



# Practice Direction 1

## Principles

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## **Summary**

- The fundamental Practice Principles underpin all casework within SCRA.
- Appendix 1 sets out specific principles that apply to court work, and details of each role in relation to court work.

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## **1. Introduction**

- 1.1 This Practice Direction sets out the principles that underpin all casework in SCRA.
- 1.2 The principles give a broader context to the more detailed Practice Directions which set out how the Principal Reporter's delegated functions in relation to casework are to be carried out.
- 1.3 Appendix 1 sets out specific principles that apply to court work.

## **2. The Kilbrandon Report**

- 2.1 The genesis of the Reporter Service and the Children's Hearing System lies in the Kilbrandon Report 1964 with its recognition of the need for a child-centred approach to decision-making in order to deal more effectively with both juvenile delinquency and other difficulties associated with childhood. To achieve this, Kilbrandon recognised the need to move away from strict adherence to processes of criminal law in dealing with children who offend so that the effect of social and environmental factors on the child can be taken into account.
- 2.2 The responsibility of parents for the care of their children was another essential feature of Kilbrandon's thinking as was the consequent need for measure of social education where parents were unable or unwilling to exercise the necessary responsibility, whilst applying discretion in other cases where parents were able to exercise the necessary care.
- 2.3 Kilbrandon identified the problems present in a narrowly based Court structure which had rendered impossible the type of decision making identified above. This required an individualised and more informed approach to the needs of the individual child in the family and community context.
- 2.4 As a consequence the specialised role of the Children's Reporter was created to provide an initial sift of children referred together with the concept of a Children's Panel by which members of the public with special aptitudes or interests in children's problems could be involved in decisions about how to address them.
- 2.5 The Kilbrandon Report was written in 1964; since then, many changes have taken place both in society and in the law. The complexity of problems faced by children has become more recognised with greater awareness of the extent of child abuse in its different forms and there has been a growth in the complexity of case law and secondary legislation. In addition the impact of obligations under the United Nations Convention on the Rights of the Child and the European Convention on Human Rights has been recognised. Throughout, the Reporter service has sought and will continue to seek development of the best laws and practice to cater for the interests of the individual child in keeping not only with these changes, but also with the fundamental principles of Kilbrandon which remain as valid today as in 1964.

### **3. Fundamental Practice Principles**

#### **3.1 Children - Each child is unique and has unique needs**

- The child is a person and not an object of concern.
- We deal with children, not cases.

#### **3.2 Rights – Each child has rights which must be respected**

- Respect for child's rights (including participation, protection and privacy) promotes the child's dignity and self-worth.
- In all actions, the best interests of the child shall be at least a primary consideration (at times the paramount consideration)<sup>1</sup>.
- The primary responsibility for the child's welfare lies with the parent and should be respected at all times.
- All discrimination is to be avoided, whether in attitude or outcome and whether deliberate or due to unconscious bias or misinformation.

#### **3.3 Intervention - Decision making will be fair and timely**

- Delay in dealing with children's cases undermines the value of intervention.
- Investigation should be proportionate.
- Case actions and decisions should be based on relevant, reliable information and objectively justifiable.

#### **3.4 Outcomes - The least intervention possible will be used to ensure the best possible outcome for the child**

- All actions, processes and decisions should promote the long-term well-being and inherent worth of the child.
- Formal proceedings should be taken if more likely to promote better life opportunities for the child than any alternative.
- Removal from home should be sought for the minimum period necessary in the interests of the child.

#### **3.5 Partnership - Working in partnership promotes the welfare of the child**

- We will enable children and parents to contribute actively to processes and decisions through clear communication, fair procedures and listening to their views.
- We will work together with other agencies on a basis of mutual respect for each agency's responsibilities and expertise.
- We will join with other agencies in approaches to improve the position of children who are or may be referred to the reporter, such as by developing preventive services or targeting resources more effectively.

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<sup>1</sup> Sections 25 and 26 of the Children's Hearings (Scotland) Act 2011 do not expressly apply to decision making by the Principal Reporter. However, the reporter is to apply the principles in those sections in relation to children referred to the reporter.

## **COURT WORK PRINCIPLES**

### **SECTION 1 - PROCEEDINGS BEFORE THE SHERIFF**

#### ***Allocation***

- 1.1 All reporters are to conduct court proceedings once sufficiently competent.
- 1.2 The Locality Reporter Manager must ensure an equitable distribution of court work across all reporters in the Locality while providing appropriate developmental opportunities for reporters within and across Localities.
- 1.3 The start point for allocation of proof and ICSSO applications is that the case reporter will prepare and conduct the proceedings. The start point for appeals is that the reporter who attended the hearing will conduct the proceedings.
- 1.4 The Locality Reporter Manager must allocate support tasks equitably to staff across the Locality taking account of effective resource management and appropriate development opportunities and needs within and across Localities.
- 1.5 Early allocation of court work is essential.
- 1.6 The allocated reporter (or reporters) becomes responsible for dealing with the case whatever the extent of their previous involvement in decision-making or drafting the statement of grounds.

#### ***Support***

- 1.7 Early identification of the support required for the proceedings is essential.
- 1.8 The allocated reporter and Locality Reporter Manager must each consider what support is required for the case, initiate discussion if any is identified or if any of the triggers for reporting under the Court Strategy apply, and keep support needs under review. Regard must be had to the Aide Memoire for Supporting Court Work when support needs are being considered. Support for non-court casework during the preparation and conduct of court proceedings should also be considered.
- 1.9 It is for the Locality Reporter Manager to determine what supports are appropriate and ensure they are put in place.
- 1.10 Support includes managing the impact of the proceedings on the wellbeing of the allocated reporter or reporters during and after the proceedings.

## ***Preparation***

- 1.11 Early preparation of the case is essential. Preparation for proof must be based on case analysis and is to be pro-active and proportionate to the circumstances of the case.<sup>2</sup>
- 1.12 The Aide Memoire on Efficient and Expeditious Case Management is to be applied to each proof application.
- 1.13 The reporter must make all fair efforts to bring about determination of the proceedings without delay. The reporter's preparation should be such that the reporter is in a position to proceed and is not the cause of delay.
- 1.14 The reporter must maintain on CSAS an up-to-date record of his/her preparation and the progress of the case in sufficient detail to enable another reporter to readily assess the current situation.<sup>3</sup>

## ***Reporter's Role***

- 1.15 The reporter must promote the principles of (i) the welfare of the child and, where applicable, (ii) the views of the child and (iii) not making an order unless better than no order (sections 25, 26, 27, 29).
- 1.16 The reporter must always act fairly, for example appropriate disclosure of information to other parties and presenting the whole case to the court not seeking to 'win' the case at all costs.
- 1.17 The reporter must have knowledge of all relevant procedures and rules, be proficient in applying them and bring them to the attention of the court even if not favourable to the reporter's case.
- 1.18 The reporter must promote expeditious case management by the sheriff.
- 1.19 The reporter must ensure that witnesses are appropriately informed and supported at an early stage and throughout the proceedings.
- 1.20 The reporter must present the case with thoroughness and skill.
- 1.21 The reporter must make relevant submissions even where the sheriff appears to be unwilling to be persuaded on the point at issue.
- 1.22 In a proof, where there is sufficient evidence for there to be a realistic prospect that a supporting fact or the section 67 ground will be established, there is a presumption that the reporter will seek to establish the fact or ground, by leading evidence if necessary, rather than withdraw the fact or ground. The presumption is overridden only where:
  - leading evidence in relation to the fact or ground would be disproportionate to the benefit for the children's hearing's consideration of the case if the fact or ground were established OR

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<sup>2</sup> The Practice Note on Case Analysis provides information about the approach and a template for recording.

<sup>3</sup> In practice this will be done in the Court Form.

- the assessment of the child's circumstances has changed and there is no longer a need for a CSO or consideration of the ground by a hearing.
- 1.23 In an appeal, the reporter must promote the hearing's decision if the decision is supportable and promote the children's hearing as the appropriate decision-making forum.
- 1.24 In an appeal, the reporter must encourage the sheriff to adopt an inquisitorial role and assist the court to manage the scope of the appeal.
- 1.25 All staff must comply with the Casework Scheme of Delegation and Practice Direction.

### ***Learning***

- 1.26 A Post-Case Review is to take place for all cases where there may be learning points (positive and/or negative). The review will always involve the allocated reporter and Senior Practitioner and will involve others as appropriate.
- 1.27 An informal post-case debrief between the allocated reporter and Senior Practitioner should take place for cases where a Post-Case Review is not being undertaken.
- 1.28 Learning points from any case must be shared in the Locality and through the Post-Case Review (which is considered at the Practice Network).
- 1.29 Learning and development in relation to court knowledge and skills is to be promoted within Localities and across Localities.



## **SECTION 2 - ROLES**

### **Head of Practice and Policy**

- Accountable for the framework of directing, supporting and promoting best practice in relation to court work.

### **Senior Operational Manager**

- Support and ensure Locality Reporter Managers carry out their role in relation to court work.
- Keep own learning and development up-to-date.
- Have an overview of court activity within their Areas and promote best practice.
- Include consideration of court work in SOM Reviews.

### **Locality Reporter Manager**

- Have an overview of court activity within the Locality and ensure an equitable distribution of court work taking account of development needs and opportunities within the Locality and across other Localities.
- Keep own learning and development up-to-date.
- Identify the development needs of staff in relation to court work through supervision and appraisal.
- For each case proactively consider support needs, review support needs and ensure supports are put in place in line with the Aide Memoire for Supporting Court Work.
- Manage the impact of court work on the wellbeing of staff.
- Ensure that the practice in the Locality in relation to preparation for court is timely, adequate, and proportionate. Promote early proactive preparation and management in line with the Aide Memoire on Efficient and Expeditious Case Management.
- Ensure compliance with Practice Direction within the Locality.
- Ensure completion of a Concluded Court Form at the end of every proof, appeal to the sheriff or section 85 application.
- Ensure Post-Case Reviews take place where there may be learning points from the case (positive and/or negative).
- Provide and support opportunities for learning and development in relation to court work through, for example, allocation of work (including support activities), sharing of learning, practice sessions, facilitating attendance at Practice training and cross-Locality activity.

### **Reporter**

- Prepare and conduct any allocated case in line with the Principles of Court Work and Practice Direction.
- Complete a Concluded Court Form at the end of every proof, appeal to the sheriff or section 85 application.
- Participate in any Post-Case Review.
- Identify and participate in learning and development opportunities and knowledge-sharing. Keep up-to-date with Practice Direction, case law and Practice Reference Materials.

### **Senior Practitioner**

- Promote best practice in relation to court work within the Locality, including developing and promoting practice sessions.
- Keep own learning and development up-to-date.
- Provide support in particular cases as appropriate.
- Support the Locality Reporter Manager to identify the development needs of staff in relation to court work and assist in identifying opportunities to meet those needs.
- Facilitate and participate in any Post-Case Review.
- Develop cross-Locality links with other Senior Practitioners, including through the Practice Network, to share experiences and learning points.
- Share learning with Locality Reporter Managers and Locality.

### **Assistant Reporter**

- Provide support as agreed.
- Participate in any relevant Post-Case Review.
- Participate in relevant learning and development opportunities and keep up-to-date with relevant Practice Direction, case law and Practice Reference Materials.

### **Locality Support Manager and Support Assistant**

- Provide support as agreed.
- Participate in any relevant Post-Case Review.
- Participate in relevant learning and development opportunities.

### **Practice Reporter**

- Promote and support best practice in relation to court work within the Locality.
- Support the Senior Practitioner in developing and promoting practice sessions.
- Provide direction and support in particular cases as appropriate.<sup>4</sup>
- Participate in any relevant Post-Case Review.

### **Practice Manager**

- Support and promote best practice in relation to court work, and sharing of experiences and learning points, through the Practice Network.
- Ensure development of Practice materials and training to support best practice in relation to court work.

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<sup>4</sup> This includes a range of supports such as advice, development of submissions, and attendance at court.

### **SECTION 3 – APPEALS TO THE SHERIFF APPEAL COURT OR COURT OF SESSION**

- 3.1 It is essential that there is national consistency in the approach we adopt in appeals to the higher courts. This is provided by the Head of Practice and Policy determining the position in each higher court appeal. Appeals are managed by the Practice Manager and detailed instruction and liaison is generally provided by the link Practice Reporter for the Locality.
- 3.2 The Locality Reporter Manager has authority to apply to the sheriff for a stated case. Consultation should take place within the Locality and with the Practice Team to help inform the decision and obtain advice on the drafting of questions to be included in the application. Authority to determine whether to proceed further with the appeal lies with the Practice Manager.
- 3.3 The reporter must inform the Practice Team immediately when intimation of an appeal is received. Any communication received by the Locality in relation to the appeal must be passed immediately to the Practice Team.
- 3.4 In any appeal the Practice Team will liaise with the reporter and Senior Practitioner and promote their appropriate involvement throughout the appeal, taking account of the issues in the appeal and timescales. This is to support the prospects of a good outcome and support learning opportunities for the reporter.
- 3.5 The reporter who dealt with the proceedings being appealed has a key role in providing information and helping to shape adjustments to the draft stated case. This must be supported within the Locality as a priority task. The reporter will lodge adjustments once approved by the Practice Team.
- 3.6 Generally the reporter will notify any proposed adjustments to parties and appear at any hearing on adjustments. The reporter will seek acceptance by the sheriff of the proposed adjustments in line with advice and instruction from the Practice Team.
- 3.7 A solicitor-advocate or advocate will conduct any appeal before the Court of Session. Generally a solicitor or solicitor-advocate will conduct any appeal before the Sheriff Appeal court. In terms of the Casework Practice Scheme of Delegation the Locality Reporter Manager may determine in consultation with the Practice Manager that a reporter or Senior Practitioner has authority to conduct an appeal before the Sheriff Appeal Court. Such a decision is to be taken on the basis of the nature of the appeal and the experience, skills and training of any identified reporter. Practice Team reporters have authority to conduct an appeal before the Sheriff Appeal Court.
- 3.8 Whoever conducts the appeal is instructed by the Practice Team. A written Note of Argument may be submitted only once approved by the Practice Team and the conduct of the appeal must reflect the instructed position.
- 3.9 The reporter and the link Practice Reporter will generally attend the appeal hearing.
- 3.10 On receipt of the decision or opinion of the court, the Practice Team will prepare and publish a news report on Connect about the appeal if appropriate.