

### Observers at Children's Hearings

#### Summary

- a member of an Area Support Team and a representative of a newspaper or news agency have a right to attend a children's hearing. All other observers are in attendance at the discretion of the chairing member and cannot observe if the child or relevant person objects
- SCRA and CHS will facilitate the observation of children's hearings by a person with a genuine professional or research interest in the system and where this is the only way in which they can obtain the knowledge required
- as both SCRA staff and AST members will be involved in arranging observations there is a need for good communication between the SCRA locality and AST about observers
- there is a presumption that only one observer will be present at a children's hearing
- ordinarily all observers at a children's hearing should have a Protection of Vulnerable Groups (PVG) certificate or a similar assurance
- in relation to trainee panel members, every effort will be made to conclude their PVG check prior to them observing a hearing. Where this is not practicable their successful completion of the selection process and competent participation in pre-service training will provide adequate assurances that will allow them to observe hearings as an essential part of their pre-service training. Where a request is made by CHS for a trainee panel member to observe a hearing, SCRA staff are to make the arrangements
- with the exception of trainee panel members, observers without the right to attend the hearing should be asked to wait outside the hearing room until their attendance has been discussed with the child and relevant persons present

Observers may wish to be present at children's hearings for a variety of reasons. Observers can include trainee panel members, Area Support Team (AST) members who are observing panel member practice, new Children's Reporters, SCRA or CHS staff with a legitimate interest in the conduct of hearings, bona fide members of the press, or professionals who wish to understand more about the operation of the children's hearings system.

The Hearings Management Practice Guidance (HMPG), section 7, sets out the practical arrangements for the attendance of observers, with an emphasis on it as part of the regular communication between SCRA localities and ASTs. This note has been developed by the joint SCRA/CHS Hearings Management Group to supplement the HMPG by giving information to panel members and children's reporters about the law and practice in relation to observers at children's hearings. It should be read alongside section 7 of the Guidance.

## **1. The Legislation**

Under the Children's Hearings (Scotland) Act 2011, some observers have a right to attend a children's hearing or pre-hearing panel:

- A member of an Area Support Team, acting in the person's capacity as such, for example a Panel Practice Advisor (PPA)
- A representative of a newspaper or news agency

In addition a constable, prison officer or other person (for example a prisoner escort) who has a person who is to attend a hearing in their custody, is authorised to attend the hearing.

Any other observer at the hearing or pre-hearing panel must be granted permission to attend by the chairing member. In making a decision about an observer's attendance:

- the chairing member cannot grant permission to a person if the child or relevant person objects to the observer's presence
- the chairing member must take all reasonable steps to ensure that the number of persons present at the hearing is kept to a minimum

### ***AST Members***

Typically the members of ASTs who will be observing children's hearings will be Panel Practice Advisors (PPAs) for the purpose of observing the practice of panel members and providing them with feedback.

Rarely another member of the Area Support Team may wish to attend a children's hearing. Area Conveners and Depute Area Conveners will have an overview of AST attendance at hearings and make sure there is a clear reason and purpose for AST members attending a

children's hearing. The overriding concern of AST member must be the privacy of children and families who attend hearings and therefore they should only attend children's hearings where it is the only way of obtaining the information they require to fulfil their role on the AST.

Although AST members have a right to attend hearings, this right should not be exercised when the child or a relevant person objects to the attendance of the AST member at the hearing.

### ***Representative of a newspaper or news agency***

The attendance of a journalist at a children's hearing will usually be arranged by CHS and SCRA national offices. If prior notice of attendance is known, panel members and the relevant AST will be notified by the SCRA locality or CHS as appropriate.

On the day of the hearing all journalists must produce a form of photographic identification to confirm that they are 'a representative of a newspaper or news agency'. The reporter will confirm this before the hearing begins, but the chairing member may also request to see the identification at the start of the hearing if he or she wishes.

There are strict rules about the publication of information from a children's hearing. Where the attendance of a journalist has been arranged in advance this will have been explained to the individual. However, it would be good practice for the chairing member to remind all present of the restrictions at the start of the hearing.

It is a criminal offence to publish "*protected information*" if the publication of the information is intended, or is likely, to identify a child, or the child's address or school. "*Protected information*" means information in relation to a children's hearing, an appeal against a decision of a children's hearing, proceedings before the sheriff or an appeal from any decision of the Sheriff or Sheriff Principal made under the 2011 Act. To 'publish' includes printed media, television, radio, online and social media.

A representative of a newspaper or news agency may be excluded from a children's hearing where the hearing is satisfied that:

- it is necessary to do so to obtain the views of the child, or
- the presence of the person is causing, or is likely to cause, significant distress to the child.

When the person is invited back into the room following a period of exclusion the chairing member may, where it is appropriate to do so, explain the substance of what has taken place in the person's absence.

Information for journalists is available on the **SCRA website**.

### ***Observers without a right to attend the hearing***

Other individuals with a genuine interest in the operation of the children's hearings system may also wish to observe children's hearings. This may include trainee panel members, new Children's Reporters or other SCRA staff, CHS staff, researchers, professionals who will interact with the hearings system as part of their role, politicians or observers from outside Scotland.

Children's hearings are private proceedings. However, SCRA and CHS will facilitate the observation of children's hearings by a person with a genuine interest in the system and where this is the only way in which they can obtain the knowledge required. 'Mock' hearing resources are available and consideration should be given to using these in the first instance.

## **2. Practical Arrangements**

### ***Before the hearing***

As both SCRA staff and AST members will be involved in arranging observations there is a need for good communication between the locality and AST. The HMPG contains further information on the practicalities of arranging observers.

There is a presumption that only one observer will be present at a children's hearing. In exceptional circumstances where more than one observer wishes to be present at a hearing agreement must be sought in advance from the child, family, Locality Reporter Manager and member of AST leadership team, where possible.

Trainee panel members should be given first priority to observe hearings, followed by Panel Practice Advisors.

Ordinarily all observers at a children's hearing should have a Protection of Vulnerable Groups (PVG) certificate. The person arranging the observer is responsible for clarifying this, which may include seeing a copy of the certificate if there is any doubt. Where the individual does not have a PVG certificate, for example because they are visiting from outside Scotland, they must provide an equivalent assurance before the observation is arranged. Equivalent examples may be Scottish or Westminster Parliament clearance, a police or national security check or a PVG equivalent from their own country.

All observers are subject to a duty of confidentiality and must not discuss anything they have seen or heard outwith the hearing room. This must be clearly explained at the time the observation is arranged and again on their arrival at the hearing centre.

Observers must not be sent papers in advance of the hearing. Hearing papers are available to AST members on request on the day of the hearing. More information about this can be found in the CHS Observation and Feedback policy.

It is good practice for the children's reporter to speak to the child and relevant persons present in the waiting room before the hearing to explain the presence of any observer and give the opportunity to consider if they wish to object. The reporter may communicate the child or relevant person's objection to the attendance of the observer at the start of the hearing if the child or relevant person asks them to.

### ***At the hearing***

Where an observer does not have a right to attend he or she should be asked to wait outside the hearing room until the matter of their attendance has been discussed with the child and relevant persons present. This approach allows the child or relevant person a fair opportunity to object to the attendance of the observer without the potential observer present.

The exception to this is a trainee panel member, part of whose training is to observe the preparation of serving panel members before the hearing and how they start the hearing. However, should a child or relevant person indicate to the reporter before the hearing that he or she objects to the presence of the trainee panel member the reporter should seek permission to pass this information to the panel members to allow the trainee panel member to leave before the hearing starts.

All observers should be introduced by name at the start of the hearing and the purpose of their attendance explained. The child and each relevant person should be given an opportunity to indicate if they object to the presence of the observer. In the case of an AST member, although the child and relevant persons do not have a right to object to the member's attendance, it is expected that the AST member will not exercise their right to attend the hearing if the child or a relevant person objects.

### ***After the hearing***

With the agreement of the chairing member the observer may remain in the hearing room at the end of the hearing, but must have no input into the writing of the reasons.

Where there is another hearing in the session that the observer without a right to attend wishes to observe, he or she should leave the hearing room before the hearing starts to allow discussion with the next child and family about their presence. The exception to this is a trainee panel member.

### **3. Contacts**

#### **SCRA**

Your Senior Practitioner, Locality Reporter Manager, Senior Operational Manager or the Practice team – [practiceteam@scra.gov.uk](mailto:practiceteam@scra.gov.uk)

#### **CHS**

Your Lead Panel Representative or member of the Practice and Policy Team, [practiceandpolicy@chs.gov.scot](mailto:practiceandpolicy@chs.gov.scot)

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