

Practice Direction 17

Contact Direction Review Hearings

Date Issued: 21 June 2013

Date Implemented: 24 June 2013

Date Last Revised: 21 June 2013

SUMMARY

- Section 126 provides that when a hearing order contains a contact direction the reporter must arrange a hearing to review the contact direction when:-
 - a contact order or a permanence order regulates contact between the child and any individual (who is not a relevant person)

AND/OR

- a person who claims s/he has or recently has had significant involvement in the upbringing of the child (but who is not a relevant person) requests this.
- Any s.126 hearing must take place no later than 5 working days after the hearing which made the contact direction.
- Reporters must only include in the papers for the s.126 hearing such parts of reports that are directly relevant to the contact direction
- A child and relevant person are not under a duty to attend an s.126 hearing but they have the right to do so.
- If a s.126 hearing is held on request, before making any decision on the contact direction, the hearing must decide whether it is satisfied the claim to have or recently to have had significant involvement in the upbringing of the child is met. If they decide that the test is not met, they do not further review the contact direction as a result of that request.
- If making a substantive decision, the hearing can either confirm the decision in relation to the contact direction or remove or vary the contact direction.
- There is a specific issue appeal against a decision of a contact direction review hearing in s.161.

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1. Introduction

1.1 Section 126 of the Children's Hearings (Scotland) Act 2011 ("the Act") requires reporters, in the circumstances set out in 1.2 below, to arrange a hearing to review a contact direction¹ (referred to in this Practice Direction as "s.126 hearing").

1.2 The circumstances are that:-

- (a) a children's hearing (referred to in this Practice Direction as the "index hearing") makes or continues an order² which contains (or is varied to contain)³ a "contact direction" AND
- (b) one or both of the following situations is relevant
 - a contact order or a permanence order regulating contact between the child and any individual (who is not a relevant person) is in force

AND/OR

- a person who claims s/he has or recently has had significant involvement in the upbringing of the child (but who is not a relevant person) requests that the reporter arrange a hearing for the purpose of reviewing the contact direction

(s.126(1)-(3), Regulation 2 The Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Persons) (Scotland) Order 2013). If there is no contact direction in the hearing order, a section 126 hearing cannot arise.

See Practice Direction 3 on Relevant Persons.

2. Requests for s126 hearing

2.1 The reporter should encourage requests for a s.126 hearing to be made in writing. However, the reporter may accept a verbal request.

¹ A "contact direction" is a direction regulating contact between the child and a specified person or class of person (s126(1)(b), s83(2)(g) or 87(2)(g)).

² A CSO, an ICSO, an interim variation of a CSO or an MEO which is to have effect for more than 5 working days, or a CSO which is continued under s.138, s.126(1)

³ It does not matter whether the index hearing makes the decision in relation to the contact direction. All that matters is that the order contains a contact direction. So, if a hearing makes an interim variation of a CSO which does not change the contact condition appearing in the CSO, the preconditions for a contact direction review will still arise. The hearing making the interim variation is the index hearing.

2.2 Before arranging a s.126 hearing, the reporter must be sure that:-

- the individual is requesting a review hearing to review the contact direction; and
- the individual is doing so on the basis that s/he claims to have or recently to have had significant involvement in the upbringing of the child.

2.3 If either of these issues is unclear, the reporter must clarify this with the individual. For most hearings, the reporter will have written to any person who appears to the reporter to have or recently to have had significant involvement in the upbringing of the child. (See Practice Direction 14 on Notifications and Papers). In communicating with any individual who has not been notified, the reporter must not disclose any confidential information about the child including information that the child is within the hearing system.

2.4 The reporter must take a “claim” that a person has or recently has had significant involvement in the upbringing of the child at face value. The reporter does not have the power to assess whether this claim is correct and **must** schedule a s.126 hearing.

3. Arranging a section 126 hearing

3.1 A s.126 hearing must take place no later than 5 working days after the index hearing. For example, if the index hearing is held on a Tuesday, the s.126 hearing must be held no later than the following Tuesday. Reporters must make every effort to arrange a s.126 hearing within the time limit, even if the request for such a hearing is made shortly before the expiry of the 5th working day. If a request for such a hearing has been made before the expiry of the 5th working day, and it is impossible for the reporter to arrange the hearing within the time limit, it may still be competent for the reporter to arrange the hearing. If so, the reporter must make every effort to arrange the hearing for the next working day. Only in very exceptional circumstances could it be appropriate for the hearing to take place later than that⁴.

3.2 The reporter must notify a s.126 hearing to the child, the relevant persons and any person with a right to attend the hearing (see below). (See also Practice Direction 14 on Notifications and Papers).

3.3 The reporter must do so as soon as possible and no later than 3 days after the index children’s hearing, Rule 42. In practice, for

⁴ The reporter should contact the Practice Team if it is not possible to arrange the hearing on the next working day.

automatic s.126 hearings, the notification must be posted first class the same day or the day after the index hearing⁵.

- 3.4 Wherever possible when sending notifications and in all cases no later than 3 days prior to the s.126 hearing the reporter must provide persons who have been notified of the hearing:-
- a copy of the contact direction in the order and the reasons for that direction.
 - any document or part of any document which is relevant to the s126 hearing. (Rule 42).
- 3.5 Reporters must only provide only such parts of reports that are directly relevant to the contact direction. Where excerpts of reports are used and can readily be cut and pasted, reporters are to use the template in Appendix 2 to provide relevant excerpts of reports.
- 3.6 Where a s.126 hearing is requested by a person claiming significant involvement, it is highly unlikely that the reporter will be able to comply with Rule 42. In this situation, the reporter must send notifications and papers as soon as possible.
- 3.7 It is conceivable that a s.126 hearing might have to be arranged both because a request for a hearing is made and because a contact or permanence order is in place. Where possible, both purposes should be discussed at the same hearing.
- 3.8 A reporter will not arrange a s.126 hearing on request if:-
- the order does not contain a contact direction; or
 - the request is made outwith the 5 working day time limit; or
 - it is not clear, despite attempts to clarify, that an individual is requesting a hearing to review the contact direction; or
 - it is not clear, despite attempts to clarify, that the individual requesting the hearing is doing so because s/he claims to have or recently to have had significant involvement in the upbringing of the child.
- 3.9 If the reporter is not arranging a s.126 hearing for any of these reasons, the reporter must write to any individual who has requested the hearing to inform them of this. If the individual concerned has not been notified of the index hearing, the letter must not disclose any confidential information about the child including the fact that the child is within the hearing system.

⁵ A hearing is "notified" when the reporter can assume that the letter has been received, which is 48 hours after posting first class (see Practice Direction 14 on Notifications and Papers).

4. At the hearing

- 4.1 A child and relevant persons are not under a duty to attend a s.126 hearing (S126(7)) but they have the right to attend. Rule 42(2)(a) and (b).
- 4.2 Other persons who have a right to attend but no duty to do so are:-
- any person who appears to the reporter to have or recently have had significant involvement in the upbringing of the child;
 - any person who has a contact order regulating contact between the individual and the child;
 - any person having a right of contact with the child under a permanence order;
 - any person who requested a children's hearing be held under section 126(2)(b) of the Act (i.e. claimed to have or recently have had significant involvement in the upbringing of the child);
 - any appointed safeguarder (Rule 42(2)(c)-(g))
- 4.3 If the s.126 hearing is being held because a person has claimed s/he has an or recently has had significant involvement in the upbringing of the child, the hearing must make a decision as to whether that claim is satisfied before reviewing the contact direction. (Rule 74(1) and (2)) If the children's hearing believes that the claim is not satisfied, the hearing must take no further action. (S.126(5))
- 4.4 For every s.126 hearing, the children's hearing must, where proceeding to review a contact direction, seek views on the contact direction from:- the child; each relevant person; any individual who the hearing considers has, or recently has had, significant involvement in the upbringing of the child (even if this is not the same person who requested the s.126 contact review hearing); any individual who has a contact order regulating contact between the individual and the child; any individual who has a permanence order which specifies arrangements for contact between the individual and the child, rule 74(5). In practice, the hearing could only seek such persons' views if they are present at the hearing.
- 4.5 There is no specific power to defer an s126 hearing. However, if proceeding to make a decision would be unfair, for example, if a child or relevant person, or indeed the person who has requested the hearing cannot attend for a valid reason, the hearing has an implied power to defer.

- 4.6 A s126 hearing must consider whether to appoint a safeguarder, unless a safeguarder has already been appointed, s30(1) and (5). As there is no express power to defer a s.126 hearing, nor should there be any deferral unless in exceptional circumstances, it is hard to envisage situations in which a s.126 hearing might consider it appropriate to appoint a safeguarder.
- 4.7 The substantive decision options open to the hearing are as follows:-
- confirm the decision of the index children's hearing, S.126(6)(a); or
 - vary the CSO, ICSO or MEO (but only by varying or removing the contact direction), S.126(6)(b).

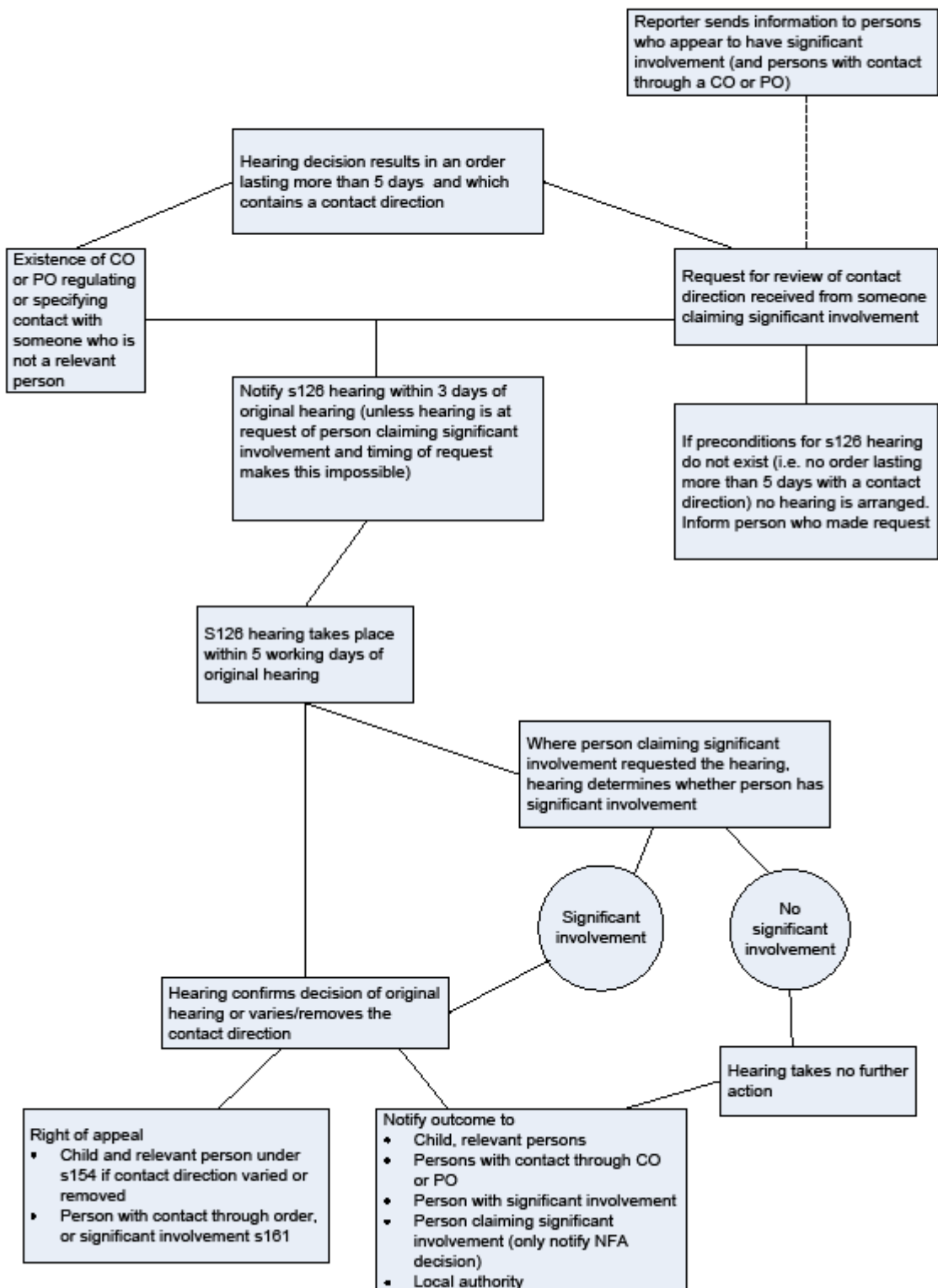
5. Appeals against s126 hearing decisions

- 5.1 S.161 sets out specific rights of appeal in relation to s126 hearings. However, s.154 also sets out rights of appeal for the child, a relevant person and a safeguarder in relation to "a relevant decision" by a children's hearing. The definition of "relevant decision" in s.154 includes a decision to vary a CSO (s.154(3(a))). (See Practice Direction 24 on Appeals).
- 5.2 Sections 161 and 154 are not mutually exclusive. Different timescales apply to appeals under the two sections.
- 5.3 Only a decision under s.126(6) may be appealed, that is a decision to confirm the index hearing's decision or vary or remove the contact direction in the CSO, ICSO or MEO (s.161(3)).
- 5.4 The following persons may appeal under s.161 (except if they are a relevant person in relation to the child):-
- anyone who has a contact order regulating contact between that person and the child;
 - anyone who has a permanence order which specific arrangements for contact between that person and the child;
 - a person who has or recently has had (not someone who claims to this – though see 6.1 above) significant involvement in the upbringing of the child⁶. (S.161(2))

⁶ Strictly, there is no appeal against a hearing's decision that a person who requested the hearing does not have or recently had significant involvement in the upbringing of the child. However, in practice, a court is likely to consider this point as a preliminary to the merits of an appeal, and therefore in effect there is also a right of appeal against this point.

Appendix 1 – Flowchart

S126 Contact Direction Review



Appendix 2 – Template for Papers for S.126 Hearing

Extracts from reports relevant to s126 hearing

1. Extract from Report by x, [professional status], dated []
[Reporter to cut and paste here relevant excerpt]

2. Extract from Report by y, [professional status], dated []
[Reporter to cut and paste here relevant excerpt]