



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 13

Attendance at Hearings

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SUMMARY

- The child and relevant persons have a right to attend the hearing. The child's right is absolute, with a limited exception in relation to consideration of a non-disclosure request. However a relevant person may be excluded from the hearing where their presence:
 - is preventing the hearing from obtaining the views of the child,
 - is causing, or likely to cause, significant distress to the child, or
 - is preventing the hearing obtaining a response to the section 67 ground from someone who is required to accept or deny the ground,
 - would prevent proper consideration of a non-disclosure request under which information has been withheld from them.
- The child has a duty to attend the hearing unless excused. A pre-hearing panel or hearing can excuse the child from attending all or part of the hearing if:
 - the ground relates to a Schedule 1 offence (or offence under the Sexual Offences Act) and the child's attendance is not necessary for a fair hearing,
 - attendance would place the child's physical, mental or moral welfare at risk, or
 - the child would not be capable of understanding what happens at the hearing.
- A grounds hearing may excuse the child from the explanation of the ground only if the child would not be capable of understanding the explanation.
- Relevant persons have a duty to attend the hearing unless excused or excluded. A pre-hearing panel or children's hearing can excuse a relevant person if:
 - it would be unreasonable to require their attendance, or
 - their attendance is unnecessary for the proper consideration of the case.
- If a relevant person does not attend a children's hearing, the hearing can proceed in the absence of the relevant person if they consider it appropriate to do so.
- A person representing the child or relevant person has a right to attend a hearing. A relevant person's representative may be excluded where their presence:
 - is preventing the hearing from obtaining the views of the child, or

- is causing, or likely to cause, significant distress to the child.
- Attendance normally means attendance in person. However, if the child or relevant person is excused from attending a hearing, they may request to attend the hearing by telephone, video link or other method. If the reporter is satisfied that the person has good reason for not attending in person, SCRA must take all reasonable steps to enable them to attend by the requested method. Similar provision is made for attendance at a pre-hearing panel or at hearing to which a pre-hearing panel matter has been referred (though without a preliminary requirement that the person has been excused).
- Section 78 specifies who has a right to attend a hearing. The chair may allow others to attend if necessary for the proper consideration of the case or if the child or relevant persons do not object.
- Where a person is being so aggressive as to pose immediate danger to persons in the hearing or on the premises, or is being so disruptive as to prevent the hearing conducting its business, the hearing may refuse the person entry or require them to leave.

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1. Introduction

- 1.1 This Practice Direction describes the statutory provisions in relation to attendance at a children's hearing, and explains how they are to be applied by reporters.
- 1.2 Attendance at a pre-hearing panel is addressed in Practice Direction 12 on Pre-hearing Panels.
- 1.3 The main statutory provisions in relation to the right of attendance at a hearing are contained in sections 73 to 78 of Children's Hearings (Scotland) Act 2011 and rules 19 and 20 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013.

2. Attendance at Hearing

- 2.1 The Act sets out who has a right to attend (together with when they can be excluded), who has a duty to attend (together with when they can be excused), and the criteria for others being able to attend. The table in Appendix 1 to this Practice Direction sets out the position for a range of categories of person.
- 2.2 The child has an absolute right to attend, and a duty to attend though can be excused.
- 2.3 A relevant person has a right to attend but can be excluded, and a duty to attend though can be excused.
- 2.4 A representative, including a legal representative, of the child or a relevant person has a right to attend but a representative of a relevant person can be excluded. A representative, including a legal representative, has a right to attend a hearing in the absence of the child or relevant person they are representing. The hearing must be satisfied that the person does have authority from the child or relevant person to represent them. The hearing may nevertheless decide that it does not want to fully consider the case or make a decision in the absence of the child or relevant person.
- 2.5 Section 78(1) specifies all those who have a right to attend a hearing. The chair may permit others to attend under section 78(2) if the chair considers their attendance to be necessary for the proper consideration of the matter before the hearing or if the child or relevant persons do not object. There are therefore three categories of person who may attend a hearing:

- those with a right under section 78(1);
 - those permitted by the chair under section 78(2) because their attendance is necessary for the proper consideration of the case;
 - those permitted by the chair under section 78(2) for other reasons, provided the child or relevant persons do not object.
- 2.6 In terms of section 78(4) the chair must take all reasonable steps to ensure that the number of persons present at a children's hearing at the same time is kept to a minimum.
- 2.7 Before the hearing commences, the reporter (or other member of SCRA staff) is to provide the hearing with a note of who has been notified about the hearing, who has been invited and who is actually present at the Hearing Centre. See Practice Direction 11 on Role of the Reporter at a hearing or Pre-hearing Panel.
- 2.8 Anyone who does not have a right to be present at the hearing and has not been invited by the reporter should generally be asked by the reporter to wait outside the hearing until the chair has come to a decision about their participation. Within the hearing the reporter is to ensure that the hearing members are aware of anyone who is present at the hearing centre and wishes to attend. Thereafter it is for the chair to decide on whether to allow any such individual to attend, when and for how long.
- 2.9 In particular, where someone is present at the hearing centre solely because of their interest in and contribution to consideration of contact at the hearing¹, the reporter is not take the person into the hearing at the outset. This reflects both the limited participation that is likely to be appropriate for them and the rights of the child and relevant persons.
- 2.10 Within hearings, the reporter is to be alert to situations where the hearing is considering including for the first time, or varying, a contact direction in a CSO in relation to a person with established family life and an ongoing relationship with the child. In most such cases, the person will have been invited by the reporter but there may be cases where the consideration of the contact direction was not anticipated in advance or where the person was not of sufficient age and maturity to be invited. In these circumstances the reporter is to take the view that the hearing should satisfy itself that, subject to age and understanding of the person:
- it has the views of the person (directly or indirectly) in relation to their contact or

¹ This will normally be after the reporter has invited the person as directed in section 10 of Practice Direction 14 on Notifications and Papers.

- if not, the person has been given an opportunity to provide their views.

The hearing can decide to defer to give the person the opportunity to attend or give their views (directly or indirectly). An interim decision can be made if necessary.

3. Excusing child from attending

- 3.1 A pre-hearing panel or children's hearing can excuse a child from attending all or part of a children's hearing. When excusing is identified as an issue in advance of the hearing, the reporter should generally arrange a pre-hearing panel. See Practice Direction 12 on Pre-hearing Panels. However the reporter is not obliged to arrange a pre-hearing panel to consider excusing the child (even if requested) and should not arrange one if the statutory criteria for excusing are clearly not met.
- 3.2 The criteria for excusing a child are set out in section 73(3) (via section 79(4) for a pre-hearing panel). They are that the pre-hearing panel or children's hearing is satisfied that:
- (a) the hearing relates to the ground mentioned in section 67(2)(b)², (c)³, (d)⁴ or (g)⁵ and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing or
 - (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk or
 - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.
- 3.3 The pre-hearing panel or hearing should specify which of the categories in 73(3) applies (it can be more than one).
- 3.4 A grounds hearing cannot excuse a child who is not present at the hearing. If the child is not present and has not been excused by a pre-hearing panel, the hearing must either require the reporter to arrange a further grounds hearing or discharge the referral – section 95 and rule 64. See Practice Direction 15 on Grounds Hearings.
- 3.5 In terms of section 73(4), a grounds hearing may excuse the child from attending during the explanation of the ground only if the hearing is satisfied that, taking account of the child's age and

² Victim of schedule 1 offence

³ Close connection with schedule 1 offender

⁴ Same household as victim of schedule 1 offence

⁵ Close connection with Sexual Offences Act offender

maturity, the child would not be capable of understanding the explanation. Section 73(4) only applies where the child is present at the grounds hearing.

- 3.6 Once a child has been excused from attending a hearing (whether by a pre-hearing panel or a children's hearing), the reporter is to take the excusal as persisting for related subsequent hearings – sections 119(5) and 138(9). The reporter is only to record the decision to excuse once - in the record of proceedings of the hearing or pre-hearing panel that made the initial decision. However a subsequent hearing may decide (at any point during the hearing) that it does not want to make a decision without the child attending and may therefore defer its decision for that reason. This 'breaks' the excusal and the child has a duty to attend the next hearing.

However, it is possible for a decision to excuse to relate to one hearing only, or part of one hearing only. This should be clear from the reasons for decision. Where it is clear that the decision is intended to be time-limited, the reporter is not to view the excusal as persisting beyond that period.

- 3.7 If the child has been excused from attending a hearing in advance (whether by a pre-hearing panel or a children's hearing), the reporter is not to record as a decision of the current hearing that the child has been excused.
- 3.8 Where an excusal is in place, the reporter must ensure that the appropriate form of notification is sent.
- 3.9 A child who has been excused from attending a hearing may request to attend by way of telephone, video link or other method of communication – rule 19. Further information on this is contained in Section 6 of this Practice Direction.

4. Excusing relevant person from attending

- 4.1 A pre-hearing panel or children's hearing may excuse a relevant person from attending all or part of a children's hearing. When excusing is identified as an issue in advance of the hearing, the reporter should generally arrange a pre-hearing panel. See Practice Direction 12 on Pre-hearing Panels.⁶

⁶ However, as with excusal of a child (see paragraph 3.1) the reporter is not obliged to arrange a pre-hearing panel, even if requested, and should not arrange one if the statutory criteria for excusing are clearly not met.

- 4.2 The criteria for excusing a relevant person are set out in section 74(3) (via section 79(5) for a pre-hearing panel). They are that the pre-hearing panel or children's hearing is satisfied that:
- (a) it would be unreasonable to require the relevant person's attendance at the hearing or part of the hearing or
 - (b) the attendance of the relevant person at the hearing or part of the hearing is unnecessary for the proper consideration of the case.
- 4.3 The pre-hearing panel or hearing should specify which of the categories in 74(3) applies (it can be more than one).
- 4.4 Once a relevant person has been excused from attending a children's hearing (whether by a pre-hearing panel or a hearing), the reporter is to take the excusal as persisting for related subsequent hearings – sections 119(5) and 138(9). The reporter is only to record the decision to excuse once - in the record of proceedings of the hearing or pre-hearing panel that made the initial decision. However a subsequent hearing may decide (at any point during the hearing) that it does not want to make a decision without the relevant person attending and may therefore defer its decision for that reason. This 'breaks' the excusal and the relevant person has a duty to attend the next hearing.
- However, it is possible for a decision to excuse to relate to one hearing only, or part of one hearing only. This should be clear from the reasons for decision. Where it is clear that the decision is intended to be time-limited, the reporter is not to view the excusal as persisting beyond that period.
- 4.5 If a relevant person has been excused from attending a hearing in advance (whether by a pre-hearing panel or a children's hearing), the reporter is not to record as a decision of the current hearing that the relevant person is excused.
- 4.6 Where an excusal is in place, the reporter must ensure that the appropriate form of notification is sent.
- 4.7 Where a relevant person fails to attend a hearing, the hearing may proceed in their absence if the hearing considers it appropriate to do so – section 75. The hearing may make a decision **either** to excuse under section 74 **or** to proceed in absence under section 75 (provided the relevant criteria for the decision are met). Either decision should only be made if it would be fair to do so, and the reporter is to intervene to express this view if it appears that a decision which the reporter thinks would be unfair is under consideration.

- 4.8 A relevant person who has been excused from attending a hearing may request to attend by way of telephone, video link or other method of communication – rule 19. Further information on this is contained in Section 6 of this Practice Direction.

5. Excluding relevant person and/or representative

General

- 5.1 There are two separate provisions which enable a relevant person to be excluded from a children's hearing. Firstly, in terms of section 76, a children's hearing can exclude a relevant person from the hearing where their presence:

- is preventing the hearing from obtaining the views of the child or
- is causing, or likely to cause, significant distress to the child.

Secondly, in terms of rule 59, the chair (not the hearing) can exclude a relevant person from a grounds hearing if satisfied that the presence of the relevant person is preventing the hearing obtaining the acceptance or denial of a ground from the child or another relevant person.

- 5.2 A hearing may exclude the representative of a relevant person under section 77. The criteria are the same as for a relevant person under section 76.
- 5.3 A hearing (or the chair under rule 59) may not exclude a relevant person or a representative on the basis that the child would prefer the person not to be present. The hearing must apply the statutory criteria.⁷
- 5.4 Exclusion under section 76 or 77 may take place at any stage of the hearing and for as long as is necessary. After the exclusion has ended, the chair must explain to the relevant person/representative what has happened in their absence. This is subject to the terms of section 178 which provides that a hearing need not disclose information to a person where this is likely to cause significant harm to the child. See Practice Direction 4 on Non-disclosure.
- 5.5 Rule 59(1) applies where, under section 90, the chair is explaining the section 67 ground(s) to the child and relevant persons and asking whether they accept the ground(s). The chair may exclude a relevant person if satisfied that the presence of the relevant person is preventing the hearing obtaining the

⁷ See *G v Children's Reporter* 14 June 2016. If the hearing or chair appears to be considering excluding someone without having regard to the statutory criteria, the reporter is to intervene to alert the hearing or chair to the criteria.

acceptance or denial of a ground from the child or another relevant person. The exclusion under rule 59 cannot last beyond the putting of the ground(s). Any exclusion cannot operate to remove a relevant person's opportunity to be given an explanation of each ground and to respond (where they would be capable of understanding the explanation).

- 5.6 The chair must give a relevant person excluded under rule 59 an explanation of what has taken place in their absence. In theory section 178 can apply to the response(s) to the section 67 ground given during the absence of the relevant person, though there are likely to be significant difficulties in maintaining the withholding of that information.
- 5.7 The power to exclude a person cannot be exercised before the hearing begins. The person retains the right to attend the hearing until the decision is made to exclude them. The person must be allowed to enter the hearing room unless they have voluntarily agreed not to do so (see paragraph 5.9).
- 5.8 The statutory provisions for exclusion do not affect the power of a hearing to refuse a person entry to the hearing or require a person to leave the hearing when that person is being so aggressive as to pose immediate danger to persons in the hearing or on the premises, or is being so disruptive as to prevent the hearing conducting its business. There is no express authority for a hearing to do this, but such action is likely to be justifiable. The reporter also has health and safety responsibilities in relation to all persons on SCRA premises or attending a children's hearing, which in circumstances of significant risk of harm, take precedence over other statutory obligations. See PD 11 Role of Reporter at a Children's Hearing or Pre-Hearing Panel.

Voluntary Arrangements

- 5.9 The statutory provisions for exclusion do not prevent a relevant person and/or their representative voluntarily agreeing not to attend part of the hearing. However, all parties to a voluntary arrangement should be fully aware of their right to attend the hearing⁸. If a person with a right to attend voluntarily does not initially attend the hearing, or leaves for part of the hearing, the reporter is to record this on the record of proceedings as a decision to proceed in the absence of the person for part of the

⁸ Paragraph 4.6 of Practice Direction 11 states (where the reporter is discussing the situation with parties before the hearing starts) that 'the reporter must always explain clearly to the relevant persons, and child if of sufficient age and understanding, that the relevant persons and child have a right to be present in the hearing at the start.' Where the issue is being considered within the hearing, if a relevant person appears to be agreeing to leave voluntarily without being aware that they have a right to remain, the reporter is to intervene to express the view that the person must be made aware that they have a right to remain.

hearing⁹. The reporter is not to record the specific time during which they left the hearing.

- 5.10 Where there is conflict or tension between persons attending the hearing, the reporter may, before the hearing starts, discuss the situation with the persons involved to see if the relevant persons, and child if of sufficient age and understanding, can agree on an approach to dealing with the situation¹⁰. The reporter must always explain clearly to the relevant persons, and child if of sufficient age and understanding, that the relevant persons and child have a right to be present in the hearing at the start. These types of situations are unlikely to meet the criteria for bringing to the attention of the hearing in advance of the hearing starting.¹¹ The reporter is to ensure that the hearing is made aware of any agreement between relevant persons (and child if of sufficient age and understanding) once the hearing starts, whether by the reporter informing the hearing or another person doing so. It is for the hearing to decide how to proceed.
- 5.11 Where a hearing decides to proceed in the absence of a relevant person who has voluntarily agreed not to be present at the outset of the hearing or to leave the hearing, there is no express duty on the chair to explain what has happened in the person's absence. However, if the person subsequently comes into the hearing, giving such an explanation will generally support fair process. There is no absolute requirement for the hearing to duplicate its consideration of each issue for each relevant person and generally the need for duplication will be limited. The extent of duplication, if any, required to ensure a fair hearing will depend on the circumstances of the case, including any expectations set by the chair or hearing if the person agreed in the hearing to be absent. It is not necessary for the chair to explain the decision and reasons to a relevant person who was voluntarily not present when the decision was made and reasons given. If the chair asks the reporter to do so, the reporter should comply with the request (outwith the hearing room) if practicable.¹²

Bail Conditions

- 5.12 Where a relevant person is subject to a bail condition, this does not affect their right to attend the hearing and does not give rise to any additional power for the children's hearing to exclude that

⁹ To proceed in the absence of a relevant person [identify the relevant person] for part of the hearing s.75. If the hearing makes a decision to excuse the person, this should also be recorded.

¹⁰ see paragraph 4.6 of Practice Direction 11 on the Role of the Reporter in the Children's Hearing

¹¹ If there is a significant health and safety risk the reporter may be justified in providing information to the hearing as part of managing the risk.

¹² If a person comes in to the hearing room to receive an explanation of the decisions and reasons from the chair, the principle that no party should have contact with the panel members after the hearing unless other parties are also invited applies.

person. If the bail condition would potentially be breached by their attendance, it is the responsibility of that relevant person to obtain their own legal advice in relation to seeking amendment of the bail condition. Neither the reporter nor the hearing can guarantee that there will be no police action or prosecution. As with other situations of tension or conflict, person subject to the bail condition may voluntarily agree not to attend part of the hearing. Equally other relevant persons may do so. The existence of the bail condition will be a factor in assessing what extent of duplication for each relevant person is necessary to support fair process, but does not of itself mean the hearing requires to duplicate its consideration of each issue for each relevant person.

6. Exclusion during Consideration of a Non-Disclosure Request

During consideration of a non-disclosure request, the hearing may exclude the person, including the child or relevant person, to whom the documents are requested not to be disclosed, where the hearing considers that the presence of that person would prevent proper consideration of the non-disclosure request. Rule 86(3). After the hearing considers and determines the non-disclosure request, the person excluded must be invited to return to the children's hearing and advised of the determination. Rule 86(5)

7. Attendance by way of telephone, video link or other method

- 7.1 Attendance at a hearing should generally be by attendance in person. Attendance by other means, such as video conferencing or telephone, may be competent but is to be facilitated by the reporter only in exceptional circumstances or where a specific duty is placed on SCRA (see paragraph 6.4)
- 7.2 The participation of the child and relevant persons in the hearing's decision-making is generally best enabled by their attendance in person. However, there will be situations where attendance in person is not possible, for example adverse weather conditions. In these circumstances the reporter may facilitate their attendance at a hearing by way of video conferencing, telephone or other means, particularly where there is urgent need for the hearing to proceed, provided the arrangements are sufficiently secure (see paragraph 6.6). The Business Continuity Plan provides further information.
- 7.3 The contribution of other people at a children's hearing is also generally best enabled by their attendance in person. However, there will be situations where attendance in person is not possible or practicable. In these circumstances the reporter may facilitate

the attendance of someone at a hearing by way of video conferencing, telephone or other means, provided the arrangements are sufficiently secure (see paragraph 6.6).

- 7.4 There are two particular situations where SCRA has a duty in relation to 'remote' attendance at a children's hearing. These are set out in rule 19. Rule 19 provides that SCRA **must** take all reasonable steps to enable the child or relevant person (or individual who wants to be deemed a relevant person) to attend a hearing (or pre-hearing panel) by way of telephone, video link or other method of communication where:

Excused from hearing

- the child or relevant person has been excused from attending the hearing (or part of the hearing),
- the child or relevant person wishes to attend,
- the child or relevant person requests to attend by telephone, video link or other method of communication, AND
- the reporter is satisfied they have a good reason for not attending in person.

Pre-hearing panel, or pre-hearing panel matter referred to a hearing:

- a pre-hearing panel has been arranged or a pre-hearing panel matter has been referred to a children's hearing,
- the child or relevant person, or an individual who wants to be deemed a relevant person, wishes to attend,
- the child, relevant person or individual requests to attend by telephone, video link or other method of communication, AND
- the reporter is satisfied they have a good reason for not attending in person.

- 7.5 The reporter is to regard an excusal from attending a hearing as a good reason for not attending in person. The reporter is **not** to regard simple inconvenience, or simple preference for attending by electronic or other remote means, as good reason for not attending in person. Illness, disproportionate travel or other arrangements, or other exceptional difficulties in attending in person are likely to be good reason for not attending in person.

- 7.6 If the duty on SCRA under rule 19 is triggered, the reporter is to ascertain whether the facilities exist to enable the person to attend by the requested means. This may include changing the venue for the hearing provided adequate notice can be given to all those with a right to attend and no disproportionate inconvenience would be caused to those persons or to panel members. The reporter must be satisfied that:

- (i) The means of transmission is sufficiently secure. Using SCOTS video conferencing at both end points and

transmitting voice data through the SCOTS network provides adequate security of transmission whereas other methods require assessment.

AND

- (ii) The remote location is sufficiently secure. It must not be possible for another person at the remote location to be able to access the proceedings (by listening or viewing) without the knowledge of the chair and other persons present at the hearing or pre-hearing panel. This will generally require the person attending by remote means to be in an SCRA office, or to be in the office of another agency if factor (i) above is met, which can confirm adequate security is in place.

8. Related Materials

Practice Direction 14 on Notifications and Papers

Practice Direction 12 on Pre-hearing Panels

Practice Direction 22 on Legal Aid

APPENDIX 1 - Table of Attendance

Category of person	Absolute right to attend	Qualified right to attend	Duty to attend	Excusal from duty to attend	Can attend at discretion of chair
Child	Yes, section 78(1)(a)	n/a	Yes, section 73 (2)	Sections 73(3) and (4) –see below	
Person representing child	Yes, section 78(1)(b)	n/a	No		
Relevant person	No	Yes, has the right to attend but can be excluded (sections 78(1)(c) and 76). See below in relation to exclusion	Yes, section 74(2)	Sections 74 (3) and 75 – see below	
Person representing relevant person	No	Yes, has the right to attend but can be excluded (sections 78(1)(d) and 77) See below in relation to exclusion	No		
Reporter	Yes, section 78(1)(e)	n/a	No		
Safeguarder appointed in relation to the child	Yes, section 78(1)(f)	n/a	No		

Category of person	Absolute right to attend	Qualified right to attend	Duty to attend	Excusal from duty to attend	Can attend at discretion of chair
Member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council	Yes, section 78(1)(g)	n/a	No		
Member of an area support team	Yes, section 78(1)(h)	n/a	No		
Representative of a newspaper or news agency	No	Yes, has right to attend, section 78(1)(i) but can be excluded under 78(5)	No		
Social Worker, teacher, health visitor	No	No	No	n/a	Section 78(2)(a) allows person to attend where their attendance is considered by the chair to be necessary for the proper consideration of the matter before the hearing
New reporter, trainee reporter or assistant reporter (in training)	Yes, section 78(1)(e)		No	n/a	

Category of person	Absolute right to attend	Qualified right to attend	Duty to attend	Excusal from duty to attend	Can attend at discretion of chair
Trainee panel member; Social worker/ psychologist / health visitor, etc in training / any other observer including SCRA board member or member of staff	No	No	No	n/a	Section 78(2)(b) allows person to attend where granted permission by the chair. If a child or relevant person objects to the person attending, the chair may not grant permission.
Police or prison escort	Yes if has in their lawful custody a person who has to attend a hearing (rule 20)	n/a	No	n/a	

