SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 23

Court Applications

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SUMMARY

Role of Reporters and General Principles

Reporters are to:

- promote the general principles in relation to the welfare of the child being paramount, views of the child and minimum intervention as they apply to court applications[1];
- act fairly, be knowledgeable and proficient in relation to relevant statutory provisions and court procedures;
- prepare and be in a position to proceed and not the cause of delay;
- promote expeditious case management by the sheriff;
- ensure witnesses are appropriately informed and supported; and
- present the case with thoroughness and skill.

Process of proof applications

A proof application must be made within 7 days of the grounds hearing. The court rules set out the form of application. A proof application must be heard within 28 days of being lodged.

Where should proof applications be lodged?

For non-offence grounds, the reporter is to send the application to the sheriff clerk for the sheriff court district where the child is habitually resident. An application in relation to offence grounds must be made to the sheriff who would have jurisdiction if the child were being prosecuted for the offence. On cause shown, the sheriff may remit any application to another sheriff court.

Service, attendance and representation in proof applications

The sheriff may dispense with (i) service of all or part of the application on the child, and (ii) the attendance of the child. The reporter must include information on dispensing with service and attendance in the application (if applicable).

On receipt of the warrant to cite, the reporter must forthwith serve this and a copy of the application on the child (unless service has been dispensed with), each relevant person and any safeguarder. There are statutory forms to use for service. The reporter must retain proof of service. A relevant person is not required to attend the hearing before the sheriff. A child and a relevant person may be represented by either a lay representative or a solicitor/advocate.

[1] General principles apply to decisions by courts as follows:- the welfare of the child (s.25/s.26) applies to all decisions; views of the child (s.27) applies to all decisions except whether to make a CPO; better for the child that the order etc. be in force than not (s.29) applies when the sheriff is making a decision to make, vary, continue or extend an order.

Management of proof applications

Sheriffs are required to hear evidence tendered by the reporter, but can order parties to take steps to ensure a prompt decision. The reporter is to use all available and fair means to assist the court in reaching a prompt decision.

At the conclusion of the reporter's evidence, other parties may themselves give evidence but require the sheriff's permission to call witnesses.

The statement of grounds including the section 67 ground may be amended by the sheriff at any time and where a certain offence is alleged, the sheriff may find any other offence established by the facts

Dispensing with evidence

The sheriff may:-

- decide a proof application without hearing evidence if the section 67 grounds are no longer in dispute,
- follow an expedited procedure for applications in relation to grounds not understood.

Withdrawing the application

The reporter must withdraw the application if no section 67 grounds apply in relation to the child. The reporter may withdraw the application in whole or in part in other circumstances. If other grounds were accepted at the grounds hearing, the reporter must arrange a hearing to decide whether to make a CSO (or review an existing CSO).

If the child is capable of forming their own views on the matter, the reporter is to give them the opportunity to give their views (unless they are already known) before deciding to withdraw an application in whole where:

- no other ground was accepted at the grounds hearing, and
- the reason for withdrawal is not because of insufficient evidence[2].

Determination of application/direction to the reporter

The reporter may only arrange a children's hearing to decide whether to make or review a CSO if the sheriff has directed this[3]. The sheriff must direct the reporter to do so if:-

- the sheriff decides one or more grounds are established; or
- the sheriff decides no grounds are established but one or more other grounds were accepted at the grounds hearing.

[2] The reporter has a duty to withdraw an application if they consider any ground to which the application relates no longer applies (section 107).
[3] Unless the application has been withdrawn in whole and another ground was accepted at the children's hearing

The reporter must move the sheriff to direct the reporter to arrange a hearing and remind the sheriff of any accepted grounds.

In any other case, the sheriff must dismiss the application and discharge the referral to the hearing.

ICSOs – During proof applications

During a proof application, the reporter can apply to the sheriff for an extension (with or without variation) to the ICSO. An application for extension can be made only during the currency of the 3rd hearing ICSO. The reporter can apply for further extensions/variations. There are statutory forms for this.

The reporter is to ensure that the implementation authority is aware of the hearing of the ICSO application by the sheriff. In addition, in some situations, the reporter is to facilitate the participation of anyone who has (i) established family life and an ongoing relationship with the child and (ii) sufficient age and maturity to participate in the proceedings.

If there is no ICSO in place, the sheriff has power to issue an ICSO. If a child's circumstances require it, the reporter is to remind sheriffs of this power (by making a motion to that effect). To grant an ICSO when there is no ICSO currently in place, the sheriff must be satisfied that it is necessary as a matter of urgency that an ICSO be made. The reporter may apply for an extension of an ICSO issued by the sheriff.

Interim orders on determination of proof applications

On determination of an application (or on withdrawal of an application in whole where no other grounds were accepted at a hearing), any ICSO/interim variation of CSO (whether issued by a hearing or the sheriff) in force terminates. If the sheriff directs the reporter to arrange a children's hearing, the sheriff can make an ICSO/interim variation. There is no express power for the reporter to apply. The reporter must be prepared to draw the sheriff's attention to this power by making a motion to that effect.

If the sheriff is directing the reporter to arrange a hearing and at the same time issues an ICSO or interim variation specifying that the child is to live at a place of safety but not at a named place, the reporter must arrange the hearing within 3 days of the child moving to the place of safety.

Warrants to secure a child's attendance

If a child's attendance has not been excused, the sheriff may grant a warrant to secure attendance if:-

- the child has failed to attend the proof hearing, or
- the hearing is to be continued to another day and the sheriff is satisfied that there is reason to believe that the child will not attend on a later date.

The warrant will last for a maximum period of 14 days beginning with the day the child is first detained under the warrant but will expire sooner if the proceedings or continued hearing before the sheriff takes place.

The sheriff can issue a warrant to secure the child's attendance at the children's hearing.

Other Relevant Practice Directions:
Practice Direction 7 on Statement of Grounds
Practice Direction 15 on Grounds Hearings
Practice Direction 19 on Orders and Measures

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1. Introduction

1.1 This Direction relates to applications for proof, ICSOs and interim variations to a CSO made by a sheriff and warrants to secure attendance issued by sheriffs.

1.2 The general considerations which apply when children's hearings and the courts exercise their functions under the 2011 Act are set out in Sections 25 to 31. Those most relevant to the role of the Sheriff in proof applications are as follows:

- Section 25, the court is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the paramount consideration.

- Section 26, a court may make a decision inconsistent with s.25 if it considers that to do so is necessary to protect members of the public from harm, but if so, the court is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the primary rather than the paramount consideration.

- Section 27, so far as practicable and taking account of the age and maturity of the child (a child aged 12 or over is presumed to be of sufficient age and maturity to form a view for these purposes), the sheriff must (i) give the child an opportunity to indicate whether to express a view, (ii) if so, give the child an opportunity to express a view, and (iii) to have regard to any views expressed by the child.

- Section 29, the sheriff may make, vary, continue, or extend an order or interim variation or grant a warrant only if the sheriff considers that it would be better for the child if the order, interim variation or warrant were in force than not.

More specifically, these considerations apply as follows:-

- s.25 and s.26 applies to all decisions;
- s.27 applies to all decisions except where the sheriff is deciding whether to make a CPO in relation to a child.
- s.29 applies when sheriff is considering:-

    1. making a child assessment order;
    2. making or varying a CPO;
    3. making an ICSO/interim variation of CSO, or extending or varying an ICSO under s98/99, or granting a warrant to secure attendance; and
    4. following an appeal, varying or continuing a CSO, making or varying an ICSO/interim variation of CSO, varying a medical examination order, or granting a warrant to secure attendance.

1.3 The role of the reporter and general principles in court applications can be summarised[4] as:-

- To promote the principles of (i) the welfare of the child and, where applicable, (ii) the views of the child and (iii) not making an order unless better than no order (sections 25, 26, 27, 29).
- To always act fairly.
- To have knowledge of all relevant procedures and rules, be proficient in applying them and bring them to the attention of the court even if not favourable to the reporter's case.
- To prepare and be in a position to proceed and not the cause of delay.
- To promote expeditious case management by the sheriff.
- To ensure witnesses are appropriately informed and supported at an early stage and throughout the proceedings.
- To present the case with thoroughness and skill.
- To make relevant submissions even where the sheriff appears to be unwilling to be persuaded on the point at issue.
- In a proof, where there is sufficient evidence for there to be a realistic prospect that a supporting fact or the section 67 ground will be established, to seek to establish the fact or ground rather than withdraw the fact or ground, unless:
  - leading evidence would be disproportionate to the benefit for the children's hearing's consideration of the case if the fact or ground were established
    OR
  - the assessment of the child's circumstances has changed and there is no longer a need for a CSO or consideration of the ground by a hearing.

2. Proof Applications – Process

2.1 A proof application may be made under:

- section 93(2)(a); ground not accepted by the child or a relevant person
- section 94(2)(a); lack of understanding by the child or a relevant person
- both 93(2)(a) and 94(2)(a)

See Practice Direction 15 on Grounds Hearings

2.2 An application for proof is made using Form 60 - Court Forms. Form 60 is a statutory form and the reporter must not amend this other than as noted in this paragraph and paragraph 2.3 below. The applicant on the Form 60 is to be the Principal Reporter.

The statement of grounds attached to the application is to be unmarked.

[4] This is taken from the Court Work Principles in Appendix 1 of Practice Direction 1.

The reporter is to apply the following approaches to determining what statements of grounds to attach to the application.[5]

Statement of grounds with one ground
Where a statement of grounds contains only one section 67 ground, and the hearing directs a proof application in relation to it, the application relates to the entirety of the statement of grounds. The reporter is to attach the complete statement of grounds to the proof application.

This applies to any ground, including 67(2)(j) and any ground involving an offence against a child. Therefore, where there is more than one offence specified in the supporting facts, the application will relate to all of the offences including any accepted at the children's hearing.

Statement of grounds with more than one ground
Where the reporter uses a single statement for more than one section 67 ground, and the hearing directs a proof application in relation to all the grounds, the reporter is to attach the complete statement of grounds to the application.

If the hearing directs a proof application in relation to only one (or some) of the section 67 grounds[6], the application will only relate to the ground(s) and the related supporting facts that were not accepted (or not understood). The statement of grounds is to be retyped so that only the non-accepted (or not understood) section 67 ground(s) and the related supporting facts are in the statement attached to the application.

More than statement of grounds
Each statement of grounds is a stand-alone document and the reporter is to apply the relevant approach for each statement, in line with the above. This is the case whether a statement has a different ground, to other statements, or has the same ground (most likely section 67(2)(j)). The reporter is to attach only the non-accepted (or not understood) statement of grounds to the application, with retyping of a statement which contains more than one ground if required in line with the above.

The reporter is to set out in the Form 60 any not accepted facts[7]. This is to assist the sheriff's initial management of the case.

The Form 60 proof application requires the reporter to:-

- include the names and roles of witnesses,
- include information about whether an ICSO is in place or not;
- provide reasons for dispensing with service on child or any other person (if applicable), and

[5] An accepted ground and supporting facts include those where the hearing decided under section 90(1B) to proceed on the basis of only the supporting facts that were accepted.
[6] This will be where one (or more) ground and related supporting facts are accepted and another ground (or grounds) and related supporting facts are not accepted.
[7] This is not a statutory requirement, but is based on our view of best practice to assist sheriffs in their management of cases.

- provide a reason for removing the child's obligation to attend (if applicable).

2.3 The reporter is to amend Form 60 (statutory form of application of proof) in line with the following, where appropriate.

- If other section 67 grounds were accepted at the hearing, the reporter is to add a sentence to the statutory application saying "Another/other section 67 ground(s) was/were accepted at the hearing".

- The reporter is to state the address of all relevant persons (whether there is a non-disclosure provision in place or not) as c/o the Principal Reporter. If that is not acceptable to the sheriff (as the Form 60 requires the addresses to be stated), then the reporter can seek a non-disclosure order from the sheriff, and can contact the Practice Team.

- Form 60 does not have space to record the name and status of relevant persons who have not attended a grounds hearing.

  Therefore, if relevant persons have not attended a grounds hearing, the reporter is to amend paragraph 5.a. to include information about non-attendance. The reporter is not to state that the non-attendance amounts to a non-acceptance of the section 67 ground(s).

  For example, if no relevant person attended, Para 5.a. should read:

  The said [*insert name, c/o the Principal Reporter, and status of the relevant person or persons (within the meaning of Rule 3.1(1))*] did not attend the children's hearing."

- Paragraph 6 of Form 60 does not refer to an application directed under section 94 where the hearing is satisfied that either a child or relevant person would not be capable of understanding or has not understood the explanation in relation to a section 67 ground. Paragraph 6 only refers to an application directed on the basis of non-acceptance.

  Therefore, if the hearing has directed the reporter to make an application under section 94, the reporter is to amend paragraph 6 of the statutory form accordingly.

  For example, where the grounds hearing is satisfied that the child would not be capable of understanding an explanation of the section 67 ground(s), and the parents did not accept the section 67 grounds at the hearing, paragraph 6 is to state:-

  "The Principal Reporter applies to the sheriff to determine whether the section 67 ground(s) not accepted by the said [*insert name of relevant person or persons (within the meaning of Rule 3.1(1))*] and which the

said [name of child] is incapable of understanding or has not understood are established."

- The Form 60 must state whether an ICSO is in force, and if so, must specify the details of the order. Where the ICSO requires the child to reside in a specified place and includes a non-disclosure measure, the reporter is to describe the residence measure as, "a measure that the child is to reside in a specified place (details of the place are not stated here as there is a non-disclosure measure). The reporter will provide the sheriff with details if requested."

2.4 The reporter must lodge the proof application with the court within a period of 7 days beginning with the date of the grounds hearing[8]. Rule 3.45. See Appendix 2, "Timescales".

2.5 Where the hearing has appointed a safeguarder, the reporter must intimate that appointment to the clerk and lodge with the application any report made by the safeguarder. Rule 3.45(2) and see Form 60.

2.6 When the application is lodged, the clerk must "forthwith" assign a date for the hearing of the application. The clerk notifies the reporter of this date by returning Form 33, which is the warrant to cite the child, to give notice/intimate to relevant persons and safeguarder, and the warrant to cite witnesses (referred to as "warrant to cite"). This form will also give notice to the reporter of the date and time of any "procedural hearing" arranged under Rules 3.45(4)-(7) see Section 8 - Proof Application – Withdrawal of application. Rule 3.11. See Appendix 2 "Timescales".

2.7 A proof application must be heard not later than 28 days after the application is lodged (s.101(2)). See Appendix 2 "Timescales". The sheriff is not required to make the determination within the 28 day period, and the case may be adjourned to a later date, Rule 3.49[9]. There are provisions for determination of the application within 7 days if the expedited procedure is used – See Section 7 - Expedited Procedure.

[8] If not lodged within 7 days, the reporter is to contact the Practice Team as we have been able to successfully argue, based on the case of R v Soneji [2006] 1 AC 340 that the sheriff deal with the application despite the late lodging, if no party is prejudiced. Locality Reporter Manger, Livingston v CM 2021 SLT (Sh Ct) 259 is the one reported example of such a decision.

[9] If the proof application is not heard within 28 days, the reporter is to contact the Practice Team. However, in light of H v Mearns 1974 SLT 184, 1974 SC 152, S v McGregor, Court of Session, 8 July 1980, Unreported, and M v Templeton, Court of Session, 29 October 2013, it is very unlikely that there is any discretion to continue with the application where the 28 timescale is breached.

3. Proof Applications – Where the Application Should be Sent and Transfer of Applications

3.1 For non-offence grounds, the reporter is to lodge the application with the sheriff clerk of the sheriff court district in which the child is habitually resident[10].If the child is not habitually resident in any sheriff court district (e.g. as the child is habitually resident abroad), the reporter is to lodge the application with the sheriff clerk for the district in the relevant local authority for the child[11].

3.2 For offence grounds under section 67(2)(j), the reporter is to lodge the application with the sheriff who would have jurisdiction if the child were being prosecuted for the offence (S102(2)). Territorial jurisdiction is set out in the Criminal Procedure (Scotland) Act 1995 (sections 4, 9, 9A, 10 and 10A).[12]

3.3 On cause shown, the sheriff may remit any application (offence, or non-offence) to another sheriff court. Rule 3.45(1B). Therefore, after lodging the application in a particular sheriff court, the reporter may move the sheriff to remit the application to another sheriff court (even in another sheriffdom), provided the reporter is able to give the sheriff a good reason to do so. Examples of when this might be appropriate are where the family has moved to a different area, or where it might be appropriate to conjoin applications initially lodged in different sheriff courts.

4. Proof Applications – Service, Attendance and Representation

4.1 See Appendix 1 for details of timescales for effecting citation or notice (Rule 3.13), methods of serving such citation or notice (Rule 3.15), and the persons who may effect such service (Rule 3.16). These provisions apply to citation or notice of any court applications except where there are other specific provisions.

4.2 The reporter must "forthwith" serve a copy of the application and the warrant to cite on the following persons:-

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[10] See Norrie's 'Parent and Child' (at pages 361 – 363) where 'habitual residence' is discussed. Habitual residence does not have a special meaning but is understood according to the ordinary and natural meaning of the words. It is a residence that is being enjoyed voluntarily for the time being and with the settled intention that it should continue for some time, although it need not be intended to be permanent or indefinite: it is sufficient if there is an intention to reside for an appreciable period. It is question of fact to be decided by reference to all the circumstances of any particular case. In the case of a child who can form no intention of his or her own, the child's habitual residence is the residence chosen for him or her by his or her parents.

[11] See Principal Reporter v LZ 2017 SLT 961. The "relevant local authority" is as defined by section 201 of the 2011 Act:(a) the local authority in whose area the child predominantly resides, or (b) where the child does not predominantly reside in the area of a particular local authority, the local authority with which the child has the closest connection.Also see Appendix 3 of Practice Direction 5 for direction about the circumstances in which the reporter may arrange a children's hearing for a child who is habitually resident abroad.

[12] (See also Walker v C (No 1) 2003 SLT (Sh Ct) 31, Walker v C (No 2) 2003 SLT 293)

- the child (unless service on the child has been dispensed with) together with a citation of the child in Form 31 (or Form 31A if a procedural hearing has been fixed). Rule 3.4
- each relevant person together with a notice in Form 39 (or Form 39A if a procedural hearing has been fixed). Rule 3.12(1)
- any safeguarder (including a safeguarder appointed by a hearing whose appointment has not otherwise terminated[13]) together with a notice in Form 40. Rule 3.12(2)

4.3 The child to whom the application relates has an obligation to attend the hearing unless excused from doing so, s.103(2). The sheriff may excuse the child from attending the hearing in the circumstances set out in s.103(3). Where a sheriff excuses a child from attending all or part of a hearing under s.103(3), any safeguarder or *curator ad litem* for the child, any relevant person and the child's representative must be permitted to remain during the absence of the child. Rule 3.47(5).

The child has an unqualified right to attend the hearing, even if excused, s.103(4). If a child has not been excused from attending, the sheriff may grant a warrant to secure attendance. (See Section 13 - Warrants to Secure Attendance).

4.4 However, until 30 November 2024[14] the requirement to physically attend various court hearings has been removed. The default position is that the person attends virtually, unless the court directs otherwise[15]. The exceptions to this include a hearing at which evidence is to be given (e.g. the proof itself).

Where the sheriff has not excused the child, the child will be required to attend any procedural calling virtually, unless the sheriff directs that the child is to attend physically. The sheriff may direct the child to attend physically only if they consider that allowing the child to attend virtually would:

- prejudice the fairness of the proceedings, or
- otherwise be contrary to the interests of justice.

Where the sheriff has not excused the child, the child will be required to attend any evidential callin g physically unless the sheriff directs that the child is to attend virtually. The same applies to any witness cited to give evidence. The sheriff may direct that the child or witness attend virtually if they consider that doing so would not:

- prejudice the fairness of the proceedings, or
- otherwise be contrary to the interests of justice.

[13] The Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012
[14] This date may be varied by regulation.
[15] This is by virtue of section 52 and paragraphs 6 and 8 of the schedule to the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Paragraph 6 applies to, amongst other things, callings of proof applications.

The default position of being required to attend virtually is "in accordance with a direction issued by the court or tribunal". Where the sheriff has issued such a direction that the child attend virtually and then the child does not attend, this is regarded as having failed to comply with a requirement to attend[16]. This may be relevant to consideration of the need for a warrant to secure attendance (see section 15 below).

Where service on the child has not been dispensed with by the sheriff, the reporter is to amend the form 31 to make clear whether the child is required to attend virtually or physically.

4.5 The sheriff may dispense with service on the child where the sheriff is satisfied, so far as practicable and taking account of the age and maturity of the child, that it would be inappropriate to order service on the child. Rule 3.3. Dispensing with service means in practice that the child cannot exercise the right of attendance, nor will the child be informed of their right to give views to the sheriff. It is hoped that a sheriff will only dispense with service where the child would be unable to understand and participate in the proceedings.

4.6 If applicable, the reporter must include reasons for dispensing with attendance of or service on the child in the application. If seeking dispensation from service, the reporter is to flag up that service will also inform the child of their right to give views to the sheriff as the sheriff may wish to take this into account before determining whether service is to be made. The reporter is not to seek dispensation from service where it is known that the sheriff would likely consider dispensation to be inappropriate because of the child's article 12 rights.

4.7 The sheriff may on application by the reporter, or of his own motion, order that a specified part of the application is not served on the child, Rule 3.4(2). When lodging an application, the reporter is to indicate if they think that a particular part of the application should not be served on the child.

4.8 There is no statutory requirement for a relevant person to attend court, though there may be obvious practical difficulties if the relevant person does not attend.

4.9 If a relevant person does attend, the sheriff may exclude any person including a relevant person, while <u>any</u> child is giving evidence. The sheriff may do so if the criteria in rule 3.47(6) are met in relation to that child, namely that it is necessary in the interests of the child and that:

- the sheriff must do so in order to obtain the evidence of the child; or
- the presence of the person or persons is causing, or is likely to cause, significant distress to the child.

[16] Paragraph 8(1) and (2) of the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

Where a relevant person is not legally represented at the hearing and has been excluded under Rule 3.47(6), the sheriff must inform that relevant person of the substance of any evidence given by the child and must give that relevant person an opportunity to respond by leading evidence or otherwise. Rule 3.47(7).

4.10 The sheriff may dispense with service on any named person, on cause shown. Rule 3.18

4.11 If required to prove to the sheriff that service has been properly made, the reporter may lodge at the hearing:-

- a certificate of execution of service in Form 43; and
- in the case of postal service, a receipt (which could take the form of a post office book) of the registered or recorded delivery letter, (Rule 3.17)

4.12 If the hearing before the sheriff is continued to a later date, there is no need for the reporter to give any further notice to any child, or relevant person who was present or represented before the sheriff, and who will therefore know about the date of the continued hearing.

However, where a child (whose attendance has not been dispensed with) or relevant person was neither present nor represented, the reporter must notify the child and the relevant person of the date for the continued proof. The reporter must use any of the modes of service specified in Appendix 1 (usually first class recorded delivery post), and must allow at least the minimum period of notice set out in Rule 3.13 (usually posting a letter four clear days before the hearing diet see Appendix 1).

As the child is obliged to attend the proof hearing (unless excused) and there are possible consequences if they do not attend, the reporter must use the Form 31 to cite the child to the continued proof. The authority to cite the child comes from the Form 33 (the warrant to cite) and from an interlocutor fixing a date for a continued proof.

Note that there is no specific form for notifying a relevant person of a continued proof. The reporter is simply to send any relevant person a letter informing them of the new date and time, as there is no specific court form for this. However, fair and proper notice, and proof of the same is essential for the reasons set out below (see 4.12).

There is no formal requirement to notify a safeguarder of a continued hearing.

4.13 Unless service has been fairly and properly made, and the reporter is in a position to provide evidence of that, the reporter is not to move the court to make any substantive decision in relation to a proof application, but instead is to seek an adjournment so that service can be effected fairly and properly. There may be exceptions to this where it would not be

unfair to a party for the sheriff to make a substantive decision such as if the child/relevant person attends court and waives his/her right to proper service. However, these situations are likely to be rare. There may be serious consequences for a proof if service has not been effected properly or the reporter cannot provide evidence of this; the proof may be delayed or the absence of proof of citation may form the basis of an appeal.

4.14 A child and relevant person may be represented at the proof by another person and that person need not be a solicitor or advocate. (s.104). In effect, the child or relevant person may be represented by a lay person or by a solicitor and/or advocate.

4.15 Rule 3.21 sets out provisions for lay representatives. A lay representative must satisfy the sheriff throughout the proceedings that he is a suitable person to represent the party and that he is authorised to do so.

4.16 A sheriff has common law powers to appoint a curator ad litem for an adult (where they lack mental capacity) in civil proceedings. (See the published response to a case practice enquiry on page 34 below.)

5. Proof Applications – Management

5.1 In relation to any ground which is in dispute, the sheriff is required to hear evidence tendered by or on behalf of the reporter. Rule 3.47(1) However, this does not mean that the sheriff must hear any evidence that the reporter wants to lead. Any evidence must be admissible, with the relevance of the evidence being a particular requirement. In addition, by virtue of Rule 3.46A (see below), the sheriff may exclude even admissible evidence if they have good reason to do so[17].

5.2 Prior to or at a "hearing on evidence", or adjournment or continuation, (see below), the sheriff may order parties to take such steps as the sheriff deems necessary to secure the expeditious determination of the application, including but not limited to:

- Instructing a single expert;
- Using affidavits;
- Restricting the issues for proof
- Restricting witnesses
- Applying for evidence to be taken by live link[18] in accordance with rule 3.22.
  (Rule 3.46A)

[17] JS v Children's Reporter 2017 SC 31 at paragraph 25.

[18] This simply introduces a specific rule which allows the reporter to take evidence from a witness who is not a vulnerable witness by live link. This could be used for example where a busy professional witness in another jurisdiction is unwilling or unable to attend court in Scotland. Previously reporters had to argue to "borrow" a similar provision from the Ordinary Cause Rules.

5.3 The Sheriffs Principal of Glasgow and Strathkelvin and Lothian and Borders have issued Practice Notes in relation to children's referrals[19].

5.4 Although Rule 3.46A refers to affidavits and not signed witness statements, the use of signed witness statements is competent[20]. In addition, when spoken to by a witness when giving evidence, a signed witness statement has the same evidential value as an affidavit. If the sheriff raises the issue of evidence being led by way of affidavit, the reporter is to promote the use of signed witness statements[21]. Further information on the use and preparation of signed witness statements is in the Practice Note on Signed Witness Statements.

5.5 The reporter's role includes the speedy determination of proof applications. It is therefore incumbent on the reporter to use all of the available means to do so. This includes:

- Compliance with Practice Direction 34 on Disclosure of Evidence by Reporters in Children's Hearing Proof Proceedings. Early and proactive disclosure reduces delay.
- Proactively seeking agreement where possible thus reducing the scope of the proof.
- Calling such witnesses as are necessary to establish the section 67 ground to the applicable standard of proof and using court time for witnesses efficiently.
- Only use independent expert evidence when necessary.
- Proactively consider the use of signed witness statements.

5.6 At the close of evidence for the reporter in s.67(2)(j) grounds (alleged offence by child), the sheriff will consider whether sufficient evidence has been led to establish that ground. The sheriff will give all parties an opportunity to be heard on the sufficiency of evidence. Where the sheriff is not satisfied that sufficient evidence has been led, s/he will make a finding to that effect (Rule 3.47(2) and (3)). This provision is similar to the "no case to answer" in criminal proceedings. This does not apply in proofs in relation to grounds other than s.67(2)(j) grounds. This can be raised by the parties, or can be considered by the sheriff on his own initiative.

5.7 Where the sheriff has considered sufficient evidence has been led in relation to a s.67(2)(j) ground or any other section 67 ground is in dispute, the child, relevant person and safeguarder may give evidence.

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[19] Practice Note of the Sheriff Principal of Glasgow and Strathkelvin – Number 2 of 2021 Children's Referrals under the Children's Hearings (Scotland) Act 2021
Practice Note of the Sheriff Principal of Lothian and Borders – Number 2 of 2018 Children's Referrals

[20] B v Principal Reporter 2022 SCLR 173 at paragraph 37.

[21] The reason for this is a practical one: reporters conducting proceedings on behalf of the Principal Reporter do not have to be, and often are not, solicitors. Many reporters are therefore often unable to notarise documents themselves. When spoken to by a witness when giving evidence, a signed witness statement has the same evidential value as an affidavit. Therefore, a requirement that an affidavit is obtained creates unnecessary additional difficulties in practice and results in the unnecessary expenditure of public funds in instructing a solicitor to notarise the document.

They may also call witnesses with regard to the ground in question, but require the approval of the sheriff to do so. Rule 3.47(4A)

5.8 All documents which are lodged are available only to the sheriff, the reporter, the safeguarder, any *curator ad litem*, and the parties. All parties must keep these documents confidential, unless the sheriff directs otherwise. Rule 3.5A. This Rule simply formalises what is already the position, namely that lodged documents are confidential. However, this does not change the way that a reporter is entitled, subject to any relevant statutory provisions (such as Data Protection) and duties of confidentiality, to handle documents in his/her possession.

5.9 The sheriff may at any time, on the application of any party or of his own motion, allow amendment of any statement of grounds[22]. Rule 3.48. The sheriff's power extends to the amendment of the section 67 ground. However, the principles which applied to drafting the statement of grounds continue to apply Practice Direction 7 on Statement of Grounds. The reporter is only to request amendment of the section 67 ground in exceptional circumstances, following consultation with a senior practitioner or LRM. The reporter is only to seek to amend the statement of grounds by adding a section 67 ground in extremely exceptional circumstances, again following consultation with a senior practitioner or LRM. Generally, it is more appropriate for the reporter to arrange a new grounds hearing in circumstances where an additional section 67 ground is identified.

5.10 If possible, in line with the principle of fair notice and certainty as to what is being alleged, the reporter is to make a motion to amend the statement of grounds prior to evidence being led. If that is not possible, the reporter may move to amend the grounds even at the stage of making submissions. However, the sheriff must allow other parties the opportunity to make submissions in relation to the amendments, and that may lead to them seeking to re-open the proof with a view to leading evidence in rebuttal of the facts in the amendments[23].

5.11 Where an offence is alleged in a statement of grounds, the sheriff may determine any other offence established by the facts has been committed. Rule 3.50.

5.12 The situation may arise where there are previously established grounds that state that a relevant person of the currently referred child committed a schedule 1 offence. Where that person was not a relevant person in relation to the original child and therefore was not a party to the previous proceedings, the reporter is not to seek to rely on the interlocutor from the previous proceedings as evidence in the current proceedings. To do so would give rise to an unfairness. Instead, the reporter is to rely on

[22] However, the sheriff must allow the contradictor an opportunity to make submissions about any proposed amendment to the supporting facts. See TC v Authority Reporter, 3 June 2014, unreported, available on Scottish Courts service website.
[23] See H v Children's Reporter [2016] SC GLA 18

evidence other than the interlocutor (in many cases this will involve the reporter relying on the same evidence that was relied upon in the previous proceedings).

5.13 Where a statement of grounds names someone as the perpetrator of an offence, and that person is neither the child nor a relevant person, there may be circumstances where the proof application may engage that person's article 8 rights[24]. If that person seeks to become involved in the proof proceedings, the sheriff will require to consider whether that person requires a proportionate degree of participation in order to ensure compatibility with article 8, natural justice and fairness. The sheriff will also require to consider whether, in the absence of any clear statutory route, there is a means to enable any participation that is required. The reporter is to contact the Practice Team if such a person seeks to become involved in the proof.

5.14 Although the position is not clear, it may be possible to rely on facts found in a judgment in other civil proceedings[25]. The reporter is to contact the Practice Team if considering doing so.

5.15 A person who accepts the ground or particular supporting facts at the grounds hearing is entitled to withdraw that acceptance during proof proceedings.[26]

6. Proof Applications – Dispensing with Evidence

6.1 The sheriff may determine the application without hearing evidence, if at a hearing on evidence (or any adjournment or continuation), the section 67 grounds (including any amendments) are no longer in dispute[27]. Rule 3.47(A1). This applies to all proof applications, whether under s.93, s.94, or both.

6.2 The reporter is to promote a broad interpretation of the phrase "no longer in dispute" to cover section 67 grounds in an application made only under section 94 due to the child's lack of understanding[28].

6.3 If an application is made under s.93(2)(a) alone, s.105 also applies and provides that the sheriff must dispense with hearing evidence and determine that the ground is established in the following circumstances:

- the ground and all supporting facts[29] is accepted by the child at the hearing before the sheriff, and

[24] For example, where the alleged perpetrator has established family life and an ongoing relationship with the referred child and has an interest in maintaining the relationship.
[25] Following the decision of the Court of Session in RG v Glasgow City Council 2020 SC 1.
[26] Kennedy v R's Curator ad litem, 1993 SLT 295
[27] It is thought that the sheriff would have to be satisfied that the grounds are no longer actively disputed, suggesting that relevant persons must either attend or be represented or otherwise indicate to the satisfaction of the sheriff that they do not dispute the grounds. This will be a matter for the sheriff.
[28] If such a broad interpretation is not adopted, there is no rule that would allow the sheriff to determine such an application without hearing evidence (other than the expedited procedure referred to in section 7 below).

- the ground and all supporting facts is accepted by each relevant person in relation to the child who is present at the hearing before the sheriff.
- Unless the sheriff is satisfied in all the circumstances that evidence in relation to the ground should be heard.

The wording used in section 105(1)(b) is "each relevant person in relation to the child who is present at the hearing before the sheriff". It would therefore be competent for the sheriff to dispense with hearing evidence even where no relevant person, or not all relevant persons, attends the hearing before the sheriff.

6.4 Section 106 can only apply where the sheriff has opted for the expedited procedure outlined below[30].

6.5 The reporter is to be alert to issues of fairness when considering moving the sheriff to find the ground established without hearing evidence.

6.6 In negotiating any amendment to the statement of grounds, the reporter is to apply the same principles as in relation to drafting grounds as set out in Practice Direction 7 on Statement of Grounds.

7. Expedited procedure

7.1 Rules 3.45(4)-(7) give the sheriff the option to follow an expedited procedure in relation to applications submitted under s.94(2)(a). The expedited procedure is as follows:-

- The sheriff may fix a "procedural hearing" to determine whether or not the section 67 grounds in the statement of grounds are accepted by each relevant person. Rule 3.45(4)
- Such a procedural hearing must take place before the expiry of the period of 7 days beginning with the day on which the application is lodged. Rule 3.45(5)
- The sheriff will order service and intimation of the procedural hearing as the sheriff thinks fit. Rule 3.45(6). Therefore, the sheriff may dispense with service on the child for this hearing. The sheriff will also order the manner of and timescale for service.
- Subsequent to the procedural hearing, the sheriff <u>may</u> discharge the hearing on evidence and determine the application, unless any of the following exceptions apply:-

  - At the procedural hearing, a relevant person does not accept the section 67 ground in the statement of grounds.

  or

[29] As originally stated in the application or as amended by virtue of Rule 3.48

[30] This is because s.106 results in circularity. S.106(2) gives the sheriff the power to determine the application *without a hearing*. However, for s.106 to apply at all, there has to be a hearing before the sheriff (s.106(1)(b)).

- The sheriff considers that it would not be appropriate to determine the application without a hearing.

or

- Any of the following persons request that a hearing be held:-
  - The child;
  - A relevant person in relation to the child;
  - A safeguarder (if one has been appointed);
  - The reporter

- A "hearing on evidence"[31] must take place in accordance with rule 3.47(rule 3.45(9)) if:

  - no such procedural hearing is held within the 7 day time period or
  - any of the exceptions apply, or
  - having had a procedural hearing the sheriff does not determine the application within the same 7 day period..

7.2 If the reporter decides that a hearing on evidence is appropriate, then to assist with case management, the reporter is to include the request for a hearing on evidence at the time of submitting the application. Examples of when a reporter might want to request a hearing on evidence are:

- Where it is likely that the reporter will be seeking to rely on the interlocutor as evidence for future referrals[32].
- Where the reporter is aware that service has not been properly effected.

7.3 Where the sheriff has determined the application following on from the procedural hearing, the sheriff shall make such orders for intimation as the sheriff thinks fit. Rule 3.45(8). This rule provides power to order intimation of the discharge of the hearing on evidence which will already have been fixed.

7.4 The expedited provisions result in some new terminology. The expedited hearing under rule 3.45 is a "procedural hearing". All other hearings of the application are classified in the rules as a "hearing on evidence". A "hearing on evidence" does not mean evidence needs to be led nor that parties be ready to lead evidence: hearings to deal with procedural matters (whatever local terminology is used eg procedural, notional or pre-proof hearings) can and should still take place. Indeed there may be more of a focus on this (see Section 5 – Proof Applications – Management).

7.5 In practice, the clerk will fix a hearing on evidence (within 28 days) at the start of process even if a procedural hearing (within 7 days) is also being fixed. The procedural hearing (if fixed) will be intimated to the reporter in Form 33, along with the date of the hearing on evidence. The hearing on

[31] Despite the terminology, the sheriff may determine the application without hearing evidence, if the grounds are no longer in dispute.
[32] See M v Constanda 1999 SLT 494 and McGregor v H 1983 SLT 626

evidence may later be discharged if the expedited procedure is followed and results in determination of the application. Rule 3.45(7)

8. Proof Application – Withdrawal of Application

8.1 If, before the application is determined, due to a change in circumstances, or information becoming available, the reporter no longer considers that any ground to which the application relates applies in relation to the child, the reporter must withdraw the application[33]. (S107(1) and (2)). The reporter must withdraw the application only if none of the grounds in the current application (including any amendments to the grounds) applies in relation to the child. The reporter's assessment of whether a ground applies in relation to a child is an assessment of the sufficiency of the evidence to support that ground.

8.2 An application may be withdrawn at the reporter's discretion in circumstances other than in s.107. Rule 3.46 provides that the reporter may at any time withdraw the application in whole or part. The reporter must do so by lodging a minute to that effect or by motion at the hearing. The reporter must intimate withdrawal to the child (unless service dispensed with), any relevant person and any safeguarder. Rule 3.46(2).

8.3 The reporter is to consult with the LRM regarding withdrawal of applications in whole or part unless the LRM has made clear to a reporter that such consultation is not necessary. Reference is made to the Casework Practice Scheme of Delegation. Reference is also made to Practice Direction 1 Appendix 1 paragraph 1.22 in relation to the presumption that the reporter will seek to establish a ground or fact and the criteria for overriding that presumption.

8.4 UNCRC article 12 requires that in certain circumstances the reporter give the child the opportunity to give their views (if not already known) on whether the reporter should withdraw the application. The circumstances are:

- the reporter is considering withdrawing the application in whole,
- the child is capable of forming their own view on the matter,
- no other ground was accepted at the grounds hearing, and
- withdrawal is not because of insufficient evidence.

The opportunity to provide views may be given in a range of ways including asking another person (verbally or in writing) to raise the matter with the child and support the child to give their views if the child wishes to do so. If the child has a representative in the proof proceedings, this should generally be the first option. Other options might include a safegurder, parent or carer (if no conflict), or the child's social worker.

[33] The wording of s.107(1)(b) is ambiguous. However, "any" can mean "every", and therefore it would appear the reporter is only obliged to withdraw the application if no ground applies in relation to the child. It is difficult to see why parliament would have intended otherwise.

Views can be sought verbally (eg discussion at court) or by writing. If the child would be able to understand the letter, the reporter may write to the child, and should always do so if the child cannot be given the opportunity to give their views through another route. A letter template is available for this.

8.5 If the reporter considered withdrawing an application in the above circumstances, the matter is to be recorded on CSAS, using the relevant tab on the Court Form. This includes whether the child was given a direct opportunity to provide their views; if not why not; whether their views were received; and if so how were they received.

8.6 If the child provides views, they are to be recorded. The reporter will require to inform the child of the reporter's decision, how they took the child's views into consideration and that the child can discuss the decision with the reporter.

8.7 If the reporter withdraws an application under section 107 and no other ground was accepted at the grounds hearing, any ICSO, interim variation of a CSO or warrant to secure attendance ceases to have effect, s.107(4) (for interim variation s107(4) with s118). Although not expressly stated in the rule, our view is that the position is the same if the reporter withdraws the application under rule 3.46.

8.8 If the reporter withdraws an application under section 107 and another ground was accepted at the grounds hearing that directed the proof application, the reporter must arrange a children's hearing to decide whether to make a CSO in relation to the child (s.107(3)). If the child is already subject to a CSO, the purpose of the hearing will be to review the CSO (s.118). Any ICSO or interim variation remains in force and is not terminated by the withdrawal of the proof application[34]. Although not expressly stated in the rule, our view is that the position is the same if the reporter withdraws the application under rule 3.46.

9. Determination of Application – Direction to the reporter

9.1 The sheriff must direct the reporter to arrange a hearing to decide whether to make (or review[35]) a CSO in relation to the child if:

- the sheriff determines that one or more grounds are established, s.108(4)(a) and s.108(2); or
- the sheriff determines that no grounds are established, but one or more other grounds were accepted at the hearing, s.108(4)(b) and s.108(2).

In any other case, the sheriff must dismiss the application and discharge the referral to the hearing, s.108(3).

[34] This is because section 107(4) (which makes clear that the ICSO or interim variation ceases to have effect) only applies where no ground was accepted at the grounds hearing.
[35] s.108 read with s.118

9.2 The reporter is to remind the sheriff about any accepted grounds at the conclusion of the proof as the reporter only has power to arrange a hearing if the sheriff has directed this[36] (unless there is another outstanding purpose such as a deferred review).

9.3 Where the sheriff is directing the reporter to arrange a hearing and makes an ICSO requiring the child to reside in a place of safety (which is not named), the reporter must arrange the hearing to take place no later than 3 days after the day on which the child begins to reside at the place of safety. See ICSO on determination, para 12.3 below.

9.4 The sheriff must give his or her decision in relation to determination of the application orally at the conclusion of the hearing. The sheriff may also issue a note of the reasons for the decision. If so, the sheriff must do this when giving the oral decision or within 7 days thereafter. The sheriff clerk must forthwith send a copy of the note to the child (unless service dispensed with), any relevant person, any safeguarder and curator ad litem, the reporter and any other person whom the sheriff may direct. Rule 3.51

9.5 The reporter may ask the sheriff to consider providing a note of the reasons for the decision. Examples of when the reporter would do so are if grounds are not established, or if a significant legal point was determined by the sheriff.

9.6 The reporter is to add to the established statement of grounds, below the SCRA logo, "Statement of grounds established at [NAME] Sheriff Court on [DATE]." This version of the established statement of grounds is to replace the original statement in the hearing papers. When notifying the subsequent children's hearing to the chief social work officer, the reporter is to send them a copy of this version of the established statement of grounds.

9.7 If the application is made in relation to a statement of grounds containing more than one ground, the sheriff should determine the application in relation to all of the grounds at the same time. As stated above (at paragraph 9.1), the sheriff's options in s.108 are to determine that one *or more* grounds are established or determine that no grounds are established. The reporter is to take the position that it is not open to the sheriff to make a direction under s.108 until the application as a whole is determined.

If the sheriff determines that one ground is established but continues consideration in relation to another matter, the reporter is generally not to arrange a hearing until the application as a whole has been determined. If the sheriff has made clear that they expect a children's hearing to be arranged, the reporter is to contact the Practice Team about the position

[36] If the sheriff fails to direct the reporter to arrange a hearing, the reporter is to contact the Practice Team.

to take. As the application as a whole has not been determined, then ongoing consideration of ICSOs should lie with the sheriff, and not the hearing.

9.8 If on determining a proof application, the sheriff issues a note of their decision, the reporter may send a copy to the local authority, provided that the information shared is relevant and proportionate (and a fair reflection of the judgement)[37]. There may also be issues of more general learning for the local authority (e.g. how the sheriff viewed differing opinions from expert witnesses). In these circumstances the reporter may share with the local authority an anonymised copy of the judgement or an extract of it. In doing so, the reporter is to ensure that the names and addresses of *all* individuals named within the judgement are removed. However, if the judgement is published on the Scottish Courts and Tribunal Service website, that version can be shared without restriction.

10. Interim Orders – During Proof Applications

Please see flowcharts in Appendices 4 and 5.

10.1 The presumption is that the reporter will make an ICSO application where the child is already subject to an ICSO and an ICSO application is competent. However, in exceptional circumstances it may be appropriate not to. Such a decision requires approval from a locality reporter manager or senior practitioner. A significant change of circumstances will almost certainly be required before such exceptional circumstances arise, and the reporter must consider that the test for an ICSO is not currently met.

10.2 It is thought that UNCRC article 12 does not apply to the reporter's decision whether to make an ICSO application. However, if the reporter is considering not making a competent application where the child is already subject to an ICSO, it is good practice to give a child who is capable of forming their own views on the matter an opportunity to give their views. This may be done in a range of ways including through another person (verbally or in writing), such as the child's representative, safeguarder, social worker, or relevant person/carer (if no conflict). Where the child has a legal representative in the proof proceedings, this should generally be the first option. If the child would be able to understand the letter, the reporter may write to the child, and should do so if the child cannot be given the opportunity to give their views through another route, provided the timescale for making the application permits this. If the reporter decides not to make the application, the reasons for doing so are to be recorded in the Additional Info tab on the Court Form.

[37] There is no express power for the reporter to share a copy of the note with the local authority. However, there is an implied power to provide information relevant to the local authority's assessment of the child's circumstances in order for it to provide a report for the children's hearing to consider the established grounds, or, if grounds were not established, in order for the local authority to understand why the grounds were not established and so inform its work with the child and family.

10.3 The reporter has express power in terms of s.98 to apply to the sheriff for an extension (and variation) to an ICSO where:

- a child is subject to a third ICSO issued by a hearing[38], or
- a child is subject to an ICSO made by the sheriff under section 100 (made by a sheriff where a child is not already subject to an ICSO issued by a hearing – see paragraph 10.6 below).

10.4 It is not competent for the reporter to apply to the sheriff prior to a hearing issuing a third ICSO (s.98(1)(b)(i) and s.96(4)).

10.5 The reporter must use Form 65C to make the application. Rule 3.64A(2) The applicant on the Form 65C is to be the Principal Reporter.

10.6 When making an ICSO application where there is a non-disclosure provision in place in relation to the child's or any relevant person's address, no address for that person is to be included in the application.[39]

10.7 When there is a current measure in the ICSO, the reporter is to include in the application the following description of the residence measure in the current ICSO: "a measure that the child is to reside in a specified place (details of the place are not stated here as there is a non-disclosure measure). The reporter will provide the sheriff with details if requested."[40]

10.8 The sheriff may hear the application at any time before expiry of the third hearing ICSO. The sheriff must be satisfied that the nature of the child's circumstances is such that it is necessary the current order be extended, or extended and varied, for the protection, guidance, treatment or control of the child. S98(4). An ICSO issued by a sheriff takes effect from the date of the sheriff's decision irrespective of when the third hearing ICSO would otherwise have ceased to have effect.

10.9 Where the sheriff has already granted an extension to an ICSO with or without variation under s98, the reporter can apply for further extension/variation of an ICSO, s99(1-3). The reporter must use Form 65D to make such an application. Rule 3.64A(3) Again, the sheriff must be satisfied that the nature of the child's circumstances is such that it is necessary the current order be extended/varied for the protection, guidance, treatment or control of the child. S99(4). Note there is no urgency aspect to the test in relation to extending or extending or varying an ICSO.

[38] Section 98 and section 96(4)
[39] This fits with the current functionality available on CSAS. It is hoped that this will be changed in future to allow for c/o the Principal Reporter addresses to be included in ICSO applications, as in proof applications.
[40] Where court hearing will be taking place virtually, this approach will require to be adapted.

10.10 In addition, where a child is not already subject to an ICSO or interim variation of CSO, a sheriff has the power to issue an ICSO/interim variation where a proof application has been made and is not determined. s100(1) (for interim variation read s.100 with s.118)

10.11 Neither the Act nor the Rules make express provision for the reporter to apply to the sheriff under s.100(1)[41]. The sheriff's power can be exercised without any application being made. However, if the reporter considers that the test in s.100(2) is met, the reporter is to make a motion to the sheriff to issue an ICSO or make an interim variation under s.100. The reporter is to record a decision to make such a motion to the sheriff on CSAS.

10.12 If the child has not been excused from the proof proceedings and has failed to attend, the reporter should consider seeking a warrant to secure attendance rather than supporting an ICSO under section 100. As with hearing warrants, a warrant to secure attendance is a lesser interference than a 22 day ICSO that requires the child to reside in a place of safety, as the matter will be brought back to the court in a shorter period.

10.13 Before granting an ICSO/interim variation under s.100, the sheriff must be satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO/interim variation is made. S.100(2)

10.14 Where the sheriff has granted an ICSO under s.100, the reporter may apply to the sheriff for an extension of the ICSO. The application for the first subsequent ICSO is under s.98, and the applications for further ICSOs are under s.99. See paragraphs 10.4 – 10.5 in relation to these applications.

10.15 Where the sheriff has granted an interim variation under s.100 there is no power for the sheriff to extend it (section 118 expressly states that sections 98 and 99 do not apply when a child is subject to a CSO and is the subject of a proof application). There is no specific provision for a hearing to consider a further interim variation in these circumstances. However it may be possible to arrange a review children's hearing which could consider making a further interim variation. This is consistent with the general approach of the Act whereby the children's hearing can continue to make interim variations when the statement of grounds is the subject of a proof application.

10.16 The circumstances in which the reporter may arrange a review children's hearing will depend on the purpose of the previous children's hearing:

- Where the previous children's hearing was carrying out a review of the CSO, as well as considering new grounds, and deferred a decision on the review, the reporter is to arrange the deferred hearing.

[41] Therefore there is no form of application nor are there any rules in relation to service

- Where the previous children's hearing was a grounds hearing only, the reporter can only arrange a review children's hearing if the implementation authority requires the review under section 131(2)(b) (unless the child or relevant person requires one or a review is required for some other purpose). Therefore, the reporter is to ask the implementation authority whether they would wish to require the review.

10.17 When the application contains a proposed measure with a named place of residence and a non-disclosure measure, the reporter is to ask the sheriff to include the full details of the place in the interlocutor.

11. Intimation of ICSO Applications

11.1 The reporter must forthwith intimate an application for an extension of an ICSO during proof on the child and each relevant person and such other persons as the sheriff determines and in such manner as the sheriff determines. Rule 3.64A(4) (See sections 12 and 13 regarding intimation to the implementation authority and others)

11.2 UNCRC article 12 applies to the sheriff's decision-making in the proceedings. The standard letters from the reporter that accompany the intimation include information that the child/relevant person may provide their views to the sheriff either direct or via the reporter. If seeking dispensation from service on the child, the reporter is to flag up that service of the application will also inform the child of their right to give views to the sheriff as the sheriff may wish to take this into account before determining whether service is to be made. The reporter is not to seek dispensation from service where it is known that the sheriff would likely consider dispensation to be inappropriate because of the child's article 12 rights. Where relevant, during the hearing of the ICSO application it may be of assistance to the court if the reporter explains that through intimation of the application the child was given the opportunity to provide their views.

11.3 Where the reporter is not applying formally for an ICSO but intends to make a motion to the sheriff to issue an ICSO, there is no provision in relation to intimating this on other parties. The reporter must be alert to issues of fairness to other parties in terms of intimation as well as the overriding duty to promote the welfare of the child.

11.4 If a sheriff makes an ICSO under s.100, or s.109 or following an appeal, the order will be in Form 65A. Rule 3.64A(1)

11.5 Where a sheriff grants an application for the extension or further extension of an ICSO, the interlocutor must state the terms of the extension/variation. Rule 3.64A(5).

11.6 The reporter is required forthwith to intimate the Form 65A or the interlocutor stating the terms of the extension/variation as follows:-

- on the child using Form 65B, unless service on the child has been dispensed with 3.64A(1) and (5);
- to the implementation authority (using Form 65E or alternatively providing the authority with a copy of the sheriff's interlocutor and any note from the sheriff); and
- on such other persons as the sheriff determines (using Form 65E), 3.64A(6).

The requirement to intimate the extension/variation to the implementation authority always applies regardless of whether the sheriff requires any other person to be intimated.

12. Intimation of ICSO applications to the implementation authority

12.1 The reporter is to ensure that the implementation authority is aware of the hearing of the ICSO application by the sheriff. This is to be done by sending the communication at appendix 3 to the implementation authority (whether by email or letter), attaching a copy of the application and the 'warrant to cite'.

The reporter is to do this regardless of whether or not the sheriff has ordered intimation on the implementation authority under rule 3.64A

12.2 In addition the reporter is to:

- Invite the implementation authority to provide written information which the reporter will provide to the sheriff. (This is separate from the usual 'informal' information the reporter may have obtained as part of drafting the application, or may want to obtain before the hearing of the application, in order to help the reporter determine their position. The reporter may continue to obtain 'informal' information in their usual way, and/or may combine with the invitation to provide written information for consideration by the sheriff.)
- Inform the implementation authority it may seek to make direct oral representations to the sheriff, and if it wishes to do so it should contact the sheriff clerk.

12.3 If the implementation authority provides written information for consideration by the sheriff, the reporter is to provide a copy to other parties where practicable.

12.4 If the implementation authority does seek to make direct representations to the sheriff, the reporter is not to oppose this. The issue of direct representations is entirely for the sheriff.

13. Participation of participation individuals and others with established family life in ICSO applications

13.1 In a court application for an ICSO the reporter is to facilitate the participation of anyone who has (i) established family life and an ongoing

relationship with the child and (ii) sufficient age and maturity to participate in the proceedings where:

- the sheriff is likely to consider including a contact direction about them in the ICSO where there is no existing contact direction about them or to making a different contact direction, or
- the person has made clear[42] that they want the sheriff to consider their contact with the child[43].

This will include people who have had participation rights in the children'shearings that made the previous ICSOs[44].

13.2 In order to facilitate their participation, the reporter is to:

- Tell the person in writing of the application and the calling date.
- Provide the person with the details of the contact direction being sought and any supporting information in the application, or provided subsequently to the court, relating to that.
- Invite the person to provide written submissions which the reporter will make available to the court.
- Tell the person in writing the outcome of the application relating to their contact including any verbal or written reasons provided by the sheriff.

The reporter may inform the individual that they may choose to provide written submissions direct to the court rather than via the reporter and to seek an opportunity to make oral submissions.

13.3 It is open to the sheriff to order formal intimation of the ICSO application on an individual (Form 65B), to order the reporter to provide information to the individual in advance of the hearing of the application and to order formal intimation of any ICSO made, varied or extended by the sheriff (Form 65E). It is thought such orders will rarely be necessary, but the reporter's position if they are raised will depend on the particular circumstances of the case.

13.4 If in any particular case the reporter considers that more extensive action by the reporter would be appropriate to facilitate a person's participation in an application for an ICSO, the reporter is to contact the Practice Team.

14. Interim Orders on Determination of Application

14.1 Any ICSO or interim variation of a CSO automatically terminates when the sheriff determines the proof application (S86(1) and s86(3)(b) or s140(1) and s140(4)(b)).

[42] This should be in writing if there is sufficient time.
[43] This may include a sibling who does not meet the participation criteria, for example because they have never lived with the child.
[44] Participation individuals only have participation rights in relation to certain children's hearings, and have no rights in relation to the application to the sheriff.

14.2 If the sheriff has directed the reporter to arrange a children's hearing, s/he has power under s109 to make an ICSO or interim variation. References to ICSO in s.109 must be read as interim variation of CSO where a CSO is in place, s.118.

14.3 If the sheriff has not directed the reporter to arrange a children's hearing, there is no power to make an ICSO or interim variation[45].

14.4 If the sheriff makes an ICSO/interim variation, specifying that the child reside at a place of safety but not naming the place, the reporter must arrange the children's hearing to take place no later than the 3rd day after the day on which the child begins to reside at the place of safety. S109(7). In practice, a child is likely to move to the place of safety immediately. So, for an ICSO or interim variation issued on a Friday, the hearing must be held no later than the following Monday. However, if the ICSO/interim variation is made on a Friday, and the child does not move to the place of safety until Monday following, the hearing must take place no later than Thursday.

14.5 If the sheriff makes an ICSO/interim variation that names the place where the child is to reside, the reporter must arrange the children's hearing to take place at some time before the expiry of the ICSO/interim variation. This will normally be 22 days but may be less if specified in the order by the sheriff.

14.6 There is no specific power for the reporter to apply for an ICSO/interim variation on conclusion of the proof. The reporter must be prepared to make a motion asking the sheriff to exercise the power under s.109 There is no provision for intimation to other parties. The reporter must be alert to issues of fairness to other parties in terms of intimation of intention as well as the overriding duty to promote the welfare of the child.

14.7 If there is no ICSO/interim variation in place, the test for the sheriff is contained in s109(3) and includes an urgency aspect. The urgency test does not apply where the sheriff is considering a further ICSO/interim variation. s109(5).

14.8 Where an ICSO has been made by a hearing in relation to established grounds and a second proof application is ongoing, the determination of the second proof application will bring the hearing's ICSO to an end[46]. If the second proof application is found not established, this will result in the child having no ICSO in force and no route for one being made.

15. Warrants to secure child's attendance issued by sheriff

15.1 If a child has not been excused from attending the proof, the sheriff may grant a warrant to secure attendance. If a child has in fact failed to attend the proof hearing, the sheriff may grant a warrant to secure the

[45] Contact the Practice Team if the determination of the application, and the termination of an interim variation is likely to cause difficulty for the particular child.
[46] That is the plain reading of section 86(3).

child's attendance under s103(5). Further, the sheriff may grant an anticipatory warrant to secure attendance, if the hearing is to be continued to another day and the sheriff is satisfied that there is reason to believe that the child will not attend on a later date (S.103(6), (7)).

15.2 As explained at paragraph 4.4, until 30 November 2023 the requirement that a child (who has not been excused) physically attend any callings of the proof has been removed other than for evidential callings. The default position is that the child attends virtually as directed by the sheriff, unless the sheriff directs otherwise. Where the sheriff has issued a direction that the child attend virtually and the child does not so attend, this is regarded as the child having failed to comply with a requirement to attend. Although this may be relevant to consideration of the need for a warrant to secure attendance, it would only be in exceptional circumstances that it would be appropriate for the reporter to ask the sheriff to grant a warrant where the child has failed to attend virtually.

15.3 The maximum period of time for which a warrant to secure attendance is effective is 14 days beginning with the day the child is first detained in pursuance of the warrant. However, the warrant may expire sooner than that, as follows:-

- for a warrant granted under s103(5), the warrant will expire when the proceedings before the sheriff in respect of which it is granted begin[47]; and
- for a warrant granted under s103(7), the warrant will end at the beginning of the continued hearing[48].
  (S.88(1) & (4))

(See also Practice Direction 19 on Orders and Measures)

15.4 In either event, it is likely that a child will be brought before the sheriff as soon as possible following being first detained under the warrant. A reporter is to promote this approach as it is the most proportionate response to the situation for the child. See Kearney 32.02, setting out the expected approach in relation to warrants to secure attendance issued under the 1995 Act.

15.5 The reporter is to attend any hearing before the sheriff and be in a position to give a view and reasons as to whether the child should continue to be detained under a warrant, or whether the child should be released. The reporter is to make efforts to inform relevant persons and any solicitors acting for parties of any hearing before the sheriff.

[47] i.e. if a s103(5) warrant is granted, and the child is found some days later, the child will be brought before the sheriff immediately, and the warrant will expire as soon as the child is brought before the sheriff – the sheriff may continue the hearing until a later date and grant a warrant under s103(7) or the sheriff may simply ordain the child to appear at a later date

[48] i.e. if a warrant is granted under s103(7), and a child found some days later, the child will be brought before the sheriff, but the warrant will not immediately expire, unless the sheriff effectively recalls the warrant at that point. If the sheriff does not recall the warrant, then the child will be detained until the date of the continued hearing, as long as this is within 14 days of the day when the child was first detained

15.6 If the sheriff is satisfied that there is reason to believe the child will not attend the children's hearing which the reporter is required to arrange, the sheriff may grant a warrant to secure the child's attendance. s109(6)

15.7 The maximum period of time for which a warrant to secure attendance under s109(6) is effective is 7 days beginning with the day the child is first detained in pursuance of the warrant, but it will expire at the beginning of the children's hearing if held sooner than that. S88(1), (4).

15.8 The expectation would be that the reporter, wherever practicable, arrange the children's hearing to take place on the first working day after the child was first detained in pursuance of the warrant, in line with what is set out in Rule 17 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013.

15.9 A warrant to secure attendance ceases to have effect on withdrawal of the application. S107(4).

APPENDIX 1 - Service, Citation and Notice

In relation to notification of court applications[49], the calculation of time runs back from the date of the diet. So, for a diet on a Friday, notified by post, 72 hours counted backwards takes the last possible time for notification to be the end of Monday (more realistically, close of business on Monday)[50].

Specific provisions in relation to service/intimation/citation

Service/intimation of:

- a procedural hearing under rules 3.45(4)-(7) – the sheriff shall appoint service and intimation as the sheriff thinks fit, Rule 3.45(6);
- discharge of a hearing on evidence – the sheriff shall make such orders for intimation as the sheriff thinks fit, Rule 3.45(8);

Timescale

- Rule 3.13 sets out the minimum period of notice
- Rule 3.15 and Rule 3.16 have to be read together. Rule 3.15 sets out the modes of service. Only some of the modes of service are available to reporters or persons delegated by reporters. All modes of service are available to sheriff officers.

  So, the following provisions apply to citation/intimation of proof applications, continued proof applications, applications for ICSO during proof applications and citation of witnesses.

Methods of service

It is legal service if service is made as follows:

1. delivered to him personally;
2. left at his dwelling-house or place of business with some person resident or employed there;
3. left for him at any other place at which he may at the time be resident, where options 1. or 2. can't be used;
4. where he is the master of, or a seaman or other person employed in, a vessel, left with a person on board or connected with the vessel;
5. sent by first class recorded delivery post, or the nearest equivalent postal service, to his dwelling-house or place of business, or if he has no known dwelling-house/place of business to any other place in which he may at the time be resident;
6. where the person has the facility to receive fax or other electronic transmission, by being faxed or other electronic transmission; or

[49]Rule 3.13 sets out that any citation or notice required must be made not later than 48 hours or in the case of postal citation 72 hours before the **date** of the diet to which the citation/notice relates..

[50] See Kearney para 30.21 A reporter should be alert to a possible argument that the citation/notification has only been "made" when it can be presumed to have been received. In other words, for a diet on a Friday, a postal citation would need to be mailed no later than 11.59pm on the Saturday before.

7. where the person has a numbered box at a document exchange, given by leaving at the document exchange.
8. where there is not sufficient time to use any of the above methods, the sheriff may direct that service is to be made orally or in such other manner as the sheriff directs.

Only methods 5, 6, 7 and method 8 (if specified and directed by the sheriff) can possibly be used by reporters. In practice, as SCRA is not part of any document exchange, reporters are limited to serving by first class recorded delivery or e-mail (where there is a secure e-mail address).

A sheriff officer may use any of the above methods.

Timescales for service, intimation or citation

Postal citation or notice must be given no later than 72 hours before the date of the diet. Other methods of service must be made no later than 48 hours before the date of the diet. Rule 3.13.

So, in practice, for a diet on a Friday, the notice must be posted no later than Monday. If e-mail can be used, the e-mail must be sent no later than Tuesday.

In practice, for a proof on a Friday, a sheriff officer would have to complete service no later than Tuesday.

If there is insufficient time for the reporter to serve/intimate/cite by post, the reporter may request that the sheriff direct that notification or citation be made orally, or in such other manner as the sheriff directs. Rule 3.15(3).

Citation of Witnesses

Witnesses should be cited using Form 41, and proof of execution of citation is given in Form 42. Rule 3.14(2),(3).

The purpose of citation is to compel attendance at court. Citation is not a precondition of that person being called as a witness.

Where the reporter is in no doubt that a witness will attend court at the reporter's request, it is not necessary for the reporter to send a citation by recorded delivery post. For example, a professional witness, such as a social worker, may be informed of the need to attend court orally, by secure e-mail, or by letter sent by ordinary post.

However, where there is any doubt about the witness's attendance at court or the witness is non-professional, citation must be sent by first class recorded delivery post. In the unlikely event that a reporter is seeking a warrant of apprehension of a witness, a sheriff is not likely to grant this unless there is absolutely no doubt that the witness has received the citation. It may be necessary for the reporter to arrange for the witness to be cited personally by a sheriff officer, to remove any doubt about the witness having received the citation.

Witness List

In a standard prosecution report submitted by the police the report may indicate that a witness's address is not to be disclosed. They will normally do this by stating the witness's "disclosable address" as being care of some other address, such as a police station.

In addition, the reporter may decide that a witness's address should not be disclosed in order to protect their privacy (see Practice Direction 4 on Non-Disclosure).

In compiling a list of witness, the reporter is not to include an address that is not disclosable. The reporter should state the witness's address as being care of the police or SCRA.

APPENDIX 2 - Timescales

SITUATION	WHAT MUST/WILL HAPPEN?	TIMESCALE?	EXAMPLES
If a hearing directs the reporter to make a proof application	the reporter must lodge the proof application with the court within a period of	7 days beginning with the date of the grounds hearing	Grounds hearing on Wednesday. Proof application must be lodged no later than following Tuesday. Grounds hearing on Monday, proof application must be lodged no later than Friday of that week.
Where a proof application is made to the sheriff, the application	must be heard	no later than 28 days after the day on which application lodged (but can be continued)	Application lodged Tuesday 13th August 2013, must be heard no later than Tuesday 10th September 2013
Where a proof application is made to the sheriff under s.94(2)(a) and the sheriff wishes to fix a procedural hearing under rule 3.45	The procedural hearing must take place before the expiry of the period of	7 days beginning with the day on which the application is made	Application made on Friday. Procedural hearing must be held no later than following Thursday

Where a sheriff directs the reporter to arrange a children's hearing following a determination of a proof application and the sheriff makes an ICSO specifying that the child is to reside at a place of safety	the reporter must arrange the hearing to take place	no later than the 3rd day after the day on which the child begins to reside at the place of safety	Application determined on Friday and sheriff directs reporter to arrange a hearing. Same day sheriff issues ICSO specifying place of safety. Child already in a place of safety. Hearing must take place no later than Monday. If child taken to a place of safety on Saturday, hearing must take place no later than Tuesday.
Where a warrant is granted by the sheriff under s103(7) (a child not excused from attending hearing of a proof application, hearing continued and sheriff is satisfied reason to believe child will not attend continued hearing), the warrant to secure attendance	is effective for the period	beginning with the granting of the warrant and ending with the earlier of (i) the beginning of the continued hearing (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained	Maximum period during which the warrant to secure attendance has effect is as follows. Where warrant granted on Monday , child detained on Sunday 27th October 2013. Warrant ceases to have effect at the end of Saturday 9th November 2013.
Where a warrant is granted by the sheriff in relation to child's attendance at any other proceedings under Part 10 (e.g. ICSO, IVCSO, review of grounds determination), the warrant to secure attendance	is effective for the period	beginning with the granting of the warrant and ending with the earlier of (i) the beginning of the Sh Ct proceedings in respect of which it was granted (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained	Maximum period as above

Where a warrant is granted by the sheriff in relation to child's attendance at a hearing arranged under s108, 115, 1172)(b) or 156(3)(a), the warrant to secure attendance	is effective for the period	beginning with the granting of the warrant and ending with the earlier of (i) the beginning of the CH in respect of which it is granted or (ii) the expiry of the period of 7 days beginning with the day on which the child is first detained	Maximum period during which the warrant to secure attendance has effect is as follows. Where warrant granted on Monday , child detained on Saturday. Warrant ceases to have effect at the end of following Friday.

APPENDIX 3: text for communication to implementation authority to accompany notifications of ICSO applications

I am letting you know that I have applied for a further interim compulsory supervision order for [NAME OF CHILD]. This will be dealt with by the sheriff on [DATE AND TIME OF THE HEARING OF THE APPLICATION].

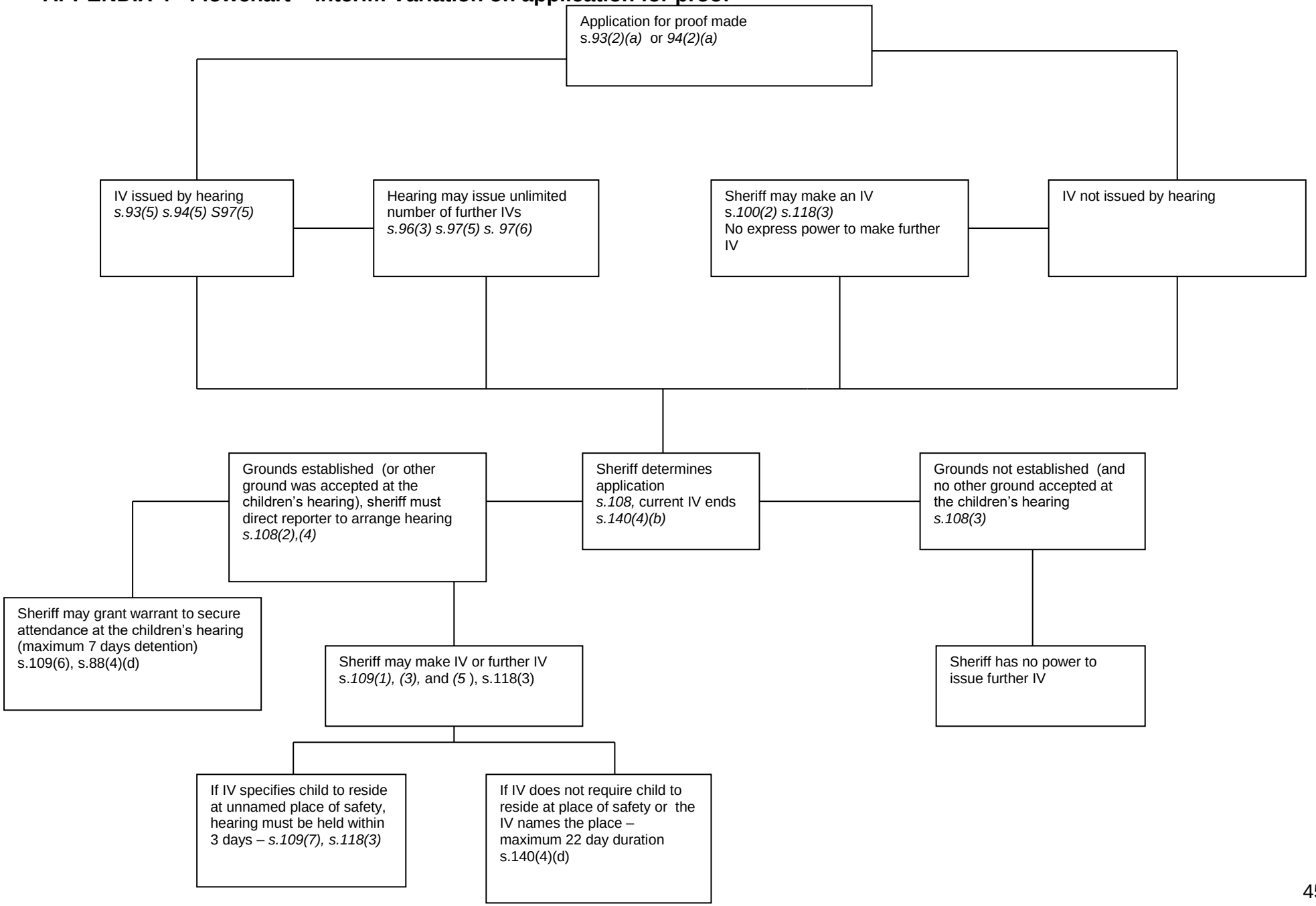
I attach a copy of the application.

If your authority wishes to provide written information to the sheriff who will consider the application, please send the information to our team mailbox by midday at least two working days before the hearing of the application. [THIS TIMESCALE CAN BE ADJUSTED TO FIT LOCAL PRACTICE] [WHERE A NON-DISCLOSURE MEASURE APPLIES ADD: You must not include any non-disclosure information within the written information.]
We will ensure that the written information is forwarded to the sheriff. Where practicable we will also provide it to other parties.

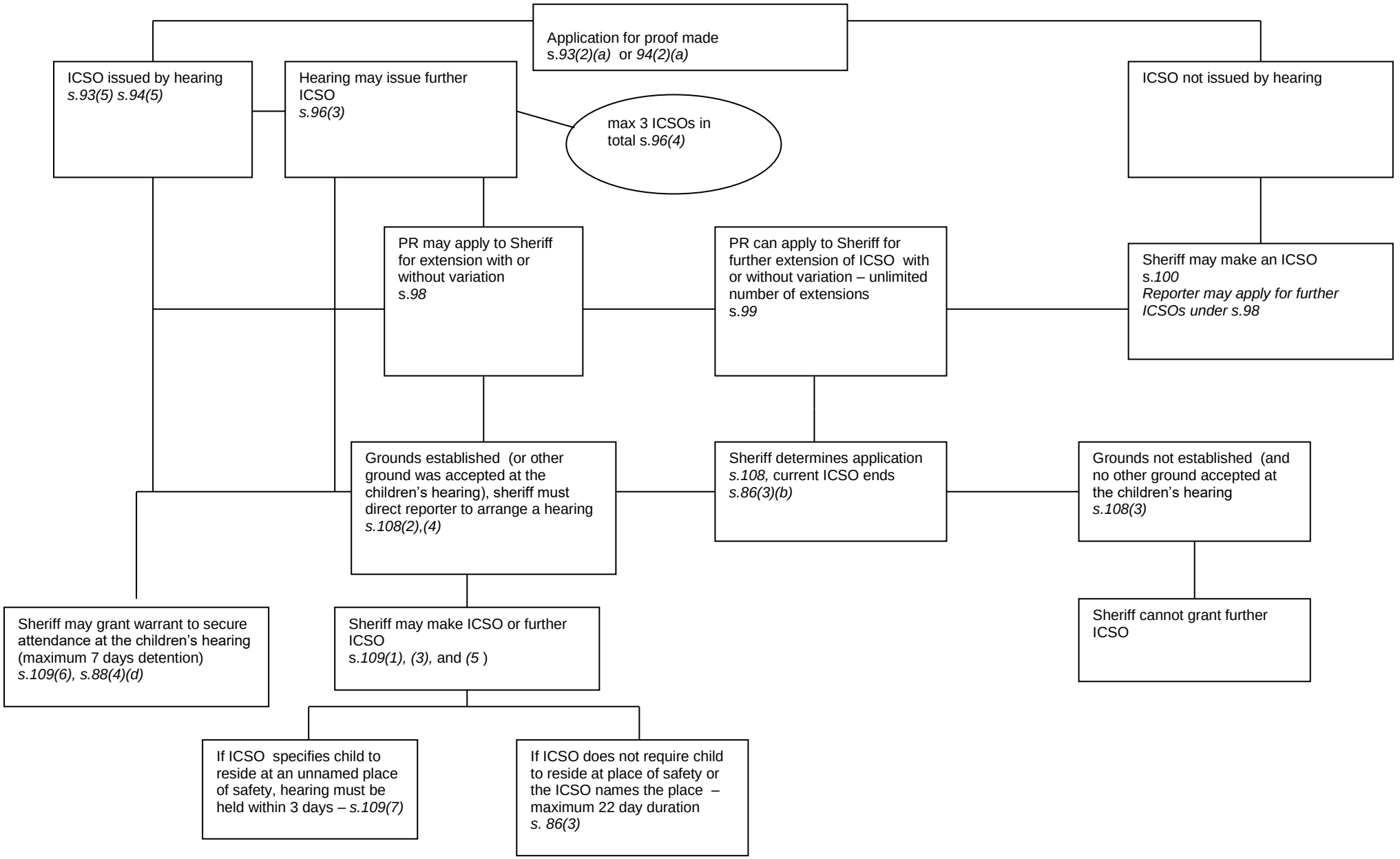
If [NAME OF IMPLEMENTATION AUTHORITY] wish to make oral submissions to the sheriff hearing the application, you should contact the sheriff clerk. It will be for the sheriff to decide whether to allow this.

[OPTIONAL - Add sentence here if also looking for 'informal' information to assist with finalising the reporter's position eg Separately to any written information you might provide for consideration by the sheriff, please let me know how the contact is going, whether circumstances have changed and what is your recommendation on the terms of the ICSO.]

APPENDIX 4 - Flowchart – Interim Variation on application for proof



APPENDIX 5 - Flowchart – ICSO on application for proof - For children not on CSO



APPENDIX 6 - Aide Memoire

Efficient and Expeditious Case Management

Set out below is an aide memoire of options to support efficient and expeditious progress of cases.

Generally speaking, the more complex the case, the more likely the reporter should employ one or more of the options. In considering any particular option, the balance should be in favour of using the option, unless there is good reason not to do so. It is always a matter of judgement as to what options are appropriate and proportionate in any particular case and this should form part of early assessment about managing the case.

It is recognised that other parties may not always be co-operative but the options in the aide memoire should always be considered by the reporter. They are likely to be of assistance in managing difficult behaviour by other parties and in supporting case management by the sheriff.

The options are in addition to the reporter's duty of disclosure as set out in PIN 39 Disclosure of Evidence – this includes the duty to disclose evidence which the reporter intends to lead, and evidence which undermines or weakens the reporter's case or strengthens another party's case (whether or not this evidence will be led by the reporter).

Aide Memoire

Send an initial letter to all parties together with the reporter's witness list and proposed inventory of productions.

1. The initial letter should, as a minimum:

    a. Request parties' lists of witnesses and (if appropriate) whether they intend to instruct any independent expert witness;
    b. Request a note of what parties intend to lodge as productions and suggest a joint bundle of productions (which is a bundle of productions containing both reporter and other parties productions);
    c. Include a proposed joint minute of agreement[51];
    d. Request that the other parties highlight any other areas capable of agreement;

[51] What to include in the draft joint minute is a matter of judgement. It ought to go beyond what is incontrovertible. It may be used as a way to initiate discussion on other parties' positions and in some cases, it may be appropriate to provide the sheriff with a copy of the draft joint minute to assist the sheriff to focus the proof.

The letter may also:

e. Suggest a meeting between all parties take place outwith court time to discuss matters which may be capable of agreement.
f. Suggest that all parties produce for the sheriff and each other a case summary (see number 8 below)
g. if the reporter or two parties require an independent expert on the same subject matter, suggest that the expert is instructed jointly.

The letter should give a date by which the reporter expects a response and highlight that Rule 3.46A of the Child Care and Maintenance Rules allows the sheriff to order parties to take such steps as the sheriff deems necessary to secure the expeditious determination of the application.

2. Lodge productions (including any signed witness statements) with inventory of same before first court hearing or as soon as possible thereafter.

3. Share precognitions of reporter witnesses except child witness (having advised witnesses at precognition stage of intention to do so, and considering whether there needs to be redaction of third party, sensitive or irrelevant information).

4. Allow parties to view child witness precognition (having advised child witness at precognition stage of intention to do so and subject to redaction as above).

5. Convert precognitions into signed witness statements (or affidavits) and share these with other parties.

6. If competing expert reports are produced (which should only be the case where the sheriff has declined to order joint instruction), the reporter should write to parties to suggest that the experts consult to identify areas of agreement and scope of disagreement in their opinions.

7. Provide the sheriff and parties with a case summary including:

   a. a witness summary containing for each witness one paragraph with a succinct and informative note of the nature and scope of evidence of that witness.
   b. a list of productions lodged or to be lodged (including any signed witness statements).
   c. a list of what has been disclosed or what is still to be disclosed.
   d. a note of any independent witness on whom the reporter intends to rely, the qualifications of that witness and their suitability to give opinion evidence on the particular topic.
   e. An estimate of the number of days for the reporter’s evidence to be concluded.

8. Ask the sheriff to issue a pre-proof order setting out expectations on parties and dates by which expectations are to be met.

9. Pre-proof order could:

   a. **require** each party to prepare and lodge a case summary setting out:-
      - a witness summary containing for each witness one paragraph with a succinct and informative note of the nature and scope of evidence of that witness.
      - for parties other than the reporter, the extent to which the grounds for referral and supporting facts are disputed.
      - a note of any independent expert witness, and the qualifications of that witness, and why they are suitable to provide opinion evidence on the particular topic.
      - a note of productions lodged or to be lodged.
      - the identity of who will represent them at the proof.
      - A proposed running order and timetable of witnesses.
      - an estimate of the number of days required to conduct that party's evidence including cross-examination and re-examination.

   b. **Set out** expectations for conduct of parties at pre-proof hearing e.g.:
      - full and frank disclosure of their respective positions – and set out that a failure to do so may mean sheriff refuses to hear evidence regarding undisclosed matter;
      - be able to explain why particular evidence is required;
      - be able to explain the nature and extent of expert evidence, the relevance of it, and the suitability of the expert;
      - be able to explain any issue which may delay the proof, e.g. legal aid, recovery of evidence, instruction of experts, availability of witnesses;
      - be able to explain any legal issues arising;
      - identify areas where evidence can be agreed;
      - identify evidence which can be presented in the form of written witness statement;
      - identify whether sharing of submissions would be helpful
      - identify whether a joint expert can be instructed and if not confirm that competing experts have shared views to identify common or disputed ground.

10. Following on from production of case summaries or information gathered by the reporter from parties at or outwith court, the reporter may consider asking the sheriff to order:

    a. Restriction on a party leading evidence of a certain line or from a certain witness if the evidence appears to be unlikely to assist the court in reaching a decision, or if the substantive line of evidence has not been disclosed during pre-proof.
    b. Joint instruction of expert.
    c. If the sheriff has declined to order joint instruction of expert, and parties do not agree to experts exchanging views, that the sheriff order experts to exchange views so as to identify areas of dispute or clarify the scope of disagreement.

d. Evidence of a witness **for any party** to be presented by way of written witness statement or affidavit.
e. Submissions to be shared in advance.

APPENDIX 7 - Aide Memoire for Supporting Court Work

Nature of support	**Discuss with**	**Possible provider**
Administrative support e.g. photocopying, numbering productions/case law, producing inventories, binding.	LRM, LSM	In team support - Assistant Reporter or Support Administrator
Locating/printing off non-standard case law, checking judicial status, checking up to date legislation	LRM, Senior Practitioner	Senior Practitioner, Practice Team
Checking for relevant SCRA experience	LRM, Senior Practitioner, Practice Network	Senior Practitioners, Practice Network, other reporter having conducted similar case
Assistance with precognitions – taking same, typing up (possible conversion to signed witness statement – meeting with witness to check/amend and finally sign statement).	LRM, Senior Practitioner	In team support - Assistant Reporter or Support Administrator
Assistance with case analysis	LRM, Senior Practitioner	Senior Practitioner, LRM, other reporter within or outwith Locality, Practice Reporter,
Review of/2nd opinion on evidence, witnesses, productions, disclosure, recovery of evidence, expert witnesss	LRM, Senior Practitioner	Senior Practitioner, LRM, other reporter within or outwith Locality, exceptionally Practice Reporter
Review of/2nd opinion on options for expeditious progress of case.	LRM, Senior Practitioner	Senior Practitioner, LRM, other reporter within or outwith Locality, exceptionally Practice Reporter
Consultation with Practice Reporter on	LRM, Senior Practitioner,	Practice Reporter

specific issues and related ongoing support from Practice Reporter	Practice Reporter	
Consultation with SCRA external solicitor or solicitor advocate, or counsel on specific issues	LRM, Senior Practitioner, Practice Reporter, Practice Manager	SCRA external solicitor or solicitor advocate, or Counsel (Practice Team will instruct)
Scribe	LRM, Senior Practitioner	In team support – Assistant Reporter, Support Administrator
Co-work the case or parts of the case with another reporter e.g. dividing up witnesses for examination-in-chief	LRM, Senior Practitioner	Other reporter within or outwith locality
Another reporter with relevant experience take on the case either within locality or from another locality	LRM, Senior Practitioner	Other reporter within or outwith locality
Practice Reporter takes on part of case (eg one-off debate on unusual and complex point)	LRM, Senior Practitioner, Practice Reporter, Practice Manager	Practice Reporter
Outsource (could be for operational reasons or eg one-off debate re complex point)	LRM, Senior Practitioner, Senior Operational Manager (also Practice Reporter and Practice Manager if because of complex point)	External solicitor, solicitor-advocate, or counsel (Practice Team will instruct if because of complex point.)