

PROTOCOL FOR THE ARRANGEMENT OF CHILDREN'S HEARINGS FOR CHILDREN RESIDENT IN SECURE ACCOMMODATION



1. PRINCIPLES

The following general principles are agreed:

1. Children have a legal right to attend any children's hearing arranged in relation to them. They have a legal obligation to attend the hearing unless formally excused in advance by a pre-hearing panel or children's hearing.
2. The fact that a child has been placed in secure accommodation as a result of criminal proceedings does not change this right and obligation.
3. Children who are, for whatever reason, resident in secure accommodation have the same right and obligation as any other child to attend their children's hearing at the location notified to them. The presumption is that the location will be the Hearing Centre customarily provided by SCRA.
4. There is a presumption against holding a child's hearing in a secure establishment because this may give the impression to the child or others involved in the process that the child will return to secure accommodation after the hearing's decision. Holding a child's hearing in the secure establishment could also give a negative impression regarding the child's behaviour which may not be warranted and which could wrongly affect the outcome of the hearing.
5. A fair hearing in terms of Article 6 of the European Convention on Human Rights is very unlikely to be achieved if a child is prevented from attending their hearing.
6. A child is not be denied the right to attend their hearing simply because of a difficulty transporting the child to the hearing premises or because of staffing/resource issues.

2. ARRANGING A CHILDREN'S HEARING FOR A CHILD RESIDENT IN SECURE ACCOMMODATION

2.1 There is a presumption that the reporter will arrange the children's hearing to take place in the usual SCRA Hearing Centre for the child's 'home' location, whatever the basis of the child's residence in secure accommodation. If there are considered to be risks to the health, safety or wellbeing of the child or other person from the child attending such a hearing, the following options may be possible:

- put in place additional measures at the usual SCRA Hearing Centre;
- hold the hearing in a different SCRA Hearing Centre (with additional measures as appropriate);
- hold the hearing in other appropriate premises (with additional measures as appropriate); or
- hold the hearing in the secure establishment in which the child is residing.

2.2 If the secure establishment or local authority considers that any of these options are necessary they are to consult with the other agency and take the views of that agency into consideration. If thereafter any of the options are seen as necessary, the secure

establishment or local authority is to inform the reporter in writing, setting out the risk assessment undertaken and including:

- details of the identified risk, the person or persons at risk and the gravity of the risk;
- explanation as to what other means of mitigating the risk have been considered;
- explanation as to why the requested option is the most appropriate way to mitigate the risk; and
- the views of the other agency.

2.3 The secure establishment or local authority must make the request in good time for the reporter to consider it in advance of any hearing taking place.

2.4 Examples of additional measures which can be put in place include police presence at or inside the hearing room, altering the environment of the hearing room, ensuring the availability of panic buttons, etc.

2.5 Requesting that a hearing be arranged in a secure establishment is a measure of last resort. The secure establishment and local authority will consider all other means of mitigating the identified risk, including the possibility of the hearing being arranged in a different SCRA Hearing Centre or other appropriate premises. This might be appropriate, for example, where the length of the journey to the usual Hearing Centre is assessed as creating a particular risk.

2.6 A member of staff from the secure establishment will attend the hearing wherever it is arranged. The member of staff will be expected to contribute to the hearing's consideration of the child's circumstances.

3. REPORTER'S DECISION

3.1 Where the secure establishment or local authority has identified a need for additional measures at the usual Hearing Centre, the reporter will consider the information provided and put in place any suggested measure, if practicable, where the reporter considers it to appropriate.

3.2 Where the secure establishment or local authority has identified a need for a different venue, the reporter will consider the information provided and assess whether there is a significant risk to the health, safety or wellbeing of the child or another person from having the hearing in the usual Hearing Centre. Based on the information in the submitted risk assessment, the reporter will consider whether there are additional measures which can be taken which would allow the child to attend the usual Hearing Centre.

3.3 It is ultimately for the reporter to decide whether or not to put in place additional measures and/or change the location of the hearing (whether to a different Hearing Centre or to the secure establishment). In coming to a decision, the reporter will consider the rights, obligations, health, safety and wellbeing of all those attending the hearing, including the child. The reporter will seek to manage the risk in the way which best minimises the impact on the children's hearing and the attendance and participation of anyone with a right to attend. The child's best interests will be a primary consideration.

3.4. The reporter may consult with the secure establishment and/or the child's social worker to assist in coming to a decision.

3.5 Where the reporter decides that a risk exists that makes additional measures at the usual Hearing Centre appropriate, or that a significant risk exists which justifies a change of hearing venue, the risk will be formally recorded by the reporter and shared with the secure establishment and local authority so that everyone has the same understanding of risk.

3.6 As with any hearing, if adequate mitigation of the risk requires those present at the hearing to be informed, the reporter must do so. The reporter will ensure that this is done in a way which minimises any potential impact on the fairness of the hearing. In particular the reporter will share information only to the extent required to adequately mitigate the risk, and will provide the same information to the child and relevant persons as is provided to the panel members (unless, exceptionally, providing the information to an individual would create a significant risk of harm to someone).

3.7 A debrief to consider the arrangements made and the level of risk should take place after any children's hearings where there are indications that the arrangements were not sufficiently robust, or were unnecessarily robust, in relation to the risk to the child or another person. The reporter, the local authority and the secure establishment should be involved in the debrief. Agreed learning points should be taken into account in future decision making for the child and wider learning points, anonymised, should be shared appropriately.

4. HEARINGS IN A SECURE ESTABLISHMENT

4.1 Where a hearing is to be held in a secure establishment, the environment in which the hearing is to be held must be appropriate for a children's hearing and conform to all relevant health and safety legislation. In selecting facilities, the establishment will have regard to the health, safety and wellbeing of all participants. Any issues identified in advance of the hearing which might affect the conduct of that hearing should be communicated immediately to the reporter.

4.2 A children's hearing that takes place in a secure establishment remains subject to all the relevant legislation, primarily the Children's Hearings (Scotland) Act 2011 and the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. The facilities provided must not potentially compromise the hearing being a fair hearing in terms of the European Convention on Human Rights. In particular:

- the reporter and the hearing chair retain their respective legal responsibilities in relation to the hearing,
- waiting facilities for those attending the hearing, including the reporter, must be available separate from panel members,
- facilities for the child or relevant persons to consult with their solicitor should be available,
- facilities for the child, relevant persons or representatives to temporarily leave the hearing room should be available,
- only those secure unit staff whose attendance is necessary should seek to attend the hearing.

4.3 A clear plan should be in place so that, in the event of an incident, the reporter, secure establishment staff and local authority social work personnel are clear about what measures of response are available and how to access them.

5. TRANSPORT

5.1 A child will not be prevented from attending their hearing because of transport difficulties.

5.2 Secure establishments and local authorities will ensure arrangements are in place for transport of children to and from children's hearings.

5.3 In terms of the National Secure Care Framework Contract, 15.4 (i) the secure unit will provide a member of Staff to accompany the Child or Young Person to a Children's Hearing where the local authority has arranged a secure escort service.

5.4 Exceptionally, transport difficulties may arise unrelated to risk to the child or another person. In these circumstances the secure establishment or local authority may request that the children's hearing be arranged to take place in a different SCRA Hearing Centre. The request must be made in good time for it to be considered in advance of the hearing taking place and must set out the reasons for the request. In considering the request the reporter will take into account the rights, obligations and circumstances of all persons attending the hearing.