



**PRACTICE NOTE NUMBER 1 OF 2024**

**CHILDREN'S REFERRALS UNDER THE CHILDREN'S HEARINGS  
(SCOTLAND) ACT 2011**

I, SEAN FRANCIS MURPHY KC, Sheriff Principal of North Strathclyde, for the purpose of regulating practice in the Sheriff Courts of North Strathclyde in pursuance of the powers conferred by Section 27(2) and (4) of the Courts Reform (Scotland) Act 2014, and all common law powers enabling me on that behalf, Order and Direct as follows:-

**Part 1 Introduction**

- 1.1 The overriding purpose of this Practice Note is to ensure that children's referral proceedings are conducted as fairly, expeditiously and efficiently as possible. This requires the accurate estimation of the time required to be allocated for hearings, the reduction of repeated appearances, and the elimination of unnecessary or repetitive evidence. This will be achieved by active judicial management, together with a requirement on all parties to co-operate to achieve the foregoing aims.
- 1.2 The Practice Note applies to the following, all of which are collectively referred to as children's referral proceedings:
- proof applications (applications by the children's reporter to determine the statement of grounds for referral which are not accepted or not understood);
  - applications for interim compulsory supervision orders (ICSOs) by the children's reporter;
  - applications to recall child protection orders;

- appeals against decisions by children's hearings; and
- applications for review of previously established grounds for referral.

The requirements of this Practice Note applicable to proof applications (Parts 3 and 4) will also apply, subject to any necessary adjustment, to any other children's referral matter in which it is anticipated that evidence will be led.

- 1.3 Except in the circumstances set out in section 26 of the 2011 Act, the court must regard the need to safeguard and promote the child's welfare throughout childhood as the paramount consideration. Further, the court must offer the child appropriate opportunities to express their views, and must have regard to any views so expressed in the circumstances outlined in section 27.
- 1.4 This Practice Note has immediate effect.
- 1.5 All statutory references are to sections of the Children's Hearings (Scotland) Act 2011 and to rules contained in the Act of Sederunt (Child Care and Maintenance) Rules 1997 as amended, and in particular Rules 3.46A and 3.47.
- 1.6 All references to "sheriff" include "summary sheriff".
- 1.7 The sheriff clerk may allocate, in consultation with the presiding sheriff, additional days for procedural and substantive hearings in any case as required.
- 1.8 Where the children's reporter is required by a warrant to cite issued by the court or subsequent interlocutor, the court will presume at the calling of the relevant application that service has been effected by the reporter in terms of the court's direction and without the need for lodging certificates of service with the court. If however there has been an issue with service it will be the responsibility of the children's reporter to bring this promptly to the attention of the court to allow the presiding sheriff to consider what further directions may be necessary.

## Part 2 Proof Applications - General

### Lodging of Application

- 2.1 When lodging an application to establish grounds for referral under section 93 or 94, the children's reporter must at the same time lodge a provisional list of witnesses containing a brief summary of the matters to which these witnesses are expected to speak, and a note of any issues known to the reporter and considered relevant to the court's exercise of its duties in terms of section 27.
- 2.2 At the time of lodging the application, the children's reporter should draw to the sheriff clerk's attention any factors indicating that the case may require to be designated as a 'complex case' as defined at paragraph 3.1 below.

### Cooperation of Parties

- 2.3 Parties are expected to assist the court in achieving the fair and expeditious determination of the application with the minimum of delay. In particular, parties shall:
- cooperate in exchanging and agreeing evidence as soon as reasonably practicable;
  - make full and frank disclosure of their position;
  - make the court aware of any issues relevant to the court's exercise of its duties in terms of section 27;
  - provide such information on the progress of the application as is required by the sheriff;
  - be able to advise the court as to the availability of witnesses; and
  - lead only relevant evidence and do so in an efficient manner.

### First Hearing

- 2.4 At the first hearing, the sheriff will seek to progress the application as expeditiously as possible. To enable the court to do so, parties must be in a position to address:
- (if not already determined) whether a safeguarder should be appointed;

- whether the children's reporter has disclosed relevant information and, if not, what arrangements are to be made for disclosure;
- whether any other party holding relevant information has disclosed it and, if not, what arrangements should be made for disclosure;
- whether any party intends to seek to recover material in the hands of others i.e. if a motion for specification of documents is contemplated;
- whether the requirement on the child to attend that or subsequent hearings should be dispensed with in terms of section 103(3);
- their understanding of the child's views or wish to express any views as regards any matter arising in the course of the application that relates to the welfare of the child in accordance with section 27;
- whether any party proposes to lead evidence from a child or other vulnerable witness, including what special measures may be required for such evidence to be taken directly;
- whether any party proposes to rely on a hearsay statement in the absence of a witness and what counter-balancing measures, if any, require to be taken in consequence thereof;
- in the case of an application falling within section 94(2)(a), whether to dispense with the hearing of evidence and deem the grounds for referral to be established;
- where representation is to be funded via Legal Aid, the status of any application including any applications for sanction;
- (where not recorded on the Form 60 application) which supporting facts are accepted and, in general terms, the position with regard to any statement of fact which is not accepted, including notice of any evidence which a party other than the reporter proposes to lead;
- where any party proposes to rely on a hearsay statement in the absence of a witness, whether that witness is required to attend by any other party under explanation of why the witness is required by the other party;

- any other steps that may be necessary to secure the expeditious determination of the application, including but not limited to those listed in Rule 3.46A;
- whether the case should be treated as a complex case in terms of Part 3 below.

2.5 If the application is not disposed of at the first hearing, unless the application is designated as a complex case, the sheriff will fix a proof hearing and a pre-proof hearing, if satisfied that the parties are or ought to be ready to proceed to proof at the proof hearing and that the hearing of evidence is likely to be required. If not so satisfied, a second procedural hearing will be assigned.

2.6 Where a second or subsequent procedural hearing is fixed the sheriff shall make such orders as necessary to secure the expeditious determination of the application including, but not limited to, a direction for respondents to the application provide a written outline of their case and addressing the matters set out at paragraph 3.7 below. All directions so given will be set out in the interlocutor issued by the sheriff clerk to all parties in respect of the hearing. The sheriff shall also ensure the interlocutor includes sufficient detail of matters raised at the calling to assist the sheriff presiding at the second or any subsequent procedural calling to address matters previously raised.

#### Subsequent Hearings

2.7 At the second or subsequent procedural hearing is fixed, the sheriff will consider the matters listed at paragraph 2.4 insofar as not already determined. The sheriff will consider whether a hearing of evidence is likely to be required and, if so, the parties' state of preparation for proof. If the application cannot be determined at the second hearing, the sheriff will fix a proof hearing unless satisfied, on cause shown, that a further procedural hearing should be fixed.

2.8 Where a child is subject to interim measures the terms of which involve significant interference in private and family life, parties are expected to take

all reasonable steps to assist the court in securing the earliest possible determination of the application.

### Proof Hearing

2.9 Where a proof hearing is fixed, the expectation is that the proof will proceed at that hearing. Once fixed, in normal circumstances the court will grant an adjournment of the proof hearing only where satisfied on cause shown that to do so is in the interests of the child and is likely to result in the fair and expeditious determination of the application.

2.10 As referral procedure is summary, proceedings should be concise. Parties must bear in mind at all times their responsibility to exercise reasonable economy and restraint in the presentation of evidence and submissions to the court. The sheriff has powers at common law and in terms of rule 3.46A to discourage prolixity or repetition or to restrict the issues for proof in order to prevent the leading of evidence which is unlikely to assist the court to reach its decision.

### **Part 3 Proof Applications - Complex Cases**

3.1 A complex case is any application where the court reasonably anticipates either that a hearing of more than 3 days may be required, where the court has approved the leading of expert evidence in terms of paragraph 3.13, where there will be evidence from a child or vulnerable witness, or where the presiding sheriff considers that additional case management procedures are necessary to ensure the expeditious determination of the case.

3.2 Once a case has been identified as a complex case, in the interests of continuity and consistency in management, every stage of the case must, wherever possible, call before the same sheriff on dates and at times assigned by him or her. If a diet of proof has to be fixed, it will be assigned to the sheriff who has conducted the previous hearings. Only in exceptional circumstances should the proof be assigned to another sheriff.

- 3.3 Throughout the progress of a complex case, all parties are under a duty to cooperate to ensure the efficient management of the proceedings and the best use of court time. In particular, parties shall:
- make full and frank disclosure of their position;
  - be prepared for each case management or pre-proof hearing;
  - agree evidence wherever possible;
  - where applicable, comply with the requirements set out below regarding expert evidence; and
  - lead only relevant evidence and do so in an efficient manner.

Case Management Hearings

- 3.4 At the first procedural hearing, or as soon thereafter as an application is identified as likely to be a complex case, after considering the matters listed at paragraph 2.4 above the sheriff will fix a case management hearing.
- 3.5 The purpose of the case management hearing is to clarify the scope and duration of proof required, and any other logistical or procedural matters likely to affect the progress of the case.
- 3.6 In advance of the case management hearing, each party shall lodge a copy report from any expert witness, and a case summary. Parties shall also lodge a joint minute of admissions in relation to any supporting facts, or any evidence, that is agreed. Where a further case management hearing is fixed, each party must lodge an updated case summary if directed to do so by the court or if required in accordance with paragraph 3.14 below.
- 3.7 A case summary is a document which gives fair notice of a party's position and state of preparation by setting out in concise terms:
- a note of the identity of those who will represent the party at proof;
  - where Legal Aid is to be used for the purpose of proceedings the status of the application including any application for sanction;

- (where not recorded on the Form 60 application) which supporting facts are accepted, and in general terms, the position with regard to any statement of fact which is not accepted;
- where any party proposes to rely on a hearsay statement in the absence of a witness, whether that witness is required to attend by any other party under explanation of why the witness is required by the other party;
- (for each party other than the children's reporter ) the extent to which, and basis on which, the grounds of referral and statement of facts are disputed;
- to the extent that the party holds relevant material, what disclosure has been effected and, if full disclosure has not been made, why not;
- a list of witnesses;
- the party's understanding of the child's views or wish to express any views as regards any matter arising in the course of the application that relates to the welfare of the child;
- the nature and scope of the evidence to be led (one succinct but informative paragraph per witness);
- whether any party intends to seek to recover material in the hands of others ie. whether a motion for specification of documents is contemplated;
- where the party proposes to lead evidence from a child or other vulnerable witness, what special measures may be required for such evidence to be taken directly;
- whether the party proposes to rely on a hearsay statement in the absence of a witness; and if so what counter-balancing measures, if any, require to be taken in consequence thereof;
- any matters relating to expert evidence in accordance with the terms of paragraphs 3.13 to 3.17 below;
- whether an inventory of productions is lodged or to be lodged by that party or, wherever possible, by parties jointly;
- an estimate of the number of days likely to be required to hear that party's evidence (including cross-examination and re-examination); and



- a note of any other logistical, procedural, evidential or legal issues to be raised by that party, and not yet resolved, that may affect the progress of the case.

3.8 At the case management hearing, parties shall cooperate so as to allow the sheriff to identify:

- the scope of the dispute between the parties;
- the nature and duration of the evidence to be led, and why such evidence is required;
- the extent to which evidence may be presented in the form of affidavits, signed written statement or other written evidence;
- any special measures or particular arrangements required in respect of evidence to be led;
- whether any procedure other than proof is likely to be required, and the reason for that; and
- any logistical, procedural, evidential or legal issues and the extent to which they may affect the progress of the case.

3.9 At the case management hearing, the sheriff may give the parties directions, including but not limited to directions regarding: instruction of a single expert; the use of affidavits or signed witness statements; restriction of the issues for proof; restriction of witnesses; and any special measures or arrangements to be made available for a child witness or vulnerable witness. All directions so given will be set out in the interlocutor issued by the sheriff clerk to all parties in respect of the hearing.

3.10 Generally the sheriff will not fix a diet of proof, or a pre-proof hearing, until satisfied that the parties have substantially complied with the requirements of paragraphs 3.7 and 3.8 and that it is possible to identify with some confidence the duration of proof hearing reasonably required. Where the sheriff considers that one or more parties has failed to comply timeously with the above requirements, the sheriff may nevertheless fix a diet of proof where satisfied

that to do so would be in the best interests of the child and would ensure the fair and expeditious determination of the application.

- 3.11 Having assessed how many days are needed for the proof, the sheriff will assign the proof. He or she should do so at the hearing after consultation with, and the agreement of, the sheriff clerk. The dates assigned should be consecutive working days and to allow for this, consideration should be given to the possibility of conducting the proof in another court within the sheriffdom, if necessary. Consideration should be given by the sheriff as to whether preparation time is likely to be required prior to hearing the case and should raise the matter with the sheriff clerk for an appropriate arrangement to be made conducive to an expeditious disposal of the case.
- 3.12 When fixing a diet of proof in a complex case, the sheriff will also fix a pre-proof hearing.

#### Expert Evidence

- 3.13 Expert evidence – that is, evidence from a witness speaking primarily to opinion evidence rather than to evidence of fact – will be restricted to that which in the opinion of the court is necessary to assist the court to determine the proof application. Where any question arises regarding reliance on expert evidence, parties are expected to have regard to the guidance set forth by the Supreme Court in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6 at paragraphs 38 to 61.
- 3.14 Where it is the view of one or more parties that expert evidence may be necessary in terms of paragraph 3.13, each such party must include within their case summary:
- the issues to be addressed by expert evidence;
  - the area(s) of expertise necessary to address these issues;
  - the identity of any expert who has been instructed to provide a report or who has been cited, along with a concise statement of the relevance of the expert's qualifications and experience;

- the enquiries that would require to be undertaken by the expert or experts, including specifically whether any examination or assessment of the child is proposed;
- the likely impact on the length and conduct of the proof hearing; and
- why such expert evidence is considered necessary.

3.15 The court expects parties to ensure that any expert witness who is instructed or cited represents an established and respectable body of relevant professional opinion, is appropriately qualified and competent to address the relevant issues, is appropriately informed as to the facts, and does address the relevant issues.

3.16 Where the court determines that expert evidence is necessary, the court will consider joint instruction of a single expert witness by all parties, including the children's reporter, to be the norm. On cause shown, where the court determines that it would be in the best interests of the child and of a fair hearing, the court may permit two or more parties each to instruct and cite their own expert witnesses on defined areas. In such circumstances parties must follow the procedure set out in paragraph 2 of the Appendix to this Practice Note. Further, unless the court otherwise directs, such evidence shall be led simultaneously as described more fully in the Appendix.

3.17 The court will not hesitate to use its powers to restrict the issues for proof and to restrict witnesses where it considers that a party who wishes to lead expert evidence has not complied with the requirements of the foregoing paragraphs.

#### Pre-Proof Hearing

3.18 In advance of the pre-proof hearing, each party must lodge

- an updated case summary, containing a final list of witnesses and a proposed running order and timetable for the proof;
- any productions to be relied upon;
- and any other documents specified by the sheriff at the case management hearing.

- 3.19 Parties should bring to the sheriff's attention any logistical, procedural, evidential or legal matters liable to affect the progress of the case and should provide the sheriff with such information as is necessary to determine such matters.
- 3.20 The interlocutor arising from the pre-proof hearing will have attached to it a timetable for the progress and completion of the proof as agreed by the parties or, failing such agreement, as determined by the sheriff.

*Proof*

- 3.21 During the proof hearing, the court is likely to sit continuously between 10 am and 1 pm, and again between 2pm and 4pm. At the court's discretion, parties may be asked to lead evidence beyond 4pm each day, in order to secure the expeditious resolution of the referral.
- 3.22 Parties must bear in mind at all times their responsibility to exercise reasonable economy and restraint in their presentation of evidence and submissions to the court, and are reminded as to the obligations contained in paragraph 2.10 of this Practice Note.
- 3.23 No party will be allowed to lead evidence or to follow a substantive line of examination not previously disclosed to other parties and the court, except with the leave of the court on cause shown.
- 3.24 Where Rule 3.47(4A) applies, at the close of the evidence led by the reporter, the child, the relevant person and any safeguarder may give evidence and may, with the leave of the sheriff, call witnesses with regard to the ground in question. In determining whether to grant such approval, the sheriff shall take into account: the overriding purpose of this Practice Note; the nature and quality of the evidence led by the reporter, the nature and scope of the evidence that any other party proposes to call; and the extent to which parties have complied with their responsibilities under this Practice Note.

### Variation of Timetable

- 3.25 Once a diet of proof is allocated, parties should not expect the court to sanction any variation to or extension of the timetable referred to in paragraph 3.20.
- 3.26 Any motion to adjourn a proof, to allow additional evidence or to allocate additional days to the hearing of the proof will be granted only on cause shown, taking account of the responsibilities of parties under this Practice Note and the extent to which parties have complied with them.

### **Part 4 Applications for ICSOs**

- 4.1 An application for an interim compulsory supervision order should include within the application a written statement setting out in concise terms the procedural history of the case, and the basis on which the reporter considers it is necessary for the protection, guidance, treatment or control of the child that the current ICSO be extended or extended and varied.
- 4.2 The sheriff will assume that a party who does not attend in person and is not represented at a hearing to consider an application under paragraph 4.1 above does not oppose the extension of the order in the terms sought by the children's reporter.

### **Part 5 Appointment of Safeguarders**

- 5.1 On lodging an application to establish grounds for referral, the reporter must advise the court of the identity of any safeguarder appointed by the children's hearing in respect of the child.
- 5.2 Any party lodging an application to recall a child protection order, an appeal against a decision of a children's hearing or an application for review of previously established grounds for referral must advise the court of the identity of any safeguarder or curator ad litem currently or recently appointed in respect of the child.

- 5.3 In deciding whether to appoint a safeguarder or curator ad litem, the sheriff may take into account: the age or ages of the child or children; the nature of the grounds for referral; whether the grounds for referral are accepted or not by any relevant person; whether there is a conflict of interest between the child and any other party such that the court cannot otherwise protect the interests of the child; whether the appointment of a safeguarder would facilitate the child's expression of views in terms of section 27; and any other relevant information provided by the children's reporter or any other party.

## **Part 6 Appeals to the Sheriff**

### **Appeals - General**

- 6.1 The primary decision-making forum in respect of arrangements for a child who requires compulsory measures of care is the children's hearing. The task of the sheriff on appeal is to determine if the children's hearing has made some error of law or procedure or has otherwise made a decision which could not on any reasonable view be justified in the circumstances of the case. Practitioners will be expected to address the court on the correct legal test in an appeal, which should be directed to the error of law said to arise in the decision of the children's hearing.
- 6.2 The time limits set out in sections 157, 160 and 161 of the 2011 Act, as the case may be, must be observed.
- 6.3 When an appeal is lodged, the appellant will be expected to send a courtesy copy to the local Children's Reporter to facilitate the expeditious booking of the appeal and to ensure that all relevant parties are clearly identified for inclusion within the warrant of citation.

## Appeals against Compulsory Supervision Orders

- 6.4 In view of the timescale referred to at 6.2 above, co-operation between parties' representatives in the preparation for any appeal hearing is essential. A bundle of authorities on which a party seeks to rely at the appeal hearing must be lodged with the court by the date and time directed by the sheriff. If no such direction has been issued, the bundle of authorities should be lodged by 4pm on the day preceding the hearing of the appeal. Relevant passages should be highlighted for the assistance of the court.
- 6.5 Where an appeal is lodged against the a relevant decision relating to a compulsory supervision order (CSO) or the discharge of a referral the court will fix a substantive hearing unless the appellant indicates when the appeal is lodged that there is a specific legal, evidential or procedural matter which requires to be determined in advance of the appeal hearing.
- 6.6 Where such an indication has been made, the court will fix a procedural hearing in order to determine the matter or matters which have been specified by the appellant.
- 6.7 For the avoidance of doubt, and without prejudice to the sheriff's powers under section 155 and Rule 3.56, any motion that the appellant be allowed to lead evidence in support of the appeal must be made at the time of lodging the appeal and will be determined at a procedural hearing fixed in terms of the foregoing paragraph.
- 6.8 Unless the child is the appellant or lodges answers to the appeal, each party must advise the court of their understanding of the child's views or wish to express any views regarding disposal of the appeal.

I appoint this Practice Note to be inserted in the Act Books of every Court within the Sheriffdom and published on the Scottish Courts and Tribunals website.

A handwritten signature in black ink, appearing to read "Sean F Murphy". The signature is written in a cursive style with a large initial 'S' and 'M'.

Paisley, 1 October 2024

Sheriff Principal S F Murphy KC  
Sheriff Principal of North Strathclyde



## APPENDIX

### Simultaneous Expert Evidence - Guidance for Parties in Referral Proceedings

1. Simultaneous expert evidence (sometimes known as 'hot-tubbing') is a process for taking expert evidence in a manner that enables the court and parties to focus on the areas of disagreement between experts on crucial issues. It is particularly useful where the court has allowed parties to call experts to give competing evidence which is intended to comment on the same matters.
  
2. Whether experts ultimately give evidence simultaneously or separately, the process is of considerable assistance in identifying the issues in dispute and the basis for such dispute. Accordingly, in any case where the court has determined that two or more parties may each call their own expert witness or witnesses on defined areas, parties must:
  - Ensure that each expert has available a copy of all reports lodged by the other experts;
  - Ensure that each expert's report or reports, together with a full CV if not included in a report, are lodged with the court by the pre-proof hearing at the latest;
  - Ensure that communication takes place between the experts so that they can identify the matters on which they agree, the matters on which they do not agree and the reasons for such disagreement;
  - Prepare a joint note setting out the matters of agreement between the experts, the matters on which the experts disagree and the reasons for their disagreement. The joint note should be intelligible and concise. It should be separate from any joint minute of admissions or agreement amongst the parties themselves regarding non-expert evidence. It may well be that the joint note should be prepared by the experts themselves, although it of course remains the parties' responsibility to ensure it is prepared;

- And lodge the joint note at least 1 week in advance of the date when the experts, or the first of them, will give evidence.
3. Further, unless the court has approved in advance the non-simultaneous leading of expert evidence, parties must coordinate between themselves and the court to ensure availability of the witnesses on the same date and at the same time.
  4. In practical terms, the process in court where experts give evidence simultaneously is that:
    - The expert witnesses are cited to attend court on the same day;
    - They are brought into court at the same time and take the oath at the same time;
    - The court then takes the lead in questioning, focusing on the matters on which there is dispute between the experts and the reasons for that dispute. The same question will be put to each witness, topic by topic;
    - During questioning the experts will be encouraged to comment on each other's opinion and to engage in three-way dialogue between each other and the court;
    - All parties will be given the opportunity to ask supplementary questions, either on a topic-by-topic basis or after the court has concluded its questioning of the witnesses.