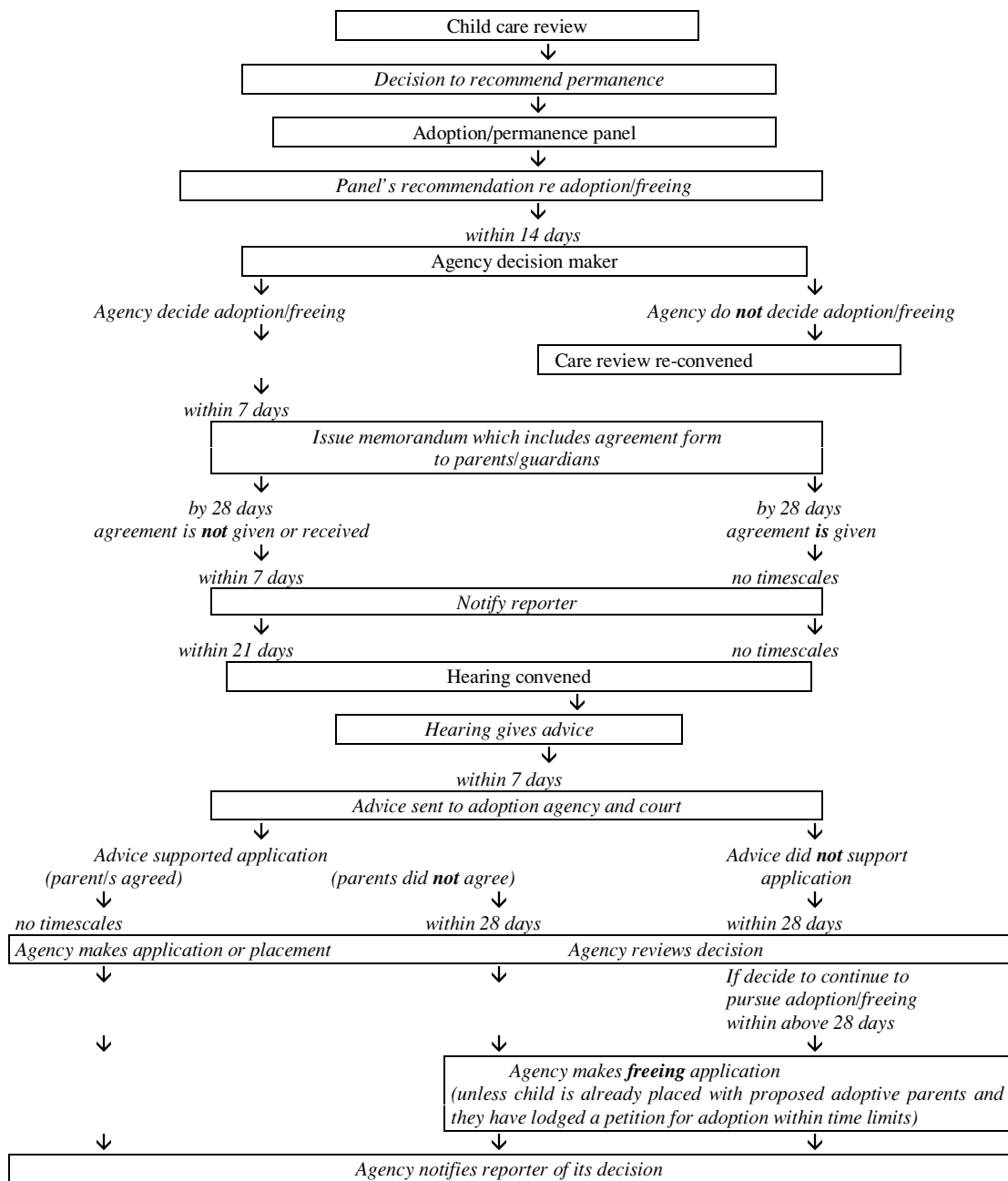
Where a court makes an adoption order or frees a child for adoption where a child is subject to a supervision requirement and is satisfied that as a result compulsory measures of supervision in respect of the child are no longer necessary, it may terminate the requirement.

Contact

There has been a significant change in adoption practice over recent years regarding contact with birth parents and birth family members. It is possible for contact arrangements to be specified as part of an adoption order although some arrangements are reliant on the adoptive parents willingly accepting and carrying them through once the order is granted with or without a contact order being attached to the adoption order.

If the Adoption Panel recommends that there should be continuing contact following an adoption between a child and one or both birth parents it must provide a written report to the agency why adoption is recommended rather than an alternative course of action. An assessment of whether any form of contact should be retained must be based solely on what is likely to be in the child's best interests, both at the point of the placement and in the future. The views of the adoptive parents will be important as they will have the responsibility once the adoption order is made of managing the contact between the child and birth parents.

ADOPTION OR FREEING APPLICATION - CHILDREN SUBJECT TO SUPERVISION



6 SUMMARY

Children's hearings make decisions about children who are in need of compulsory measures of intervention. They do not do this in isolation but as part of a network of agencies working together to promote children's welfare. A thorough knowledge of the roles and responsibilities of people working within and alongside the children's hearings system will help panel members to make effective decisions.

Resource provision for children and families changes continually and it is important that panel members update their knowledge and understanding of children's services throughout their panel membership. This part of the manual provides a framework from which panel members can begin to develop awareness of resources within their own panel areas.

7 FURTHER READING

- C&YPG (2001) **Blueprint for the processing of children's hearings cases** (second edition)
Inter-agency code of practice and national standards
- SWSI (1992) **Another Kind of Home: a review of residential child care** HMSO.
A report by Angus Skinner, Chief Inspector of Social Work Services, SWSI, on a review of residential child care in Scotland with recommendations for maintaining a service of high quality.
- SWSI (1996) **A Secure Remedy** HMSO.
A review of the current provision of secure accommodation in Scotland with recommendations on future provision.
- SWSI (1997) **Regulation and Guidance on the Children (Scotland) Act 1995.** The Stationery Office.
Four volumes: support and protection for children and their families; children who are looked after; adoption; index and bibliography.
- HMIS and SWSI (2001) **Learning with care: The education of children looked after away from home by local authorities.** Astron

Appendix

THE BLUEPRINT FOR THE PROCESSING OF CHILDREN'S HEARINGS CASES

The Blueprint for the Processing of Children's Hearings Cases lays down inter-agency codes of practice and National Standards. It outlines the following pre-requisites for the delivery of a high quality service:

- minimal delay
- effective communication with children and families
- participation by children
- inter-agency co-operation
- facilities that meet the needs of all service users.

Stage 1: incident to receipt of referral by reporter

Code of practice – criteria for referral

1. Following consultation with other agencies SCRA will issue up to date guidance on referral criteria and on what information is needed when a child is referred to the reporter.
2. Each agency will implement mechanisms to promote compliance with guidance on criteria for the referral of a child to the reporter.
3. In given circumstances and in keeping with the agreed joint policy the police will consider issuing a warning instead of referring a child to the reporter.
4. Agencies will operate a system that allows for prompt and direct referral to the reporter.

Code of practice – the referral process

1. Each agency will have clear arrangements in place for the referral of a child to the reporter.
2. Any decision to refer a child to the reporter will be implemented with the minimum of delay.
3. Agencies' internal administration systems will minimise delays in the referral process.
4. The police will report incidents to the reporter with minimum delay.
5. Police reports will be in nationally agreed format
6. In jointly reported cases the police will operate procedures to ensure simultaneous delivery of referrals to the procurator fiscal and the reporter.
7. Procurators fiscal and reporters will liaise regularly at local and national level to ensure co-operation over children's cases.
8. Education departments will operate clear and consistent policies that allow schools to refer children directly to the reporter.

9. In child protection cases the minutes of case conferences will record explicitly whether or not a decision has been taken to refer a child to the reporter and any decision to refer a child to the reporter will be implemented by the named person with the minimum of delay.
10. Any individual or agency who may decide to refer a child to the reporter contrary to a child protection case conference decision should inform the case responsible social worker.
11. Health Boards and Trusts will ensure that SCRA guidance about referral criteria and the legal framework is disseminated to all relevant health professionals through both managerial and professional structures.
12. Police and education departments will make referrals to the reporter as and when they arise rather than in periodic batches.

Stage 2: Receipt of referral to reporter's decision

Code of practice – report requests

1. In keeping with SCRA guidance on the level of investigation required on receipt of a referral, reporters will request reports from agencies where essential for effective decision making.
2. Guidance agreed between SCRA and ADSW will; distinguish between the range and extent of information expected of Initial Enquire Reports (IERs), Initial Assessment reports (IARs) and Social Background Reports (SBRs).
3. SCRA will issue clear guidance to staff on the recording of information acquired by telephone and on the status of such information.

Code of practice – Timescales for the return of reports

1. In every request to another agency for a report or information the reporter will specify a date for the return of the report or information.
2. Report providers will give early notice to the reporter of any reasons why a report cannot be submitted on time.
3. Individual agencies will take responsibility for complying with agreed timescales and monitoring of delays.
4. Education services will have in place systems for the provision of written information to the reporter throughout the year.
5. In accordance with the nationally agreed protocol health services will have in place clear arrangements for the provision of reports about children to the reporter.

Code of practice – The views of children

Social work departments will ensure that the views of children are sought and included in social background reports/reports for hearings.

Code of practice – The reporter's decision

The reporter will make a decision about a referral with the minimum of delay.

Stage 3: Reporter's decision to initial hearing

Code of practice – The scheduling of hearings

The reporter will take full account of family circumstances and commitments when arranging a children's hearing.

Code of practice – Notice of hearings

1. The reporter will give as much notice as possible of a hearing date to all those expected to attend.
2. Reporters will provide children with written information about children's hearings
3. Social work departments will ensure that children and families are given sufficient information in advance of their hearing to enable them to participate fully in the process.
4. Each agency will inform the reporter of changes of address or other family circumstances that may become known to them in advance of the hearing.

Stage 4: Initial hearing to disposal

Code of practice – Accommodation for hearings

SCRA will provide accommodation for hearings that complies with its stated property standards.

Code of practice – Punctuality of hearings

1. In the course of hearings sessions panel members and others will take account of the impact of delay on families in attendance at the hearings centre who are kept waiting beyond their scheduled time.
2. When hearing sessions are running behind schedule, SCRA staff will keep families informed of how long delays are likely to last.

Code of practice – Avoidance of unnecessary continuations

1. Whenever possible, the initial hearing will be provided with sufficient relevant information to allow full consideration of the case.
2. Agencies will ensure that they provide appropriate representation to allow full discussion of the case.
3. Education departments will provide a service for attendance at hearings outwith school term where considered necessary by the reporter.
4. The social work department will be represented at all hearings by the caseworker or appropriate substitute.
5. In making recommendations for disposal, social workers will provide as much detail as possible about relevant options, including residential placements.
6. Whenever possible, the reporter will schedule a date for a continued hearing at the end of the current hearing.

Code of practice – Safeguarders

1. In stating their reasons for appointing a safeguarder, panel members will specify as clearly as possible those aspects of the case that they wish the safeguarder to investigate.
2. A date for submission of the safeguarder's report will be specified on appointment and should only be extended if the interests of the child so require.
3. Local authorities will operate procedures to ensure that safeguarders are allocated to cases with a minimum of delay.
4. Reporters will ensure that safeguarders receive case papers with the minimum of delay.
5. Reporters will provide safeguarders with a list of relevant contact addresses and, where available, telephone numbers.
6. Local authorities will review their safeguarders' panel regularly to ensure that adequate numbers of safeguarders are available to meet demand.
7. Safeguarders will submit their reports with the minimum of delay.
8. Safeguarders should attend children's hearings to facilitate full discussion of children's cases.

Code of practice – reports from mental health professionals

1. In the planning and resourcing of children's services, Health Boards and Trusts will take account of the role of all health professionals, but particularly those working in child and adolescent mental health services, in producing reports for the reporter and for children's hearings.
2. SCRA and Children's Panel Training Organisers will ensure that reporters and panel members receive training on the appropriateness of requesting reports from child and adolescent mental health professionals as a contribution to their decision making.

Code of practice – Cases referred for proof

1. When a case is referred for proof reporters will provide families with appropriate written information about going to court, obtaining legal advice and, where appropriate, applying for legal aid.
2. Liaison will take place between reporters and the Scottish Court Service to avoid delay in the scheduling of children's cases.
3. The reporter will give all those having a right, or required, to attend a proof hearing as much notice as possible of the court date.
4. Efforts will be made to avoid court adjournments and to ensure that cases go ahead on the scheduled date.

Code of practice – Disposals

1. Written notification of the outcome of a hearing, together with a copy of the reasons for the decision, will be sent to the child and family with the minimum of delay.
2. Supervision requirements will be implemented with the minimum of delay.

PART TWO

Section 3

Communication

The success of the children's hearings will depend to a large extent on the ability of their members to get through to the children and their parents; and a capacity to communicate with them, and an understanding of their feelings so that they gain their confidence will be of great importance.

(SWSG Circular SW7, 1969)

The views and concerns of children should always be taken seriously and given due weight in reaching decisions.

(White Paper, *Scotland's Children*, 1993)

One of the most obvious facts about grown-ups, to a child, is that they have forgotten what it is like to be a child.

(Randall Jarrell, *Introduction to The Man Who Loved Children* by Christina Stead, 1965)

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1 INTRODUCTION

Communication is the basis of children's hearings. Good communication in a hearing should ensure that all involved will come away feeling listened to and that the decisions made were based on the best information available, including the views of the child. Hearings are intended to be a process of two-way communication.

This section will examine what is meant by communication; questioning and listening techniques; non-verbal communication; talking to children and to adults; written communication; and, dealing with sensitive and difficult situations in hearings.

2 WHAT IS MEANT BY COMMUNICATION?

Communication is not simple. It encompasses the spoken word and its interpretation by the listener; the gestures, facial expressions, glances - all the other ways we have of expressing our views with our body rather than with the spoken word; and the written word via letters, reports and legal documents. All these aspects of communication feature in a children's hearing and will play a part in how each person present comes to understand or fail to understand what is happening. Some of the legal requirements are framed to encourage communication and stress the importance of it by the use of words like '*inform*', '*explain*', '*obtain the views of*', '*discuss*'.

Legal obligations

*It shall be the duty of the chairman to **explain** to the child and the relevant person the grounds stated by the reporter...for the purpose of **ascertaining** whether grounds are accepted in whole or in part.....* s.65(4)

*The chairman shall **explain** the purpose of the hearing.* Rule 20(2)

*The chairman shall **inform** the child and his parent of the substance of any reports.* Rule 20(4)

*The hearing shall **discuss** the case.....* Rule 20(3)(d)

*The hearing shall **take steps to obtain** the views of the child* Rule 20(3)(d)

*The hearing shall **endeavour to obtain the views** of ..any relevant person and of any safeguarder.....* Rule 20(3)(d)

*The chairman shall **inform** the child, any relevant person, any safeguarder, and any representative....of the decision, the reasons for decision and the right... of appeal to the sheriff....* Rule 20(5)(c)

*The chairman shall **make** or cause to be made **a report** of the decision ... and **a statement in writing** of the reasons.....* Rule 10(5)

Communication is not straightforward. It requires a sender of a message and a receiver. The receiver will interpret the message sent according to his or her past experiences, level of development and understanding, current emotional state and his or her understanding of what is at stake as a result of the message being given.

What is effective communication?

Effective communication occurs when both the sender and receiver are both sure that each understands the message sent. This means that the sender must give clear messages which match both verbally and non-verbally. Sometimes the words used may be inviting and hospitable but the tone of voice and body language conflicts with this, e.g. a mother saying to a teenager '*I said you could go out*' but the tone is harsh, the facial expression tense and arms folded. The teenager might then be confused - should he or she obey the spoken word and go out or follow the interpretation of the body language and stay in? Good communication should allow both the sender and receiver the opportunity to check with each other that the message is clear.

Listening is also an important part of good communication. If the receiver of a verbal message has developed good listening skills then the sender will feel respected and thus may be able to explain or discuss matters in more depth. Good listening allows the receiver to pick up the feelings behind the words.

Barriers to effective communication in hearings

The communication process during a hearing is highly complex. Imagine what it must be like for a family to be confronted by strangers whose task is to discuss the family's most difficult problems and reach a decision.

Children and families are likely to be anxious, distressed, resenting the intrusion into their privacy by strangers, and very conscious of the power of the panel members to intervene in their lives. Surroundings may be unwelcoming. Although hearings are formal occasions the seating arrangements and use of a large table may be intimidating. The timetable may be tight. There may be outside distracting noises. Tension will increase if a family is kept waiting. There is pressure on panel members to get the legal procedures correct, but they must also try to achieve a supportive, informal atmosphere which encourages children and families to express their points of view freely and contribute to the decision-making.

English might not be the first language of a child or parent. A family member may have learning difficulties or a health problem which may affect their capabilities to hear, speak or understand. Panel members and professionals may use professional jargon which is not understood by the family. Social workers and other people attending hearings all have their own worries and concerns. With so many built in barriers to 'good' communication, it is hardly surprising that young people and families sometimes fail to understand what is going on and express a critical view of hearings.

3 QUESTIONING

Effective questioning will depend on good preparation. When discussing a family's problems, panel members will need tact and a non-judgmental manner. They should treat people with respect and courtesy. It can be helpful if panel members acknowledge the difficulties when approaching sensitive issues, and to try to show respect for families' answers, even if they don't agree with them. Using people's name early on shows respect.

Where possible open questions (when? where? how? what?) should be used instead of closed questions which only require a yes or no answer. Questions should be asked singly and answers waited for before asking another, rather than rattling out a confusing series. It is

important to finish with one train of thought before moving on to another. In order for people to take in a question properly they need to remember it from the beginning to the end.

What to say and how to say it

Here are some examples of different types questioning and strategies for discussion. Some will be more helpful than others. Panel members can develop their own awareness by noticing how people exchange information in day to day conversations in which they take part (e.g. with their family or at work). Through practice, observation of others and training they should develop their skills in engaging appropriately with those present at a hearing.

Helpful to the discussion

- Open questions

One of the easiest ways to attempt to gather information is to ask a question using starter words like *Who? What? When? Where? How?* Some thought should be given to the use of the question *Why?* It is often the case that individuals are not conscious of their motivations and find it impossible to answer such questions. Therefore the reply given will usually be a '*Don't know*'.

- Indirect questions

These can be helpful for approaching sensitive issues.

I wonder if you've thought about . . . ?

Would you feel able to . . . ?

Have you considered . . . ?

Do you think you could have. . . ?

- Clarifying questions

Could you explain a bit more what you mean by . . . ?

Is what you are saying . . . ?

- Rephrasing statements

I think perhaps what Mr X is saying is . . .

Maybe what we're trying to suggest is . . .

I don't think that is quite what we meant. It was more that . . .

- 'Mirroring' statements

These do not really introduce new information but 'mirror' or reflect what has already been said by someone else. They can be surprisingly useful. They continue a discussion without complicating the situation by introducing new points. They bounce the conversational tennis ball back into the opposite court. Importantly they pull together the strands of a discussion and clarify the position of the person who first expressed the views in question. They can be phrased in various ways:

What you seem to be saying is. . .

Your view is that. . .

To sum it all up, you. . .

What you have described is that. . .

- Exploratory statements

One obvious advantage of using such statements is that they allow the recipient room for manoeuvre. They can be accepted, denied or modified in an atmosphere containing less risk of confrontation..

I wonder if perhaps. . .

Would it be fair to say that. . .

Are you suggesting that. . .

- Interim summing up (checking discussion so far)

If I could just go over what we've discussed so far . . .

Up to now we've only talked about the school problem . . .

So, as I understand it, you are agreeing that . . .

- Working together questions (panel members following the same line of questioning)

Could I go on from what Mrs Y was asking . . .?

I'd like to ask you a follow-up question . . .

Do you think you could explain a bit more about what you were saying to Mr B . . .?

- Expressions of understanding

The basic philosophy of the children's hearing is one of round table discussion in which all parties collaborate in an attempt to set in motion the most appropriate measure to help the child in need or trouble. One of the more useful tools for a panel member to use is a statement which expresses understanding and rapport and which invites continued discussion.

I know it's difficult for you to talk about these problems . . .

This will be upsetting for all of you, but we have to move on to discuss . . .

Please take as much time as you need with your answer . . .

It does seem to me, Mrs Smith, that you have had to cope with a lot of problems which other mothers have not had to face.

Unhelpful to the discussion

- Closed questions

These questions invite the answer 'yes' or 'no' and are not an effective way of gaining general information. They are good however for checking facts and useful for bringing the conversation back to the point.

- Pressurising questions

Don't you think that . . .?

Have you really tried . . . ?

But surely you understand that . . . ?

- Leading questions

You will try and go back to school, won't you?

Wouldn't it be better if you stayed away?

- Loaded remarks or questions

These are similar to leading questions. They are questions or remarks where the aim seems to be to evoke penitence, guilt feelings, a declaration that the individual has resolved to or has already changed his or her behaviour in a certain direction, or an awareness of the stupidity of one's behaviour:

You're sorry now you did that, aren't you?

How do you feel now about what you did?

If we place you on supervision, will you promise to attend school?

It is unlikely that a child at a hearing would answer in other than the desired direction.

- Judgmental statements

These may be said by panel members in an attempt to 'correct' the ways of those before them. In the process they display their own attitudes and outlook. An observer at hearings where such statements are used, emerge with a firm impression of the attitudes and views of the panel members and very little idea of the thoughts and feelings of the child and family. Panel members may think that the use of judgmental observations will act as a deterrent to future misbehaviour. There is little evidence that they do.

A mother is the best friend that you can ever have.

You must learn to respect your mother and father and to do what they say.

You are a big boy now and you are not behaving responsibly.

- Following up too quickly

It is important to give people time to answer a question. They might need to think through the implications of giving a particular answer.

What do you do in your spare time? (No answer.) *Do you like football?* Gives room for only 'yes' or 'no'.

- Sudden changes of direction, interrupting before a speaker has finished or peppering a child or parent with a whole series of unrelated questions are all confusing and unhelpful tactics which do not allow discussion to develop.

4 LISTENING

Listening is basic to all effective relationships. It is the listener, not the speaker, who controls the conversation. It is a skill. Good listeners get listened to. It is not the same as hearing

what someone has said. It is possible to hear, understand but not really listen. In active listening the listener uses various senses:

- listens with the ears to the words spoken/tone of voice
- listens with the mind to understand the message
- listens with the eyes to the body language/posture/bearing/gesture
- listens to him/herself and notes own reactions to the messages received.

Listening is quite different from ordinary conversations and requires full attention and concentration. If the words spoken do not match the behaviour then it is important to check this out e.g. *'Although you have told us that you will do...., Mrs. X, I have the impression that you are not very happy about it. Perhaps you could help me understand?'*

People can show that they are listening by:

- nodding
- smiling (where appropriate)
- looking at people when they are talking to them
- prompting by saying e.g. 'yes' 'mmm'
- mirroring back key points of what has been said - summarising
- reflecting back feelings as well as ideas
- checking out what has been said.

Problems of listening

Generally when people listen they only do so to the middle of the statement. Before the speaker has finished delivering the message, the listener has already begun to formulate an answer. This means that the end of the message is missed and the listener may even finish off the sentence for the speaker. People's previous knowledge and expectations may lead them to hear only what they expect to hear - the message is frequently reduced by eliminating detail. People listen selectively.

The listener may have a hearing problem which may lead to speech not being heard or may be misheard. It is always important to look directly at a person when speaking to them and watch the rate of speech.

How much information can be held for processing will vary from person to person. The average person aged eight and over can remember and repeat back six and seven numbers. A large number of children and adults can only remember about three or four. If people have a poor 'auditory memory' then not all the information will be processed and sometimes because of overload everything may be 'lost'. It is important therefore to keep sentences short and uncomplicated.

5 NON-VERBAL COMMUNICATION

Research has shown that when people communicate face-to-face less than 10% of the impact comes from words that are said. Over 90% of the impact is determined by non-verbal communication. Non-verbal messages are received in various ways, through sight, hearing and even smell. They are an important and often unconscious factor in communication.

In a children's hearing panel members will be picking up signals about the family and vice versa. Although it is important to be aware of these signals they are not always easy to interpret and it is important not to jump to conclusions. The interpretation needs to be checked out e.g. a young girl might be wriggling around in her seat and taking no notice of what is being said to her - this may mean that she is bored by what is going on or it could mean that she wants to go to the toilet but is afraid to ask!

There may be cultural differences which will effect both the behaviour itself and its interpretation. For example in some cultures avoidance of eye contact with figures of seniority and authority is considered to be respectful.

Sight

This includes outward appearance: clothes, hair, make-up, cleanliness, signs of ill-health, appearance in relation to age. Body language is important in terms of facial expressions which may reveal mood or emotions, avoidance of eye contact. Some people will sit straight, others slumped down, some with arms crossed. There may be close contact between family members or none at all. People may use gestures, have trembling hands, wriggle, yawn. However, it is important not to rely on body language alone as appearances may be deceptive.

It is important for panel members to think about how they sit during a hearing, where they look, whether they smile, frown, nod their head, sigh, tap fingers, click or point pens, and flick through reports. All these will give messages to others which might mean the difference between a productive and a non-productive discussion.

Sound

The tone of voice used can indicate a person's feelings more than the words that are being used. The volume too may be a helpful indicator. Some people may talk rapidly when nervous - others may stammer and stutter. Some might use silence to give them time to think about their answers. Panel members should not rush in to fill a silence - they should try to allow time for people to gather their thoughts. To be an effective communicator panel members need to ensure that their body language and tone of voice match what they are saying. Problems can arise when they say one thing, but look and sound as though they mean something else.

Smell

On occasions people attending hearings may smell of alcohol, which may indicate their anxiety about coming to a hearing or their dependency needs. Sometimes people may have body odours which may indicate poor hygiene standards or a physical illness.

Self awareness

Communication is a two way process. When we speak face-to-face with someone else their senses are taking in what we look like and how we sound. Their brain interprets all this based on their past experiences and view of the world. Meantime we are doing something similar. People behave differently in different situations. Panel members should not be too influenced by their first impressions. They should check the facts before making judgements about others.

It is important for panel members to be conscious of their own feelings, attitudes and values and how these may colour their decisions and lead them to jump to conclusions. They need to be aware of the messages they are giving out during the hearing - their own stress, anger, embarrassment may influence how they react.

6 COMMUNICATING WITH CHILDREN

Children's views

The need to seek children's views is one of a panel member's most important but also most difficult tasks. The Children (Scotland) Act 1995 reinforces the right of children to be consulted about decisions in their lives, in keeping with Article 12 of the UN Convention. In making decisions about children, hearings must go through three specific stages:

- give the child an opportunity to indicate whether he or she wishes to express any views
- if so, give the child an opportunity to express them
- have regard to the views expressed by the child.

In doing this, panel members must take account of the age and maturity of the child, and it is presumed that a child of twelve years of age or more will be mature enough to form a view. However this does not mean that the views of children below this age should be ignored. Even very young children can make important contributions to hearings if encouraged to do so in appropriate ways. The Rules also allow the child to express their views via audio or video recordings.

Though hearings will not always make the decision that the child wants, the child's views must always be an important factor contributing to the decision. Conversely, panel members must respect the right of children not to express views if they do not choose to do so.

Children's experiences of hearings

Panel members often find children reluctant to talk at hearings. Many children find panel members scary, preoccupied and condescending. Various research studies have shown that almost all children and young persons who have had some experience of children's hearings have found them 'scary' unless they were too young to understand what was going on. Older children describe being 'nervous' because:

'Its frightening to have to go and talk in front of lots of people'. (Thirteen year old boy)

'They are all strangers. I don't know them, but they know all about you.' (Thirteen year old girl)

As young people become more familiar with the system over time, exposure to it becomes less nerve wracking:

'The first and second time I found it hard to speak. Then I found it easier at panels after that.'

Children and young people's experience varied. Those who had positive experiences commented that:

'It's not too bad'

'You think everyone will shout at you but they don't. They act normal.'

'They were listening (you could tell they were listening) because of the way they were answering back.'

Those who had more negative experiences commented that panel members were not really listening to them because:

'They shuffled papers... while I was speaking'.

'They didn't look at you.'

'Adults don't listen to children.'

'They wanted me to talk about my mother but she was sitting there right beside me. How could I do that? It was so embarrassing.'

'You can't tell what they are saying because they use a lot of long words, like jargon.'

Child's stage of development

A child's age may have a bearing on their understanding about what is taking place at a hearing. However, age itself may not give a clear indication of what stage the child has reached. Some background knowledge of child development will give some indication about how children of particular ages are likely respond in hearings. There are no hard and fast rules and there is no way that a child's or a young person's developmental level can be assessed in the few minutes available in a hearing, but it is useful to operate from some basic knowledge of children's thought processes, needs and likely reactions at different stages.

Language is shaped by experience. Children pick up the words in their vocabularies first from what they see, hear and experience around them and then from listening to how those words are put together in sentences. Children learn, for instance, from the people around them what the function of a question is. *'Do you want another biscuit?'* is probably a request for information; *'Do you want another spanking?'* probably is not. Children learn how they are expected to talk to adults and other children. Not all families put the same value on words and how they should be used.

Younger children

Young children need to feel it is safe and appropriate to talk and they are more likely to be forthcoming if panel members have managed to gain the trust/approval of their parents first. This gives the child the message that it is OK to talk to these strangers.

With pre-school children, there is obviously a need to concentrate on using simple language: it's no good asking a five-year-old who has been battering his little sister what he understands by 'sibling rivalry'. Children of this age group think in a very concrete way, with themselves at the centre of their world, surrounded by their immediate family. They are mainly conscious of actions; they can recall facts and events and can express clear feelings. They tend to react spontaneously but have a short concentration span. (No wonder they are wriggling during a forty minute hearing.) This has implications for the kind of questions to ask *'Who takes you to school in the morning?'* *'What do you do when your mum and dad are arguing?'*. It may be helpful to start with an easy question and then expand it in greater depth: *'Tell me what you do at playtime . . . What happens when the other boys take your ball?'*

Young children can easily cope with *what? who? where?* questions seeking factual answers. *When?* is harder as they have a hazy idea about time. They find *why?* even more difficult as they don't understand the notion of cause and effect - that one thing was actually the result of another. Also *why?* is often associated with blame and scolding - *'Why on earth did you leave your bike out in the rain?'* A child under eight is unlikely to be able to identify shame and

guilt. They see this more as a function of getting caught - the presence of a disapproving adult rather than an emotion arising in themselves.

They understand and can express basic feelings - happy, sad, scared, angry. As early as three to four, children learn to mask real feelings as they become aware of what is expected and approved of. Adults expect children to be well-behaved and obedient, and most children will act accordingly once they learn the 'rules'. At around six they begin to realise that it is possible to feel one way and act another, that they can intentionally deceive if they have reason to do so, either in self-protection (not to get into trouble) or to protect someone else from distress. If their own survival depends on these skills, they can acquire them much earlier. This can be important for children in families where abuse is taking place who will want to avoid giving answers in hearings.

From a very early age, certainly by the start of primary school, children become skilled at testing adults' likely reactions before committing themselves to an answer. Most children will look for approval and panel members need to be able to reassure them that it is safe and appropriate to talk. This will entail establishing rapport with the parents. Though they have developed in understanding and ability to express themselves, children of this age still regard themselves as powerless in comparison to grown-ups who expect them to do as they are told and speak when they are spoken to. It may be very confusing if they are aware that panel members are urging them to talk while their parents are hoping they won't.

It is important to know that the child has understood what he/she has been asked. Experiments have shown that young children rarely ask questions or request more information when they don't understand what is being asked of them. They are more likely to try to give some sort of answer in order to please a persistent questioner, but they may in fact not have understood the question at all. In fact most children when asked the question '*do you understand?*' will always answer 'yes' even if they don't understand what has been asked of them. This has particular implications for chairmen of hearings putting grounds for referral. Panel members must find ways of checking that children have really understood, for example getting child to repeat in his own words what the grounds are.

Some children are reprimanded if they say '*no*'. Parents and adults may say to them '*don't say "no" to me*' so they are afraid of answering any question with a negative.

It is important to aim for simplicity and clarity, using simple words and short sentences and to have one idea per question or sentence.

Teenagers

In the teenage years, children learn to think out issues and to express more complicated feelings and ideas. They begin to judge adults and compare them with others. They often suffer agonising embarrassment because of some aspect of their parents' behaviour. They are self-conscious and searching for their own identity in relation to people around them. They become interested in emotions and abstract issues - life, death, love, sex - and will discuss these with their contemporaries, but many have great difficulty in talking about their feelings with or in front of their parents, let alone during a hearing. Picture the silent teenager with the head sinking lower and lower.

Teenagers will react very negatively to being patronised - panel members should not concentrate on the phrase '**children's** hearings'. This age group often finds particular difficulty in speaking out in front of their parents, especially about problems which are personal to them. Panel members should try to express their understanding of the difficulty

and explain why they want to know the answers to their questions. Young people should be given the chance to say what *they* want and in some way set their own agenda.

Communication in the hearing

The purpose of communication in a children's hearing is for panel members to gather information and make a decision on what is best for the child. Both children and panel members may use strategies to cope.

Children's strategies for dealing with hearings

Research indicates that children have been observed to adopt a number of strategies.

- Act normally. This is most likely to be the case when dealing with younger children aged five and under who have little understanding of what a hearing is about.
- Engage in dialogue with panel members. Some children, once they have got over their nervousness, respond to panel members' attempts to engage them in discussions about their future and participate as best they can.
- Tell panel members what they think the hearing want to hear.
- Rely on an adult to express their views for them. Where a child trusts the social worker or another adult to express his or her point of view, the young person's position should not be prejudiced by the lack of participation.
- Try to make themselves invisible. In many cases children and young people feel embarrassed to be in the company of adults at a hearing and long 'to get it over with'. Sitting slouched in their seat, face down with a baseball cap covering most of their face, their body language and demeanour signal their desire to be anywhere but at the hearing.
- Disengage from proceedings. In some cases young people attempt to retain control over their situation in a hearing through defiance. They refuse to acknowledge panel members' authority over their person. They may shout and swear at the panel members and even storm out of the hearings room.

Panel members' strategies

Various strategies may be used by panel members to support and encourage children and young people in the setting of a hearing. Some of these involve using the legal powers outlined in the section on Law and Procedure.

- Sometimes one panel member will strike up an instant rapport with a child. In that case it is best to let them continue, even if it means that member does most of the talking.
- The child can bring a representative who may help him or her to talk. This may be a lawyer or a trusted adult. However, not all young people know that they can have a representative and could choose a friend of their own age who might offer them more support than a grown-up.
- Young people can be helped to write their own reports for hearings. This allows them to identify the issues they think are important and can provide a useful starting point for discussion. They need to know in advance, however, that any report they provide will automatically be sent to their parents as well as to the panel members.

- A safeguarder can be appointed by the hearing to explore the child's point of view and convey it either in the report or during the hearing. (Again, a copy of the report will also be sent to the parents as well as to the panel members.)
- A legal representative can be appointed by the hearing to help the child effectively participate, particularly where there are complex legal issues.
- Panel members have the power to exclude a parent (relevant person) or representative if they consider this necessary in order to obtain the views of the child. This power is useful in situations where a child appears distressed or particularly inhibited in front of his parents, or where a parent may be preventing the child from speaking. It is important to make it clear to the child that when the relevant person returns, the chairman has a duty to explain the substance of what has been said in his or her absence. Children should not, therefore, assume that what they are telling the panel members can be kept confidential.
- Similarly, if members of the press are present, they may be excluded if their presence is considered to be distressing or inhibiting for the child. In this case panel members may, but are not obliged to, inform them of what has been said in their absence if they do return to the hearing.

What if they just won't talk?

Panel members can point out to children that they are there to listen to their views to help them come to a decision. However, panel members should beware of being too persistent. Children may eventually give some kind of an answer just to bring the questioning to an end, even if it is not true or they have not understood the question. Panel members should not feel they have failed because they have not succeeded in getting the child or young person to talk. If a child decides to remain silent that is their right and choice.

A checklist for child-friendly language

Panel members should ask themselves the following questions about their use of words:

- did I use easy words instead of hard words?
- did I use specific names and places instead of pronouns and adverbs?
- did I break long sentences/questions into shorter ones that had one main idea in each?
- did I avoid legal words and phrases? Was I alert to my use of words that mean one thing in everyday life but something else in law?
- did I avoid using negatives if I could?
- was I careful about the 'Why?' and 'How?' questions?

In addition, to ensure that they are keeping in step with the child, panel members should ask themselves:

- did I make it clear at the beginning that the child's contributions, comments and questions were important?
- did I let the child know what each subject of discussion was, and why we were discussing it?
- did I frame my questions in terms of the child's experience?

- did I run a check on the child's understanding of my language and explanations?
- did I allow sufficient time for the child to process my questions and explanations?
- when I shifted topics, did I alert the child to the fact that I was going to do so?

Things to remember

Panel members should:

- listen to the child's language - they should try to make their language fit that of the child's
- keep in mind that experience shapes language use and understanding - every child is unique
- listen to their own language and questions
- be alert to the fact that young children both use and interpret language very literally
- not take for granted that they know what the child means, or that the child knows what they mean
- keep whatever they say short and simple.

7 COMMUNICATING WITH ADULTS

The number of adults at a hearing can vary considerably. The chairman has a duty to keep the number of people present to a minimum. Limiting the number can help to ensure that the atmosphere is relaxed and informal as possible. However, this needs to be balanced against the contribution which people involved with the child's life may make to the hearing. The reason for their presence should be clear. Each should be treated with respect. For further information see the section on Managing Hearings.

The principles of communication with children also apply. Language and literacy difficulties often run in families. Some specific points for panel members to consider follow.

Relevant persons

Relevant persons are usually the child's parents. They are attending the hearing because it is considered that their child might, or continue to require compulsory measures of supervision. At a hearing therefore, they will be expected to talk about their family life, their ability to care for the child, and their feelings about the situation. They may not have had much experience of talking about such things to each other, let alone to three strangers and with their child and professionals present.

Comments made by some parents on their experience of hearings include:

'I was so worried I couldn't concentrate.'

'They ask too many questions, by the time you've understood, they've moved on to something else.'

'It's my impression that panel members always take sides with the social worker.'

Whatever the reason for the child being present at the hearing, relevant persons must be given the opportunity to put their views and to have those views taken into consideration. They must be treated fairly.

Representatives

Participation in a hearing not only involves an understanding of the process but the ability to communicate and make one's voice heard. The child and each relevant person is entitled to be accompanied by a representative at a hearing. These representatives could be friends or someone from organisations like Who Cares? or a lawyer.

Lawyers who attend hearings have the same status as any other representatives of the child or relevant persons. They are there to help the person put their view to the hearing.

In particular circumstances a legal representative may be appointed by a hearing or business meeting for a child.

Professionals

It is important to allow professionals and others who have taken time to attend the hearing to have their say. The writer of a report should have the opportunity to discuss it. If he or she is making a recommendation they should comment on why that one has been put forward and whether other courses of action were considered and discarded. Someone who has been living in close contact with a child, for example, a foster carer or key worker will have a particularly valuable contribution to make. A social worker or safeguarder who has helped to prepare the child for the hearing may be well placed to encourage him or her to express views.

Although panel members may come to know social workers and others who regularly attend hearings quite well, it is not a good idea for them to appear too familiar with them. This can give the impression to the family that there has been collusion and the outcome of the hearing has been decided beforehand.

Reporters

Reporters should not in any way present a case to the hearing or advocate a particular outcome. However, they can give factual information to families e.g. the likely time frame for a proof hearing in court. Panel members may wish to ask the reporter a question during a hearing and should make it clear to the family why they are doing this. If it appears likely to assist the discussion of the child's case and the chairman consents, the reporter may briefly clarify the range of options available to either a procedural matter or the outcome of the hearing. The reporter will also alert the chairman to any procedural or human rights requirements that appear to have been omitted or carried out irregularly.

Other panel members

Most of the communication during a hearing is between the panel members and the child, family and other professionals. However, panel members do on occasions need to communicate with each other.

To help make a hearing run as smoothly as possible, panel members should work as a team at a hearing by:

- not interrupting the flow of questions from another panel member
- not labouring their own points at great length and hogging the hearing
- listening to other panel members' questions and the answers given so they do not go over the same ground.

Special circumstances

Sometimes special measures are required to help children and their families take part in hearings. For example, an interpreter should be invited to attend where a person's first language is not English or if the person communicates by signing. Panel members must ensure that they ask questions of the child or family member and not the interpreter.

8 WRITTEN COMMUNICATION

The main type of written communication used in the hearing system is reports. There are various types, the main ones being: social background (completed by a social worker), safeguarder; school. Social background reports and school reports tend to present information according to a set pattern. The social work department has a duty to provide a social background report if requested by the reporter. A school report will nearly always be requested for a child of school age, especially one coming to a hearing for the first time. Sometimes a child or young person may write about themselves and their situation. There is also legal documentation: e.g. grounds for referral, reasons for past hearings' decisions, copies of warrants and supervision requirements.

Papers for the hearing

As well as reports from various sources, the papers sent out before a hearing will include documents giving the history of the child's involvement in the system:

- new and/or previous grounds for referral
- copies of existing warrants and orders from court
- existing supervision requirements with conditions
- reasons for decisions from previous hearings.

Reports are the 'raw material' which panel members use to prepare for a hearing. They enable panel members to learn the facts of the case and to begin to build up a picture of the child's life. From the reports, panel members can gain a sense of how they will handle a specific issue. However it is always important that they keep an open mind and never prejudge a situation. The initial judgement may alter radically during the hearing when panel members are able to observe first hand the kind of interactions that take place between family members and the professionals. The hearing offers an opportunity for panel members to form an independent view of the family and to check the professionals' recommendations.

Reports should reach panel members no later than three days before the date of the hearing, to allow enough preparation time. Indeed social background reports and safeguarders' reports must legally be with panel members and relevant persons three days before the hearing. If they are not, the hearing has to consider whether to continue the hearing to another date.

It is recommended that panel members have a preliminary read-through of the papers as soon as possible after they receive them. This lets them check that there are no immediate problems (e.g. that a report is missing) and begins to let their mind work on the cases they will be dealing with. Then, nearer the date of the hearing, they can go through them in much greater detail, noting points and questions they may wish to ask.

Panel members develop their own methods of taking notes for the hearing. It is recommended that they jot down names, dates of birth and other details to keep in front of them, especially when chairing the hearing. Panel members should try to know the contents of the reports well enough not to have to shuffle through the papers during the hearing which is very off-putting to families. Any pro-forma used by panel members should be completed in handwriting. This avoids family members thinking that the panel members have an extra report which they have not received.

If there are any legal or other points not immediately clear from a panel member's reading of the papers, these can be checked with the reporter prior to the start of the hearing.

The content of reports is strictly confidential, so it is essential that panel members keep all the documentation in a safe place. They must be returned to the reporter at the end of the hearing, and any personal notes made at home or during the hearing are destroyed before leaving the hearing room.

Under no circumstances should a panel member keep any information either hand-written or on a computer about a child and family who has been referred to a hearing.

Information given to families

Relevant persons will receive copies of all the documentation which is sent to panel members before the hearing. However, the chairman has a legal obligation to ensure that they, and particularly the child, understand what is in them by checking facts and discussing issues thoroughly during the hearing. The only exception is the disclosure of information which might be detrimental to the interests of the child. All decisions reached by panel members must be based on information shared with the family during the hearing. A child, or a representative on behalf of the child, may request a copy of reports from the reporter.

Social background reports

For a first referral, these are likely to be based on at least one meeting between the social worker and the child and family. For children already in the system, social background reports will include a synopsis of previous involvement. The reports provide various types of information:

- factual details of the child's life, names, addresses, ages, family structure and background, religion, home and financial circumstances
- who has been seen and consulted in compiling the report, including reference to any information gained from other reports
- family composition and family history: description of the home, family relationships, child's behaviour within the home and parental attitudes; identification of the main carers of the child and any problems associated with this; any factors outside the family e.g. peer group influences; any issues of contact between child and adults
- what is the nature of the concern: family's attitude to the events or allegations which led to the request of the report
- emotional and physical development of the child: includes child's understanding of the events going on around him or her and the people in his or her life; personal strengths and skills; whether he or she reacts in an age appropriate manner; child's views
- education: history of the child's schooling detailing if and when difficulties arose; how transition from primary to secondary was experienced; any problems in attendance or

behaviour; attitudes to peers and staff; links between home and school; any measures the school have taken; whether there is a record of needs

- child and family's view of current needs and way forward
- conclusion and recommendation: why this recommendation and why other options were discounted; if supervision is recommended details of the care plan

For review hearings, panel members should receive a background report with an update describing the current situation which includes what aspects of the care plan have been successful or unsuccessful.

School reports

Most school reports are written on pre-printed forms. In primary schools they will be written by the child's class teacher or the head teacher. In secondary schools, they are usually written by the child's guidance teacher after consultation with other teachers. The level of knowledge about the child will vary greatly. A school report can reveal a great deal about the child's life both in school and outside. Information can be gained from attendance record, number of schools attended, disruption to the child's education, comments on health, and the school's contact with parents. Is the child's level of achievement consistent with the school's assessment of his or her ability? If not, why not?

Safeguarders' reports

When a hearing appoints a safeguarder, reasons must be given for the appointment together with an indication of the areas that should be considered in the report. The report to the hearing will indicate who the safeguarder visited and consulted; a summary of the information gained, particularly in relation to the requested areas, views of the child and a recommendation of action that the hearing should take.

Other reports

From time to time panel members will have other reports to consider, for example from a psychologist, health worker or from the staff of a residential establishment in which a child is staying. It is helpful if panel members consider why these reports were requested and how far they give answers to the questions raised. For example, in a paediatrician's report, information about growth and weight gain in a young child will be particularly crucial since failure to thrive might be an indication of various kinds of neglect and abuse. It will always be useful if the report writer can be present at the hearing, but this may not always be possible.

Reasons for decisions

At the end of the hearing, panel members give their reasons for their decision. These should be clear and in language that the child can understand. After the family has left the room, the reasons are written by the hearing on the form provided and signed by the chairman. These reasons should be clear and simply stated and be as close as possible to what was said. A copy is sent to the child, relevant persons, the local authority, and any safeguarder and legal representative for the child, if appointed.

9 SUMMARY

Communication is creating understanding in the minds of others. Effective communicators get their message received in the way they intended it to be received. The children's hearings system is one based on communication. In order that it works well for all concerned, particularly the child, care and attention needs to be given to how messages are given and received.

10 FURTHER READING

- | | |
|-----------------------------|--|
| Berne E (1966) | <i>Games People Play, the Psychology of Human Relationships</i> London, Deutsch.
Description of the patterns of human communication in terms of 'games'. Contains interesting analysis of dialogues, interpreting what is really being said behind the words. |
| Lishman, J (1994) | <i>Communication in Social Work</i> Macmillan,
A comprehensive guide to practical and theoretical issues in non-verbal, verbal and written communication. |
| Skynner R & Cleese J (1983) | <i>Families and How To Survive Them</i> London, Methuen.
Written in the form of light-hearted dialogue between psychiatrist and patient. Explores the complex network of relationships within families. |
| The Scottish Office (1991) | <i>Who's Hearing?</i> HMSO.
Report of a conference seeking views of children and parents about the hearings system. |
| The Scottish Office (1994) | <i>Scotland's Children: Speaking Out, Young People's Views on Child Care Law in Scotland</i> HMSO.
Report of views of young people on issues of concern to them, such as residential care, education, emergency protection, confidentiality, the representation of children's views. Many of the ideas were incorporated into the White Paper Scotland's Children. |
| Walker, AG (1999) | <i>Handbook on Questioning Children: A Linguistic Perspective</i> Washington, ABA.
This book examines the language used when questioning children and gives helpful ideas about how giving clear messages to children. |

Glossary of Terms

Explanations/Definitions/Abbreviations

GLOSSARY OF TERMS

ACCOMMODATION - provided by the local authority for a period of more than 24 hours for a child where:

no-one has parental responsibilities for the child
the child is **lost or abandoned**
the person who has been caring for the child is prevented from
providing the child with **suitable accommodation or care**

AFTER CARE - the local authority has a general duty to help prepare a child to leave their care, in particular they must:

advise, guide and assist any child **under 19** who was looked after by the local authority at any time after s/he reached the school leaving age
young people **between 19 and 21 can ask** for advice, guidance and assistance and the local authority can agree if this is in the young person's best interests

ASSESSMENT - in the community or a residential setting. Continuation for an assessment is made when additional information is required / more detailed explanations are needed / or information from additional sources is requested. This can include information from psychologists - educational and / or clinical; psychiatrists; specialist services. This joint assessment should enable the hearing to make an informed decision. Think why you would need a residential setting. *This process should not be confused with an Assessment Order, which can be issued by a sheriff.*

BEST PRACTICE - the system is governed by the Act and Rules. **Best Practice Guidance helps make the legal process 'user friendly'.** The Best Practice Guidance is issued by the Scottish Executive and lays out the areas and is used by panel members throughout Scotland. Current issues are contained in the Training Resource Manual.

BUSINESS MEETING - arranged by the reporter with written notification in writing **four working** days before the meeting to:

- consider procedural matters** – releasing the child from obligation to attend a hearing; consideration of relevant persons
- obtain direction or guidance** in relation to their duties
- consider the appointment of a legal representative**

CHILD - in terms of the legislation

- a child a person who is **not yet 16** years of age

- a child **over 16** years of age but is subject of a **supervision requirement**

- a child **over** the age of **16** years of age but **still at school**

CHILD ASSESSMENT ORDER - order issued by the court to allow for assessment of a child's health and /or development or to investigate how a child has been treated. **It is issued by the sheriff when s/he is satisfied that the local authority have reasonable cause for concern and the parents (relevant person(s)) are unwilling to co-operate** with investigation into the child's circumstances. The child may be removed from home to allow the assessment to take place

CHILD PROTECTION ORDER - an order granted by the court where the **sheriff is satisfied that there is reasonable cause to believe that a child is suffering or is likely to suffer significant harm and cannot be protected other than by removal from home.** If no application is made to set the order aside the Child Protection Order will be reviewed by a hearing **on the second working** day. A Child Protection Order lasts for a **maximum of eight working days after it has been implemented;** any further order will be a Place of Safety Order - issued by means of a warrant.

CHILDREN AFFECTED BY DISABILITY - person with a disability is defined as someone with:

a **chronic sickness or disablement**

suffering from a **mental disorder**

services must be designed **to minimise the effect on children of either their disability or that of a family member**, and to allow them to lead as normal a life as possible.

CHILDREN'S HEARING - a **lay tribunal** composed of three members of mixed gender charged with making decisions on the needs of children and young people.

CHILDREN'S HEARINGS (SCOTLAND) RULES 1996 - the **rules concern the operation** of the Act. Copy of rules is issued with Training Resource Manual.

CHILDREN'S PANEL – member of the public who have been selected and trained to sit on children's hearings

CHILDREN'S SERVICE PLAN - a plan published by each local authority **stating the services provided** for children.

CHILDREN (SCOTLAND) ACT 1995 - the Act of Parliament which **governs the children's hearings system**. The part of the act, which deals with hearings, is issued with the Training Resource Manual.

COMPULSORY MEASURES OF SUPERVISION – **an order placed** to impose measures of **guidance, treatment, protection or control** on a child.

CONDITIONS - allow panel members to make their **intentions for supervision** more specific. The most common conditions relate to contact, non-disclosure of address and date for review.

CONTACT - contact between children and their parents (and brothers, sisters) is a **basic right** which should only be regulated if the welfare of the child is might be compromised.

EMERGENCY PROTECTION - this allows the local authority and others to take steps to protect a child in an **emergency** prior to seeking a Child Protection Order.

EXCLUSION ORDER - Order granted by the court to **remove the suspected abuser** from the home in order that a child who is suffering or likely to suffer significant harm may remain at home. **Used in place of a Child Protection Order.**

GROUND FOR REFERRAL - the **twelve conditions** contained in the Act which indicate a child may need supervision.

GUARDIANSHIP - the legal situation where a **court or parent** who has parental responsibilities and rights **passes these on to an appointed person** to act in their place in the event of the parent's death. A guardian must be **appointed in writing** and **children should be asked their opinion** before any appointment. Guardianship lasts until the child is 18.

IN NEED - a child in need is a child who **unless local authority services are provided, is unlikely to have the chance to achieve or maintain:**

a reasonable standard of **health**

whose **health and development** are likely to be **seriously damaged** without resources

a child who is **disabled**

a child who is **affected adversely by the disability of someone in his / her family**

LEGAL REPRESENTATIVE - a legally qualified representative for the child, appointed from the Panel of Safeguarders when a child cannot effectively participate in or understand the proceedings, or where there is a possibility that the child may lose her / his liberty.

LOOKED AFTER - children who may be looked after by a local authority are children:
 without anyone who has **parental responsibilities** and rights for them
 children who are **lost; abandoned**
 children **whose parent (relevant person) cannot / will not care for them**
 children who **need accommodation**
 18 - 21 year olds whose welfare needs formal intervention
 children **on supervision**
 children **under a warrant**
 children **‘in care’ elsewhere and transferred** to Scotland

MEDICAL EXAMINATION and TREATMENT - under the Age of Legal Capacity (Scotland) Act 1991, **children under the age of 16 have capacity to consent** to their own medical examination and treatment, where in the opinion of the qualified medical practitioner, the child is capable of understanding the nature and possible consequences of the examination or treatment.

NO ORDER PRINCIPLE - minimal intervention – court / hearing should only impose an order if the family cannot solve the problems without compulsory help and the help offered should be appropriate.

PARENTAL RESPONSIBILITIES - responsibilities parents have towards their children:

- to safeguard and promote child's health, development and welfare until the child reached 16
- to provide appropriate direction until the child reached 16 and guidance until 18
- maintain good personal relationships and contact with the child until 16
- to act as a legal representative until child is 16

PARENTAL RESPONSIBILITIES ORDER - a sheriff may transfer parental responsibilities to a local authority where a relevant person has:

- persistently failed, without reasonable excuse** to fulfil their parental responsibilities
- has seriously ill-treated** the child and return home is unlikely

This order lasts until the child is 18.

PARENTAL RIGHTS

- to **regulate the residence** of a child under 16
- to **direct** the child's **upbringing**
- to maintain **contact**
- to act as a **legal representative**

PERMANENCY PLANNING - decisions made on the long-term future of children who have been removed from their families. Its purpose is to **ensure that the child has a permanent, stable and secure upbringing** either with their original family or with alternative high quality care.

PLACE OF SAFETY - **temporary placement** of a child where there are concerns about her / his safety.

PROOF HEARING - a hearing held in private **before the sheriff** to establish (or not) the grounds for referral.

REFUGE – a local authority may provide refuge for a child / young person who appears to be **at risk**. The refuge **must be designated** to be a refuge and could be in a residential establishment or local authority approved household. The young person will only be allowed to stay for **7 days**, or **in exceptional circumstances 14 days**.

RELEVANT PERSON

female parent

male parents who are or were **married to the female parent**

male parents (unmarried) who have a **recorded agreement** with the female parent regarding the parental responsibilities/rights of the child

male parents (unmarried) awarded parental responsibilities/rights

male parents (unmarried) who have been **appointed guardian**

any person who has been **given parental responsibilities/rights** under the Children (Scotland) Act 1995

any person who ordinarily has the charge of, or control of, a child (*unmarried father living with the child and mother, cohabitee, grandparents, and in exceptional situation this may include foster carers*)

REPORTER - a person employed by the **Scottish Children's Reporter**

Administration to whom referrals about children are made.

REPRESENTATIVE - a person attending a hearing **to assist** the child and / or relevant person(s) in the discussion of the child's case. **A relevant person is NOT a representative.** The child's representative **cannot** be excluded from the hearing.

RESIDENCE ORDER – an order made by a court which **regulates the arrangements about where, and with whom a child will live.** If an order is made in favour of someone who does not have parental responsibilities and rights (e.g. grandparents, aunts) then that person will hold responsibilities and rights until or unless the order is changed. This lasts until the child is 16.

SAFEGUARDER - an **INDEPENDENT person** appointed by a children's hearing (or by a sheriff) to provide a report when the hearings are not entirely clear what a child's interests are, and **to safeguard the child's interests.** **A safeguarder is NOT a representative, legal agent, befriender, counsellor or child advocate.**

SCHOOL LEAVING DATE

For children whose 16th birthday is between **1 March and 30 September** the date is **31st May**

For children whose 16th birthday is between **1 October and 28-9 February** the date is **Christmas**

SECURE ACCOMMODATION - if children meet certain **criteria** they may be placed in residential accommodation, which **restricts their liberty.** See appropriate sections of the Training Resource Manual.

SHERIFF - lawyer or advocate of ten years standing appointed to a Sheriff Court to administer the law.

SOCIAL BACKGROUND REPORT (SBR or SER) - report provided by the local authority which provides **detailed information on the child and the family** and **RECOMMENDS** a course of action to guide the hearing.

SPECIFIC ISSUES ORDER - an order made by the court which **regulates a specific question** which has arisen in relation to parental responsibilities, rights, guardianship or administration of a child's property.

STATEMENT OF FACTS - information which explain / support the grounds for referral

SUPERVISION - protection, guidance, treatment OR control

SUPERVISION REQUIREMENT (SR) - A programme of **work, support and services** to assist the child.

TIME INTERVALS WORKING GROUP (TIWG) - a multi-agency group set up to consider the setting of **national standards** covering time-scales and other aspects of the delivery of services to children.

WORKING DAY - every day except Saturday and Sunday; the 25 and 26 December and 1 and 2 January

EXPLANATIONS / DEFINITIONS / ABBREVIATIONS

Absc. Absconder

Abs. Dis Absolute Discharge

Adm. Admonished

Att. HB w/i Attempted Housebreaking with intent

Att. OLP Attempted Opening Lockfast Premises

ART AND PART - **active participation** of an indirect nature before or during the commission of a crime – presence is not enough active involvement is required.

ASSAULT - any deliberate / unjustifiable attack upon another.

AUTHORITY CHAIRMAN - a panel member appointed by the Scottish Ministers to represent panel members within a local authority at local / national level. The only **statutory duty** imposed on the authority chairman is the **preparation of the hearings rota** but the work involved is much more.

Br. Of P Breach of Peace - any conduct likely to place a person in a state of fear and alarm

Con RTA Contravention of Road Traffic Act

CPAC see Children's Panel Advisory Committee

CPAG see Children's Panel Advisory Group

CPCG see Children's Panel Chairmen's Group

CPO see Child Protection Order

CPTO see Children's Panel Training Organiser

C & YPG see Children and Young People's Group

CHILDREN and YOUNG PEOPLE'S GROUP - the branch of the Scottish Executive Education Department, which deals with all matters regarding the Children's Hearings System.

CHILDREN'S PANEL ADVISORY COMMITTEE - members **appointed by the Scottish Ministers** to select, monitor and reappoint panel members.

CHILDREN'S PANEL ADVISORY GROUP - Chairmen and Clerks of Advisory Committees meet on a regular basis to consider national issues with regard to their role in the system.

CHILDREN'S PANEL CHAIRMEN'S GROUP – Authority Chairmen meet on a regular basis to consider issues on a national basis with regard to panel members and their role in the system

CHILDREN'S PANEL TRAINING ORGANISER - situated with the Universities of Aberdeen, Edinburgh, Glasgow and St Andrews, the training organisers are responsible for the pre service and new member training of new members. They also provide in-service training to experienced panel members.

COUNCIL OF TRIBUNALS - an **independent body** who act as a watchdog of various tribunals of which the hearings system is only one.

F and O Def Finding and Order Deferment

FIRE RAISING - causing all or part of the property to be consumed by fire. Fire must have been started **intentionally / recklessly**.

GOR see grounds for referral / grounds of referral

HB w/i Housebreaking with intent
Known Thief found in enclosed premises
Known Thief found loitering with intent
There is no offence of housebreaking – intent to steal must be proved

IT and IIT see Intermediate Treatment or Intensive Intermediate Treatment

INTERMEDIATE TREATMENT and INTENSIVE INTERMEDIATE

TREATMENT (IT or IIT) - group work and projects - with specific remits - to offer support and supervision to young people. Examples include - drug issues; social skills; dealing with offending behaviour.

JAT see Joint Assessment Teams

JOINT ASSESSMENT TEAMS (JAT) - assessment of children which involve a multi-agency approach - social work, education, psychological services etc.

M. Reg. Motor Vehicle Regulation

MALICIOUS MISCHIEF - intentional or reckless destruction or damage to the property of another.

NG Not Guilty

OLP w/i Opening Lockfast places with intent

PCs Previous Convictions

POS see Place of Safety

PRO see Parental Responsibilities Order

Psy Rept Psychiatric Report

Reset Handling goods knowing them to have been acquired illegally

RULES see Children's Hearings (Scotland) Rules 1996

SACP see Scottish Association of Children's Panel

SBR see Social Background Report

SCRA see Scottish Children's Reporter Administration

SCRO Scottish Criminal Records Office

SD Sentence Deferred

SER Social Enquiry Report

S.L. Shoplifting

SEED see Scottish Executive Education Department

SR see Supervision Requirement

Sup SER Supplementary Social Enquiry Report

SWD see Social Work Department

SCOTTISH ASSOCIATION OF CHILDREN’S PANELS - involves representatives from panels throughout Scotland and provides a forum for sharing views and promoting understanding of the system to the wider community.

SCOTTISH CHILDREN’S REPORTER ADMINISTRATION - non-departmental public body whose statutory function is to **manage the reporters service** and to provide **suitable accommodation and facilities** for children’s hearings.

SCOTTISH EXECUTIVE EDUCATION DEPARTMENT - the department of the Scottish Executive responsible for the running and monitoring of the system

Th Theft - taking goods and permanently depriving owner of their use

Th by HB Theft by Housebreaking - not necessarily by force using a false key is sufficient

Th by OLP Theft by Opening Lockfast Premises - security overcome and articles taken

Th by SL Theft by Shoplifting

TIWG see Time Interval Working Group

Tr Trial

TUTOR - panel members who are trained to help deliver training sessions under the guidance of the training unit.

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Astron B27035 12-02

