



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 12

Pre-hearing Panel Matters

**including related procedure for pre-hearing
panels and hearings**

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SUMMARY

- A pre-hearing panel can be arranged to consider certain preliminary issues in advance of a children's hearing:
 - whether to deem someone to be a relevant person;
 - whether an individual currently deemed to be a relevant person should continue to be so deemed (be "undeemed");
 - whether a person meets the criteria to have participation rights
 - whether a person meets the criteria to have a section 132A review
 - whether to excuse a child or relevant person from attending the children's hearing;
 - whether certain persons should be allowed to attend the hearing only by electronic means
 - whether it is likely the children's hearing will consider making a compulsory supervision order with secure accommodation authorisation.
- A pre-hearing panel arranged for any of the above purposes may:
 - appoint a safeguarder;
 - identify that the child or a relevant person requires legal representation to be able to participate effectively in the hearing and that the child or relevant person will be unlikely to arrange this for themselves.
- The reporter **must** arrange a pre-hearing panel where:
 - (i) the child, relevant person or an individual requests one to consider deeming the individual to be a relevant person,
 - (ii) the child or a relevant person requests one to consider whether a currently deemed relevant person should be undeemed,
 - (iii) a person requests one to consider whether they meet the criteria for participation rights, or
 - (iv) a person requests one to consider whether they meet the criteria to have a section 132A review.

In other circumstances the reporter **may** arrange a pre-hearing panel.

- Subject to limited flexibility, the reporter is not to arrange a pre-hearing panel to consider whether someone should be deemed to be a relevant person unless a request that triggers the reporter's duty is received,
- If the reporter considers that a deemed relevant person no longer has (and has not recently had) significant involvement in the upbringing of the child the reporter is to arrange a pre-hearing panel regardless of whether a request is made.
- The following people have a right, but not a duty, to attend the pre-hearing panel: the child, relevant persons, safeguarder, any person who appears to the reporter to have (or recently have had) significant involvement in the

upbringing of the child (if the pre-hearing panel is to consider deeming someone), any person about whom deeming has been referred to the pre-hearing panel and any person about whom either of the participation rights matters (criteria for participation rights or section 132A review) has been referred. They may provide reports to the pre-hearing panel. Some persons may provide reports only about certain matters, and this can be different depending on whether a pre-hearing panel or a hearing is dealing with the matter. Information from persons about a deeming matter which will be considered by a pre-hearing panel is included in the PHP papers only if the reporter considers it relevant.

- The chief social work officer is always to be sent notification of a pre-hearing panel or a pre-hearing panel matter referred to a hearing.
- The pre-hearing panel must take place before the day of the children's hearing. Where this is not practicable, the reporter must refer the PHP matters to the hearing and the children's hearing must consider the pre-hearing panel matters at the beginning of the children's hearing.
- Papers for a pre-hearing panel matter are to be provided using the PHP Papers Form. This applies whether the pre-hearing panel matter is referred to a pre-hearing panel or a children's hearing. The papers are to be provided as soon as possible before the pre-hearing panel or hearing.
- The reporter may on occasion arrange a pre-hearing panel as a virtual one. The reporter may arrange for a person to attend a physical pre-hearing panel remotely where it is known direct or from a reliable source that the person wishes to attend remotely. The reporter must arrange for a person to attend remotely if the duty in rule 20B applies (following certain requests to attend remotely).
- If a person entitled to attend a pre-hearing panel (or the consideration of a pre-hearing panel matter at a children's hearing) is unable to attend, they may make oral representations to the reporter in relation to the same matters about which they may provide a report. The reporter must make a record of the representations and include it in the papers for the pre-hearing panel (or the papers for the pre-hearing panel matter at the hearing).
- Pre-hearing panel matters which have been referred to a pre-hearing panel or hearing must be dealt with and determined in the following order: undeeming, deeming, and then other matters (the order of dealing with other matters is determined by the chair).
- Determinations of a pre-hearing panel to deem or not deem someone to be a relevant person, or to undeem or not undeem an existing relevant person, can be appealed.

CONTENTS

1.	INTRODUCTION	5
2.	PRE-HEARING PANEL MATTERS	5
3.	ARRANGING A PRE-HEARING PANEL	6
4.	TIMING OF A PRE-HEARING PANEL	13
5.	NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL	14
6.	NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL MATTER REFERRED TO A CHILDREN'S HEARING	19
7.	ATTENDANCE AT A PRE-HEARING PANEL	23
8.	PROCEDURE AT A PRE-HEARING PANEL OR A HEARING DEALING WITH A REFERRED PHP MATTER	25
9.	ADJOURNING OR DEFERRING A PRE-HEARING PANEL	28
10.	NOTICE OF DETERMINATION	28
11.	NOTICE OF DETERMINATION AFFECTING LEGAL AID	29
12.	APPOINTMENT OF SAFEGUARDER	30
13.	RELATED MATERIALS	30

APPENDICES

APPENDIX 1 – TABLE OF NOTIFICATIONS AND PAPERS FOR A PRE-HEARING PANEL	31
APPENDIX 2 - PHP PAPERS FORM	42
APPENDIX 3 - PHP PAPERS FORM – PI STATUS/S132A REVIEW MATTERS ...	44
APPENDIX 4 – TABLE OF ATTENDANCE AT A PRE-HEARING PANEL	46
APPENDIX 5 - RAISING PHP MATTERS WITHIN A PHP OR HEARING	49

1. INTRODUCTION

- 1.1 Pre-hearing panel matters are certain preliminary matters that can be addressed in advance of a children's hearing. They are generally dealt with at a pre-hearing panel. Where it is not practicable to arrange a pre-hearing panel in advance of the hearing, the pre-hearing panel matters must be dealt with at the beginning of the children's hearing.
- 1.2 This Practice Direction explains the relevant statutory provisions and how they are to be applied by the reporter in relation to the following:
- Pre-hearing panel matters
 - Arranging, notifying and providing papers for a pre-hearing panel
 - Attendance at a pre-hearing panel
 - Procedure within a pre-hearing panel
 - Procedure within a hearing dealing with a pre-hearing panel matter.
- 1.3 Section A of Practice Direction 14 on Notifications and Papers provides direction on the general considerations applying to notifications and papers; these issues are relevant for pre-hearing panels as well as hearings. Section 3 of Practice Direction 13 on Attendance at Hearings addresses attendance at a hearing with a referred pre-hearing panel matter.
- 1.4 The relevant statutory provisions are contained in:
- The Children's Hearings (Scotland) Act 2011
 - The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013
- 1.5 Template letters and forms are available for all the statutory communications noted in this Practice Direction.
- 1.6 The terms 'pre-hearing panel' and 'PHP' are used interchangeably within the Practice Direction.

2. PRE-HEARING PANEL MATTERS

PHP matters are set out in section 79 and rule 44A. They are:

	PHP matter	Section	Criteria for Determination
1.	Whether a person should be deemed to be a relevant person	79(2)(a) & (b)	81(3)
2.	Whether a person should continue to be deemed to be a relevant person s79(5A)	79(5A)	81A(3)
3.	Whether a person meets the criteria to have participation rights	79(2)(ba)	rule 2A(3)

4.	Whether a person meets the criteria to have a section 132A review hearing	79(2)(bb)	132A(2)
5.	Whether the child should be excused from attending	79(2)(c)/79(3)	73(3)
6.	Whether a relevant person should be excused from attending	79(2)(c)/79(3)	74(3)
7.	Whether it is likely that the children's hearing will consider making a CSO (or ICSO ¹) including a secure accommodation authorisation ²	79(2)(c)/79(3)	
8.	Whether a person ³ should be allowed to attend a hearing only by electronic means ⁴	rule 44A and s79(2)(c)/79(3)	Rule 20C

In addition, a PHP may, during the course of considering any of the above listed matters, also make the determinations below. However, a PHP cannot be arranged for the purpose of considering these matters below.

9.	Appoint a safeguarder for the child (unless there is a safeguarder already appointed)	s 82
10.	Determine that it is necessary for a child or relevant person to be represented by a solicitor or counsel to enable that person to participate effectively in the children's hearing and that it is unlikely that the child or relevant person will arrange to be so represented	rule 50(7)

3. ARRANGING A PRE-HEARING PANEL

Relevant hearings

- 3.1 A PHP must relate to a relevant hearing which is already arranged or in the process of being arranged. Other than for the PHP matter of whether someone should continue to be deemed to be a relevant person (undeeming), a relevant hearing is one being held under section 69(2) or Parts 9, 10, 11 or 13 of the Act. This includes all grounds and review hearings, and all hearings flowing from them (including remits from a criminal court and in relation to antisocial behaviour orders, and hearings flowing from a review by the sheriff of previously established grounds). It does not include CPO second-working day hearings, suspension

¹ Rule 50(6) indicates that a pre-hearing panel may also determine that the hearing is likely to consider such a measure in an *interim* compulsory supervision order.

² Reporters are not to arrange a PHP for this reason as the purpose of doing so is in relation to automatic legal aid and it is not necessary for a PHP to be arranged in order for a child to be eligible for automatic legal aid. Further information about legal aid is provided in Practice Direction 22 on Legal Aid.

³ Can apply only to a relevant person, their representative, a person with participation rights, their representative, and a particular representative of a newspaper or news agency. Rule 20C.

⁴ "Electronic means" includes telephone and video link. The term 'remote attendance' is used in Practice Direction to mean any electronic means of attendance.

hearings, CPO advice hearings, criminal or ASB advice hearings, or contact direction reviews.

3.2 Where the PHP matter is whether someone should continue to be deemed to be a relevant person, a relevant hearing is one which is either:

- A subsequent hearing under part 11 of the Act – this is a hearing to deal with accepted or established grounds after a proof application has been determined or a deferred hearing to deal with any accepted or established ground
- or
- A hearing for the purpose of reviewing a compulsory supervision order. This includes a review hearing and is also to be taken include a grounds hearing for a child already subject to a compulsory supervision order. A section 96 hearing to consider a further ICSO or interim variation during a proof is not such a hearing.

3.3 There are circumstances where the reporter has a duty to arrange a pre-hearing panel and circumstances where the reporter has discretion. A prerequisite is always that there is a relevant hearing.

Duty to arrange

The table below summarises whether the reporter has a duty or discretion to arrange a pre-hearing panel. Further detail about the application in each situation is set out in the subsequent sections.

	PHP matter	Duty to arrange	Reporter's discretion
1.	Whether a person should be deemed to be a relevant person	If requested by child, relevant person or the individual	Yes (but limited in practice)
2.	Whether a person should continue to be deemed to be a relevant person s79(5A)	If requested by child, relevant person or the individual	Yes
3.	Whether a person meets the criteria to have participation rights	If requested by the individual	No
4.	Whether a person meets the criteria to have a section 132A review	If review hearing requested by the individual and reporter not satisfied they meet the criteria	No
5.	Whether the child should be excused from attending	No	Yes
6.	Whether a relevant person should be excused from attending	No	Yes

7.	Whether it is likely that the children's hearing will consider making a CSO (or ICSO ⁵) including a secure accommodation authorisation	No	Yes (but in practice not to be arranged)
8.	Whether a person ⁶ should be allowed to attend a hearing only by electronic means	No	Yes

Deeming

- 3.4 The reporter must arrange a PHP to consider deeming an individual if requested to do so by the child, a relevant person or the individual ⁷.
- 3.5 The reporter may arrange a pre-hearing panel to consider deeming an individual without a such a request having been received⁸. However, in the absence of such a request, the reporter is not to exercise their discretion to arrange a PHP unless:
- It is clear that a request will be made and it will be operationally difficult to arrange a PHP (or refer the matter to the hearing) if not arranged immediately. This flexibility does not apply in relation to a foster carer, or to someone whose significant involvement has recently ceased and appears likely to be permanent
 - In any other situation, following consultation with a Senior Practitioner or Locality Reporter Manager, it is appropriate in the circumstances to arrange one.
- 3.6 It should be noted that where a person appears to the reporter to have current or recent significant involvement in the upbringing of the child, the person must be notified of most hearings. Where the hearing is a relevant hearing (see paragraph 3.1) the person will have the opportunity to request that a PHP be arranged to consider deeming them or, if present at the hearing, can require the matter to be considered by the hearing.
- 3.7 If a PHP or hearing determines not to deem someone to be a relevant person, the reporter is not to arrange a PHP to consider the matter again during the same set of proceedings⁹, even if a request is received, except in exceptional circumstances. The matter has been determined by the PHP or hearing and an appeal is the appropriate route if the person (or the child or a relevant person) is not satisfied with the decision.

⁵ Rule 50(6) indicates that a pre-hearing panel may also determine that the hearing is likely to consider such a measure in an *interim* compulsory supervision order.

⁶ Can apply only to a relevant person, their representative, a person with participation rights, their representative, and a particular representative of a newspaper or news agency. Rule 20C.

⁷ S79(2)(a).

⁸ Section 79(2)(b)

⁹ All pre-hearing panels and hearings relating to the current outstanding substantive decision.

Exceptional circumstances might include where there is a significant change of circumstances during very lengthy proceedings, or the person was erroneously not notified of the PHP/hearing nor the outcome, thereby rendering the appeal route in effect unavailable. The reporter is to consult with their Senior Practitioner and the Practice Team if considering whether exceptional circumstances apply. Even if the reporter has not arranged a PHP, the person (if present at the hearing) may ask the hearing to consider deeming them to be a relevant person. If so, the reporter is to express the view that it is not appropriate for the hearing to consider the request unless exceptional circumstances apply. It will be for the hearing to decide how to proceed.

Undeeming

- 3.8 The reporter must arrange a PHP to consider whether someone should continue to be deemed to be a relevant person ('undeemed') if requested to do so by the child, a relevant person or the individual¹⁰.
- 3.9 The reporter may arrange a PHP to consider undeeming without such a request having been received Section 79(5A)(b). Subject to the exception in the next paragraph, the reporter is to arrange a pre-hearing panel where they consider that the individual no longer has, and has not recently had, significant involvement in the child's upbringing¹¹.
- 3.10 If a review hearing is requested by a deemed relevant person, and the reporter considers that the person no longer has current or recent significant involvement, the reporter is not to arrange a PHP on their own initiative. If another relevant person or the child requests that a PHP be arranged to consider undeeming the person, the reporter has a duty to arrange this. If the PHP then undeems the person, the arranged review hearing should still take place as the reporter's duty under section 137(2) has been properly triggered¹². If no request for a PHP is made, the review hearing, after it has made its substantive decision and if it appears to the hearing that the person may no longer have current or recent significant involvement, will be able to review whether the relevant person should continue to be deemed¹³.
- 3.11 Where the forthcoming hearing is a hearing under section 119 or a deferred review hearing the reporter must consult with their Senior Practitioner and the Practice Team before arranging a pre-hearing panel without a request having been received. Only exceptionally will it be appropriate to arrange a pre-hearing panel to consider undeeming a

¹⁰ S 79(5A)(a)

¹¹ And the hearing is a relevant hearing ie a review hearing or a grounds hearing for a child already subject to a compulsory supervision order.

¹² Note that the person who has been undeemed by the PHP will no longer have attendance or appeal rights in relation to the substantive review hearing even though it has been arranged on their request.

¹³ Section 142. See Practice Direction 3 paragraphs 7.6 - 7.11 for detail on its application.

relevant person within the same current proceedings as they have been deemed¹⁴.

Criteria for participation rights

- 3.12 The reporter must arrange a PHP to consider whether a person meets the criteria in procedural rule 2A(3) to have participation rights at the children's hearing, if requested to do so by the individual¹⁵. However, if on receiving a request for a pre-hearing panel, the reporter then considers that the person meets the participation criteria, the reporter is to treat the person as having the participation rights and is not to arrange a pre-hearing panel. Therefore, a pre-hearing panel is to be arranged only where an individual wants the question of whether they meet the participation criteria considered, and the reporter does not think the criteria are met.
- 3.13 There is no provision for the reporter to arrange a PHP on their own initiative to consider the matters of whether someone meets the participation rights criteria

Criteria for section 132A review

- 3.14 The reporter must arrange a PHP to consider whether a person meets the criteria in section 132A(2) to require a review of a CSO, if the person requests a review hearing under that section and the reporter is not satisfied that the person meets the criteria.
- 3.15 There is no provision for the reporter to arrange a PHP on their own initiative to consider the matter of whether someone meets the criteria for a section 132A review.
- 3.16 If the PHP decides that the person meets the criteria for a section 132A review, the review hearing will proceed as arranged¹⁶. If the PHP decides the person does not meet the criteria, and there is no other reason for the review to proceed, the PHP must discharge the review hearing that has been arranged.

Excusing the child

- 3.17 The reporter may arrange a PHP to consider whether to excuse the child. A request is not necessary, and the reporter is not obliged to arrange a PHP for the purpose of considering excusing the child, even if requested to do so by someone. The reporter is not to arrange a PHP for this purpose if it is clear that the criteria for excusal are not met. See

¹⁴ Note also it is not open to a hearing having concluded a review of a CSO to review a current deemed relevant person in terms of s.142 where that question has already been considered by a pre-hearing panel or a children's hearing under s.80(3).

¹⁵ Section 79(2)(ba). A request by the child or relevant person does not create a duty to arrange a PHP.

¹⁶ See Practice Direction 33, section I.

section 73(3) of the 2011 Act and Practice Direction 13 on Attendance for further information about excusal.

- 3.18 The approach to be taken by the reporter depends to a considerable extent on the age of the child and whether the hearing is a grounds hearing. This is because of the particularly significant impact on the decision options open to a grounds hearing if the child does not attend and has not been excused in advance¹⁷.
- 3.19 For children who will be aged under 6 on the day of the hearing, **if the hearing is a grounds hearing, the reporter is to arrange a PHP unless it is clear that the child is likely to attend.** The reporter is to check this as part of the usual discussions with the social worker when arranging the hearing. The reporter is to ensure that the social worker understands the importance of the child attending the grounds hearing if the child is not excused. For other hearings, the reporter is not to arrange a PHP for the sole purpose of excusing the child, unless there is a particular need as a matter of fairness, or it is in the child's interests¹⁸.
- 3.20 For children who will be aged 6 or over on the day of the hearing, the reporter may arrange a PHP to consider excusing the child if the reporter considers that the legal test for excusal might be met. If the hearing is a grounds hearing, the reporter should check, if appropriate, whether a PHP to consider excusal might be appropriate as part of the usual discussions with the social worker when arranging the hearing¹⁹.
- 3.21 The approach to be taken is set out in the table below:

Age of Child	Grounds Hearing	Other Hearing
Under 6	<ul style="list-style-type: none"> • Arrange PHP to consider excusing child unless it is clear the child is likely to attend anyway • Check with social worker whether child is likely to attend 	<ul style="list-style-type: none"> • Do not arrange a PHP to consider excusing child unless: there is a particular need as a matter of fairness, or it is in the child's interests to do so
6 or over	<ul style="list-style-type: none"> • May arrange PHP to consider excusing child if reporter considers legal test for excusal might be met • If appropriate, check with social worker whether a 	<ul style="list-style-type: none"> • May arrange PHP to consider excusing child if reporter considers legal test for excusal might be met

¹⁷ The grounds hearing must either require another grounds hearing to be arranged or discharge the referral. See Practice Direction 15 on Grounds Hearings.

¹⁸ For example, there is disagreement between relevant persons about the child's attendance.

¹⁹ Excusal of a child who is able to understand the statement of grounds will mean (assuming the child does not attend) that the hearing cannot proceed to consider the statement of grounds unless established through a proof application.

	PHP to consider excusal might be appropriate	
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- 3.22 If the reporter does not arrange a pre-hearing panel, and the child does not attend the hearing, the hearing can consider excusing the child on the day. However, if the hearing is a grounds hearing, it cannot excuse the child for that hearing, only for subsequent hearings, and the grounds hearing must either direct the reporter to arrange another grounds hearing or discharge the referral.
- 3.23 A decision by a pre-hearing panel (or hearing) to excuse the child is taken to persist for related subsequent hearings. 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.

Excusing a relevant person

- 3.24 The reporter may arrange a pre-hearing panel to consider whether to excuse a relevant person. A request is not necessary, and the reporter is not obliged to arrange a pre-hearing panel for this purpose even if a request is received. The reporter is not to arrange a pre-hearing panel for this purpose if it is clear that the criteria for excusal are not met. See section 74(3) of the 2011 Act and Practice Direction 13 on Attendance for further information about excusal.
- 3.25 A decision by a PHP or hearing to excuse a relevant person is taken to persist for related subsequent hearings. 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.

Whether hearing likely to authorise secure accommodation

- 3.26 The reporter may arrange a PHP to consider whether the hearing is likely to make a CSO or ICSO including secure accommodation authorisation. However, in practice the reporter is not to do so. The purpose of such a pre-hearing panel matter is in relation to automatic legal aid but it is not necessary for a pre-hearing panel to consider the matter for a child to be eligible for automatic legal aid. Further information about legal aid is provided in Practice Direction 22 on Legal Aid.

Restricting attendance to electronic means only

- 3.27 The reporter may arrange a pre-hearing panel to consider whether certain persons may attend the hearing **only** by electronic means. A request is not necessary and the reporter is not obliged to arrange a pre-hearing panel for this purpose even if a request is received. The criteria

are set out in rule 20C. They are that the person's physical presence at the hearing (or any part of it) is likely to:

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

Having consulted with the child's social worker the reporter is to arrange a pre-hearing panel for this purpose if they consider that either of the statutory criteria is met in relation to a person about whom a pre-hearing panel can make such a decision.

3.28 A PHP may make such a decision only in relation to:

- a relevant person
- a representative of a relevant person
- a person with participation rights
- a representative of a person with participation rights
- a particular representative of a newspaper or news agency.

A PHP may not consider this in relation to anyone seeking to be deemed to be a relevant person, nor someone seeking to have participation rights.

3.29 A decision to restrict physical attendance is to be treated as continuing until a substantive decision is made, unless the PHP or a children's hearing indicates that it applies only to a specific hearing or is to come to an end prior to the substantive decision being made.

3.30 The reporter may refer the question of whether a person may attend a children's hearing only by electronic means to a children's hearing as a PHP matter. However, the practical benefit of doing so is likely to be limited as any decision to restrict a person's attendance in this way will apply only to any subsequent related hearing.

3.31 If the pre-hearing panel determines that a person is to attend the hearing by electronic means only, SCRA must take all reasonable steps to enable the person to attend by electronic means.

4. TIMING OF A PRE-HEARING PANEL

4.1 If a pre-hearing panel is being arranged, it must take place before the date fixed for the children's hearing (Section 80(2)). Where possible, a pre-hearing panel to consider deeming or undeeming should take place far enough in advance of the hearing to enable the issue to be determined before hearing papers require to be sent to relevant persons.

4.2 Where it is not practicable to have a pre-hearing panel before the date of the children's hearing, the children's hearing must consider the matters

which would otherwise have been considered by a pre-hearing panel at the beginning of the children's hearing. (Section 80(3) and Rule 52).

The reporter is to refer a pre-hearing panel matter to a hearing only where it is not practicable to arrange the pre-hearing panel for a day before the day of the children's hearing.

- 4.3 In determining whether it is practicable to arrange a pre-hearing panel, the reporter is to take account of whether those with a right to attend would have sufficient notice to exercise that right. Given the significance of a determination by a pre-hearing panel in relation to whether to deem (or continue to deem) someone to be a relevant person, it is particularly important that sufficient notice is given where such a matter is to be considered.
- 4.4 Where the PHP matter of whether someone meets the criteria to have a section 132A review has to be determined²⁰, a PHP is always to be arranged (not referral to the review hearing) unless exceptional circumstances apply.
- 4.5 There will be limited effect in referring the matter of excusing the child or a relevant person to the hearing. In particular, if the hearing is a grounds hearing, consideration of excusal of the child by the hearing itself does not address the difficulties caused by lack of advance excusal of a child who does not attend. There will also be limited effect in referring to the hearing the matter of restricting someone's attendance to remote only, as any restriction will not apply to that hearing. However, it could have an effect for any subsequent related hearing²¹.
- 4.6 In every instance where the reporter is arranging a children's hearing for which it is competent to arrange a pre-hearing panel, the reporter is to give consideration to the necessity for a pre-hearing panel at the earliest opportunity and certainly no later than when sending notifications for the children's hearing.

5. NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL

The table at Appendix 1 summarises who is notified of which pre-hearing panels, and who is to receive what information in their papers.

Notifications - who

- 5.1 The reporter must notify the child (if of sufficient understanding), relevant persons and any safeguarder of all pre-hearing panels and the matters that have been referred.

²⁰ See Practice Direction 33, section I, 'Other new rights to request a review hearing'.

²¹ Restricting attendance cannot be raised through a request within a pre-hearing panel or hearing, only if referred. See paragraph 8.11

- 5.2 Where the pre-hearing panel is to consider whether to deem someone to be a relevant person (whether or not it is also to consider other matters), the reporter must also notify:
- any person who the pre-hearing panel will consider whether to deem to be a relevant person²²; and
 - any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child.
- 5.3 Where the pre-hearing panel is to consider either of the pre-hearing panel matters relating to participation rights (whether or not it is also to consider other matters) the reporter must also notify the individual about whom the participation rights matter is being considered.
- 5.4 Although not required by the rules, the reporter is to notify the chief social work officer of any pre-hearing panel.

Notifications - when

- 5.5 Rules 45 to 46A set out the provisions for notification of a pre-hearing panel. The reporter must give 5 clear days notice of the pre-hearing panel wherever practicable.
- 5.6 There will be occasions where it is not practicable to give 5 clear days notice of a pre-hearing panel. For example the children's hearing may be arranged at short notice, new information is received which changes the reporter's assessment about the need for a pre-hearing panel or a request that triggers the reporter's duty to arrange a pre-hearing panel is received shortly before the hearing. In arranging such a pre-hearing panel, the reporter is to give as much notice as possible. Written notification at any point before the pre-hearing panel starts is competent where earlier notification is not practicable²³. Information can initially be given verbally to ensure maximum notice.
- 5.7 Where it is not practicable to have a pre-hearing panel before the day of the hearing, the reporter must refer the pre-hearing panel matter to the hearing (see paragraph 4.2²⁴).

Papers

- 5.8 Rule 47 sets out the information to be provided to a pre-hearing panel. A summary is provided in the table at Appendix 1.
- 5.9 For all pre-hearing panels, information is to be provided to:

²² The rules refer a person requesting that a pre-hearing panel consider whether to deem them, but the reporter is to interpret this as anyone about whom deeming has been referred to the pre-hearing panel.

²³ The reporter is always to be alert to fairness if written notification might not have been received by a person not in attendance and is to inform the pre-hearing panel.

²⁴ See also paragraph 6.8 in relation to when a request is received too late to try to make the necessary written notifications about referral of the matter to the hearing.

- the child (if of sufficient understanding),
- relevant persons,
- safeguarder, and
- panel members.

5.10 In addition, if the pre-hearing panel is considering whether to deem a person, the information is also to be provided to:

- that person, and
- any other person notified because the reporter considers the person has or has recently had significant involvement in the upbringing of the child.

5.11 If the pre-hearing panel is considering either of the matters relating to participation rights (criteria for participation rights or a section 132A review), papers are also to be provided to the person about whom the matter is being considered. However the reporter is to give them only information from the hearing papers in so far as relevant to that matter.

5.12 The papers are generally to be provided as soon as possible before the pre-hearing panel. Written information received for consideration by the pre-hearing panel from someone entitled to provide it²⁵ is to be provided by the reporter wherever practicable at least 3 days before the pre-hearing panel²⁶.

5.13 The PHP Papers Forms at Appendices 2 and 3 are always to be used for the provision of papers for a pre-hearing panel. The Form at Appendix 3 is for use only where either of the participation rights matters (criteria re participation rights or section 132A review) has been referred. Information may be included directly on the Forms, or referred to on the Forms and attached. If subsequent information is provided to the pre-hearing panel a further Form or Forms is to be completed in relation to that information. Word versions of the PHP Papers forms are available here (PHP Papers form) and here (PHP Papers Form – PI status/s132A review matters).

5.14 There are 4 categories of information which the reporter may provide for consideration by a pre-hearing panel, and a further 5th category where the PHP matter is either of the participation rights matters. These are each considered in more detail below. The reporter is to proactively consider what information already held by the reporter will be relevant for the pre-hearing panel, taking into account the particular pre-hearing panel matter or matters to be considered and the factors which the pre-hearing panel is likely to take into account.

²⁵ The child, relevant persons, safeguarder, person about whom deeming will be considered, person who appears to have significant involvement (if the pre-hearing panel will consider deeming someone) and a person about whom a participation rights matter will be considered.

²⁶ The person should give such information to the reporter wherever practicable at least 4 days before the pre-hearing panel. The reporter is not obliged to re-distribute the information to the person who provided it.

5.15 The 5 categories of information are:

- a) information from the records held by the reporter;
- b) reports or extracts from reports;
- c) written information submitted to the reporter for consideration by the pre-hearing panel;
- d) oral representations made to the reporter in advance of the pre-hearing panel by someone entitled to make them.
- e) **the reporter's recollection**

a) Information from Reporter Records

5.16 This type of information is likely to be limited. It will involve specific pieces of relevant information which are not readily extracted from reports, for example that the child has been subject to a compulsory supervision order requiring him to reside with [name] since [date].

b) Reports and Extracts from Reports

5.17 These are reports (other than reports or written submissions provided specifically for the pre-hearing panel by certain persons, see paragraphs 5.18 to 5.22) which the reporter has and which the reporter considers to be relevant to the pre-hearing panel matter(s) to be considered²⁷. If the reporter is providing only part of a report, the extract may be incorporated direct onto the PHP Papers Form rather than attaching a separate document.

c) Written Information for Consideration by the PHP

5.18 The child, relevant persons or safeguarder, may make written representations or give reports or documents about any referred pre-hearing panel matter for consideration by the pre-hearing panel.

5.19 In addition, where the pre-hearing panel is to consider whether to deem an individual to be a relevant person, the individual and any person who appears to the reporter to have or recently have had significant involvement in the upbringing of the child may also provide written representations or reports - but only in relation to the matter of whether to deem someone²⁸ to be a relevant person.

5.20 **Where the pre-hearing panel is to consider either of the matters relating to participation rights (criteria for participation rights or a section 132A review), the individual about whom the matter is being considered may provide written representations and reports – but only in relation to that specific matter.**

²⁷ This category includes written information provided by a social worker or other professional which the reporter considers to be relevant to the pre-hearing matters to be considered.

²⁸ This could be any person about whom deeming will be considered and/or any person who has been notified because they appear to have significant involvement.

- 5.21 For the avoidance of doubt, a person not yet deemed is not entitled to make representations, in writing or in person, regarding the issue of a deeming a currently deemed relevant person.
- 5.22 If the pre-hearing panel concerns deeming and/or undeeming, the reporter's duty to copy and provide the information given in relation to those matters applies only to such information as the reporter considers is relevant to those matters²⁹. (Note this restriction does not apply where deeming and/or undeeming is referred to the children's hearing (see paragraph 6.18).

d) Oral Representations via the Reporter

- 5.23 In terms of rule 47, a person may make oral representations to the reporter where the person:
- is entitled to give a report to the pre-hearing panel; and
 - is unable to attend the pre-hearing panel; and
 - wishes to make oral representations for the consideration of the pre-hearing panel.

The persons entitled to make oral representations to the reporter are:

- the child, relevant persons, safeguarder whatever the referred PHP matter;
- person who appears to the reporter to have significant involvement – if the PHP matter of deeming someone has been referred and only in relation to deeming someone³⁰
- person about whom deeming has been referred – only in relation to deeming someone³¹;
- person about whom participation rights (criteria for participation rights or section 132A review) has been referred and only in relation to that specific matter.

- 5.24 The reporter must make a written record of the representations and provide a copy of the record as soon as possible before the beginning of the pre-hearing panel.

²⁹ An exception for information which is offensive or indecent may also be justified. See Practice Direction 14 at paragraph 6.1 footnote 8.

³⁰ This could be any person about whom deeming will be considered and/or any person who has been notified because they appear to have significant involvement.

³¹ This could be any person in relation to whom deeming has been referred and/or any person notified because they appear to have significant involvement.

e) The Reporter's Recollection - additional category for matter relating to participation rights

5.25 An additional category of information is available on the Form (Appendix 3) for use in relation to matters about participation rights. This is information about the reporter's recollection, to be used only where the reporter has relevant information not otherwise available from records. This is most likely to arise where the person requesting the review is claiming a material failure by the reporter or the previous hearing to act in accordance with the rules and the reporter directly involved at the time has a recollection of events contrary to the claim and such information is not contained within a formal record. Such information may also be provided by giving it verbally in the hearing (with the permission of the chair).

Non-disclosure

5.26 A non-disclosure request may be made in relation to the information being provided for a pre-hearing panel. In addition, rules 15 (duties of reporter when withholding information), 16 (withholding whereabouts) and 18 (notifications and papers for child unable to understand) apply to a pre-hearing panel. Further information on all aspects of non-disclosure is contained in Practice Direction 4 on Non-Disclosure.

6. NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL MATTER REFERRED TO A CHILDREN'S HEARING

6.1 The table at Appendix 1 summarises who is notified of hearings to which a pre-hearing panel matter has been referred, and who is to receive what information in their papers.

Notifications - who

6.2 The requirements when a pre-hearing panel matter is referred to a hearing are similar to the requirements for a pre-hearing panel but there are some differences. These differences are highlighted in the following paragraphs.

6.3 Rule 52 sets out the notification requirements. The reporter must give notice that a pre-hearing panel matter has been referred to the children's hearing to:

- the child;
- relevant persons;
- safeguarder;

- any person about whom deeming has been referred to the pre-hearing panel³²;
- any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child;
- any person about whom either of the participation rights matters (criteria for participation rights or section 132A review) has been referred; and the panel members.

6.4 Note that a person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child is notified when any PHP matter is referred to the hearing. Notification is not dependent on the PHP matter being whether to deem someone to be a relevant person. **This is different to the situation for notifications for a pre-hearing panel.**

6.5 Where a pre-hearing panel matter relating to participation rights has been referred, the person about whom the matter will be considered must also be notified.

6.6 Although not required by the rules, the reporter is to notify the chief social work officer of any pre-hearing panel matter referred to the children's hearing.

Notifications – when

6.7 Notifications and papers in relation to a pre-hearing panel matter which has been referred to a children's hearing must be given as soon as practicable. Written notification at any point before the hearing starts, including giving written notification at the Hearing Centre, is competent where earlier notification is not practicable. Information can initially be given verbally to ensure maximum awareness. The reporter is always to be alert to fairness if written notification has not, or might not have been, received by a person³³ and is to inform the hearing. It will be for the hearing to decide how to deal with any unfairness eg deferral.

6.8 If a request is received which triggers the duty on the reporter to arrange a pre-hearing panel³⁴, but the request is received too late to try to make the necessary written notifications to any persons (including the panel members) about referral of the matter to the hearing, the reporter is to inform the hearing about the request. The reporter is to explain that it was not possible for the reporter to refer the matter to a pre-hearing panel or the hearing. It is then for the hearing to decide how to proceed. The hearing may require to defer to enable the pre-hearing panel matter to be properly notified (with or without an interim decision) and the

³² Rule 45(2)(c) refers to a person who has requested a determination about deeming, but the reporter is to apply the provision to any person about whom deeming has been referred.

³³ Eg if the person attends virtually or not at all, and is unable to be given written notification before the hearing starts.

³⁴ A request received at the Hearing Centre does not trigger the reporter's duty. The person may be able raise the matter in the hearing. In some circumstances the hearing may be able to consider the matter (see paragraphs 8.6 – 8.12) or may wish to defer to allow the matter to be treated as a request and notified.

matter to be properly before the hearing for determination. In some circumstances the matter may be properly raised within the hearing for consideration and determination even though not referred – see paragraphs 8.6 – 8.12³⁵.

Where the request was to arrange a pre-hearing panel to consider undeeming someone (which cannot be dealt with on request during a hearing), it is likely to be appropriate for the hearing to defer so that the matter can be referred to the deferred hearing³⁶.

Papers

6.9 Rule 53 sets out the information to be provided where a pre-hearing panel matter has been referred to the hearing. The appendices to Practice Direction 14 - Notifications and Papers specify which papers must be provided to which persons for any pre-hearing panel matter referred to a children's hearing.

6.10 Generally, papers for the pre-hearing panel matter are to be provided to:

- the child;
- relevant persons;
- safeguarder;
- any person about whom deeming has been referred;
- any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child; and the panel members.

They are to be provided as soon as practicable before the hearing.

6.11 Note that the provision of papers for the pre-hearing panel matter to any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child applies whatever the pre-hearing panel matter(s). It is not dependent on the PHP matter referred to the hearing being whether to deem a person to be a relevant person. **This is different to the situation for papers for a pre-hearing panel.**

6.12 Note that a person about whom deeming has been referred or a person notified because they appear to have current or recent significant involvement in the upbringing of the child may provide reports and, if

³⁵ For example if the persons who would have required to be notified are present and a competent request for the hearing to consider the pre-hearing panel matter is made in the hearing, it is likely to be both competent and fair for the hearing to deal with the request without deferral.

³⁶ Although a review hearing can consider undeeming once it makes a substantive decision on review, the individual will have been able to participate in the review and will have rights of appeal in relation to the review decision. If they had been undeemed prior to the hearing, the individual would have neither the right to participate nor appeal. Further, a review hearing is not obliged to consider undeeming and therefore it is possible the request to consider undeeming would not be actioned.

unable to attend the hearing, make oral representations to the reporter about any referred PHP matter, not just about deeming. **This is different to the situation for papers for a pre-hearing panel.**

- 6.13 Where a pre-hearing panel matter about the criteria for participation rights or a review hearing under section 132A has been referred, the person about whom the matter will be considered must also be given information. This is only information from the hearing papers that is:
- relevant to the particular matter (participation rights criteria or section 132A criteria) or
 - otherwise about the individual, contact between the child and the individual, or how contact or the possibility of contact between the child and the individual may be affected by a decision of the children's hearing.³⁷

This is broader than the equivalent provision for pre-hearing panels (which is information from the hearing papers that is relevant to the matter that has been referred in respect of the individual³⁸) and reflects the hearing information that would be provided to a person with participation rights.

- 6.14 The same 4 **or 5** categories of information for a pre-hearing panel apply where a pre-hearing panel matter is referred to the children's hearing. The reporter is to proactively consider what information already held by the reporter will be relevant, taking into account the particular pre-hearing panel matter or matters to be considered and the factors which the hearing is likely to take into account when considering them.
- 6.15 The papers must be provided in the same way as for a pre-hearing panel, using the relevant PHP Papers Form³⁹. Therefore the reporter must send two sets of papers to the panel members, the child (if receiving papers), the relevant persons and any safeguarder. That is, papers for the pre-hearing panel matter(s) **and** papers for the children's hearing.
- 6.16 If the pre-hearing panel matters include whether to deem a person to be a relevant person, the reporter is to send that person, and any other person who the reporter considers has or has recently had significant involvement in the upbringing of the child, only the papers for the pre-hearing panel matters. The reporter must only give these persons papers for the children's hearing if they are deemed to be a relevant person⁴⁰.

³⁷ Rule 53(6). The information is not to include a copy of the statement of grounds. Exceptionally some information from the statement of grounds may meet the criteria. The reporter is to consult with their Senior Practitioner or LRM, and the Practice Team, before including such information.

³⁸ Rule 47(6A)

³⁹ Word versions of the PHP Papers forms are available here (PHP Papers form) and here (PHP Papers Form – PI status/s132A review matters).

⁴⁰ A person may ask at the hearing that the hearing consider whether to deem them to be a relevant person. The matter must then be dealt with as if it had been referred.

- 6.17 Where pre-hearing panel matters(s) are referred to a hearing rather than a pre-hearing panel, any written representations provided by those entitled to attend must be provided in full to the hearing. **This is different to the position for a pre-hearing panel** where, if the matter concerns deeming or undeeming, the reporter's duty to provide the information given in relation to the deeming and/or undeeming applies only to the information which the reporter considers relevant to the deeming and/or undeeming (see paragraph 5.22).

Non-disclosure

- 6.18 A non-disclosure request may be made in relation to the information being provided in relation to a pre-hearing panel matter referred to a children's hearing. Rules 15 (duties of reporter when withholding information), 16 (withholding whereabouts) and 18 (notifications and papers for young child) also apply. Further information on all aspects of non-disclosure is contained in Practice Direction 4 on Non-Disclosure.

7. ATTENDANCE AT A PRE-HEARING PANEL

- 7.1 The table at Appendix 4 summarises who has a right to attend a pre-hearing panel, and also includes information about whether they should attend at the start and whether they can be excluded.
- 7.2 Section 78(1) specifies all those who have a right to attend any pre-hearing panel⁴¹
- the child
 - relevant persons
 - representatives of the child or a relevant person
 - safeguarder
 - member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council
 - member of an Area Support Team
 - representative of a newspaper or news agency reporter
- 7.3 Additional people have a right to attend depending on which PHP matters have been referred to the PHP.

⁴¹ Section 78 relates to attendance at a children's hearing but section 78(7) makes it clear that references to "children's hearing" in that section include a pre-hearing panel). As with a children's hearing, a social worker does not have a right to attend a pre-hearing panel.

Deeming

Where the pre-hearing panel is to consider whether to deem someone to be a relevant person, by virtue of rule 45(2)(c) and (d) the following people also have a right to attend the pre-hearing panel:

- any person about whom deeming has been referred⁴²;
- any person who appears to the reporter to have or recently have had significant involvement in the upbringing of the child.

Participation Rights

Where the pre-hearing panel is to consider whether a person meets the criteria to have participation rights or the criteria to require a review under section 132A, the person about whom the matter will be considered has the right to attend the pre-hearing panel⁴³.

Representatives

A representative of a person in relation to whom the PHP matter of deeming, or a PHP matter about participation rights, has been referred to the PHP does not have an express right to attend. However rule 11 implies a right to attend and fairness supports a right to attend. Any right to attend is during the period that the person they are representing attends⁴⁴.

A person notified of the PHP because they appear to have significant involvement does not have a right to have a representative. The reporter's position is to be that fairness likely requires that a representative be allowed to attend while the person they are representing attends.

- 7.4 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 pre-hearing panel:

- those with a right under section 78(1) or rule 11;
- 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.

⁴² The rule refers to a person who has requested that a pre-hearing panel deem them but the reporter is to apply it to all persons about whom deeming has been referred. Further, a person who wants to be deemed (even if not notified) appears to have an implied right to attend under rule 11, and to have a representative.

⁴³ Rule 45B

⁴⁴ Based on rule 11. If the chair does not agree there is a right of attendance, the chair may permit attendance under section 78(2).

Remote attendance

- 7.5 The reporter may on occasion decide to arrange a pre-hearing panel as a virtual one. The considerations in Section 9 of Practice Direction 13 on Attendance at Hearings is equally applicable to deciding the mode of a pre-hearing panel.
- 7.6 The reporter may arrange for (and notify) a person to attend a physical pre-hearing panel remotely where it is known direct, or from a reliable source, that the person wishes to attend remotely.
- 7.7 The reporter *must* arrange for (and notify) a person to attend a physical pre-hearing panel remotely when the duty in rule 20B applies. Rule 20B provides that anyone who has a right to attend under section 78(1), or is entitled to attend under section 78(2), may ask to attend by electronic means⁴⁵. “Electronic means” include telephone and video link⁴⁶. Having received the request, SCRA must take all reasonable steps to enable the person to attend by electronic means if the reporter is satisfied that the person:
- has good reason for not attending physically or
 - would be better able to participate effectively if they attend by electronic means.
- 7.8 Consideration of rule 20B only arises if the reporter is not otherwise arranging for remote attendance by the person. Appendix 4 of Practice Direction 13 on Attendance at Hearings provides detailed direction on the approach to take to applying rule 20B and is equally applicable to pre-hearing panels.

8. PROCEDURE AT A PRE-HEARING PANEL OR A HEARING DEALING WITH A REFERRED PHP MATTER⁴⁷

- 8.1 Where a pre-hearing panel matter is referred to a hearing, the procedures set out in rule 47A, 48 and 48A apply to the hearing as if it were a pre-hearing panel (rule 54). Reference in this section of the Practice Direction to a pre-hearing panel is therefore to be taken to include reference to that part of a hearing dealing with referred pre-hearing panel matters.
- 8.2 At the beginning of a pre-hearing panel, the chair must explain the purpose of the pre-hearing panel⁴⁸. Section 81(2) requires that the order

⁴⁵ Anyone with a right to attend under the rules rather than section 78(1) will be covered by section 78(2).

⁴⁶ The term ‘remote attendance’ is used in Practice Direction to mean any electronic means of attendance.

⁴⁷ Section 81 and 81A, and Rules 48, 49 and 49A set out the procedure at a pre-hearing panel. Sections 81(7) and 81A(A) and Rule 54 determine the procedure to be followed by a children’s hearing which is dealing with a pre-hearing panel matter.

⁴⁸ Rule 47A(1).

in which a pre-hearing panel must deal with referred pre-hearing panel matters is:

- (i) undeeding
- (ii) deeming
- (iii) other matters (participation rights, excusing, and/or restricting attendance) – the order of dealing with these is determined by the chair.

In relation to each pre-hearing panel matter being dealt with, the pre-hearing panel should make its determination before proceeding to the next matter (see paragraphs 6.8 and 6.9).

- 8.3 The chair must invite the following persons to make representations if in attendance:
- the child
 - relevant persons
 - person about whom the pre-hearing panel will consider deeming – but only about that matter
 - person about whom the hearing will consider a participation rights matter – but only about that matter.
- 8.4 The chair may invite any person in attendance to make representations in relation to any pre-hearing panel matter being dealt with, if the pre-hearing panel considers it appropriate to do so. A person so invited may make representations orally or in writing and may submit any document to the pre-hearing panel that they wish.⁴⁹
- 8.5 If the pre-hearing panel determines that an individual should no longer be deemed to be a relevant person then the individual has no right to take part in discussion of other matters (unless the matter of their participation rights is also being dealt with). While the individual has a right to remain throughout the pre-hearing panel⁵⁰, it will be for the chair to determine the individual's further involvement.

Raising PHP matters that have not been referred

- 8.6 Some PHP matters can be raised within a PHP or hearing even though they have not been referred. The provisions are slightly different between PHPs and hearings. If a PHP matter is competently raised in either forum, the Act and procedural rules apply as if the matter had been referred to it.
- 8.7 The table at Appendix 5 summarises whether a PHP or hearing may consider a PHP matter that has not been referred.

⁴⁹ Rule 47A(5) and (6).

⁵⁰ Rules 45(3ZA)(c), (3A)(b) and (4)(aa), and 46A(4)(a) and (5)(b)

8.8 If an individual is deemed to be a relevant person by a pre-hearing panel or hearing, they may request the pre-hearing panel or hearing to determine other matters under section 79(3) (in effect excusing the child or a relevant person, or restricting certain persons' attendance to remote only)⁵¹.

8.9 A request may be made within a pre-hearing panel to consider:

- whether someone should be deemed⁵²
- whether someone meets the criteria to have participation rights (but not a section 132A review).⁵³

The individual must be present in the PHP and the request may be made by the child, a relevant person or the individual.

8.10 A request may be made within a relevant hearing⁵⁴ to consider:

- whether someone should be deemed⁵⁵
- whether someone meets the criteria to have participation rights (but not a section 132A review)⁵⁶

The individual must be present in the hearing and the request may be made by the child, a relevant person or the individual.

8.11 If a request to consider deeming or participation rights is made in a hearing (under rule 55 or 55A) where the matter has already been determined by a pre-hearing panel, the reporter is to express the view that it is not appropriate for the hearing to consider the request unless exceptional circumstances apply. Exceptional circumstances might include where there is a significant change of circumstances during very lengthy proceedings, or the person was erroneously not notified of the hearing outcome, or a person who the PHP decided not to deem was not notified of the outcome⁵⁷. It will be for the hearing to decide how to proceed.

8.12 The following PHP matters cannot be competently considered and determined by PHP or hearing without referral:

- undeeming⁵⁸
- restricting someone's attendance to remote only⁵⁹.

⁵¹ Rules 45(3)(c), 52(3)(b), 48(3) and 55(2).

⁵² Rule 48

⁵³ Rule 48A.

⁵⁴ See paragraph 3.1.

⁵⁵ Rule 55

⁵⁶ Rule 55A.

⁵⁷ Thereby rendering their right of appeal ineffective.

⁵⁸ A review hearing, on conclusion of the substantive review, may review a deemed relevant person's status under section 142.

⁵⁹ Except in the extremely limited circumstance of someone who the PHP or hearing has deemed asking for it to be considered Rules 45(3)(c) and 52(3)(b).

Determination

- 8.13 Each member of the pre-hearing panel must state their determination on each pre-hearing panel matter and the reasons for that determination. The chairing member must thereafter confirm the determination of the pre-hearing panel and the reasons for that determination.
- 8.14 If the pre-hearing panel makes a determination about whether someone should be, or should continue to be, deemed to be a relevant person, the chair must inform the child, any relevant person and the individual of their right to appeal under section 160 of the Act. Rule 47A(9).

9. ADJOURNING OR DEFERRING A PRE-HEARING PANEL

- 9.1 A pre-hearing panel, if it considers it appropriate to do so, may be adjourned on the initiative of the pre-hearing panel or on the request of any person attending. Where a pre-hearing panel is adjourned it must re-convene on the same day as the adjournment was made. (Rule 7).
- 9.2 There is no express provision to defer a pre-hearing panel. However a power for the pre-hearing panel to defer making a determination may be implied where it would be unfair to proceed. If the issue arises or is likely to arise, the reporter is to express a view in the pre-hearing panel that a determination may be deferred. Unfairness will be for the pre-hearing panel to decide but it is most likely to arise where there has been a failure in notification of the pre-hearing panel. The reporter may also express a view on whether they consider that it would be unfair to proceed. The provision in the Rules for a person who is unable to attend to give oral representations to the reporter means that an inability to attend does not render the pre-hearing panel unfair. Deferral of a pre-hearing panel determination may mean that the matter or matters will need to be dealt with by the children's hearing. The fairness of this should also be taken into consideration.

10. NOTICE OF DETERMINATION

- 10.1 Rule 50 requires that as soon as practicable after the pre-hearing panel the reporter must give notice of any determination of the pre-hearing panel and the reasons for that determination to:
- the child,
 - each relevant person,
 - any appointed safeguarder, and
 - the chief social work officer of the relevant local authority for the child.

This notice must also give notice of the relevant rights of appeal under section 160 of the Act.

10.2 Where the pre-hearing panel has determined that an individual:

- (i) is no longer to be deemed to be a relevant person,
- (ii) is not to be deemed a relevant person, or
- (iii) does or does not meet the criteria for participation rights or a section 132A review

as soon as practicable after the pre-hearing panel, the reporter must give notice of the determination and the reasons for the determination to the individual. This notice must also give notice of the relevant rights of appeal under section 160 of the Act⁶⁰.

10.3 Where the pre-hearing panel has determined that an individual is to be deemed a relevant person, as soon as practicable after that determination the Reporter must give that person all information which is to be given to each relevant person. (Rule 51)

10.4 Notice of a pre-hearing panel determination that a child or relevant person has been excused from attending all or part of the children's hearing must also inform the child and relevant person, as the case may be, that they:

- have the right to attend the hearing and
- have the right to request that the reporter make arrangements to enable them to attend the hearing or part of the hearing by way of telephone, video link or any other method of communication. (Rule 50(5))

10.5 The reporter is to make every effort to notify the outcome of a relevant person determination (to deem, to not deem, to no longer deem) as soon as possible. This is because any appeal against that determination must be made before the expiry of 7 days beginning with the day on which the determination is made. Details of who should be notified are set out in the table in appendix 1.

11. NOTICE OF DETERMINATION AFFECTING LEGAL AID

11.1 Where a pre-hearing panel has determined that it is likely that a children's hearing will consider making a compulsory supervision order or interim compulsory supervision order with a secure accommodation authorisation, the reporter must, as soon as possible after the determination, notify the Scottish Legal Aid Board of that fact and of the name and address of the child. Rule 50(6)

11.2 Where a pre-hearing panel has determined that a child or any relevant person requires to be represented by a solicitor or counsel to effectively

⁶⁰ A person about whom a participation rights determination was made does not have a right of appeal.

participate in the children's hearing and it is unlikely that the child or relevant person will arrange to be so represented, the reporter must as soon as possible after the determination, notify the Scottish Legal Aid Board of that fact and of the name and address of the child or relevant person. Rule 50(7).

12. APPOINTMENT OF SAFEGUARDER

- 12.1 Under rule 56, where a pre-hearing panel appoints a safeguarder, the reporter must inform the safeguarder of the date, time and place (if known) of the next hearing to be held in relation to the child and provide the safeguarder with information as soon as practicable before the intended hearing date. The information to be provided is all the information being provided to the children's hearing, the decision and reasons of the pre-hearing panel (or children's hearing), including the reasons for the appointment of a safeguarder.

13. RELATED MATERIALS

Practice Direction 4 - Non-Disclosure
Practice Direction 14 - Notifications and Papers
Practice Direction 20 – Secure Accommodation
Practice Direction 22 – Legal Aid

Appendix 1 – Table of Notifications and Papers for a Pre-hearing Panel or a Hearing dealing with PHP Matters

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
PHP – to consider deeming (Not undeeming, excusing or restricting attendance. Where there is also a matter about participation rights, see additional entry later in table.) s.79(2)(a) or (b)	rule 45 and 47	Whenever practicable at least 5 days before pre-hearing panel	<ul style="list-style-type: none"> • child • each RP • person about whom deeming has been referred • person who appears to have with significant involvement • safeguarder • chief social work officer* • panel members • National Convener 	*This is not stated in the rules but notice is to be given to them.	Whenever practicable at least 3 days before pre-hearing panel	<ul style="list-style-type: none"> • child • each RP • person about whom deeming has been referred • person who appears to have significant involvement • safeguarder • panel members 	PHP Papers form Written representations/ reports/documents provided by child, RP, person about whom deeming has been referred, person who appears to have significant involvement or safeguarder, which the reporter considers relevant to the deeming decision to be made; Oral representations made to the reporter by a person entitled to attend but unable to do so (these must be recorded by the reporter); Any other relevant document or part of document.

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
PHP – excusing and/or restricting attendance to remote only (Not deeming, undeeming, excusing or restricting attendance. Where there is also a matter about participation rights, see additional entry later in table.) s.79(2)(c)/79(3)	rule 46 and 47	Whenever practicable at least 5 days before pre-hearing panel	<ul style="list-style-type: none"> • child • each RP • safeguarder • chief social work officer* • panel members • National Convener 	*This is not stated in the rules but notice should be given to them	Whenever practicable at least 3 days before the pre-hearing panel	<ul style="list-style-type: none"> • child • each RP • safeguarder • panel members 	PHP Papers form Written representations/ reports/documents provided by the child, relevant person or safeguarder; Oral representations made to the reporter by a person entitled to attend but unable to do so (these must be recorded by the reporter); Any other relevant document or part of document.

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
<p>PHP – to consider deeming AND excusing and/or restricting attendance to remote only</p> <p>(Not undeeming. Where there is also a matter about participation rights, see additional entry later in table.)</p> <p>s.79(2)(a) or (b) AND (c)</p>	rules 45 and 47	Whenever practicable at least 5 days before the pre-hearing panel notice	<ul style="list-style-type: none"> • child • each RP • person about whom deeming has been referred • person who appears to have significant involvement • safeguarder • chief social work officer* • panel members • National Convener 	<p>*This is not stated in the rules but notice should be given to them.</p>	Whenever practicable at least 3 days before the pre-hearing panel	<ul style="list-style-type: none"> • child • each RP; • person about whom deeming has been referred • person who appears to have significant involvement • safeguarder • panel members; 	<p>PHP Papers Form</p> <p>Written representations/ reports/documents in relation to deeming provided by child, a relevant person, person about whom deeming has been referred, person who appears to have significant involvement or safeguarder, which the reporter considers relevant to the deeming decision to be made;</p> <p>Written representations /reports/documents in relation to excusing provided by the child, a relevant person or safeguarder;</p> <p>Oral representations made to the reporter by a person entitled to attend but unable to do so (and which relate to a matter about which the person is entitled to give written information. They must be recorded by the reporter);</p> <p>Any other relevant document or part of document.</p>

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
<p>PHP – to consider undeeding whether or not also excusing and/or restricting attendance to remote only</p> <p>(Not deeming. Where there is also a matter about participation rights, see additional entry later in table.)</p> <p>s.79(2)(a) or (b) AND (c)</p>	rule 45, 46A and 47	Whenever practicable at least 5 days before the pre-hearing panel notice	<ul style="list-style-type: none"> • child • each RP (including RP who may be undeeded) • safeguarder • chief social work officer* • panel members • National Convener 	*This is not stated in the rules but notice should be given to them.	Whenever practicable at least 3 days before the pre-hearing panel	<ul style="list-style-type: none"> • child • each RP (including RP who may be undeeded) • safeguarder • panel members 	<p>PHP Papers Form</p> <p>Written representations/ reports/documents provided in relation to undeeding by the child, relevant person or safeguarder which the reporter considers relevant to undeeding;</p> <p>If excusing and/or restricting attendance is referred, representations /reports/documents provided by the child, relevant person or safeguarder in relation to these matters;</p> <p>Oral representations made to the reporter by a person entitled to attend but unable to do so (these must be recorded by the reporter);</p> <p>Any other relevant document or part of document.</p>

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
<p>PHP – to consider undeeming AND deeming whether or not also excusing and/or restricting attendance to remote only</p> <p>(Where there is also a matter about participation rights, see additional entry later in table.)</p> <p>s.79(5A)(a) and 79(2)(a) or (b) AND (c)</p>	rule 45, 46A and 47	Whenever practicable at least 5 days before the pre-hearing panel notice	<ul style="list-style-type: none"> • child • each RP (including RP who may be undeemed • person about whom deeming has been referred • person who appears to have significant involvement • safeguarder • chief social work officer* • panel members • National Convener 	*This is not stated in the rules but notice is to be given to them.	Whenever practicable at least 3 days before the pre-hearing panel	<ul style="list-style-type: none"> • child • each RP (including RP who may be undeemed) • person about whom deeming has been referred • person who appears to have significant involvement • safeguarder • panel members 	<p>PHP Papers form</p> <p>Written representations/reports/documents in relation to deeming provided by child, relevant person, safeguarder, person about whom deeming has been referred or person who appears to have significant involvement which the reporter considers relevant to deeming;</p> <p>Written representations /reports/documents in relation to undeeming provided by child, relevant person or safeguarder which the reporter considers relevant to undeeming;</p> <p>If excusing and/or restricting attendance is referred, written representations /reports/documents provided by the child, relevant person or safeguarder in relation to these matters;</p> <p>Oral representations made to the reporter by a person entitled to attend but unable to do so and which relate to a</p>

							<p>matter about which the person is entitled to make written representations (these must be recorded by the reporter);</p> <p>Any other relevant document or part of document.</p>
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Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
<p>PHP – to consider whether individual meets the criteria to have participation rights or a section 132A review whether or not considering any other matter</p> <p>(Where any other matter is also referred see the relevant entry above.)</p> <p>Section 79(2)(ba)</p>	Rules 45A and 45B	Whenever practicable at least 5 days before the pre-hearing panel notice	<ul style="list-style-type: none"> child each RP person whose PI status to be determined by PHP safeguarder chief social work officer* panel members 	*This is not stated in the rules but notice should be given to them.	Whenever practicable at least 3 days before the pre-hearing panel	<ul style="list-style-type: none"> child each RP safeguarder panel members 	<p>PHP Papers Form</p> <p>Written representations/reports/documents provided by child, relevant person, safeguarder;</p> <p>Written representations/reports/documents provided by the person whose PI status is to be determined and which are about that matter;</p> <p>Oral representations made to the reporter by a person entitled to attend but unable to do so and which relate to a matter about which they are entitled to provide written information (these must be recorded by the reporter);</p> <p>Any other relevant document or part of document.</p>
						<ul style="list-style-type: none"> individual whose PI status will be determined 	Any information from the above documents that is relevant to the participation rights matter about them

Type of PHP or Hearing	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
Hearing dealing with any PHP Matter Notification of PHP matter to be sent in addition to letter notifying the substantive purpose of the hearing (see Practice Direction 14 for notification and papers for substantive hearing)	Rule 52	As soon as practicable	<ul style="list-style-type: none"> child each RP (including any RP who may be undeeded, if any) person requesting a relevant person determination (if any) person who appears to have significant involvement (if any) person whose PI status to be determined by the hearing (if any) safeguarder Chief Social Work Officer* panel members National Convener 	<p>*This is not stated in the rules but notice is to be given to them.</p>	Where practicable at least 4 days before the children's hearing (in practice it is always likely to be less otherwise a PHP could be arranged)	<ul style="list-style-type: none"> child each RP (including any RP who may be undeeded) a person requesting a relevant person determination a person who appears to have significant involvement safeguarder panel members 	<p>PHP Papers Form</p> <p>Written representations/ reports/documents provided by child, RP, safeguarder, person who appears to have significant involvement and person about whom deeming has been referred in relation to any referred PHP matter;</p> <p>Written representations/reports/documents provided by person about whom participation rights criteria has been referred and which relate to that matter;</p> <p>Oral representations made to the reporter by a person entitled to attend but unable to do so and which relate to a matter about which they are entitled to provide written information (these must be recorded by the reporter);</p> <p>Any other relevant document or part of document.</p>

						<ul style="list-style-type: none"> • person whose PI status to be determined by the hearing 	<ul style="list-style-type: none"> • Any information from the above material relevant to: <ul style="list-style-type: none"> - the participation rights matter about them or - otherwise about them, their contact with the child, or how the possibility of contact may be affected by a decision of the hearing
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Notice of Determination of PHP Matters	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
Notice of determination by a pre-hearing panel	rule 50	As soon as practicable after the pre-hearing panel	<ul style="list-style-type: none"> • child • each RP • person who appears to have significant involvement (if any) • person not deemed to be RP • person whose PI status was determined • safeguarder • chief social work officer • SLAB* 				<p>Notice of any determination and reasons</p> <p>Person not deemed to be RP is given notice only of that determination and reasons</p> <p>Individual whose PI status was determined by hearing to be given that determination and reasons only</p> <p>*SLAB is notified only of (1) determination that CSO with secure accommodation authorisation is likely (2) determination and reasons that representation by a solicitor may be necessary and child/RP unlikely to arrange</p>
Notice of determination of PHP matters by a hearing		Within 5 days ⁶¹	<ul style="list-style-type: none"> • child • each RP • safeguarder • Chief Social Work Officer 				Notice of any determination and reasons about a PHP matter (plus all other hearing decisions and reasons)

⁶¹ If a review hearing reviews the status of a deemed relevant person under section 142, this is different to determining a PHP matter. The decision and reasons under section 142 (whether the person continues to be deemed or is no longer deemed) is to be notified within 2 working days to the child, relevant persons and the person about whom the determination was made.

Notice of Determination of PHP Matters	Relevant rules	Notifications			Papers		
		When	To Whom	Comments	When	To Whom	What
			<ul style="list-style-type: none"> person not deemed to be RP person undeemed person whose PI status was determined 				<p>Person not deemed or person undeemed⁶² – only that determination and reasons</p> <p>Person whose PI status was determined – that determination and reasons. Plus, if the hearing determined they meet the criteria for participation rights, any relevant decisions and reasons about their contact with the child (see PD 14 section 21)</p>

⁶² If a review hearing decides under section 142 to no longer deem a person, this is different to determining a PHP matter. The person remains entitled to receive all the decisions and reasons of the hearing.

Appendix 2 - PHP Papers Form

Papers for the Choose an item.

On: Click to enter text.

Name of Child: Click to enter text.

Date of Birth: Click to enter text.

Purpose of Pre-Hearing Panel/Pre-Hearing matter to be considered:

- ☐ To consider whether Click to enter text. should continue to be deemed to be a relevant person.

Statutory Criteria

- *The person does not have (and has not recently had) a significant involvement in the upbringing of the child*

- ☐ To consider whether to deem Click to enter text. to be a relevant person.

Statutory Criteria

- *The person has, or has recently had, a significant involvement in the child's upbringing*

- ☐ To consider whether the child should be excused from attending the children's hearing.

Statutory Criteria

- *the hearing relates to a ground in section 67(2)(b), (c) (d) or (g) and the attendance of the child at the hearing is not necessary for a fair hearing,*
- *the attendance of the child at the hearing would place the child's physical, mental or moral welfare at risk, or*
- *taking account of the child's age and maturity the child would not be capable of understanding what happens at the hearing*

- ☐ To consider whether a relevant person Click to enter text. should be excused from attending the children's hearing.

Statutory Criteria

- *it would be unreasonable to require the relevant person's attendance at the hearing, or*
- *the attendance of the relevant person at the hearing is unnecessary for the proper consideration of the matter before the hearing.*

- ☐ to consider whether an individual Click to enter text. should be allowed to attend a children's hearing only by electronic means.

Statutory Criteria

The person's physical attendance at the hearing (or any part of it) is likely to:

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

The Pre-Hearing Panel has been arranged/pre-hearing matter referred to the children's hearing:

- ☐ On the children's reporter's own initiative
- ☐ Following a request by [Click to enter text.](#) and the request is attached

The following information is provided from the records held by the children's reporter: *(Insert information, for example "The child has been subject to a CSO since ..." **Please number each separate item.**)*

[Click to enter text.](#)

The following extracts from reports are attached/provided below: *(Insert description, for example "Extract from social work/safeguarder report dated ..." **Please number each separate item.**)*

[Click to enter text.](#)

The following information has been submitted to the reporter for the consideration of the Pre-Hearing Panel/Children's Hearing: *(Insert description, for example: Letter from Mrs B, child's mother – attached...." **Please number each separate item.**)*

[Click to enter text.](#)

The children's reporter has received the following representations in advance of the Pre-Hearing Panel/Children's Hearing: *(Insert notes, for example, Note of representation made by Mr B, child's father, to the reporter on "....." – attached" **Please number each separate item.**)*

[Click to enter text.](#)

Appendix 3 - PHP Papers Form – PI status/s132A review matters

Papers for the Choose an item

On: Click to enter text.

Name of Child: Click to enter text

Date of Birth: Click to enter text

Purpose of Pre-Hearing Panel/Pre-Hearing matter to be considered:

- ☐ To consider whether an individual Click to enter text. meets the criteria to have participation rights in relation to a Children's Hearing.
- Statutory Criteria
- *the individual is living or has lived with the child,*
 - *the individual and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common),*
 - *the hearing is likely to make a decision significantly affecting contact, or the possibility of contact, between the individual and the child, and*
 - *the individual is capable of forming a view on the matter of contact between the individual and the child.*

- ☐ To consider whether an individual Click to enter text. meets the criteria to require a review of the Compulsory Supervision Order

Statutory Criteria

EITHER:

- *the individual did not attend the last hearing,*
- *the individual was not treated as meeting the participation criteria, and no decision on the matter was made by a PHP or hearing, and*
- *if a hearing or a PHP had considered the matter, it is likely that it would have decided that the participation criteria applied.*

OR:

- *the individual did not attend the last hearing,*
- *the individual had participation rights in relation to the last hearing, and*
- *the individual was not able to participate properly in the hearing's decision making as a result of:*
 - *a material failure to treat the individual or any representative of the individual in accordance with the rules; or*
 - *exceptional circumstances.*

The request by the individual for the pre-hearing panel is attached.

The following information is provided from the records held by the children's reporter: *(Insert information, for example "The record of proceedings for the children's hearing on x date does not record AB as attending/records AB as attending in part/records the following information within the reasons for decisions". Please number each separate item.)*

Click to enter text.

The following information is provided from the recollection of the reporter at the hearing:⁶³ *(Insert information, for example "The reporter recollects that AB attended the hearing for about 15 minutes before the electronic connection failed. AB did not return to the hearing."*

Click to enter text.

The following extracts from reports are attached/provided below: *(Insert description, for example "Extract from social work/safeguarder report dated ... " Please number each separate item.)*

Click to enter text.

The following information has been submitted to the reporter for the consideration of the Pre-Hearing Panel/Children's Hearing: . *(Insert description, for example: Letter from Ms B, child's mother – attached...." Please number each separate item.)*

Click to enter text.

The children's reporter has received the following representations in advance of the Pre-Hearing Panel/Children's Hearing: *(Insert notes, for example, Note of representation made by Ms B, child's sister seeking PI status, to the reporter on " – attached" Please number each separate item.)*

Click to enter text.

⁶³ This section is relevant only if PHP is considering whether the criteria for a s132A review are met and only if the reporter has relevant information not available from records.

Appendix 4 – Table of attendance at a Pre-Hearing Panel

Notes:

1. No person other than the reporter⁶⁴ has a duty to attend a pre-hearing panel (PHP).
2. A person without a right to attend a PHP may be allowed by the chair to attend under section 78(2).
3. The chair of a PHP may exclude any person if the person's conduct is violent or abusive, or otherwise so disruptive that the chair would consider it necessary to end or adjourn the PHP if the person were not excluded. Rule 20D(1)(a)⁶⁵. (Referred to in the table as 'Exclusion – Conduct'.)
4. A PHP may exclude a person during consideration of a non disclosure request relating to the person, and/or may exclude the representative of the person. Rules 86(3) and 84(4)⁶⁶. (Referred to in the table as 'Exclusion – NDR'.)
5. The chair of a PHP may exclude a relevant person, their representative or the representative of a news paper or news agency if the person's presence is preventing (or is likely to prevent) the PHP obtaining the views of a relevant person, or is causing (or is likely to cause) significant distress to a relevant person attending the hearing.⁶⁷ (Referred to in the table as 'Exclusion – Protect other RP')

Person	Right to attend	Which PHPs	Comments	Exclusion	Attend at start
Child	Yes s78(1)(a)	All		<ul style="list-style-type: none"> ▪ Conduct ▪ NDR 	Yes
Relevant Person	Yes s78(1)(c)	All		<ul style="list-style-type: none"> ▪ Conduct ▪ NDR ▪ Protect other RP 	Yes
Person notified because they appear to have significant involvement	Yes Rule 45(2)(d) & 45(3)(b)	Any PHP to which deeming any person has been referred	The person is not entitled to take part in discussion about any PHP matter other than deeming someone, unless they are deemed to be a relevant person Rule 45(3) & 45(4) ⁶⁸	<ul style="list-style-type: none"> ▪ Conduct ▪ NDR 	Yes

⁶⁴ The reporter has a duty under rule 13 to keep a record of the proceedings of a pre-hearing panel.

⁶⁵ If the chair has allowed the attendance of a person without a right to attend, the chair may deal with the situation by exclusion or withdrawing permission to attend.

⁶⁶ There is no express provision to exclude a representative. However, the reporter is to take the view that a representative of a person may be excluded during consideration of a NDR to withhold information from the person they are representing, as otherwise the purpose of a non-disclosure request might be undermined.

⁶⁷ Rule 20D. The equivalent exclusion to protect a child, contained in section 76, applies only to children's hearings.

⁶⁸ There is no duty on the chair to invite representations on any matter.

Person about whom deeming has been referred to the PHP	Yes Rule 45(2)(c) ⁶⁹ & 45(3)(b)	Any PHP to which deeming the person has been referred	The person is not entitled to take part in discussion about any PHP matter other than deeming someone unless they are deemed to be a relevant person Rule 45(3) & 45(4) ⁷⁰	<ul style="list-style-type: none"> Conduct NDR 	Yes
Person about whom a participation rights matter (criteria for participation rights or section 132A review) has been referred to the PHP	Yes Rule 45B	Any PHP to which a participation rights matter about the person has been referred	The person is not entitled to make representations relating to any other referred PHP matter Rule 45B(2)(b)	<ul style="list-style-type: none"> Conduct NDR 	Yes
Safeguarder	Yes s78(1)(f)	All		<ul style="list-style-type: none"> Conduct 	Yes
Social worker for the child	No ⁷¹			<ul style="list-style-type: none"> Conduct 	Yes ⁷²
Reporter	Yes s78(1)(f)	All		<ul style="list-style-type: none"> Conduct 	Yes
Representatives					
Representative of child	Yes s78(1)(b)	All		<ul style="list-style-type: none"> Conduct NDR 	Yes
Representative of relevant person	Yes s78(1)(d)	All		<ul style="list-style-type: none"> Conduct NDR Protect other RP 	Yes
Representative of person about whom a participation rights matter (criteria for participation rights or section 132A review) has been referred to the PHP	Yes implied by rule 11(3)(d)	Any PHP to which a participation rights matter has been referred in relation to the person they are representing	<ul style="list-style-type: none"> Applies only while the person they are representing attends Rule 11(1) 	<ul style="list-style-type: none"> Conduct NDR 	Yes

⁶⁹ Rule 45(2)(c) refers to a person who has requested to be deemed, but the reporter is to adopt the same approach whatever the basis for deeming being referred.

⁷⁰ Although the duty on the chair to invite representations applies only to the matter of the person's own deeming rule 47A(3)

⁷¹ While there is no statutory right, practice is that their attendance will be allowed.

⁷² Only one social worker is to attend at the start. If more than one wishes to attend, it is for them to decide which one will attend at the start. The chair may allow the other to attend after the hearing has started.

Representative of person about whom deeming has been referred as a PHP matter	Yes implied by rule 11(3)(c)	Any PHP to which deeming the person they are representing has been referred	▪ Applies only while the person they are representing attends rule 11(1)	▪ Conduct ▪ NDR	Yes
Representative of person notified because they appear to have significant involvement	No ⁷³			▪ Conduct ▪ NDR	No
Others					
Police or prison officer	Yes rule 20A	All	▪ Applies only while the person in their custody is attending the hearing		Same as for the person in their custody
Member of an Area Support Team	Yes s78(1)(h) ⁷⁴	All		▪ Conduct	Yes
Representative of a newspaper or news agency	Yes s78(1)(i)	All		▪ Conduct ▪ Protect RP	Yes
New reporter, trainee reporter or assistant reporter (in training – not if just observing)	Yes s78(1)(e)	All		▪ Conduct	Yes
Observer – other than trainee panel member	No			▪ Conduct	No
Observer – trainee panel member	No			▪ Conduct	Yes

⁷³ There is no express right for a representative to attend but the reporter's position is to be that fairness likely requires their attendance to be allowed while the person they are representing takes part in discussion. The chair may allow the representative to attend under section 78(2).

⁷⁴ In practice, it is expected that an AST member will not exercise their right if the child or a relevant person objects to their attendance. See the joint SCRA/CHS Practice Note on Observers at Children's Hearings, though note that the approach to providing papers to AST observers has changed.

Appendix 5 - Raising PHP Matters within a PHP or Hearing

PHP Matter	Can it be considered by a PHP if not referred to the PHP?	Can it be considered by the hearing if not referred to the hearing?
1. Deeming	<p>Yes – the PHP must consider the matter if the child, a relevant person or the individual requests the PHP to do so and the individual is present at the PHP.</p> <p>The PHP cannot otherwise consider the matter.</p>	<p>Yes – a relevant hearing (see para 3.1) must consider the matter if the child, a relevant person or the individual requests the hearing to do so and the individual is present at the PHP. The Procedural Rules apply as if the matter had been referred.</p> <p>But where a request is made after the matter has already been determined by a PHP see paragraph 8.10.</p> <p>A hearing cannot otherwise consider the matter.</p>
2. Undeeming	No	<p>No.</p> <p>However a review hearing, on conclusion of the substantive review, may review the status of a deemed relevant person under section 142.</p>
3. Criteria for participation rights	<p>Yes – the PHP must consider the matter if the child, a relevant person or the individual requests the PHP to do so and the individual is present at the PHP (rule 48A).</p> <p>The PHP cannot otherwise consider the matter.</p>	<p>Yes – a relevant hearing (see para 3.1) must consider the matter if the child, a relevant person or the individual requests the hearing to do so and the individual is present at the hearing (rule 55A). The Procedural Rules apply as if the matter had been referred.</p> <p>But where a request is made after the matter has already been determined by a PHP see paragraph 8.10.</p> <p>A hearing cannot otherwise consider the matter.</p>

4. Criteria to require a section 132A review	No (rule 48A)	No (rule 55A)
5. Excusing child	Yes – the PHP must consider the matter if requested by someone whom the PHP has deemed. The PHP cannot otherwise consider the matter.	A hearing has power to consider excusal under section 73.
6. Excusing a relevant person	Yes – the PHP must consider the matter in relation to any relevant person if requested by someone whom the PHP has deemed. The PHP cannot otherwise consider the matter.	A hearing has power to consider excusal under section 74.
7. Hearing likely to make CSO or ICSO with SAA	Yes – the PHP must consider the matter if requested by someone whom the PHP has deemed. The PHP cannot otherwise consider the matter.	No (but will be alert to fairness including legal representation for the child if considering such a decision)
8. Restricting attendance to electronic means only	No (except in the extremely limited circumstance of someone who the PHP has deemed asking for it to be considered)	No (except in the extremely limited circumstance of someone who the PHP has deemed asking for it to be considered)
9. Appoint safeguarder	Yes – either if requested by anyone or on the initiative of the PHP (this matter cannot be referred)	A hearing has a duty under section 30 to consider appointment of a safeguarder.
10. Child or RP requires legal representative	Yes – either if requested by anyone or on the initiative of the PHP (this matter cannot be referred)	A hearing has power to make this determination under rule 61(1)(d) if deferring the decision on grounds or review.