



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 13

Attendance at Hearings

including hearings with a referred PHP matter

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SUMMARY

Child

- The child has a right to attend their hearing. The child's right is subject to the possibility of being excluded where:
 - their conduct is violent, abuse or very disruptive, or
 - their presence would prevent proper consideration of a non-disclosure request under which information has been withheld from them.
- The child has a duty to attend their hearing unless excused. A pre-hearing panel or hearing can excuse the child from attending all or part of the hearing if:
 - the ground relates to a Schedule 1 offence (or offence under the Sexual Offences Act) and the child's attendance is not necessary for a fair hearing,
 - attendance would place the child's physical, mental or moral welfare at risk, or
 - the child would not be capable of understanding what happens at the hearing.
- A grounds hearing may excuse the child from the explanation of the ground only if the child would not be capable of understanding the explanation.

Relevant Persons

- A relevant person has a right to attend a hearing, subject to the possibility of being excluded where:
 - their conduct is violent, abuse or very disruptive,
 - their presence would prevent proper consideration of a non-disclosure request under which information has been withheld from them,
 - their presence is preventing the hearing from obtaining the views of the child,
 - their presence is preventing, or is likely to prevent, the hearing from obtaining the views of a relevant person, or
 - their presence is causing, or likely to cause, significant distress to the child or a relevant person.
 - Relevant persons who have been notified have a duty to attend the hearing unless excused or excluded. A pre-hearing panel or children's hearing can excuse a relevant person if: it would be unreasonable to require their attendance, or
 - their attendance is unnecessary for the proper consideration of the case.

Rather than excuse a relevant person, the hearing may make a decision to proceed in the absence of the relevant person if the hearing considers it appropriate to do so.

Others with a right to attend

- A persons with participation rights has a right to attend for part of most hearings, to facilitate proper consideration of how a decision of the hearing may affect their

contact or the possibility of contact with the child. They do not have a duty to attend.

- A person who appears to the reporter to have significant involvement in the upbringing of the child has a right to attend any hearing to which a PHP matter has been referred (during consideration of the PHP matter(s) only) and a contact direction review hearing. Fairness almost certainly requires they be allowed to attend to some extent at a CPO second working day hearing or CPO advice hearing, though this decision lies with the chair.
- A person who has contact under a contact order or permanence order has a right to attend a contact direction review hearing.
- A person about whom a PHP matter has been referred to the hearing has a right to attend the part of the hearing dealing with PHP matters.
- A safeguarder has a right to attend a hearing, and if appointed by a hearing (rather than the sheriff) has a duty to attend so far as reasonably practicable.
- A person representing the child or relevant person has a right to attend a hearing. Some others have a right to have a representative accompany them at the hearing. A representative is subject to similar powers of exclusion as the person they represent.

Persons allowed to attend by chair

- Section 78(1) and the procedural rules specify who has a right to attend a hearing. The chair may allow others to attend if:
 - their attendance is necessary for the proper consideration of the matter before the hearing (for example this includes those whose interest in contact indicates that a degree of participation is necessary to protect their ECHR rights and fairness), or
 - in other circumstances if the child or relevant persons do not object.

Managing attendance

- In order to support the chair's management of attendance and the fairness of the proceedings, SCRA staff are to bring into the hearing at the start only those with a right to attend at the start and also a social worker for the child.

Virtual hearings

- A hearing may on occasion be arranged as a virtual hearing rather than a physical (ie face-to-face) hearing. A virtual hearing is one which does not have a physical location and which everyone attends remotely. In deciding the mode of hearing, fairness is a primary factor, with a number of specific issues to be taken into account by the reporter.

Remote attendance

- Arrangements may, and sometimes must, be made for a person to attend a physical hearing remotely (ie by electronic means) in certain circumstances. The reporter is to arrange for remote attendance at a physical hearing only where:
 - (i) it is known direct, or from a reliable source, that the person wishes to attend remotely,
 - (ii) rule 20B applies (SCRA duty to enable remote attendance),
 - (iii) rule 20C applies (PHP or hearing has decided to allow only remote attendance),
 - (iv) specific exceptional circumstance in relation to a child resident in secure accommodation, or
 - (v) as an alternative for a person in prison in case transport to the hearing cannot be arranged.

CONTENTS

1. Introduction	
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2. Attendance at a Hearing	6
3. Additional Attendance at a Hearing with a referred PHP Matter	11
4. Managing Attendance at the Start of a Hearing	13
5. Excusing the Child from Attending	14
6. Excusing a Relevant Person or Proceeding in Absence	16
7. Exclusion and Voluntary Arrangements	17
8. Bail Conditions	21
9. Deciding on the Mode of Hearing	22
10. Method of Attendance at a Physical Hearing	23
11. Related Materials	26
APPENDIX 1 – Table of Attendance at a Children’s Hearing	27
APPENDIX 2 – Summary of Rights of Attendance – A Resource for Reception Staff	34
APPENDIX 3 – Table of Exclusion Provisions	36
APPENDIX 4 - Rule 20B – Duty to Enable Remote Attendance	37
APPENDIX 5 – Flowchart of Method of Attendance at a Physical Hearing	40

1. Introduction

- 1.1 This Practice Direction describes the statutory provisions in relation to attendance at a children's hearing, and explains how they are to be applied by reporters.
- 1.2 This includes attendance at a hearing where a pre-hearing panel matter has been referred to the hearing. Attendance at a pre-hearing panel is addressed in Practice Direction 12 on Pre-hearing Panels.
- 1.3 The main statutory provisions in relation to the right of attendance at a hearing are contained in sections 73 to 78 and 79(5ZA)(d) of the Children's Hearings (Scotland) Act 2011 and rules 2A, 19, 20-20D of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. The procedural rules in relation to notification also contain information about rights of attendance.
- 1.4 It is open to the reporter to arrange a hearing as a virtual hearing in some circumstances. For a physical (ie face-to-face) hearing, the reporter may, and sometimes must, arrange for a person to attend remotely in certain circumstances. Sections 9 and 10 of this Practice Direction provide detailed information. Particular considerations apply where a child is resident in secure accommodation or a relevant person is in prison.

2. Attendance at a Hearing (no referred PHP matter)

General

- 2.1 The Act and Procedural Rules set out who has a right to attend a hearing (together with when they can be excluded), who has a duty to attend (together with when they can be excused), and the criteria for others being able to attend. For some categories of person, the right to attend a hearing is a right to attend for only part of the hearing and/or applies only to certain hearings. The table in Appendix 1 to this Practice Direction summarises the position for a wide range of persons. Fuller information is provided below for some categories of person.
- 2.2 Appendix 2 provides a summary of rights of attendance at hearings and pre-hearing panels, designed primarily to be a resource for support staff in their role in relation to hearings.
- 2.3 The chair may exclude any person from a hearing if the person's conduct at the hearing is (i) violent or abusive, or (ii) otherwise so disruptive that without exclusion the chair would consider it necessary to end or adjourn the hearing. Any right to attend a hearing is subject to this power of exclusion. Some categories of person may be excluded for a wider range of reasons. Full information about exclusion is provided in Section 6 and Appendix 3.

- 2.4 Procedure within a hearing dealing with a pre-hearing panel matter (referred, or raised within the hearing) is addressed in Practice Direction 12 on Pre-hearing Panels at section 8.

Child

- 2.5 The child has a right to attend a hearing, and has a duty to attend though can be excused.

Relevant Person

- 2.6 A relevant person has a right to attend, and has a duty to attend though can be excused.

Person with participation rights

- 2.7 A person who has participation rights has a right to attend part of certain hearings, but does not have a duty to do so.
- 2.8 The children's hearings to which participation rights apply are hearings held under section 69(2) or Parts 9, 10, 11 or 13 of the Act. This includes all grounds and review hearings, and all hearings flowing from them¹. It does not include second-working day hearings, suspension hearings, any advice hearing², or contact direction reviews³.
- 2.9 The chair of the hearing must allow a person with participation rights to attend at some point during the hearing (if the person has chosen to attend)⁴. The period during which the person is authorised to attend:
- begins at the time the chair considers appropriate, and
 - ends when the chair decides that the individual's attendance is no longer necessary for the proper consideration of how a decision of the hearing may affect contact or the possibility of contact between the individual and the child⁵.
- 2.10 The purpose of the person's attendance is to enable the hearing to properly consider how a decision of the hearing may affect contact or the possibility of contact between the person and the child⁶. It is for the chair to decide on the extent to which the person's attendance is necessary for this purpose. The person does not necessarily require to be present for all consideration of how a decision may affect their contact. Nor does the person require to

¹ Including remits from a criminal court and in relation to antisocial behaviour orders and hearings flowing from a review by the sheriff of previously established grounds.

² CPO advice hearing, criminal advice hearing or anti-social behaviour advice hearing. Note that anti-social behaviour advice hearings rarely if ever arise.

³ If the contact direction being reviewed relates to the person with participation rights, the reporter is to invite the person to the hearing.

⁴ This remains the case even where it is likely that the hearing will defer for a procedural reason. The person with participation rights should be in attendance for proper consideration of the impact on contact if the hearing were to defer.

⁵ Rule 19(2)

⁶ Rule 19(2)

be present when the hearing makes its decisions (by definition the hearing is no longer considering the matter and therefore the authorisation to attend under the participation rights should have ended).

- 2.11 If a person with participation rights does not attend a hearing, it is very likely to be fair for the hearing to proceed. The person does not have a duty to attend the hearing and their rights are protected by the right to request a review hearing under section 132A (see Practice Direction 33). Exceptionally, if the reporter is aware of particular circumstances that indicate there is a likely unfairness in proceeding, the reporter is to inform the hearing of these circumstances. It will be for the hearing to decide how to proceed. The reporter is to ensure the panel members are aware of section 132A if there appears to be any doubt.

Person who appears to have significant involvement

- 2.12 A person who appears to the reporter to have current or recent significant involvement in the upbringing of the child must be notified by the reporter of most hearings, but there is no express right to attend these hearings. However, for a CPO second working day hearing and a CPO advice hearing such a person must also be given papers⁷. Fairness almost certainly requires that they be allowed to attend and participate to an appropriate degree if they seek to do so. The chair may allow them to attend under section 78(2). The reporter is to be alert to issues of fairness if the chair appears not to be considering this.
- 2.13 A person who appears to the reporter to have current or recent significant involvement has a right to attend a contact direction review hearing⁸.
- 2.14 A person who appears to to the reporter to have current or recent significant involvement has a right to attend any hearing to which any PHP matter has been referred. See paragraphs 3.2 and 3.3.

Person with a relevant court order addressing contact

- 2.15 A person with contact regulated by a contact order or a right of contact under a permanence order has a right to attend a contact direction review hearing⁹. See Practice Direction 17 for more information about contact direction review hearings.

Representatives

- 2.16 There are a number of statutory provisions in relation to representatives. Rule 11 of the Procedural Rules addresses the role of a representative and

⁷ This reflects that there is no opportunity to be deemed to be a relevant person before or at such hearings as it is not competent for a PHP to be arranged or for the PHP matter to be referred to the hearing.

⁸ Rule 42.

⁹ Rule 42.

makes clear that a person with a right to a representative may have both a 'non-legal' representative and a legal representative¹⁰.

- 2.17 A representative of the child or a relevant person has a right to attend, subject to exclusion in certain circumstances. The representative has a stand-alone right to attend even in the absence of the child or relevant person they are representing¹¹. The hearing must be satisfied that the person does have authority from the child or relevant person to represent them. The hearing may nevertheless decide that, in the absence of the child or relevant person, it does not want to fully consider the matters before it or make a decision.
- 2.18 A representative of a person with participation rights has a right to attend the hearing during the period that the person attends. The representative does not have an independent right to attend the hearing in the absence of the person they are representing.¹²
- 2.19 A representative of a person who wants to be deemed or wants to have participation rights¹³ has an implied right to attend under rule 11 if the person who wants to be deemed or to have participation rights is present.

Safeguarder

- 2.20 A safeguarder has a right to attend a hearing, and if appointed by a children's hearing (rather than a sheriff) has a duty to attend so far as reasonably practicable¹⁴.

Persons allowed to attend by the chair of the hearing

- 2.21 Section 78(1) and the procedural rules specify all those who have a right to attend a hearing. Section 78(2) enables the chair to permit others to attend if the chair considers their attendance to be necessary for the proper consideration of the matter before the hearing or in other circumstances if the child or relevant persons do not object. There are therefore three categories of person who may attend a hearing:
- those with a right under section 78(1) or the procedural rules;
 - those permitted by the chair under section 78(2) because their attendance is considered by the chair to be necessary for the proper consideration of the case;
 - those permitted by the chair under section 78(2) for other reasons, provided the child or relevant persons do not object.

¹⁰ An advocacy worker instructed by the child is acting as a 'non-legal' representative of the child. See the Practice Note on Advocacy Services for Children's Hearings for more information in relation to advocacy.

¹¹ Section 78(1)(c) and (d)

¹² Rule 20 and rule 11

¹³ These matters might be referred PHP matters but might also arise from a request being made in the hearing, subject to certain conditions. Rules 55 and 55A.

¹⁴ Section 33. See Practice Direction 21 for full information in relation to safeguarders.

2.22 The power of the chair under section 78(2) may be used, if the criteria are met, in relation to any person. This might include, for example, a professional working with the child or family, a carer who is not a relevant person, a family member who does not have a statutory right to attend, a representative who does not have a right to attend in the absence of the person they are representing, extended attendance by a person with a right to attend only part of the hearing, or an additional 'non-legal' representative.

2.23 Decisions by the chair about allowing attendance under section 78(2) are expected to be made after the hearing starts. See Section 3 on managing attendance at the start of a hearing.

2.24 A particular category of person where consideration of section 78(2) will be relevant is a person with an ECHR interest in contact. Such a person¹⁵:

- has (i) established family life and an ongoing relationship with the child and (ii) sufficient age and maturity to participate in the hearing

and EITHER

- the hearing is likely to consider making a contact direction about them in a CSO, ICSO or interim variation where there is no existing contact direction about them or making a different contact direction, OR
- the person has made clear that they want the hearing to consider their contact with the child.

The reporter invites such a person in order to protect the person's apparent legitimate interest in the proceedings. However, it is for the chair to decide on the extent to which the person's attendance is necessary, if any. The reporter is to seek to explain within the hearing why the reporter invited the person, if the chair appears to be unaware of the person's possible legitimate interest.

2.25 There is no express right for such a person to have a representative in the hearing. The chair may allow a representative to attend under section 78(2).

2.26 Within hearings, the reporter is to be alert to situations where the hearing is considering including for the first time, or varying, a contact direction in relation to a person with established family life and an ongoing relationship with the child. In most such cases, the person will have been invited by the reporter but there may be cases where the consideration of the contact direction was not anticipated in advance or where the person was not of sufficient age and maturity to be invited. In these circumstances the reporter is to take the view that the hearing should satisfy itself that, subject to age and understanding of the person:

- it has the views of the person (directly or indirectly) in relation to their contact or

¹⁵ See Practice Direction 14 paragraph 16.4.

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

The hearing can decide to defer to give the person the opportunity to attend or give their views (directly or indirectly) and can consider an interim decision where appropriate..

3. Additional Attendance at a Hearing with a referred PHP Matter

- 3.1 Where a PHP matter has been referred to a hearing additional rights of attendance arise.

Person who appears to have significant involvement¹⁶

- 3.2 A person who appears to the reporter to have current or recent significant involvement in the upbringing of the child has a right to attend a hearing to which any PHP matter has been referred (not just a PHP matter about them)¹⁷. The right is to attend at the start of the hearing for consideration of all referred PHP matters. They do not have a duty to attend.
- 3.3 They also have the right to give a report or other document for consideration by the hearing relevant to any referred PHP matter¹⁸. However, they are not entitled to take part in discussion about a referred matter of excusal or restricting someone's attendance (to remote only) unless they are deemed to be a relevant person¹⁹.

Person about whom deeming has been referred

- 3.5 A person about whom the PHP matter of whether to deem them to be a relevant person has been referred to the hearing has the right to attend the hearing²⁰. Their right is to attend at the start for consideration of all referred PHP matters (not just the matter about them). They do not have a duty to attend.²¹
- 3.6 They also have the right to give a report or other document for consideration by the hearing relevant to any referred PHP matter²². However, they are not entitled to take part in discussion on any referred matter of excusal or restricting someone's attendance (to remote only) unless they are deemed to be a relevant person²³.

¹⁶ And the matter of deeming them has not been referred to the hearing.

¹⁷ Rule 52.

¹⁸ Rule 52(3)(vi)

¹⁹ Rule 52(5). Deeming can be raised within the hearing in certain circumstances even though not referred. See Practice Direction 12 at paragraph 8.9.

²⁰ Rule 52

²¹ A person who wants to be deemed (even if not notified) appears to have an implied right to attend under rule 11. And to have a representative.

²² Rule 52(3)(v)

²³ Rule 52(5). Rule 52(6) creates a tighter restriction where the the hearing will consider both deeming the person AND whether they meet the criteria in relation to participation rights or a section 132A review. In this situation the person is not entitled to take part in discussion on any other referred matter unless

- where the PHP matter about whether they meet the criteria for participation rights or a section 132A review hearing has also been referred, they are not entitled to take part in discussion on any PHP matter that is not about them unless they are deemed to be a relevant person.

Person about whom a participation rights matter has been referred

3.8 There are two PHP matters in relation to participation rights:

- whether someone meets the criteria to have participation rights
- whether someone meets the criteria in section 132A to require a review hearing.²⁴

A person about whom either of these matters has been referred to a hearing has the right to attend the hearing at the start for consideration of all referred PHP matters²⁵. They do not have a duty to attend.

- 3.9 They have the right to make representations (orally or in writing) about the specific PHP matter relating to them and may give a report or other document relevant to that matter for consideration by the hearing. The right to make representations or give a report does not extend to other PHP matters (unless the matter of whether to deem the person has also been referred, in which case see paragraphs 3.5 – 3.7).
- 3.10 If the hearing determines that someone does meet the criteria to have participation rights, the right to attend becomes that of a person with participation rights and it will be for the chair to decide the period of the hearing during which they are to attend in that capacity.

Representatives

- 3.11 A representative of a person in relation to whom the PHP matter of deeming, or a PHP matter about participation rights, has been referred to the hearing does not have an express right to attend. However rule 11 implies a right to attend and fairness supports a right to attend. Any right to attend is during the period that the person they are representing attends²⁶.
- 3.12 A person notified of the hearing because they appear to have significant involvement does not have a right to have a representative. The reporter's position is to be that fairness likely requires that a representative be allowed to attend while the person they are representing attends.

deemed. However should the issue arise, which is unlikely, the reporter is to take the view that the tighter restriction appears unfair.

²⁴ See Practice Direction 33 and Practice Direction 12. If this PHP matter arises, the reporter should always arrange a PHP in advance of the hearing unless exceptional circumstances apply and so the situation should rarely arise where the matter is referred to the hearing.

²⁵ Rule 52A

²⁶ Based on rule 11. If the chair does not agree there is a right of attendance, the chair may permit attendance under section 78(2).

PHP matter raised in a hearing

- 3.13 In certain circumstances, a PHP matter may be raised within a hearing without having been referred. Where a PHP matter is properly raised within a hearing (see Practice Direction 12), it is to be treated as if it had been referred. The reporter should therefore take the same approach to attendance as if the matter had been referred. The hearing should be alert to potential issues of fairness in relation to proceeding if the child or a relevant person is absent.

4. Managing Attendance at the Start of a Hearing

- 4.1 In terms of section 78(4) the chair must take all reasonable steps to ensure that the number of persons present at a children's hearing at the same time is kept to a minimum.
- 4.2 It is for the chair to decide whether anyone who does not have a right to attend the hearing will be allowed to attend and, if so, at what point and for how long. In addition the chair has responsibility to manage the attendance of a person with participation rights and decide at what point they will attend. The chair may decide at any point during the hearing whether/when a person is allowed to attend.
- 4.3 In order to assist the chair in managing attendance at a children's hearing, the only people that SCRA staff are to bring into a hearing (or enable to join if attending remotely) at the start are:
- persons with a right to attend throughout the hearing,
 - persons with a right to attend because a PHP matter has been referred to the hearing, and
 - a social worker for the child.²⁷
- 4.4 Appendices 1 and 2 include those categories of person who SCRA staff are to enable to attend from the start. Appendix 2 is designed in particular as a resource to assist support staff who are carrying out hearing reception tasks or tasks supporting remote attendance at hearings.
- 4.5 In advance of the children's hearing starting, support staff or the reporter are to inform the panel members which persons have attended at the Hearing Centre²⁸ for the purpose of being present at the hearing and their status (e.g. whether they are a relevant person, a person with participation rights, a person invited by the reporter etc). This should be done by support staff where practicable. The reporter is to ensure that the member of support staff knows what the status of each individual is and whether they are to come into the hearing at the start.

²⁷ This approach applies even if the chair indicates before the hearing starts that they want others to come in at the start. The approach has been agreed with CHS.

²⁸ Or - for a virtual hearing or where a person is attending a physical hearing remotely - which persons with a right to attend from the start have joined and which persons will join if the chair decides, after the hearing starts, to permit them to join.

- 4.6 A person who is waiting for the chair's decision about their attendance and is at the Hearing Centre in person is expected to wait in a waiting room. If attending the hearing remotely, they are to be contacted by SCRA staff²⁹ to tell them if and when to join the hearing, as decided by the chair during the hearing.
- 4.7 If there appears to be any doubt on the part of the chair about who is waiting to attend the hearing, and their status, the reporter is to inform the chair. This will also help ensure that the child and relevant persons are aware of anyone who wishes to attend.

5. Excusing the Child from Attending

- 5.1 A pre-hearing panel or children's hearing can excuse a child from attending all or part of a children's hearing. The reporter is not obliged to arrange a pre-hearing panel to consider excusing the child (even if requested) and is not to arrange one if the statutory criteria for excusing are clearly not met.
- 5.2 Practice Direction 12 on Pre-hearing Panels should be referred to for more detailed information in relation to the practice to be applied to arranging a PHP to excuse a child. The approach takes into account the purpose of the hearing and the age of the child. In summary,
- (i) For children aged below 6 on the day of the hearing, the reporter is to arrange a PHP for the sole purpose of considering whether to excuse them only in the following circumstances:
 - the forthcoming hearing is a grounds hearing and it is not clear that the child is likely to attend, or
 - for other hearings, there is a particular need as a matter of fairness, or it is in the child's best interests, for a PHP to determine whether to excuse them³⁰.
 - (ii) For children aged 6 or over on the day of the hearing, the reporter may arrange a PHP to consider excusing the child if the reporter considers that the legal test for excusal may be met.
- 5.3 The criteria for excusing a child are set out in section 73(3) (via section 79(4) for a pre-hearing panel). They are that the pre-hearing panel or children's hearing is satisfied that:

²⁹ In operational terms this is done by phone by support staff. See the Corporate Parenting Guide to Hearings and the Standard Operating Model.

³⁰ An example of this may be where there is a disagreement between relevant persons about the child's attendance.

- (a) the hearing relates to the ground mentioned in section 67(2)(b)³¹, (c)³², (d)³³ or (g)³⁴ and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing or
- (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk or
- (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.

5.4 The pre-hearing panel or hearing should specify which of the categories in 73(3) applies (it can be more than one).

Grounds hearing

5.5 A grounds hearing cannot excuse a child who is not present at the hearing. If the child is not present and has not been excused by a pre-hearing panel, the hearing must either require the reporter to arrange a further grounds hearing or discharge the referral³⁵. See Practice Direction 15 on Grounds Hearings.

5.6 In terms of section 73(4), a grounds hearing may excuse the child from attending during the explanation of the ground only if the hearing is satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the explanation. Section 73(4) only applies where the child is present at the grounds hearing.

Duration of excusal

5.7 Once a child has been excused from attending a hearing (whether by a pre-hearing panel or a children's hearing), the reporter is to take the excusal as persisting for related subsequent hearings³⁶. However a subsequent hearing may decide (at any point during the hearing) that it does not want to make a decision without the child attending and may therefore defer its decision for that reason. This 'breaks' the excusal and the child has a duty to attend the next hearing.

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

5.8 The reporter is to record the decision to excuse only once - in the record of proceedings of the hearing or pre-hearing panel that made the initial decision. If the child has been excused from attending a hearing in

³¹ Victim of schedule 1 offence

³² Close connection with schedule 1 offender

³³ Same household as victim of schedule 1 offence

³⁴ Close connection with Sexual Offences Act offender

³⁵ Section 95 and rule 64

³⁶ Sections 119(5) and 138(9)

advance (whether by a pre-hearing panel or a children's hearing), the reporter is not to record as a decision of the current hearing that the child has been excused.

Notification

- 5.9 Where an excusal is in place, the reporter must ensure that the appropriate form of notification is sent.

6. Excusing a Relevant Person or Proceeding in Absence

Excusing

- 6.1 A children's hearing or pre-hearing panel may excuse a relevant person from attending all or part of a children's hearing. When excusing is identified as an issue in advance of the hearing, the reporter should generally arrange a pre-hearing panel. See Practice Direction 12 on Pre-hearing Panels.³⁷
- 6.2 The criteria for excusing a relevant person are set out in section 74(3) (via section 79(5) for a pre-hearing panel). They are that the pre-hearing panel or children's hearing is satisfied that:
- (a) it would be unreasonable to require the relevant person's attendance at the hearing or part of the hearing or
 - (b) the attendance of the relevant person at the hearing or part of the hearing is unnecessary for the proper consideration of the case.
- 6.3 The pre-hearing panel or hearing should specify which of the categories in 74(3) applies (it can be more than one).
- 6.4 Once a relevant person has been excused from attending a children's hearing (whether by a pre-hearing panel or a hearing), the reporter is to take the excusal as persisting for related subsequent hearings³⁸. However a subsequent hearing may decide (at any point during the hearing) that it does not want to make a decision without the relevant person attending and may therefore defer its decision for that reason. This 'breaks' the excusal and the relevant person has a duty to attend the next hearing.
- However, it is possible for a decision to excuse to relate to one hearing only, or part of one hearing only. This should be clear from the reasons for decision. Where it is clear that the decision is intended to be time-limited, the reporter is not to view the excusal as persisting beyond that period.
- 6.5 The reporter is to record the decision to excuse only once - in the record of proceedings of the hearing or pre-hearing panel that made the initial

³⁷ However, as with excusal of a child (see paragraph 3.1) the reporter is not obliged to arrange a pre-hearing panel, even if requested, and should not arrange one if the statutory criteria for excusing are clearly not met.

³⁸ Sections 119(5) and 138(9)

decision. If a relevant person has been excused from attending a hearing in advance (whether by a pre-hearing panel or a children's hearing), the reporter is not to record as a decision of the current hearing that the relevant person is excused.

- 6.6 If a relevant person has not been notified of a hearing for any reason, for example their whereabouts are not known, they are not subject to a duty to attend the hearing. As excusal under section 74 is for the purpose of removing the duty to attend, there is no purpose in the hearing deciding to excuse that relevant person from attending that particular hearing.³⁹
- 6.7 Where an excusal is in place, the reporter must ensure that the appropriate form of notification is sent.

Proceeding in absence

- 6.8 Where a relevant person is under a duty to attend a hearing and fails to do so, the hearing may proceed in their absence if the hearing considers it appropriate to do so⁴⁰. The hearing may make a decision **either** to excuse under section 74 **or** to proceed in absence under section 75 (provided the relevant criteria for the decision are met). Either decision should only be made if it would be fair to do so, and the reporter is to intervene to express this view if it appears that a decision which the reporter thinks would be unfair is under consideration.
- 6.9 Section 75 applies only if the relevant person has been notified of the hearing. If the relevant person has not been notified, a decision under section 75 is not competent. There is no need for a decision under section 75 for the hearing to be able to proceed⁴¹. If the hearing insists on making a section 75 decision despite it not being competent, the reporter is to record the decision.

7. Exclusion and Voluntary Arrangements

- 7.1 There are a number of provisions about exclusion, applying to a range of people. Some decisions about exclusion lie with the hearing, some lie with the chair. Appendix 3 provides a table summarising the different provisions. The general table on attendance at Appendix 1 also includes the position on exclusion.
- 7.2 The power to exclude a person who has a right to attend the hearing cannot be exercised before the hearing begins. The person retains the right to attend the hearing until the decision is made to exclude them. The person

³⁹ However a persisting decision would have a future effect if it became possible to notify the relevant person of related subsequent hearings,

⁴⁰ Section 75

⁴¹ If the hearing thinks it would be unfair to proceed without further attempts to notify, for example more information about the person's whereabouts comes to light during the hearing, the hearing can defer.

must be allowed to enter the hearing room unless they have voluntarily agreed not to do so (see paragraphs 7.16 – 7.19).⁴²

7.3 The statutory provisions for exclusion do not prevent a person with a right to be in the hearing voluntarily agreeing not to attend part of the hearing. See paragraphs 7.16 to 7.19 for full details.

7.4 There are 4 distinct situations where exclusion may be competent:

- (i) in response to a person's conduct at the hearing
- (ii) when dealing with a non-disclosure request
- (iii) to provide protection for the child
- (iv) to provide protection for a relevant person.

(i) Conduct

7.5 In terms of rule 20D, the **chair** of a children's hearing or PHP may exclude any person whose conduct at the hearing is:

- violent or abusive, or
- otherwise so disruptive that unless the person is excluded the chair would consider it necessary to end or adjourn the hearing⁴³.

7.6 The exclusion may take place at any time during the hearing and for as long as necessary. After the exclusion has ended, the chair must explain to the person what has happened in their absence.⁴⁴

(ii) Non-disclosure request

7.7 In terms of rule 86(3), during consideration of a non-disclosure request, the **hearing** may exclude the person, including the child or relevant person, to whom the documents are requested not to be disclosed, where the hearing considers that the presence of that person would prevent proper consideration of the non-disclosure request.

7.8 After the hearing considers and determines the non-disclosure request, the person excluded must be invited to return to the children's hearing and advised of the determination⁴⁵.

7.9 There is no express provision to exclude the representative of a person to whom the non-disclosure request relates. However, the reporter is to

⁴² Given the terms of rule 20D, this appears to apply even in relation to someone whose conduct is violent, abusive or disruptive. However, where someone is posing a risk of significant harm to others it is likely that proportionate action by the reporter (and/or the chair) to manage the risk will take precedence over the statutory provisions.

⁴³ Rule 20D(1)(a).

⁴⁴ Rule 20D(2). Subject to withholding information under section 178 which provides that a hearing need not disclose information to a person where this is likely to cause significant harm to the child. See Practice Direction 4 on Non-disclosure .

⁴⁵ Rule 86(5).

take the view that a representative of a person may be excluded as otherwise the purpose of a non-disclosure request might be undermined.

(iii) Protection for the child

7.10 In terms of sections 76 and 77, a **hearing** can exclude a relevant person and/or their representative from the hearing where their presence:

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

Obtaining the views of the child includes obtaining their response to the statement of grounds.

7.11 The exclusion may take place at any time during the hearing and for as long as necessary. After the exclusion has ended, the chair must explain to the person what has taken place in their absence⁴⁶.

7.12 Very similar provisions apply to a representative of a newspaper or news agency⁴⁷.

7.13 The hearing may not exclude a relevant person, their representative or a representative of a newspaper or news agency on the basis that the child would prefer the person not to be present. The hearing must apply the statutory criteria.⁴⁸

(iv) Protection for a relevant person

7.14 In terms of rule 20D, the **chair** may exclude a relevant person, their representative, or a representative of a newspaper or news agency if:

- their presence is preventing, or likely to prevent, the hearing or PHP obtaining views of a relevant person, or
- is causing, or likely to cause, significant distress to a relevant person attending the hearing⁴⁹.

Obtaining the views of a relevant person includes obtaining their response to the statement of grounds.

⁴⁶ Sections 76(3) and 77(3). Subject to withholding information under section 178 which provides that a hearing need not disclose information to a person where this is likely to cause significant harm to the child. See Practice Direction 4 on Non-disclosure. In theory section 178 can apply to a response to the statement of grounds though there are likely to be significant difficulties in maintaining the withholding of that information.

⁴⁷ Section 78(5).

⁴⁸ See *G v Children's Reporter* 2016 SLT (Sh Ct) 293. If the hearing or chair appears to be considering excluding someone without having regard to the statutory criteria, the reporter is to intervene to alert the hearing or chair to the criteria.

⁴⁹ Rule 20D(1)(b)

- 7.15 The exclusion may take place at any time during the hearing and for as long as necessary. After the exclusion has ended, the chair must explain to the person what has taken place in their absence.⁵⁰

Explanation after exclusion

- 7.16 Exclusion under sections 76, 77, 78 or rule 20D may take place at any stage of the hearing and for as long as is necessary⁵¹. After an exclusion has ended:
- If a relevant person or their representative was excluded, the chair must explain to them what has happened in their absence⁵².
 - If any other person is excluded under rule 20D because of their conduct, the chair must explain to them what has taken place in their absence.
 - If a person representing a newspaper or news agency was excluded, the chair *may* explain to them, where appropriate to do so, the substance of what has taken place in their absence⁵³ - except where they were excluded under rule 20D in which case the chair *must* explain what has taken place in their absence.

Voluntary Arrangements

- 7.17 The statutory provisions for exclusion do not prevent a person with a right to be in the hearing voluntarily agreeing not to attend part of the hearing. However, all parties to a voluntary arrangement should be fully aware of their right to attend the hearing⁵⁴. If a person with a right to attend voluntarily does not initially attend the hearing, or leaves for part of the hearing, the reporter is to record this on the record of proceedings as a decision to proceed in the absence of the person for part of the hearing⁵⁵. The reporter is not to record the specific time during which they left the hearing.
- 7.18 Where there is conflict or tension between persons attending the hearing, the reporter may, before the hearing starts, discuss the situation with the persons involved to see if the persons (if of sufficient age and

⁵⁰ Rule 20D(2). Subject to withholding information under section 178 which provides that a hearing need not disclose information to a person where this is likely to cause significant harm to the child. See Practice Direction 4 on Non-disclosure. In theory section 178 can apply to a response to the statement of grounds though there are likely to be significant difficulties in maintaining the withholding of that information.

⁵¹ See paragraph 7.2

⁵² Subject to withholding information under section 178 which provides that a hearing need not disclose information to a person where this is likely to cause significant harm to the child. See Practice Direction 4 on Non-disclosure. In theory section 178 can apply to a response to the statement of grounds though there are likely to be significant difficulties in maintaining the withholding of that information.

⁵³ Section 78(6)

⁵⁴ Paragraph 4.6 of Practice Direction 11 states (where the reporter is discussing the situation with parties before the hearing starts) that 'the reporter must always explain clearly to the relevant persons, and child if of sufficient age and understanding, that the relevant persons and child have a right to be present in the hearing at the start.' Where the issue is being considered within the hearing, if a relevant person appears to be agreeing to leave voluntarily without being aware that they have a right to remain, the reporter is to intervene to express the view that the person must be made aware that they have a right to remain.

⁵⁵ Unless the hearing makes a decision to excuse the person.

understanding) can agree on an approach to dealing with the situation⁵⁶. The reporter must always explain clearly to the relevant persons, and child if of sufficient age and understanding, that the relevant persons and child have a right to be present in the hearing at the start.

- 7.19 The types of situations in the paragraph above are unlikely to meet the criteria for bringing to the attention of the hearing in advance of the hearing starting.⁵⁷ The reporter is to ensure that the hearing is made aware of any agreement between persons once the hearing starts, whether by the reporter informing the hearing or another person doing so. It is for the hearing to decide how to proceed.
- 7.20 If a voluntary arrangement is not possible, the reporter may seek views from the relevant person or child who is unwilling to come in to the hearing in order to provide those views within the hearing and assist the hearing or chair in any consideration of exclusion of a person. The views sought should be in relation to the criteria for exclusion, not on the person's preference about whether someone is in the hearing. An open question to the child or relevant person about how they think that the presence of the particular relevant person or representative will affect them and their ability to give their views to the hearing would be appropriate.
- 7.21 Where a hearing decides to proceed in the absence of a relevant person who has voluntarily agreed not to be present at the outset of the hearing or to leave the hearing, there is no express duty on the chair to explain what has happened in the person's absence. However, if the person subsequently comes into the hearing, giving such an explanation will generally support fair process. There is no absolute requirement for the hearing to duplicate its consideration of each issue for each relevant person and generally the need for duplication will be limited. The extent of duplication, if any, required to ensure a fair hearing will depend on the circumstances of the case, including any expectations set by the chair or hearing if the person agreed in the hearing to be absent. It is not necessary for the chair to explain the decision and reasons to a relevant person who was voluntarily not present when the decision was made and reasons given. If the chair asks the reporter to do so, the reporter should comply with the request (outwith the hearing room) if practicable.⁵⁸

8. Bail Conditions

- 8.1 Where a person is subject to a bail condition, this does not remove any right they have to attend the hearing and does not give rise to any additional power for the children's hearing to exclude that person. If the bail condition would potentially be breached by their attendance, it is the responsibility of

⁵⁶ See paragraph 4.6 of Practice Direction 11 on the Role of the Reporter in the Children's Hearing

⁵⁷ If there is a significant health and safety risk the reporter may be justified in providing information to the hearing as part of managing the risk.

⁵⁸ If a person comes in to the hearing room to receive an explanation of the decisions and reasons from the chair, the principle that no party should have contact with the panel members after the hearing unless other parties are also invited applies.

that person to obtain their own legal advice in relation to seeking amendment of the bail condition. Neither the reporter nor the hearing can guarantee that there will be no police action or prosecution.

- 8.2 As with other situations of tension or conflict, the person subject to the bail condition may voluntarily agree not to attend part of the hearing. Equally other persons may do so. As with other voluntary arrangements the hearing is not required to duplicate its consideration (nor give explanation of what has happened during a voluntary absence). The existence of the bail condition will be an additional factor in assessing what is required in terms of fair process.
- 8.3 Where attendance at a hearing would potentially breach a bail condition, attending remotely rather than in person does not automatically mean no breach would arise. This will depend on the specific terms of the bail condition. It is not for the reporter to advise on what might constitute a breach and the person should seek their own legal advice if in any doubt. As with attendance in person, voluntary arrangements may be agreed.
- 8.4 Exceptionally the chair of the hearing may wish to consider rule 20D, which allows the chair to exclude any person if that person's presence is preventing, or likely to prevent, the hearing from obtaining the views of a relevant person. This could enable a relevant person subject to a bail condition to participate to some degree without a potential breach arising, if the chair thought exclusion of another person for this purpose was appropriate in all the circumstances⁵⁹.

9. Deciding on the Mode of Hearing

- 9.1 A virtual hearing is one which everyone attends remotely; there is no physical location and all participants are notified/invited to attend remotely. A physical hearing is one which has a physical location, even if some persons attend remotely.
- 9.2 As the child and relevant person have a right to participate effectively in a hearing, fairness is a primary factor in deciding whether the hearing will be virtual or physical. Factors to be taken into account include:
 - (a) The views of the child and relevant persons, if available. If any of them prefer to attend in person, the reporter is to arrange a physical hearing unless exceptional circumstances make this not possible.
 - (b) If the child or a relevant person has a particular difficulty with communication or anything else that might impact on their ability to participate. Where this is likely to be significantly alleviated by physically attending the hearing, the reporter is to arrange a physical hearing unless exceptional circumstances make this not possible. Communication and other relevant issues can include, for example,

⁵⁹ If the person subject to the bail condition is the child, section 76 might be a relevant consideration for the hearing.

the need for an interpreter, any difficulty with communicating over video or any difficulty with access to technology.

- (c) Whether a relevant person is in prison. Where a relevant person is in prison, the reporter is to arrange a physical hearing - this requirement does not apply where it is known direct, or from a reliable source, that the relevant person wishes to attend remotely⁶⁰. See paragraphs 10.9 – 10.11 for more information about notification of a hearing when a relevant person is in prison.

Certain other people have a right to attend or be involved in the decision-making process to an appropriate degree⁶¹. If such a person has a particular difficulty with communication or anything else that might impact on their ability to participate, the reporter may decide that the hearing has to be a physical hearing in order to help ensure that the person can be appropriately involved, particularly if it is known that the person is likely to attend.

- 9.3 If the reporter decides to arrange a virtual hearing, all persons must be notified/invited to attend remotely.

10. Method of attendance at a physical hearing

- 10.1 The reporter *may* arrange for (and notify) a person to attend a physical hearing remotely where it is known direct, or from a reliable source, that the person wishes to attend remotely.
- 10.2 The reporter *must* arrange for (and notify) a person to attend a physical hearing remotely in the following two situations:
- when Rule 20B applies – duty on SCRA to enable remote attendance (see paragraphs 10.12 to 10.15)
 - when rule 20C applies – determination by PHP or hearing that a person is allowed to attend only remotely (see paragraphs 10.16 to 10.22)
- 10.3 The reporter is not to arrange for, or notify, remote attendance at a physical hearing in any circumstances other than those three specified above, except for the very limited exceptions set out below for children resident in secure accommodation and persons in prison.
- 10.4 Appendix 5 provides a flowchart on the method of attendance at a physical hearing.

⁶⁰ Or if a PHP or hearing has decided under rule 20C to restrict the relevant person's attendance to remote only.

⁶¹ In particular, a person with participation rights; a person about whom the hearing will consider a PHP matter; a person invited because of an ECHR interest in contact; a person invited to a CPO 2wd or advice hearing because they appear to have significant involvement.

Children resident in secure accommodation

- 10.5 In relation to children resident in secure accommodation, the same general approach applies. Therefore when deciding to arrange a physical hearing, the reporter is in the first instance to notify the child to attend remotely only if it is known direct, or from a reliable source, that the child wishes to attend remotely. If the child's preference has been communicated indirectly, the reporter requires to be satisfied that it does accurately reflect the child's preference and has been given by the child on an informed basis.
- 10.6 Thereafter, if the child is, or is to be, notified to attend physically, the Joint Protocol on Arranging Hearings for Children Resident in Secure Accommodation will apply. In terms of the Protocol, if the secure establishment or local authority consider that alternative arrangements⁶² require to be put in place because of risks to the health, safety or wellbeing of the child or other person, they are to make a request to the reporter setting out their risk assessment. This is to be done in good time for the reporter to consider it in advance of the hearing taking place.
- 10.7 The Joint Protocol does not address remote attendance by the child. Remote attendance is to be arranged for the child at a physical hearing only if this is:
- the preference of the child (in line with the approach in paragraph 9.2), or
 - the risk assessment by the secure establishment or local authority concludes that even holding the hearing within the secure establishment is insufficient to address the risk - and the reporter agrees.
- 10.8 In terms of the Joint Protocol, transport difficulties do not justify the hearing being moved to the secure establishment. In line with this, the reporter is not to take transport difficulties as justifying the child attending remotely.

Relevant persons in prison⁶³

- 10.9 In relation to relevant persons in prison, the same general approach applies. Therefore when deciding to arrange a physical hearing, the reporter is to notify the relevant person to attend remotely only if either:
- it is known direct, or from a reliable source, that the relevant person wishes to attend remotely, or
 - there has been a determination by a PHP or hearing that the relevant person is allowed to attend only remotely.
- 10.10 However, given the difficulties with the transportation of prisoners, where a relevant person is to attend in person, the letter notifying the prison governor of the hearing⁶⁴ gives the governor the necessary details for the

⁶² These include additional measures at the usual Hearing Centre, having the hearing at a different SCRA Hearing Centre or other premises, with or without additional measures, or if none of these are sufficient having the hearing in the secure establishment.

⁶³ Where there are others in prison with a right to attend a hearing, similar considerations apply.

⁶⁴ Available on CSAS and Connect.

prisoner to attend remotely in case that is required. The letter makes clear that the purpose of providing the additional details about remote attendance is to give the prison additional time to arrange it if it is required. However, it also says that the prison should arrange for the relevant person to attend remotely only if they cannot be transported to the Hearing.

- 10.11 If the prisoner does not attend in person, it will be for the Children's Hearing to decide whether it is fair to proceed. The reporter must inform the hearing (after it has started) that the relevant person is attending remotely only because the prison service was unable to provide transport and that it is the reporter's view that the hearing should be alert to any issues of fairness arising from that.

SCRA duty to enable remote attendance – rule 20B

- 10.12 Appendix 4 provides detailed direction on the approach to take to applying rule 20B.
- 10.13 Rule 20B provides that anyone who has a right to attend under section 78(1), or is entitled to attend under section 78(2), may ask to attend by electronic means. "Electronic means" include telephone and video link⁶⁵.
- 10.14 Having received the request, SCRA must take all reasonable steps to enable the person to attend by electronic means if the reporter is satisfied that the person:
- has good reason for not attending physically or
 - would be better able to participate effectively if they attend by electronic means.
- 10.15 Consideration of rule 20B only arises if the reporter is not otherwise arranging for remote attendance by the person.

Person allowed to attend only remotely – rule 20C

- 10.16 A PHP can decide that a person may attend a children's hearing only by electronic means. "Electronic means" include telephone and video link⁶⁶. The PHP may do so if satisfied that the person's physical presence at the hearing (or any part of it) is likely to:
- prevent the hearing obtaining the views of child or a relevant person, or
 - cause significant distress to child or a relevant person.
- 10.17 A PHP may make this decision in relation to:
- a relevant person,
 - a representative of a relevant person,

⁶⁵ The term 'remote attendance' is used in Practice Direction to mean any electronic means of attendance.

⁶⁶ The term 'remote attendance' is used in Practice Direction to mean any electronic means of attendance.

- a person with participation rights,
- a representative of a participation individual, and
- representatives of a newspaper or news agency.

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

- 10.18 If a PHP decides a person is allowed to attend only remotely, SCRA must take all reasonable steps to enable the person to attend remotely. It is for the reporter, and not the PHP, to decide which type of electronic attendance to put in place. There is a presumption that the reporter will use video link if that is practicable.
- 10.19 It is for the reporter to decide whether to arrange a PHP for this purpose, regardless of whether or not anyone has requested it. Having consulted with the child's social worker, the reporter is to arrange a PHP for this purpose when they consider that either of the criteria is met in relation to a person.
- 10.20 The reporter may refer the question of whether a person is allowed to attend a children's hearing only by electronic means to a children's hearing as a PHP matter. The practical benefit of doing so is likely to be limited as the person's attendance will not be restricted in advance of the hearing. However a decision to restrict attendance is to be taken as applying to subsequent hearings (see next paragraph).
- 10.21 A PHP or hearing decision to allow a person to attend only remotely is to be taken by the reporter as continuing until a substantive decision is made, unless the PHP or a children's hearing indicates that it only applies to a specific hearing or is to come to an end prior to the substantive decision being made⁶⁷.
- 10.22 Neither a PHP nor a hearing can decide to restrict attendance to remote means unless the matter has been referred by the reporter.

11. Related Materials

Practice Direction 14 on Notifications and Papers
 Practice Direction 12 on Pre-hearing Panels
 Practice Direction 22 on Legal Aid

⁶⁷ The rules do not address how long a decision to restrict lasts for. The position to be taken by the reporter is in line with the position taken to excusal. Similarly, the reporter is to take the position that a subsequent hearing may decide that the restriction is no longer to apply.

APPENDIX 1 – TABLE OF ATTENDANCE AT A CHILDREN’S HEARING

Notes:

1. An individual may fall into more than one category. Ensure the higher extent of rights is recognised for them.
2. Any person, even those without a right to attend the hearing, may be excluded by the chair if their conduct is violent or abusive, or otherwise so disruptive that the chair would consider it necessary to end or adjourn the hearing if the person were not excluded. Rule 20D(1)(a). For a person without a right to attend, the chair may deal with the situation either through withdrawing permission to attend under section 78(2) or through exclusion. The appropriate route will depend on the circumstances.
3. A hearing may exclude a person during consideration of a non disclosure request relating to them. Rule 86(3). There is no express provision to exclude a representative. However, the reporter is to take the view that a representative of a person may be excluded as otherwise the purpose of a non-disclosure request might be undermined.
4. The following abbreviations for exclusion are used in the table:
 - Conduct = Exclusion by chair because the person’s conduct is violent, abusive or extremely disruptive. Rule 20D(1)(a).
 - NDR = Exclusion by hearing during consideration of a relevant non-disclosure request. Rule 86(3). (See above for representatives.)
 - Protection for child = Exclusion by hearing to obtain the views of the child or to prevent significant distress to the child. Sections 76(2) or 78(5).
 - Protection for relevant person = Exclusion by chair to obtain the views of a relevant person or to prevent significant distress to a relevant person. Rule 20D(1)(b).

Person	Right to attend	For which hearings	Qualifications to right	Attend at start?	Duty to attend	May be allowed by chair under s.78(2)
Child	Yes s78(1)(a)	All	<ul style="list-style-type: none"> ▪ Exclusion by chair for conduct ▪ Exclusion by hearing for NDR to withhold information from the child 	Yes	Yes s.73(2) ⁶⁸	
Relevant Person	Yes s78(1)(c)	All	<ul style="list-style-type: none"> ▪ Exclusion by chair for conduct 	Yes	Yes s.74(2) ⁶⁹	

⁶⁸ May be excused from duty - section 73(3) and 73(4).

⁶⁹ May be excused from duty - 74(3). The hearing may proceed in the absence of a relevant person (without excusing) – section 75.

			<ul style="list-style-type: none"> Exclusion by hearing for NDR to withhold information from the relevant person Exclusion by hearing to protect the child Exclusion by chair to protect another relevant person 			
Person with participation rights	Yes s79(5ZA)	All except CPO 2wd, suspension, any type of advice, and contact direction review hearings	<ul style="list-style-type: none"> The right is to attend only part of the hearing (determined by chair) Exclusion by chair for conduct Exclusion by hearing for NDR to withhold information from the person 	No		Yes – beyond the circumstances covered by the right
Person notified because they appear to have significant involvement	Depends on type of hearing rules 42 and 52(3)(a)(iii)	1. A CPO 2wd or advice hearing ⁷⁰ 2. A contact direction review hearing rule 42 3. Any hearing to which any PHP matter has been referred rule 52(3)(a)(iii)	<ul style="list-style-type: none"> If attending because a PHP matter has been referred to the hearing, the right applies only during consideration of all the referred PHP matter(s)⁷¹ Exclusion by chair for conduct Exclusion by hearing for non-disclosure request to withhold information from the person (relevant for CPO 2wd and CPO advice hearings) 	Yes		Yes – beyond the circumstances covered by the right
Person with contact under contact order or permanence order	Yes rule 42	Only a contact direction review hearing	<ul style="list-style-type: none"> Exclusion by chair for conduct Exclusion by hearing for NDR to withhold information from the person 	Yes		Yes

⁷⁰ For this type of hearing there is no express right to attend, though they must be notified and given full papers – rules 39 and 40. Fairness almost certainly requires that they be allowed to attend and participate to an appropriate degree if they seek to do so. The chair may allow this under s.78(2).

⁷¹ While there is a right to attend for all referred PHP matters, the right to make representations or take part in discussions does not extend to matters under section 79(2)(c) – ie excusal and restricting someone's attendance to remote. Rule 52.

Person with ECHR interest (someone who meets the criteria in PD 14 para 15.4.)	No ⁷²	A hearing which is likely to make a new or different contact direction about them or they want the hearing to consider their contact	▪ Exclusion by chair for conduct	No		Yes
Safeguarder	Yes s78(1)(f)	All	▪ Exclusion by chair for conduct	Yes	If appointed by hearing: yes, but only so far as reasonably practicable. If appointed by sheriff: no.	
Social worker for the child	No ⁷³		▪ Exclusion by chair for conduct	Yes ⁷⁴		Yes
Carer who is not a relevant person	No		▪ Exclusion by chair for conduct	No		Yes
Teacher, health visitor, additional representative of local authority, other professional etc	No		▪ Exclusion by chair for conduct	No		Yes
Reporter	Yes s78(1)(e)	All	▪ Exclusion by chair for conduct	Yes	Yes, based on duty to keep a record of proceedings rule 13	

⁷² Not an express statutory right, but ECHR and fairness requires an appropriate degree of participation to protect their interests. This is for the chair to determine.

⁷³ While there is no statutory right, practice is that their attendance is expected.

⁷⁴ Only one social worker is to attend at the start. If more than one wishes to attend, it is for them to decide which one will attend at the start. The chair may allow the other to attend after the hearing has started.

Additional persons where PHP matter referred to hearing						
Person about whom deeming has been referred ⁷⁵	Yes rule 52(3)(a) (iii)	Hearing with referred PHP matter	<ul style="list-style-type: none"> ▪ The right is to attend while the hearing is considering the PHP matter and any other referred PHP matter⁷⁶ ▪ Exclusion by chair for conduct 	Yes		
Person about whom either matter in relation to participation rights has been referred	Yes rule 52A(2) (b)	Hearing with referred PHP matter	<ul style="list-style-type: none"> ▪ The right is to attend while the hearing is considering the PHP matter and any other referred PHP matter rule 52A(2)(b) ▪ Exclusion by chair for conduct 	Yes		
Person about whom restricting attendance to remote only has been referred ⁷⁷	Yes – if relevant person or representative of newspaper or news agency	Hearing with referred PHP matter	<ul style="list-style-type: none"> ▪ Usual exclusion options for the particular person apply 			Yes - relevant only for person with participation rights as others have a right to attend
Representatives						
Representative of child	Yes s78(1)(b)	All	<ul style="list-style-type: none"> ▪ Exclusion by chair for conduct ▪ Exclusion by hearing for NDR to withhold information from the child 	Yes		
Representative of relevant person	Yes s78(1)(d)	All	<ul style="list-style-type: none"> ▪ Exclusion by chair for conduct 	Yes		

⁷⁵ The relevant rules refer to a person who has requested a determination that they be deemed a relevant person. However, the reporter is to apply the rules for any person about whom deeming has been referred to the hearing.

⁷⁶ While there is a right to attend for all referred PHP matters, the right to make representations or take part in discussions does not extend to matters under section 79(2)(c) – ie excusal and restricting attendance to remote. Rule 52.

⁷⁷ Applies only to relevant person, person with participation rights and representative of newspaper or news agency.

			<ul style="list-style-type: none"> Exclusion by hearing for NDR to withhold information from the relevant person Exclusion by hearing to protect the child Exclusion by chair to protect relevant person 			
Representative of person with participation rights	Yes Rule 20	All except CPO 2wd, suspension, any type of advice, and contact direction review hearings	<ul style="list-style-type: none"> Applies only while the person they are representing attends rules 20(2) & 11 Exclusion by chair for conduct Exclusion by hearing for NDR to withhold papers from the person they are representing 	No		Yes – beyond the circumstance covered by the right
Representative of person notified because they appear to have significant involvement	No ⁷⁸	Same hearings as for person they are representing	<ul style="list-style-type: none"> Exclusion by chair for conduct Exclusion by hearing for NDR to withhold papers from the person they are representing 	No		Yes
Representative of person with contact under a contact order or permanence order	No ⁷⁹	The person they are representing has a right to attend only a contact direction review	<ul style="list-style-type: none"> Exclusion by chair for conduct Exclusion by hearing for NDR to withhold papers from the person they are representing 	No		Yes
Representative of person with ECHR interest in contact	No		<ul style="list-style-type: none"> Exclusion by chair for conduct 	No		Yes

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

⁷⁹ There is no express right for a representative to attend but the reporter's position is to be that fairness likely requires their attendance to be allowed while the person they are representing attends. The chair may allow the representative to attend under section 78(2).

Representative of person about whom deeming has been referred as a PHP matter	Yes implied by rule 11(3)(c)	Any hearing to which the PHP matter has been referred	<ul style="list-style-type: none"> Applies only while the person they are representing attends rule 11(1) Exclusion by chair for conduct Exclusion by hearing for NDR to withhold papers from the person they are representing 	Yes		Yes - beyond the circumstance covered by the implied right
Representative of person about whom either matter in relation to participation rights has been referred as a PHP matter	Yes Implied by rule 11(3)(d)	Any hearing to which the PHP matter has been referred	<ul style="list-style-type: none"> Applies only while the person they are representing attends rule 11(1) Exclusion by chair for conduct Exclusion by hearing for NDR to withhold papers from the person they are representing 	Yes		Yes - beyond the circumstance covered by the implied right
Others⁸⁰						
Police or prison officer	Yes rule 20A	Any hearing where they have a person in their lawful custody and that person is attending the hearing	Applies only while the person in their custody is attending the hearing	Same as for the person in their custody		
Member of an Area Support Team	Yes s78(1)(h) ⁸¹		<ul style="list-style-type: none"> Exclusion by chair for conduct 	Yes		
Representative of a newspaper or news agency	Yes s78(1)(i)		<ul style="list-style-type: none"> Exclusion by chair for conduct Exclusion by hearing to protect child Exclusion by chair to protect relevant person 	Yes		
New reporter, trainee reporter or assistant reporter (in	Yes s78(1)(e)		<ul style="list-style-type: none"> Exclusion by chair for conduct 	Yes		

⁸⁰ For more detail in relation to observers at hearings, see the joint SCRA/CHS Practice Note on Observers at Children's Hearings, though note that the process for providing papers to AST observers has changed.

⁸¹ In practice, it is expected that an AST member will not exercise their right if the child or a relevant person objects to their attendance.

training – not if just observing)						
Observer – other than trainee panel member	No		<ul style="list-style-type: none"> Exclusion by chair for conduct 	No		Yes, provided child or a relevant person does not object s.78(2)(b) and 78(3)
Observer – trainee panel member	No		<ul style="list-style-type: none"> Exclusion by chair for conduct 	Yes		Yes, provided child or a relevant person does not object s.78(2)(b) and 78(3)
Where PHP matter raised during the hearing						
Individual present and a request made by the child, a relevant person or the individual for the individual to be deemed or to have participation rights	Yes rules 55 and 55A(2)	All except CPO 2wd, suspension, any type of advice, and contact direction review hearings	<p>Treated as if the PHP matter had been referred to the hearing and same qualifications as when referred will apply:</p> <ul style="list-style-type: none"> to the individual to a representative of the individual 	n/a as issue can only arise during the hearing		

APPENDIX 2 Summary of Rights of Attendance at a Children's Hearing or PHP

A Resource for Reception Staff

A. ATTENDANCE

1. **To Attend at Start:** The following are to be brought into, or enabled to join, a hearing or PHP from the start (unless they choose not to). Other persons are not to attend at the start.

Person	Comments
Child	
Child's representative	The child may have both a lay representative and a legal representative.
Relevant Person	
Relevant Person's representative	The relevant person may have both a lay representative and a legal representative.
Safeguarder	
A social worker for the child	Not a right, but agreed practice. Only one social worker is to attend at the start. If more than one wish to attend, it is for them to decide which one will attend at the start.
Person notified because they appear to have significant involvement	To attend at the start only if it is: <ul style="list-style-type: none"> ▪ a PHP ▪ a hearing to which any PHP matter has been referred ▪ a CPO 2wd or advice hearing ▪ a contact direction review hearing.
Person with contact under a contact order or permanence order	To attend at the start only if the hearing is a contact direction review hearing.
Person about whom deeming has been referred to the PHP/hearing	
Representative of a person about whom deeming has been referred to the PHP/hearing	To attend at the start if the person they are representing is also attending. The person may have both a lay representative and a legal representative.
Person about whom meeting the criteria for participation rights or the s132A criteria has been referred to the PHP/hearing	
Representative of a person about whom meeting the criteria for participation rights or the s132A criteria has been referred	To attend at the start if the person they are representing is also attending. The person may have both a lay representative and a legal representative.
A person who has an individual with a right to attend in their lawful custody	Most likely to be a prison escort or secure care escort. They are to attend at the start only if the person they are escorting attends at the start.
A member of the AST (to observe panel member performance)	In practice they will be in the hearing room before the start of the hearing and will leave if the child or a relevant person objects. Ideally the reporter will explain the situation and find out the child's and relevant persons' views before the hearing starts.
Representative of a newspaper or news agency	

An advocacy worker does not have a separate right to attend – if instructed by the child they are to be treated as a lay representative of the child.

Where any person who may attend at the start has more than one lay representative, it is for the person to decide which lay representative is to attend at the start.

2. **To Attend at Some Point:** The following have the right to attend most hearings (not PHPs) at some point – the chair will decide when. They are not to attend the hearing (or PHP) at the start.

Individual with participation rights	The chair determines the start and finish points. The start point might be quite well into the hearing.
Representative of a person with participation rights	The person may have both a lay representative and a legal representative. The representative's right applies only while the individual they are representing attends.

3. **To Attend if Allowed by the Chair:** Other persons may attend the hearing or PHP only with the permission of the chair of the hearing. They are not to attend at the start. The chair determines whether they may attend at all and, if so, the start and finish points. The chair may make these decisions at any point during the hearing. Such persons include teachers, health visitors, independent report writers, advocacy workers who are not instructed by the child etc.

B. PROHIBITION ON PHYSICAL ATTENDANCE

4. Some persons may be prohibited from attending a hearing in person and be allowed to attend only by electronic means. Only a PHP or hearing can make this decision.
5. The people who can have their means of attendance restricted in this way are:
- Relevant persons and/or their representatives
 - Persons with participation rights and/or their representatives
 - Representatives of a newspaper or news agency.

C. EXCLUSION

6. Any person may be excluded from a hearing or PHP if their behaviour at the hearing or PHP is violent or abusive, or so disruptive that unless they are excluded the chair would need to end or adjourn the hearing or PHP.
7. The following may be excluded from a hearing (and sometimes a PHP) for other reasons:
- a relevant person and/or their representative
 - a representative of a newspaper or news agency.

The broad reasons are that the presence of the person is:

- preventing the hearing/PHP from obtaining the views of the child or a relevant person, or
- causing, or is likely to cause, significant distress to the child or a relevant person.

8. An exclusion lasts as long as the hearing (or sometimes the chair) considers necessary.

D. VOLUNTARY ABSENCE

9. Any person with a right to attend the hearing or PHP may agree not to attend part of the hearing on a voluntary basis. They may agree not to go in at start of the hearing or agree to leave at any point during the hearing. They must be aware of their right to be present before agreeing not to attend. Any agreement reached before the hearing starts must involve the reporter.

APPENDIX 3 – Table of Exclusion Provisions

Situation/Criteria	To whom it applies	How long it lasts	Who makes decision	Statutory reference
Conduct Person's conduct at the hearing or PHP is violent or abusive, or is so disruptive that the chair would consider it necessary to end or adjourn the hearing if person not excluded	<ul style="list-style-type: none"> any person 	as long as necessary	chair	rule 20D(1)(a)
Non-disclosure request Hearing is considering a non-disclosure request and the presence of the person to whom the documents are requested not to be disclosed would prevent proper consideration of the request	<ul style="list-style-type: none"> person to whom the documents/information are requested not to be disclosed 	during consideration of the non-disclosure request	hearing	rule 86(3)
Protection for child Presence is preventing the hearing from obtaining the views of the child Presence is causing, or likely to cause, significant distress to the child	<ul style="list-style-type: none"> relevant person, representative of relevant person representative of newspaper or news agency 	as long as necessary	hearing	section 76 section 77 section 78(5)
Protection for relevant person Presence is preventing, or likely to prevent, the hearing or PHP obtaining the views of a relevant person Presence is causing, or likely to cause, significant distress to a relevant person attending the hearing	<ul style="list-style-type: none"> relevant person, representative of relevant person, representative of newspaper or news agency 	as long as necessary	chair	rule 20D(1)(b)

APPENDIX 4 - Rule 20B – Duty to Enable Remote Attendance

A. APPLICATION

The application of rule 20B arises only in relation to physical hearings where the reporter would not otherwise be arranging for the person to attend remotely.

The application of rule 20B is a three-stage process:

1. Receipt of request
2. Consideration of the criteria - good reason/effective participation
3. Taking all reasonable steps to enable remote attendance, if either of the criterion at (2) apply

1. *Receipt of request*

The request requires to be made by the person who wishes to attend remotely (or by someone acting on their behalf, with their consent).

A request from an agency, a residential establishment or a prison does not trigger consideration of rule 20B, unless it is clear that the agency, establishment or prison is making the request on behalf of the person and the reporter is satisfied that the person has given informed consent to the request.

2. *Consideration of whether there is a good reason for not physically attending and/or whether the person is better able to participate remotely than physically*⁸².

(a) *good reason – participant other than professional representative*

Each of the following is to be taken as a good reason for a person other than a professional representative not physically attending:

- Travel to the hearing involves significant distance, duration or difficulty.
- The person has particular difficulties with travelling eg from illness or disability.
- The extent of the person's attendance at the hearing is likely to be limited and the distance, duration or difficulty of travel would be disproportionate.
- The child is attending remotely from the person's place of work and the person has a role in assisting the child to attend from there.

(b) *good reason - professional representative*

Each of the following is to be taken as a good reason for a professional representative (eg solicitor or advocacy worker) not physically attending:

- The person they are representing is attending remotely.

⁸² The location of the hearing should be carefully selected in the first instance but may be changed, where practicable, to best provide for effective participation by the child, relevant persons and/or others.

- It is a short notice hearing and the representative has a pre-existing diary commitment which make travel impossible.
- The hearing appears likely to be non-contentious from the perspective of the person being represented and the distance and/or duration of travel for the representative would be disproportionate.

The following *may* amount to a good reason for not physically attending, depending on all the circumstances. The reporter is to consult with their Senior Practitioner or LRM before deciding *not* to follow a specified presumption or deciding exceptional circumstances apply.

- If the representative has a diary commitment which pre-dates notification of the hearing and the commitment cannot be changed or covered by someone else, there is a presumption that this constitutes good reason. However, the more frequently a representative requests remote attendance because of diary commitments, the more scrutiny the reporter is to give each request and, even if it meets the situation, the less likely it should be viewed as good reason.
- If the representative has a diary commitment which post-dates notification of the hearing, there is a presumption that this does *not* constitute good reason.
- Exceptional circumstances eg travel disruption.

Neither of the following is to be taken as amounting to a good reason for not physically attending:

- The convenience of the representative.
- Any anticipation by the representative of SLAB refusing funding for travel.

(c) *better able to participate effectively by remote attendance – any participant*

Each of the following is to be taken as meaning the person is better able to participate effectively by remote attendance rather than physical attendance:

- The person has particular communication difficulties that have more of a negative impact on participation if physically attending than if attending remotely.
- There are circumstances specific to that particular hearing that mean the person would have more difficulties participating within the hearing if physically attending than if attending remotely (eg the person's current physical, mental or emotional health).
- The person would be caused distress by coming into contact, or potentially into contact, with specific individuals at the hearing (or Hearing Centre) and would be less distressed by video, or potential video, contact – and the criteria in rule 20C (determination by PHP that a person is to attend only by electronic means) are not met or the person requesting remote attendance would prefer that they attend remotely rather than the other person.
- The person has other concerns that impact on their ability or confidence to participate effectively in person and those concerns cannot be

addressed by other steps (eg changing the location of the hearing, having an understanding of the hearing's powers of exclusion, waiting room arrangements).

If the reporter considers that any other circumstances amount to good reason for not attending physically or to more effective participation through remote attendance, they are to consult with their Senior Practitioner or Locality Reporter Manager.

3. *Taking all reasonable steps*

If the duty is triggered, it requires SCRA to take *all reasonable steps* to enable the person's remote attendance. It is therefore not an absolute requirement that we enable remote attendance, and practicalities can be taken into account – for example how long until the hearing takes place, whether the hearing is already set up for some virtual attendance, the facilities available at the scheduled location etc. Operational guidance may be relevant in deciding what is reasonable in terms of the practicalities.

If all reasonable steps are insufficient to enable remote attendance, remote attendance will not be available to the person.

B. COMMUNICATION IN RELATION TO RULE 20B

If remote attendance is not arranged in response to a request, the reporter must ensure that any communication to the requester is accurate in terms of how it reflects the application of rule 20B.

C. NON-ATTENDANCE FOLLOWING DECISION NOT TO ARRANGE REMOTE ATTENDANCE UNDER RULE 20B

In some circumstances the reporter will decide that the criteria in rule 20B (good reason or effective participation) are not met. As a result there will be no duty on SCRA to take steps to enable the person to attend remotely. Separately, there may be circumstances where the criteria are met but the taking of all reasonable steps is insufficient to enable remote attendance.

The lack of opportunity to attend remotely does not in itself create unfairness. If the person does not attend the hearing, it is for the hearing to decide how to proceed, taking into account all the circumstances. This is the same as when anyone does not attend a hearing (whether remotely or in person). After the hearing starts the reporter is to inform the hearing of the request and the reporter's response to it, including the basis (ie criteria not met or all reasonable steps not sufficient to enable).

APPENDIX 5 – Flowchart of Method of Attendance at a Physical Hearing

