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Safeguards
Panel

PRACTICE NOTE FOR SAFEGUARDERS ON COURT

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Foreword

Court proceedings are involved in the Children's Hearings System to allow challenge to grounds or decisions that justify compulsory intervention in a child and a family's life. The court is a different context to that of a Children's Hearing. There is often a lot at stake for children and their families and it can be difficult to understand and participate in what are more formal processes.

The Safeguarder has an important role to play in keeping the child at the centre and safeguarding the interests of the child during the child's involvement in this part of the Children's Hearing system. The Safeguarder is the only role tasked exclusively with this focus.

It is important that Safeguarders are able to perform their role to the highest of standards and in doing so, never lose sight of the individual child and their needs whilst these proceedings are ongoing.

Contents

Part 1 - Practice Positions	5
1. Role of the Safeguarder at Court	6
2. Appointment.....	7
3. Attendance at Court	8
4. Reports for Court During Proceedings for the Determination of Grounds.....	10
5. Should Safeguarders be a Party to the Court Proceedings?.....	12
7. Curator Ad Litem	15
8. Conflict of Interest.....	16
9. Legal Advice and/or Representation for the Safeguarder	17
10. Confidentiality	19
11. Children in Court Proceedings	20
12. Enquiries.....	23
13. Safeguarders Role Regarding Delay.....	24
14. Grounds Applications – Order of Parties at Proof/Hearing of Evidence	25
15. Support for Safeguarders in Their Role at Court	26
16. Experience of Higher Courts as Safeguarders.....	27
Part 2 - Information	
1. Children’s Hearings Court Proceedings – General Context.....	29
2. Court Structures	30
3. Relevant Legislation	31
4. Legal Terminology.....	32
5. Types of Court Proceedings for Safeguarders.....	33
6. Roles at Court (Children’s Hearing Court Proceedings).....	34
7. Rights and Duties of Safeguarder (Court)	35
8. Appointment (Relevant to Court)	37
9. Attendance at Court	39
10. Enquiries.....	40
11. Becoming a Party to the Court Proceedings.....	42
12. Legal Advice and/or Representation for the Safeguarder	43
13. Confidentiality	44
14. Children in Court Proceedings	45

15. Grounds Applications.....	46
16. Appointment and Reasons	47
17. Grounds Applications – Summary of Process	48
18. Dispensing with Hearing Evidence – Fast-track and Grounds accepted	50
19. Grounds Applications – Outcomes.....	51
20. Appeals.....	52
21. Courts Involved in Appeals.....	53
22. Timescales for Appeals	54
23. Decisions That Can be Appealed	58
24. Reviews of Children’s Hearing Decisions at Court	59
25. Legal Criteria for Appealing / Grounds to Appeal	60
26. Who Can Appeal Decisions	61
27. Frivolous and Vexatious Appeals.....	63
28. Outcomes of Appeals.....	64
29. Appeals Against Interim Compulsory Supervision Orders (ICSOs)	66
30. Appeals from the Sheriff to the Sheriff Appeal Court/Court of Session.....	67
31. Rights and Duties of Safeguarders (Appeals Against Children’s Hearing Decisions)	73
Part 3 - Practice.....	74
Introduction.....	74
1. Considerations	75
2. Grounds Applications.....	77
3. Interim Compulsory Supervision Orders (ICSOs)	109
4. Appeals Against Children’s Hearing’s Decisions	112
5. Word Index for Part 3.....	127
Appendices	
Appendix 1 Scottish Court System	128
Appendix 2 Legal Jargonbuster	132
Appendix 3 Rights and Duties of the Safeguarder at Court.....	140
Appendix 4 Grounds Application Form.....	148

PART 1 PRACTICE POSITIONS

Introduction

The purpose of the Practice Note on Court is:

- to support **Safeguards** to be able to consistently and confidently perform their role at its best for children where court proceedings are involved.
- to achieve greater consistency of practice for **Safeguards** in their role in relation to court.
- to ensure that **everyone** involved in the proceedings is clear as to the role of Safeguards in relation to court so that expectations of the role at court are more consistent.

The Note supplements the **Practice Standards and current Practice Notes** to clarify practice. It will be used to allow practice performance to be supported and monitored and will be used in conjunction with induction and continuing professional development for new and existing Safeguards.

The 3 Parts of the Note are intended to work together to provide all the written information that Safeguards may require in relation to their role at court.

Part 1 of the Practice Note contains Practice Positions that are statements of practice expected of a Safeguarder. [This Part assumes a level of knowledge of the role.](#)

If you are new to the role of the Safeguarder, it can be helpful to read Parts 2 and 3 first. Part 2 provides information on the purpose of court, court structures and the basis for court proceedings commonly experienced by Safeguards. Part 3 is a practice walk-through of the most common proceedings.

1. Role of the Safeguarder at Court

PRACTICE POSITION 1: ROLE OF THE SAFEGUARDER IN COURT PROCEEDINGS

The role of the Safeguarder in court proceedings is the same as the overall role: to safeguard the interests of the child.

Differences in Safeguarders performing the role for court relate to

- the **context** within which the role is operating,
- the **activities** that the Safeguarder performs and
- the **knowledge** required for the proceedings.

All appointments to a child have the possibility of court work being involved. All Safeguarders are expected to be able to perform their role where that includes court proceedings to be a member of the national Safeguards Panel.

There is no requirement for Safeguarders to be legally qualified for court related proceedings. There are no specialist court Safeguarders.

The **Practice Standards for Safeguarders** require Safeguarders to be skilled in communication, relationship building, enquiring, negotiation and other requirements all of which are relevant to the court role - especially keeping the child at the centre.

Safeguarders are recruited, inducted and offered ongoing learning and development and support through the Performance Support & Monitoring Framework, to ensure that they are able to perform the role at court. This will include working to practice contained in this Note.

2. Appointment

PRACTICE POSITION 2: APPOINTMENT BY CHILDREN'S HEARING OR SHERIFF

The source of the appointment i.e. Children's Hearing or Sheriff, does not affect

- **the extent of the role**
- **when the appointment should end**

Most Safeguarder appointments relating to court are for applications to establish grounds or appeals against Children's Hearing decisions. Where grounds are at court, Safeguarders are often involved in the consideration of interim orders, where these are in place for a child.

In most cases, an appointment involving **grounds applications** occurs when the Sheriff is considering an application for the establishment of grounds. In some cases, the Children's Hearing will appoint when it sends the grounds to court¹.

For an appointment relating to an **appeal**, most Safeguarders are already appointed and involved in the decisions that are being appealed. A Sheriff occasionally appoints to an appeal when no Safeguarder has been involved.

A **Sheriff can appoint at any stage of proceedings** including after the proceedings have commenced, but this is very rarely done.

In some cases, the **Reporter has indicated**, usually through the application for grounds establishment or on occasions when the grounds are first heard in court, that they believe a Safeguarder is required. There is **NO** provision for this and the reasons for this recommendation may be included in the application or not. It is for the Sheriff to decide if a Safeguarder is required but these recommendations can be influential in this decision.

No person can be appointed Safeguarder by the Sheriff outwith the agreed allocation process.

A Children's Hearing appointment entitles the Safeguarder to be involved in court proceedings.

A Sheriff appointment for grounds proceedings lasts through to the substantive decision of the Children's Hearing following the grounds being determined at court (and if the hearing decision is appealed until determination of the appeal) ([link to Further Provision regs](#)).

Sometimes grounds are not established at court but other matters are still outstanding from the Children's Hearing that sent the grounds to court. The Safeguarder may have been appointed by the Sheriff at the grounds application stage and there may be some confusion as to the Safeguarder's continuing involvement and providing a report for the hearing for these other outstanding matters. ([link to Practice Notes on Reports](#)). See Practice Position 5 below which covers this situation.

¹ This information is based on a review of the allocation information held by the Safeguarders Panel Team.

3. Attendance at Court

PRACTICE POSITION 3: ATTENDANCE AT COURT

A Safeguarder should attend court so far as reasonably practicable.

The 2011 Act and the court rules provide a right for the Safeguarder to attend court proceedings². There is no express duty in law to attend court³.

The Safeguarder role is a personal appointment and the Safeguarder cannot send someone on their behalf.

The **Practice Standards for Safeguarders** and the legislation and rules provide an expectation that the Safeguarder will be engaged with the proceedings.

In practice, for a Safeguarder to comply with the purpose of the role to safeguard a child's interests in the proceedings, it is difficult to see how the role could be performed effectively without the Safeguarder attending court hearings so far as is reasonably practicable.

There can be several reasons why it is not reasonably practical for a Safeguarder to attend court:

- Illness
- Health appointments
- Emergency situations
- Extreme weather conditions
- Holiday commitments
- Unexpected and unavoidable priority work or other Safeguarder commitments.

If there is a regular pattern of inability to attend court, this should be discussed between the Safeguarder and support manager to try and resolve the reasons for this.

Sometimes the Safeguarder is **advised by other professionals** that the Safeguarder does not need to attend court. This can be connected to the nature of the proceedings, e.g. procedural issues or matters agreed in advance. Sometimes there is an expectation from case management court direction e.g. Practice Note No. 1 2018 for Sheriffdom of Glasgow and Strathkelvin ([link](#)), that where matters are agreed in advance, there is no requirement for the Safeguarder to appear. Non-attendance may be presumed to mean that there is no objection to what is being proposed in the Safeguarder's absence.

² A Safeguarder has the right to appear personally in the court proceedings (rule 3.9 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended).

³ Compare the rights and duties for the Safeguarder to attend a Children's Hearing - A Safeguarder appointed by Children's Hearing or court 'must..... attend the Children's Hearing, so far as reasonably practicable' (section 33 of the 2011 Act) and the Safeguarder's right to attend a Children's Hearing (section 78(1)(f) of the 2011 Act).

However, the above Practice Position 3 on attending court should be followed.

- The Safeguarder has a right to attend even where his or her attendance is felt by others not to be required or where they have effectively been excused by the court
- Matters agreed in advance are still subject to the decision of the court. There can be a change of circumstances on the day of court. The Safeguarder should be considering (1) the need to contribute in the interests of the child and (2) the need to respond during the hearing to any issues raised or discussed where the interests of the child need a contribution from the Safeguarder.

If a Safeguarder **cannot or does not attend** the Safeguarder should:

- At the very least inform the court, preferably in writing, of the non-attendance and the reason for this.
- Where information is provided to the court which simply confirms non-attendance with reasons or only gives an update on making enquiries carried out by the Safeguarder, this should not be considered to be a report.
- Reports are not required for court proceedings unless specifically asked for. Where a Safeguarder cannot attend court but considers that a report is required in their absence, this should be in exceptional circumstances and will require explanation for any fees claimed for this as a report in terms of the [Safeguarder's Fee Guidance](#).

4. Reports for Court During Proceedings for the Determination of Grounds

PRACTICE POSITION 4: SAFEGUARDER REPORTS DURING GROUNDS DETERMINATION

Safeguarders should not assume that a report is required for the Sheriff in a grounds determination unless a report is specifically requested. If requested, Safeguarders should be clear about what the report is to cover.

The previous legislative provision which allowed for reports in grounds determination was removed and now the Safeguarder is under no duty to provide a report where no report has been requested. A Sheriff can still ask for a report and if so, it is usual and helpful for the Sheriff to specify what he or she wishes the report to cover⁴.

For information: The issue of a Safeguarder providing a report whilst the court has still to hear evidence is that the report could provide information or comment on the evidence to the Sheriff. However, this should not happen outwith any hearing of the evidence in a court context where this information provided can properly be aired, and be able to be challenged, as evidence. Due to this, there has been challenge through the courts to grounds being established where a Safeguarder's report has been provided. The court that considered this issue did not say that the Safeguarder could not provide a report but where a report is provided, it should not provide evidence in relation to establishing the grounds but can be used by the Sheriff as a 'check on the view which he had formed on the evidence'⁵. As such this report does not equate to a production or submission and when complying with this request for a report the Safeguarder should provide their report to the Sheriff Clerk who will arrange for the report to be placed before the Sheriff. There is no legislative responsibility that the Safeguarder is responsible for ensuring that a copy of this report is provided to anyone else; the Safeguarder should clarify with the Sheriff Clerk at this time if they will be doing so or not. It may therefore be unnecessary for the Safeguarder to take any steps of their own. It is best practice however that the Safeguarder discusses verbally with other parties, including the Reporter, what is contained within their report. This is different from the procedures in an appeal which are covered later in the Practice Note (Part 2, sections 21-32). If the report requested by the Sheriff is for an appeal it is submitted through the Sheriff Clerk who directs the Reporter to distribute it to parties (court rule 3.56(2)).

It is less common now for reports to be requested during grounds determination and Safeguarders should be clear that a report is being requested and what it is that is being asked to be covered in the report. It should not be assumed that a report is required, due perhaps to perceived standard practice, unless a specific request for a report is made by the Sheriff.

⁴ Reference is made to the Practice Note on the Role of the Safeguarder in relation to reasons providing a remit.

⁵ Kennedy v M 1989 S.L.T. 687 at 689D considered this matter when a challenge was made to the Safeguarder providing a report to the Sheriff.

PRACTICE POSITION 5: GROUNDS NOT ESTABLISHED BUT OUTSTANDING MATTERS ONGOING

Where the Sheriff has appointed and the grounds referred to court are not established but where there is an outstanding matter from the hearing that sent the grounds to court (which may be other grounds accepted at the Children's Hearing or a review not concluded at that hearing) then the Safeguarder's appointment is still in place and the Safeguarder should be involved in the further Children's Hearing to consider the outstanding matters, until their appointment then comes to an end, in terms of the regulations.

5. Should Safeguarders be a Party to the Court Proceedings?

PRACTICE POSITION 6: BECOMING A PARTY

Although it is the Safeguarder's decision as to whether to become a party or not, in most cases Safeguarders will become a party to the proceedings to allow the Safeguarder to fulfil their role to safeguard the interests of the child.

Where a Safeguarder decides that he or she does not need to be a party, the reasons for this decision must be clear to the Safeguarder and must relate to there being no need for the Safeguarder to safeguard the interests of the child in the proceedings.

- What is 'a party'?

A party in legal proceedings is generally defined as someone who is entitled to be there and contribute by making claims or defences, offering evidence and submissions, examining and cross-examining witnesses in evidence hearings or trials and has the right to pursue appeals where they are not satisfied with decisions or judgements.

- **Parties in Children's Hearing court proceedings** are usually the Reporter and the child and Relevant Persons. Rights as a party are set out in the Children's Hearings court rules. The Safeguarder is not defined as a party but can become a party in terms of the rules. Even as a party, this may not mean that the Safeguarder has rights to appeal where the Safeguarder has not specifically been given the right to do this – e.g. a Safeguarder cannot appeal the determination of a Sheriff as to the grounds being established or not.

The following **rights are attributed to parties** with no mention of the Safeguarder also having these rights:

- in grounds applications – but only in relation to **an offence by child ground** – the right to be given an opportunity to be heard on the question of the **sufficiency of evidence** after the Reporter's evidence has been heard
- in grounds applications – the right to apply for **amendment of the grounds**
- in grounds applications and in appeals – to ask for an **adjournment or continuation**
- in appeals – to **receive a copy of any further report** required by and received by the Sheriff
- several rights **when evidence being heard** relating to vulnerable witnesses, applying for live link use, etc.
- in appeals to Sheriff Appeal Court and Court of Session – several rights to receive/act in the appeal (if not the appellant)
- in appeals from Sheriff Appeal Court to Court of Session – to be intimated of the application for leave to appeal and the date of the hearing to consider the application
- in applications to review grounds established – to be heard in the hearing on the application
- in a Medical Examination Order proceedings – to receive intimation of the order

- Implications of a Safeguarder not having these 'party' rights

Where rights are directly connected to being a party, in practice, many Safeguarders would be able to, and may be expected to, contribute to the considerations as a Safeguarder who has not become a party. For example, where a Safeguarder wishes an adjournment, the Safeguarder would ask and explain the reason to the Sheriff who can, of his or her own motion grant this. In many examples, the court has discretion to include the Safeguarder in receiving information and contributing to the considerations.

However, in effect the Safeguarder is acting as a party.

- Legal expectation on the Safeguarder to indicate whether they intend to become a party or not

The court rules (rule 3.8(e)) place a duty on the Safeguarder to notify the court in writing of their intention to become a party or not (see below regarding further information on this duty) therefore this is something that the Safeguarder needs to consider to comply with this duty before the hearing of the application or appeal.

Becoming a party implies activity on the part of the Safeguarder. A Safeguarder usually needs to be active in the proceedings for different reasons, including **making enquiries** (see section 12 below regarding the different purposes of enquiries) and **attending court** (per Practice Position 4 Attending Court above).

Where a Safeguarder makes enquiries and sees the interests of the child being safeguarded by the actions of others but continues to participate to ensure that these interests continue to be safeguarded during the proceedings, this amounts to activity. This implies **attendance at court**.

Being a party of itself does not place additional duties on the Safeguarder and must not prevent the Safeguarder from fulfilling their role to safeguard the interests of the child.

POSITION STATEMENT 7: CONFIRMATION OF BECOMING A PARTY:

The Safeguarder should confirm their intention to become a party to the proceedings or not, in writing, to the Sheriff Clerk, to comply with their duty in the rules. The written notice can confirm that this is a duty required of the Safeguarder in the rules (rule 3.8(e)).

- Informing the Sheriff Clerk that the Safeguarder intends to become a party or not -

The court rules (rule 3.8(e)) state that the Safeguarder must inform the Sheriff Clerk in writing. Some courts do not expect this to be provided, some courts assume all Safeguarders appointed are parties without the need for anything more formal to be done, some expect verbal confirmation in advance or at the first court hearing.

- **Becoming a party later in the proceedings** - A Safeguarder is **expected to confirm** as soon as possible before the first court hearing, if he or she intends to become a party to the court proceedings in terms of the court rule. It can be difficult for the Safeguarder to know if they need to become a party or not in such limited timescales.

It is possible for a Safeguarder to stay involved with Safeguarder-only rights and then enter at a later date during the hearing of the application or appeal, but this is likely to require some explanation and justification as to why this later position was not adopted earlier.

6. Officer of the Court

There are different opinions as to whether the Safeguarder is an officer of the court when appearing in court proceedings. There is no definitive position in relation to this.

Being an **officer of the court** carries with it the responsibility to promote justice and effective operation of the judicial system. It involves an ethical duty to tell the truth, including avoiding dishonesty or evasion about any matter. It means bringing to the attention of the court, relevant matters even when these may not be favourable to that person's position.

A **Safeguarder has responsibilities**, reflected both across all the Practice Standards and in commitments made when being appointed to the national Safeguarders Panel, that mean that they are promoting justice and effective participation of the judicial system that they are part of. This is so whether or not they are considered to be an officer of the court.

An officer of the court may consider that their **foremost duty is to the court**, however, the Safeguarder's foremost duty is to the child and safeguarding their interests during the proceedings.

This does not mean that the Safeguarder does not accord the duty and respect to the court as is expected from an officer of the court or fulfil the responsibilities attributed to an officer of the court.

Some Safeguarders are officers of the court due to their other roles, for example being a solicitor. Any Safeguarder involved in court proceedings as a Safeguarder is not acting in any other role. Any Safeguarder who feels that there is a **conflict between being involved as a Safeguarder in court proceedings and other roles that they have**, should contact the Safeguarders Panel Team to discuss whether there is a conflict and if so if this conflict can be resolved.

7. Curator Ad Litem

The court rules give a Safeguarder the powers and duties of a *curator ad litem* in respect of the child.

A ***curator ad litem*** is an officer of the court who is appointed by the court to represent and protect the interests of a person lacking full capacity, including a child. Individuals can apply to the Sheriff Principal of a Sheriffdom to be added to the lists of Child Welfare Reporters and *curators ad litem*. The appointment criteria has been set by each Sheriff Principal of the 6 Sheriffdoms. The Children (Scotland) Act 2020 at section 17 introduces regulation of the role, in particular registration, appointment processes and Standards.

The **purpose and parameters of the role** have been taken to include protecting the child's interests⁶. There is no personal connection with the child, nor an overall protective function⁷. The powers and duties should not extend beyond the subject matter of the litigation and the *curator ad litem* is appointed to act for a child so that the court may be satisfied that the case has been and, continues to be, properly conducted. The *curator ad litem* is to exercise his judgement independently and safeguard the interests of the child so far as affected by the action⁸.

In practice, the ability to perform the full range of the Safeguarder's role in court proceedings is covered by the provisions in the 2011 Act and the court rules.

The Safeguarder has the powers and duties but is not a *curator ad litem*.

A Sheriff can still decide that it is necessary to appoint a *curator ad litem* in Children's Hearing court proceedings. The Scottish Legal Aid Board may not approve legal aid for the role where a Safeguarder could carry out the same function in the Children's Hearing court proceedings.

⁶ Stair Memorial Encyclopaedia.

⁷ Wilkinson & Norrie 'The Law Relating to Parent and Child in Scotland 3rd ed. 2013 at 5.58

⁸ Wilkinson and Norrie reference *Cameron v Carr's Curator as Litem* 1998 SLT (Sh. Ct.) 22 at 22D where these latter comments are made.

8. Conflict of Interest

Safeguarders are obliged in terms of their letter of appointment to the Safeguarders Panel, to ensure that there is no conflict of interest in the performance of their role. In performing their role at court, any Safeguarder with interests in the court, for example through other roles with direct contact with court, should be clear about any conflict or potential conflict of interest and take the steps required of the Safeguarder role. This prevents difficulties which would cause delay to the process and unnecessary intrusion into children and family's lives.

9. Legal Advice and/or Representation for the Safeguarder

A Safeguarder is entitled to instruct a **solicitor or an advocate to appear on the Safeguarder's behalf**.

A Safeguarder may require

- **only legal advice** from a solicitor or an advocate but not representation in the proceedings
- **legal advice and representation** from a solicitor or advocate
- **general non case-specific information on the law** – the Safeguarder can be supported by the Safeguarders Panel Team to where they may access this information.

Advice and or representation by a solicitor or advocate involves the Safeguarder in a client relationship where the solicitor or advocate will act on the Safeguarder's instructions.

Authorisation - If a Safeguarder needs legal advice and or representation, in order for the Scottish Government to agree to cover the costs, it must first agree that such legal advice and or representation is necessary. The Safeguarder must send any request for legal advice and or representation to the Safeguarders Panel Team who will forward the request to the Scottish Government team with responsibility for Safeguarders. The Scottish Government have made it clear that Safeguarders should not contact them directly.

Seeking legal advice or representation from a solicitor or advocate without funding being provided by the Scottish Government team may be considered to be a **breach of confidentiality** where case-specific information about an appointment is shared.

Legal advice or representation can be thought to be required in different circumstances which can be individual to each child's case. Such advice or representation must be **necessary for the Safeguarder to perform the Safeguarder's role** and not the role of others and should not normally be something that the role empowers a Safeguarder to do at their own hand, for example, speaking to the child.

Any advice or representation which is authorised must **not prevent or hinder the Safeguarder in fulfilling the entire responsibilities** of the Safeguarder role (as these need to be applied in individual cases).

In considering making or making a request for legal advice and or representation, the Safeguarder should **discuss the matter first with the Safeguarders Panel Team**. The Safeguarders Panel Team do not make the decision in relation to the request nor do they make any recommendation to the Scottish Government as to whether a request should or should not be granted, but they can help to clarify what information the Safeguarder should provide to the Scottish Government and also whether other forms of support are required.

It is helpful for Safeguarders to **provide information about the nature of the request and the child's case itself (without case specific details)**, that can be relayed with the request to the Scottish Government. This prevents delay in processing the request.

Considerations that may be helpful before making a request include:

- What aspect of the performance of my role can I not do without the legal advice or representation?
- How will the advice or representation enable me to perform my role?
- Why will I not be able to perform my role without the legal representation?
- Does someone else involved in the proceedings e.g. Reporter or legal representative, have a role to do what I feel I need legal representation to do?
- Does someone need to be brought into the proceedings to do what I want done e.g. a solicitor for the child, an assessment on the child?
- Am I expected to do what I need the legal advice or representation for? Is this within my role? Who is expecting this?
- Am I filling a deficit from another role not performing their responsibilities? If so, have I tried to resolve this without stepping into their shoes? If so, how?

Authorisation provided will confirm the area of Safeguarder performance to be covered and this may be for all or some of what was requested by the Safeguarder. The Safeguarder may be asked for an **indication of cost** for the advice or representation and the Safeguarder may be able to provide this by getting an estimate from a solicitor. Legal Aid rates apply. In getting this estimate, Safeguarders should not disclose **confidential case specific information**.

If authorised it is for the Safeguarder to **select, organise and manage their legal representation**.

In **selecting a solicitor**, the Safeguarder can look to The Law Society of Scotland or to the Scottish Legal Aid Board for a choice of local solicitors who carry out Children's Hearing court work or the Safeguarder may know of an appropriately knowledgeable and experienced solicitors already. There should be no conflict of interest.

Once authorised, it is for the Safeguarder to provide the necessary information to the solicitor and to provide the necessary **management** of the service from the solicitor. This includes being clear about what the Safeguarder has authorisation to instruct, and for keeping to this, and ensuring that costs are in keeping within those authorised.

The Safeguards Panel Team is available to provide **support of a general nature** in relation to this but cannot be involved in any decision making in connection with the authorisation and management of legal representation.

If a Safeguarder obtains legal advice and or representation or instructs either a solicitor or an advocate without authorisation from the Scottish Government, the Scottish Government is under no obligation to cover the costs and may refuse to do so, in which case they will fall to the Safeguarder personally.

10. Confidentiality

PRACTICE POSITION 8: CONFIDENTIALITY IN RELATION TO DISCUSSIONS ABOUT COURT

In relation to court proceedings, **any discussion involving case-specific information or personal details of the parties and their particular circumstances should not occur with any person not entitled to receive this information.**

Where Safeguarders need to discuss their thinking or clarify information about procedure or options available to them related to a case, with a person with no legal access to that information, the Safeguarder must only speak in general terms such as not to identify the child or other persons involved or breach any other confidentiality responsibilities.

Safeguarders have responsibilities regarding confidentiality as contained in Practice Standard 5, the Safeguarder's Letter of Appointment, rule 9 of the Children's Hearing Rules and rule 3.5A of the Court Rules.

11. Children in Court Proceedings

In practice, children, including many children who are of sufficient maturity, **do not get actively involved** in court proceedings. Young children are usually excused from **attending** and excused from being **notified** of the proceedings, so that they may be unaware of the proceedings.

PRACTICE POSITION 9: LEVEL OF CONTACT WITH CHILD

The level of contact with a child is dependent on the child and their individual circumstances but meeting a child more than once and for the amount of occasions proportionate to the child's needs, is to be expected.

Contact with the child is expected in terms of the Safeguarder role:

- For the views of the child to have an opportunity to be expressed⁹ (court rule 3.8(c))¹⁰.
- For the Safeguarder role and functions to be explained (Further Provisions Regulation 8).
- As a requirement to meet Practice Standards for a 'meaningful and purposeful relationship' to be made with the child (Practice Standard 2).
- As a requirement of the Practice Note on the Role of the Safeguarder, section 3 to meet the child.

Research relating to the Safeguarder role has indicated that meeting a child more than once, where appropriate, seems to increase the likelihood of effective communication with the child and therefore, more effective presentation of his/her interests and views¹¹.

Contact with Relevant Persons

There is a similar expectation that the Safeguarder meet with Relevant Persons

- to explain the role, and
- to establish 'meaningful and purposeful' relationships which allow information and views to be exchanged.

⁹ The Children (Scotland) Act 2020 <https://www.legislation.gov.uk/asp/2020/16/contents> introduced new requirements to ensure that the child's voice is heard. In particular, the court is required to give the child a suitable opportunity to express their views in a manner suitable to the child. This includes seeking the preferences of the child on how they wish to give their views. The legal presumption that a child aged 12 or over is considered mature enough to give their views

¹⁰ The Children (Scotland) Act 2020 <https://www.legislation.gov.uk/asp/2020/16/contents> introduced new requirements to ensure that the child's voice is heard. In particular, the court is required to give the child a suitable opportunity to express their views in a manner suitable to the child. This includes seeking the preferences of the child on how they wish to give their views. The presumption is that a child is capable of giving their views.

¹¹ McDairmid, C., Barry, M., Donnelly, Corson, S. The Role of the Safeguarder in the Children's Hearings System, published by Scottish Government September 2017

Discussing the grounds with child or Relevant Person

Where grounds are to be determined in the court process, the acceptance or not of these by the child or Relevant Person is an important part of the process. Ultimately it is for the child and Relevant Person to confirm any acceptance with the court. Where they have legal representation in the proceedings, this can be done on their behalf by their legal representative.

The Safeguarder in speaking with child or Relevant Person, may be aware of the child or Relevant Person's position on the grounds and they can encourage and support the child or Relevant Person to relay the position to court. Where the person has legal representation, the Safeguarder can relay this position to that person's representative.

What the Safeguarder must be extremely careful not to do – is to advise the child or person on what their position should be. If the Safeguarder feels that the person needs assistance to formulate or express their position to the court, the Safeguarder should point the person in the direction of someone who can help them (in line with Practice Position 11 below). This may be a lawyer given the legal nature and implications of the process.

If the Safeguarder is relaying the position of any person to the court in their absence, this is in terms of advising the court of their enquiries and information that was provided to the Safeguarder. The Safeguarder should not represent the absent person i.e. appear on their behalf as a legal representative can do. It is for the court to consider what to do as a result of the information provided by the Safeguarder.

Information regarding court – consistent information for the child

PRACTICE POSITION 10: COORDINATION OF INFORMATION PROVISION TO CHILDREN

The Safeguarder should try to be aware of others involved in the court process who are providing information about court to the child, and try to ensure the best way for the child to get consistent and clear information that suits that particular child's needs and circumstances, if this is what they wish to have or need.

A child who is to attend court, or not, may want or need information about the court. Information is available from SCRA and on their website <https://www.scra.gov.uk/>. The child should be receiving information from others about the court in general, about the proceedings or about their rights, from others. Whilst the Safeguarder may be able to provide information to the child, it is important that the child gets consistent information.

Safeguarder not 'representing' the child

Use of the word 'represent' is used in connection with the Safeguarder representing the child's views. The term in this context is not meant in the formal sense such as legal representation or representation by an advocacy worker where this can involve actively (and appropriately) trying to achieve what the child wishes. For the Safeguarder it means relaying or laying out or ensuring that the views are reflected.

Advocacy services and legal representation – signposting by the Safeguarder

Where the child wishes advocacy services from an advocacy worker who can represent their wishes, or, wishes legal advice from a solicitor who can advise or represent their legal requirements, then the Safeguarder should be prepared to know where to pass this

PRACTICE POSITION 11: SAFEGUARDER SIGNPOSTING SERVICES FOR THE CHILD

The Safeguarder should pass any information about a child wishing services connected to the court proceedings on to the most appropriate person to support the child to do this – for example a parent or carer, social worker, advocacy worker. The Safeguarder cannot advise or advocate for the child and should avoid suggesting or sourcing specific services for the child. Where possible the child should be offered a choice of services, where choice is available.

information on to so that the child can access these services.

Where the Safeguarder feels that the child will not be supported to access a service that the child is indicating that they need, then the Safeguarder should try to resolve this problem in a manner suitable to each particular child's case, to try to ensure that the child gets the services that they require.

Sharing of information - by the Safeguarder with others representing the child

PRACTICE POSITION 12: SHARING INFORMATION WITH CHILD'S REPRESENTATIVES

Where a child is involved in the proceedings and is attending hearings and has legal representation or advocacy support, the Safeguarder should ensure that his or her information and position is shared with these representatives, with the child's permission. This is in line with a general responsibility to act with all parties with openness and honesty to ensure a speedy and coordinated determination of the proceedings.

12. Enquiries

PRACTICE POSITION 13: THE PURPOSE OF ENQUIRIES

The purpose of making enquiries must always be to identify what is needed to safeguard the interests of the child.

The purpose of making enquiries in the context of grounds applications includes:

- **considering the grounds** and the evidence to establish and or to challenge them, to be satisfied that the grounds will safeguard the child's interests
- **understanding the proceedings** sufficiently to be able to contribute appropriately to safeguard the child's interests and to explain the proceedings to the child if they request this
- **understanding the child's needs** and the measures being recommended to meet these needs
- **considering the need for compulsory measures** and therefore the need to determine the application
- **providing an opportunity for the child to provide views** and if provided, ensuring they are heard to inform decision making in his or her interests in the proceedings
- **being clear that the child is sufficiently supported** and if necessary protected whilst the grounds are being determined

PRACTICE POSITION 14: EXTENT OF ENQUIRIES

Safeguarders should carry out purposeful, proportionate and relevant enquiries. Where a Safeguarder consistently carries out

- no, or very few enquiries, or
 - extensive enquiries well beyond what is required, or
 - enquiries only relevant to other roles, e.g. the Reporter or legal agent's roles
- this is not appropriate in terms of the role's requirements and needs to be explored at support sessions (within the Performance Support & Monitoring Framework) with a view to understanding the issues and any development needs.

Safeguarder should make enquiries to the extent necessary in an individual child's case to allow them to perform their role. This will be **unique to each child's case** and the Safeguarder is best placed to know what needs to be done in an individual appointment.

However, enquiries should be **purposeful and proportionate** and rely on the availability of information available.

Safeguarders will have different thresholds for being satisfied regarding the information that they require and the Safeguarder should reflect on this.

13. Safeguarders Role Regarding Delay

PRACTICE POSITION 15: SAFEGUARDER ROLE REGARDING DELAY

The Safeguarder has a role to actively try to prevent delay in determining the proceedings.

Delay can prevent measures of protection, care, treatment and control from being put in place for a child where these are required. Delay can also cause anxiety and stress for children and their families and carers, especially where court proceedings are ongoing.

The Safeguarder can prevent delay:

- By not causing delay by their own action or inaction,
- By raising issues of unnecessary delay, including pointing out any impact of delay on the child, and
- By taking action to assist in the avoidance of delay.

14. Grounds Applications – Order of Parties at Proof/Hearing of Evidence

PRACTICE POSITION 16: ORDER OF HEARING PARTIES IN COURT

Whilst it is for the Sheriff to decide on the order of questioning in a proof/evidential hearing, the Safeguarder should move that they question a witness last i.e. after child or relevant person has cross-examined a Reporter's witness or after the Reporter has cross-examined a child or relevant person's witness.

There can be different practice in court as to the order of parties being heard at any proceeding. It is important that Safeguarders are heard and that a Safeguarder is able to make the contribution that they need to make in their role to safeguard the interests of a child. Usually, the Safeguarder is heard last after all other parties unless particular rules state that another party should be heard last.

When evidence is being heard, it is important that the Safeguarder is heard last, and not for example just after the Reporter, even if the Safeguarder is supporting the Reporter's position. This is to accord with the Safeguarder's exclusive role to safeguard the interests of the child.

In practice, this is the order that most courts adopt, although it is ultimately for the Sheriff to decide on the order of parties in the hearing of evidence.

Should any Safeguarder have a difficulty as a result of the order of being heard, it is helpful if this could be passed on to the Safeguarder's Panel Team, for information and support for the Safeguarder if appropriate.

15. Support for Safeguards in Their Role at Court

Safeguards Panel Team Responsibilities

The Safeguards Panel Team has responsibilities to support Safeguards in performing their role relating to court¹².

Learning and Continuing Professional Development (CPD) for Safeguards for Court

The purpose of all learning and CPD for Safeguards relating to court is to ensure that Safeguards are able to perform their role as Safeguarder, in court proceedings. This involves appropriate knowledge, skills and confidence to perform this aspect of the role. The manner of providing this learning and CPD is:

- flexible in delivery
- practice-based
- drawing on appropriate external expertise
- involving the Safeguarder community
- responsive to individual needs.

Pre-appointment and induction provide training on the role of the Safeguarder in court proceedings and this is offered to all recruitment candidates/inductees no matter their individual knowledge and experience of the court in other roles, as it specifically relates to the role of the Safeguarder in court. Where additional training is required for new or existing Safeguards regarding court, this is recorded on their individual development plan and where possible will be addressed through an optional module available through the CPD calendar. Safeguards direct the content of the CPD calendar which is based on needs identified from support sessions, training, local events and individual matters raised by Safeguards and others.

Under Practice Standard 7 Safeguards also have a responsibility for their own learning and development. Given the relatively light touch nature of the requirement for training contained in their terms of appointment and the governing regulations, Safeguards must take the ultimate responsibility for ensuring that they are competent to discharge their role in court, as elsewhere, and if they are concerned that they are not, for raising their concerns with the Safeguards Panel Team. The training opportunities offered by the Safeguards Panel Team form a very important part, but not the whole, of the way that Safeguards are expected to ensure this competence, which should include self-directed learning.

Local events for Safeguards are an important part of the Performance Support & Monitoring Framework and are facilitated for Safeguards as a means of sharing practice and identifying areas where practice can be improved and or developed, including practice relating to court.

¹² [Safeguards Panel regulations, 2012 as amended, 2016](#)

16. Experience of Higher Courts as Safeguards

PRACTICE POSITION 17: ADVISING OF HIGHER COURT APPEAL EXPERIENCE

When a Safeguarder is involved in an appeal to the Sheriff Appeal Court or Court of Session, the Safeguarder should notify the Safeguards Panel Team that he or she is involved in such an appeal, for the Team's information.

Appeals to courts higher than the Sheriff court, for example the Sheriff Appeal Court and Court of Session, and some appeals to the Sheriff court, are unusual and are unlikely to be experienced by many Safeguarders.

Where a Safeguarder intends to appeal a matter to the Sheriff Appeal Court or Court of Session, or, is involved as Safeguarder in such an appeal brought by others, it is helpful for the Safeguards Panel Team to be aware of this. This is to allow any appropriate support to be provided to the Safeguarder if required, and to have a record of Safeguarders with experience of such appeals who may be able to assist understanding for other Safeguarders in future appeals.

PART 2 INFORMATION

Introduction

Part 2 of the Practice Note on Court contains [information on the law, process and practice relevant to court for Safeguarders](#).

This document is intended to be used as a reference document together with Part 1 which contains Practice Positions for Safeguarders (covering areas of practice requiring clarification for consistency) and Part 3 Practice (which contains practical explanation and guidance for Safeguarders on court proceeding most commonly experienced by them).

1. Children's Hearings Court Proceedings – General Context

The Children's Hearings System is founded on the basis of a separation of functions between the Children's Hearings and the court.

- The Children's Hearing is the tribunal that deals with all children in need of compulsory measures by determining these measures in a structured but participative forum where the individual child's needs can be considered.
- The courts are the forum for resolving disputes of fact, but not the place to decide on a welfare basis what measures a child may need¹³. Courts are structured to test through evidence, the truth of disputed facts and the application of the law. This allows the Children's Hearing to put in place any compulsory measures required for the child.
- To comply with rights to fairness there is an appeals structure from Children's Hearing decisions through the courts. The courts again are the appropriate forum to consider issues of proportionality and fairness.¹⁴

¹³ The exception to the courts deciding on measures for the child relates to the consideration of interim orders by the court during grounds determination – this is covered in more detail below and in the appeals sections below where the Sheriff can substitute a decision.

¹⁴ Although the appeal structure allows the courts, in certain circumstances, to act as the Children's Hearing in continuing or altering orders, the general practice of courts is to allow the Children's Hearing to consider the need for compulsory measures given the appropriateness of that forum as noted above

2. Court Structures

For Children's Hearing court purposes, the court and judge most relevant to these proceedings is the **Sheriff court** and **Sheriff**. The **Sheriff Appeal Court** and the **Court of Session** will be involved rarely, only when further appeal is made from the Sheriff. There is no appeal to any higher courts i.e. the Supreme Court of the United Kingdom or the European Court, who would only be involved in Children's Hearing matters, where the matter has gone to these courts by another legal route e.g. civil proceedings for parental rights.

Appendix 1 contains a note of the court structure in Scotland. This note and other notes annexed as appendices to this document are documents provided by [Clan Childlaw](#), a children's law centre incorporating a legal firm with solicitors acting only for children in Scotland, who have provided these as part of training for Safeguarders.

The [Judiciary of Scotland](#) provides helpful information about the general structure of the courts in Scotland.

The [Scottish Courts and Tribunals Service](#) provides helpful information about the courts.

The Scottish Parliament Information Centre provides information about the courts and terminology used.

http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_14-15.pdf

http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-98_Civil_Justice_-_Civil_Courts_and_Tribunals.pdf

The proceedings are considered to be civil proceedings *sui generis* which means that they operate to their own **distinct rules of civil (as opposed to criminal) procedure**. These are mainly contained in the Act of Sederunt (Child Care and Maintenance Rules) 1997.

The proceedings follow the normal **principles of evidence in summary civil proceedings** except that 'the interests of the child are not to be thwarted by an over-rigid application of the rules of evidence or procedure'¹⁵

The proceedings are heard **in private** – the public cannot sit in the court, only those with a right to be there can.

Much of the understanding of the Children's Hearings System, its terms, its grounds and its procedure in operation comes from **case law** where senior judges have interpreted and clarified the practical operation of the law in dealing with legal cases raised and heard before them.

¹⁵ This was said by the court in the case of *W v Kennedy* 1988 S.L.T. 583

3. Relevant Legislation

The following law is specifically relevant to court proceedings:

Law	Sections/Rules/Regulations
Children's Hearings (Scotland) Act 2011	Part 4 sections 32-4 (appointment and functions); Section 78 (right to attend Children's Hearing), Section 82 (appointment by pre-hearing panel); Section 93/4, (grounds not accepted/understood at hearing); Part 10 sections 98-118 (ICSOs, grounds, review of grounds); Part 15 sections 154-167 (appeals); Part 17 sections 172-6 (evidence in grounds applications); Section 179 (evidence from PF); Section 185 (evidence by live link)
Act of Sederunt (Child Care and Maintenance Rules) 1997	Chapter 3 Part I rules 3.1 (general interpretation); Part II rules 3.2-3.24 (general rules covering application; child's attendance, child's views; Safeguarders; fixing dates; service, citation and notice; expenses; representation, live link, transfer of courts); Part VII (grounds applications covering lodging and withdrawal of an application, hearing on evidence, amendment, adjournment, and decisions); Part VIII rules 3.53-3.58 (appeals against hearing decisions); Part VIIIA rules 3.58A-B (applications for review by local authority); Part IX rules 3.59(A1)-3.61A (appeals by stated case to the Sheriff Appeal Court); Part X rules 3.62-3.63 (review of grounds determined); Part XA rules 3.64A-3.64C (ICSO, CSO, MEO by Sheriff); Part XB rule 3.64B (evidence sexual behaviour); Part XI rules 3.65-3.76 (vulnerable witnesses); Part XIA rules 3.76A-3.81A (sexual behaviour evidence)
Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013	Rule 9 (confidentiality); Rules 37-8 (new grounds to hearing when grounds extant); Rule 41 (further ICSO at Children's Hearing); Rule 56 (appointment by pre-hearing panel); Rules 86-7 (non-disclosure request); Rules 60,65,66, 74,78 (rights to contribute at different hearings held during or following grounds)
Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012	Regulation 3-5 (termination of Safeguarder appointment); Regulation 5 (reports in appeals); Regulation 7 (views of child); Regulation 8 (informing of role and functions)

Access

Links to relevant law are provided in the Note itself. All legislation mentioned is accessible online by searching for the title of the legislation using the government website <http://www.legislation.gov.uk>. If a Safeguarder has difficulty accessing legislation, the Safeguarders Panel Team may be able to help.

4. Legal Terminology

Appendix 2 contains a list of the most common legal terms which a Safeguarder may come across, with explanation as to their meaning.

The Judiciary of Scotland have published a comprehensive glossary of legal terms which can be accessed through their website at <http://www.scotland-judiciary.org.uk/62/0/Glossary-of-Legal-Terms> .

5. Types of Court Proceedings for Safeguarders

Safeguarders may be involved in different court proceedings either because

- they are appointed at the start of court proceedings or
- they are already appointed and court matters happen during their appointment.

The **most common** court proceedings for a Safeguarder to be involved in are:

- **Determination of grounds**
- **Interim orders (ICSOs) being extended at court (whilst grounds are being determined)**
- **Appeals against Children's Hearing decisions to make, vary, continue a Compulsory Supervision Order or an Interim Child Supervision Order**

Less common court proceedings for a Safeguarder include:

- Child Protection Orders – usually there is no involvement of a Safeguarder when the Child Protection Order is being made but there can be involvement if this occurs and a Safeguarder is already in place
- Applications to vary or terminate Child Protection Order– involvement usually only if the Safeguarder is already in place
- Application to review grounds established – i.e. where 'new' evidence prompts a review – if the Safeguarder is already in place
- Appeals against Children's Hearing decisions to terminate a compulsory supervision order, discharge a referral, make a Medical Examination Order, or grant a Warrant to Secure Attendance
- Appeals against Children's Hearing decisions on Relevant Person status
- Appeals against Children's Hearing decisions in a contact direction review
- Appeals against implementation of secure authorisation - Chief Social Work Officer decision
- Appeals by local authority against a decision allocating responsibility for implementation
- Appeals from the Sheriff to the Sheriff Appeal Court or Court of Session
- Applications (various) connected to the hearing of evidence in grounds and appeal proceedings, e.g. vulnerable witnesses, specification of documents

Sometimes Safeguarders are contacted to be involved in **civil court proceedings in relation to Safeguarder reports** that they have written. The Practice Note on Reports covers practice expected when this happens. ([Practice Note for Safeguarders on Reports, section 11](#)).

6. Roles at Court (Children's Hearing Court Proceedings)

Sheriff: Expert in the law; in charge of all court proceedings; ensures fairness and that court rules and legal procedures are followed; duty to protect the interests of people in the proceedings including witnesses; makes decisions regarding applications and appeals. Issues orders and manages the expeditious determination of the proceedings.

Sheriff Clerk: Has responsibility for the management and administration of the court. Arranges court dates and notifies parties where required. Employed by the Scottish Courts and Tribunals Service.

Court Officer (sometimes called Bar officer): Assists the Sheriff with their requirements, ensures the work of the court is conducted in an orderly and efficient manner and is responsible for evidence and for witnesses being brought into the court room.

Reporter: Responsible for putting forward evidence to establish grounds, applying for interim orders, conducting appeals, providing papers and notifying parties. Acts on behalf of the Principal Reporter and is employed by the Scottish Children's Reporter Administration.

Child and Relevant Persons: Parties to the proceedings. The child has a duty to attend but can be excused from attending without removing their right to attend. Relevant Persons have no duty to attend but have the right to attend.

Legal representatives: Instructed by parties to advise and represent their position. Usually this is a solicitor. Usually each Relevant Person and occasionally a child is represented. Sometimes counsel or advocates who are senior lawyers will represent a party in more serious and complex cases. Legal aid may be available (see [Scottish Legal Aid Board](#)). A solicitor who is also a Safeguarder cannot also represent the child in the proceedings (court rule 3.9(2))

Witnesses: Persons cited or arranged to be at court by the Reporter or a legal agent (and very rarely a Safeguarder) to provide evidence in court. Includes expert witnesses.

Roles less commonly involved include:

Lay representatives: The child or Relevant Person is entitled to have such a person as well as a legal representative. This is unusual. Court rules cover what this person can do and their suitability to perform their role (court rule 3.21)

Advocacy workers: Represent usually the child's wishes, for a child who may require support in the court proceedings.

Authors/compilers of reports: May be cited to attend an appeal to be examined by the Sheriff on their report.

Chief Social Work Officer: In appeals related to implementation of secure authorisation. **curator ad litem** is appointed by the court to represent and protect the interests of a person lacking full capacity, including a child. He or she is appointed to act for a child so that the court may be satisfied that the case is properly conducted. The *curator ad litem* is to exercise his judgement independently and safeguard the interests of the child so far as affected by the action¹⁶ (see Part 1, section 7 on *curators ad litem*).

Being an **officer of the court** means having responsibility to promote justice and effective operation of the judicial system; involves an ethical duty to tell the truth, including avoiding dishonesty or evasion about any matter; and bringing to the attention of the court, relevant matters even when these may not be favourable to that person's position¹⁷.

¹⁶ Wilkinson and Norrie 'The Law Relating to Parent and Child in Scotland 3rd ed. 2013 at 5.58reference *Cameron v Carr's Curator as Litem* 1998 SLT (Sh. Ct.) 22 at 22D where these latter comments are made.

¹⁷ see Part 1, section 6 Officers of the court.

7. Rights and Duties of Safeguarder (Court)

There are general rights and duties that the Safeguarder has in relation to all court proceedings that the Safeguarder can be involved in. What follows is a **summary** of the general rights relevant to all court proceedings. Appendix 3 contains fuller tables about these rights with full reference to the rules that relate to these.

Rights to information as a Safeguarder

- General right (in all applications including appeals)
 - to **make such enquiries** as the Safeguarder considers relevant as part of the role
 - to **serve, cite and give notice** when obliged to do so
 - to access all **documents lodged** in the court process (unless the Sheriff directs otherwise)
 - to receive from the Sheriff Clerk all **interlocutors** subsequent to appointment
- As a party:
 - to receive a copy of any **further report** required and received by a Sheriff **in an appeal**.

Rights to notice as a Safeguarder

General right to **receive notice** of an application, which means that the Safeguarder will get notice of the application or appeal with a copy of the grounds application¹⁸ or appeal, any court orders and notice of the date, place and time of court hearings.

Rights to contribute as a Safeguarder

- General right:
 - to contribute as required to fulfil role when attending court hearings
 - to convey the **views of the child** to the Sheriff
- As a party:
 - to be heard in the hearing of an application to **review grounds established**.

Rights to notification of decisions

- General right:
 - to receive the **decision and any note of the reasons** for the decision from the Sheriff Clerk in grounds applications, appeals, application for review by a local authority, and applications to review grounds established
 - to receive from the Reporter intimation of the Sheriff's order in relation to an **ICSO**, if the Sheriff considers the Safeguarder to be a person to receive this.
- As a party:
 - To receive intimation of the **Sheriff Appeal Court's written decision** in an appeal to the Sheriff Appeal Court from the Sheriff Clerk
 - to receive intimation of the order if the Sheriff varies or continues a **Medical Examination Order**.

¹⁸ see Appendix 4 for a copy of this application.

Duties as a Safeguarder

Child's views:

Determine if child wishes to express a view and if so, transmit these views to the Sheriff.

Ascertain child's views, if asked by Sheriff¹⁹.

Where a report is provided to assist the Sheriff determine any matter, the Safeguarder must give the child an opportunity to express views; have regard to these views and include these and the means of obtaining these, in the report to the Sheriff.

Provide information

Inform the child, Relevant Person and any person interviewed of the Safeguarder's functions and powers, in particular that the role is to safeguard the interest of the child.

Confidentiality

Treat documents and all information gathered as confidential and not disclose unless disclosure necessary for the purposes of the Safeguarder role's duties and as permitted by law.

Enquiries

Make such enquiries relevant to the application as the Safeguarder considers necessary (rule 3.8(d))

Notify of intention to become a party or not

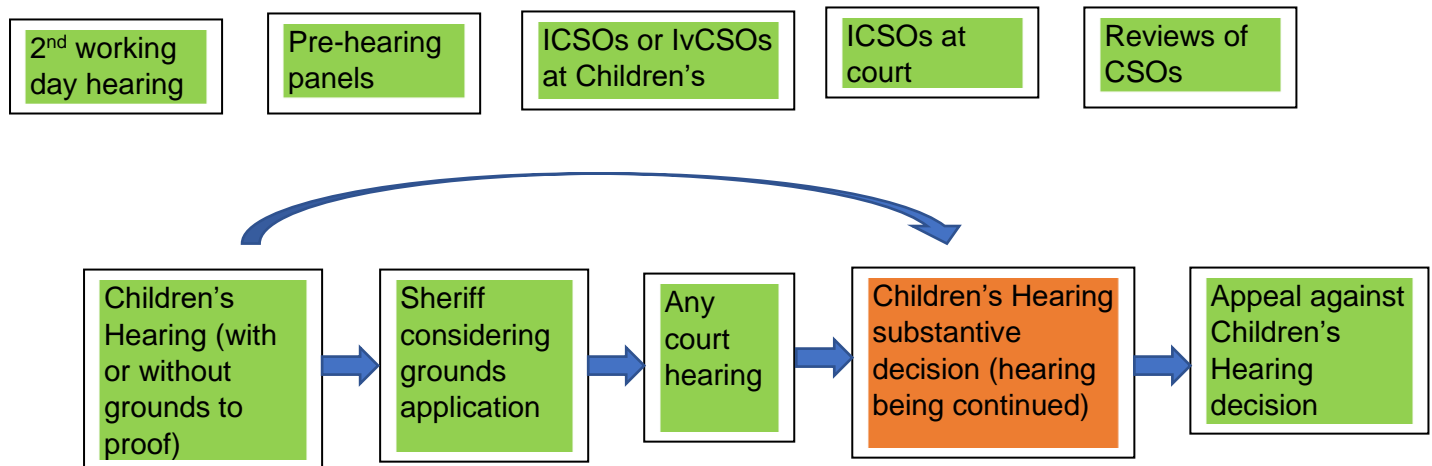
Intimate to the Sheriff Clerk in writing whether or not intends to become a party, without delay but before the hearing of the application. (rule 3.8(e))

To comply with any Sheriff requirements

This covers any requirements in relation to case management orders; exclusion during any child's evidence; and, to be examined on his or her report in an appeal as an author or compiler of reports.

¹⁹ Duties in relation to the child's views must take into account the rights of the child to be given an opportunity to give their views in a manner preferred by them (see duty on the Sheriff in section 27 of the 2011 Act).

8. Appointment (Relevant to Court)



The diagram shows hearings, both Children's Hearing and court, where a Safeguarder can be appointed and where court proceedings are already involved or could be involved in the future.

In most cases, an appointment involving **grounds applications** occurs when the Sheriff is considering an application for the establishment of grounds²⁰. In some cases (usually geographically based) the Children's Hearing will appoint when it sends the grounds for proof.

For **appeal appointments**, most Safeguarders are already appointed and involved in the decisions that are being appealed. A Sheriff occasionally appoints to an appeal when no Safeguarder has been involved.

A **Sheriff can appoint at any stage of proceedings** including after the proceedings have commenced, but this is very rarely done.

In some cases, the **Reporter has indicated**, usually through the application for grounds establishment or on occasions when the grounds are first heard in court, that they believe a Safeguarder is required. There is **NO** provision for this and the reasons for this recommendation may be included in the application or not. It is for the Sheriff to decide if a Safeguarder is required but these recommendations can be influential in this decision.

No person can be appointed Safeguarder by the Sheriff outwith the agreed allocation process.

The source of the appointment i.e. Children's Hearing or Sheriff, does not affect **the extent of the role or when the appointment should end**²¹.

A Children's Hearing appointment entitles the Safeguarder to be involved in court proceedings.

²⁰ This information is based on a review of the allocation information held by the Safeguarders Panel Team.

²¹ The Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Rules 2013 cover this.

A Sheriff appointment for grounds proceedings lasts through to the substantive decision of the Children's Hearing following the grounds being determined at court (and if the hearing decision is appealed until determination of the appeal) ([link to Further Provision regs](#)).

Where the Sheriff has appointed and the grounds referred to court are not established but where there is an outstanding matter from the hearing that sent the grounds to court (which may be other grounds accepted at the Children's Hearing or a review not concluded at that hearing) then the Safeguarder's appointment is still in place and the Safeguarder should be involved in the further Children's Hearing to consider the outstanding matters, until their appointment comes to an end (see Practice Position 5 in Part 1 above).

Reasons for appointment

Section 30(4) states that the reasons for the decision to appoint are to be provided by the Children's Hearing. Children's Hearings generally provide reasons for the appointment of a Safeguarder.

Section 31(6) of the 2011 Act specifies that the Sheriff must give reasons for the decision to appoint a Safeguarder. The Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended at rule 3.7(2) states that where a Sheriff appoints a Safeguarder, the appointment and the reasons for it must be recorded in an interlocutor. In practice, reasons are seldom provided by Sheriffs. Where reasons are provided these consist of more generic reasons e.g. 'age of the child' or 'safeguard the interests of the child', rather than reasons relating to the individual child and their circumstances. The reasons are rarely included in interlocutors²².

A statement of clear reasons amounting to a focus of activity does not restrict the Safeguarder in what the Safeguarder identifies as needing to be done to safeguard a child's interests, but they can assist the Safeguarder to understand the focus of concern that has prompted the need for the Safeguarder to be appointed in the court proceedings. ([Practice Note on Role of Safeguarder, section 1](#)).

A Sheriff may consider appointing a Safeguarder to assist the Sheriff in complying with section 27 of the 2011 Act as amended by the Children (Scotland) Act 2020. The child has a right to express a preference for the manner in which they may express their views. The Safeguarder's role is wider than simply obtaining views, and Safeguarders do not work to a remit, therefore a Sheriff would have to consider carefully if appointing a Safeguarder is the best way to obtain a child's views. There may be other, better ways, for that child to express their views.

Withdrawal from appointment

Where a Safeguarder has taken an appointment which involves court proceedings and is no longer able to remain as Safeguarder and therefore wishes to withdraw, the Safeguarder should follow the practice expected in all cases ([Safeguarder Allocations – FAQs, What should I do if I cannot continue with an appointment?](#)). The court or Sheriff do not need to give permission for a Safeguarder to withdraw from proceedings.

²² The Role of the Safeguarder in the Children's Hearings System, McDairmid, Barry et al 2017

9. Attendance at Court

Section 33 of the 2011 Act specifies that a Safeguarder appointed by Children's Hearing or court 'must ... attend the Children's Hearing, so far as reasonably practicable'.

Section 78 of the 2011 Act states at section 78(1)(f) that the Safeguarder has a right to attend a Children's Hearing.

Rule 3.9 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended allows a Safeguarder the right to appear personally in the proceedings.

The 2011 Act and the court rules provide a right for the Safeguarder to attend court proceedings. There is no express duty in law to attend court.

The Safeguarder role is a personal appointment and the Safeguarder cannot send someone on their behalf.

The **Practice Standards for Safeguarders** and the legislation and rules provide an expectation that the Safeguarder will be engaged with the proceedings. It is difficult to see in practice, for a Safeguarder to comply with the purpose of the role to safeguard a child's interests in the proceedings, how the role could be performed effectively without the Safeguarder attending court hearings so far as is reasonably practicable.

10. Enquiries

Practice Standard 3 –

- ...the assimilation of information and views is carried out in a considered, appropriate and purposeful way...
- information and views already available from other roles or services helping, advising or supporting the child are considered and critically assessed
- clear and articulate conclusions and recommendations are provided to the Children's Hearing or Sheriff court, focused on the best interests of the child and arrived at following rigorous, detailed and proportionate independent enquiries
- there is a transparency of approach ensuring trust and integrity in all activity.

Practice Note on the Role of the Safeguarder –

- ...assessments and information available can be critically reviewed and can avoid a Safeguarder from unnecessary and unjustified enquiries...
- ...the only limitations (on the extent of the role being performed) are that the Safeguarder must act proportionately and within the parameters set for the role. The Safeguarder must not act beyond that, no matter the individual Safeguarder's experience or competence to act in another role...
- ...the Safeguarder's role is not a 'doing' role in relation to the child. A Safeguarder should only be carrying out enquiries to enable them to provide the ... Sheriff with information and or recommendations...
- ... where a Safeguarder feels that there are issues with the performance of a role... the Safeguarder should not take on that role's functions, no matter how competently the Safeguarder feels that he or she could perform that role...

Practice Note on Reports

- ...It is not good practice, on appointment by a Sheriff, to wait and do little or nothing until the Children's Hearing (following the establishment of grounds) to then see if that Children's Hearing wish a report...
- ...During court proceedings and before grounds are established, enquiries (which would usually be required to provide a report) may be limited because critical matters in the grounds require clarification. A Safeguarder may only be able to enquire so far until such time as disputed grounds are resolved.
Nonetheless, the Safeguarder would be expected to enquire and engage with the child, Relevant Persons and other key individuals, sufficient to contribute appropriately to what is required at court, e.g. the support of the grounds or not, to form their position in terms of a further ICSO...
- ...As a result of their involvement, the Safeguarder has often gained access to information and has had the advantage of observing and or participating in proceedings including the proof. There may also have been further contact with the child and family. Much of these enquiries, information gathering and relationship building will help to produce a report that will assist the decision making of the Children's Hearing if the matter is remitted back to the hearing. Doing whatever is possible during court proceedings means that overall delay can be avoided...

Safeguarders: Further Provisions Regulations (regulation 8)

- a Safeguarder must inform the child, any Relevant Person and any other person whom they interview in pursuance of their functions of their functions and powers, in particular their role to safeguard the interests of the child.

11. Becoming a Party to the Court Proceedings

A Safeguarder must inform the Sheriff Clerk in writing of their intention to become a party to the proceedings or not²³.

A party in legal proceedings is generally defined as someone who is entitled to be there and contribute by making claims or defences, offering evidence and submissions, examining and cross-examining witnesses in evidence hearings or trials and has the right to pursue appeals where they are not satisfied with decisions or judgments.

The following **rights are attributed to parties** with no mention of the Safeguarder also having these rights:

- in grounds applications – but only in relation to **an offence by child ground** – the right to be given an opportunity to be heard on the question of the **sufficiency of evidence** after the Reporter's evidence has been heard
- in grounds applications – the right to apply for **amendment of the grounds**
- in grounds applications and in appeals – to ask for an **adjournment or continuation** (of an appeal)
- in appeals – to **receive a copy of any further report** required by and received by the Sheriff
- several rights **when evidence being heard** relating to vulnerable witnesses, applying for live link use, etc.
- in appeals to Sheriff Appeal Court/Court of Session – several rights to receive/act in the appeal (if not appellant)
- in appeals from Sheriff Appeal Court to Court of Session – to be intimated of the application for leave to appeal and the date of the hearing to consider the application
- in applications to review grounds established – to be heard in the hearing on the application
- in a Medical Examination Order proceedings – to receive intimation of the order

²³ Court rule 3.8(e) Act of Sederunt (Child Care and Maintenance) Rules 1997 and Court Practice Note, Part 1 - Practice Positions 6 and 7.

12. Legal Advice and/or Representation for the Safeguarder

A Safeguarder is entitled to instruct a **solicitor or an advocate to appear on the Safeguarder's behalf**.

Advice and or representation by a solicitor or advocate involves the Safeguarder in a client relationship where the solicitor or advocate will act on the Safeguarder's instructions.

The Scottish Government team with responsibility for Safeguarders must approve funding for such advice or representation.

See Part 1, section 9 for more details on this area.

13. Confidentiality

Safeguarders have responsibilities regarding confidentiality.

These responsibilities are contained in:

- Practice Standard 5
- the Safeguarder's Letter of Appointment
- the Children's Hearings Rules (rule 9) and
- the Court Rules (rule 3.5A).

These duties extend to information that the Safeguarder holds relating to their appointment and in particular all case-related information which must not be disclosed unless expressly authorised or necessary to perform the role.

Any discussion involving case-specific information or personal details of the parties and their particular circumstances should not occur with any person not entitled to receive this information. Where Safeguarders need to discuss their thinking or clarify information about procedure or options available to them related to a case, with a person with no legal right to access to that information, the Safeguarder must only speak in general terms such as not to identify the child or other persons involved (Practice Note on Court, Part 1 - Practice Position 8) or to breach any confidentiality requirements on them.

14. Children in Court Proceedings

Excusing attendance

- In practice, children, including many children who are of sufficient maturity, **do not get actively involved** in court proceedings. Young children are usually excused from **attending** and excused from being **notified** of the proceedings. That should not prevent their views being heard.²⁴
- Section 103(3) sets out the **3 circumstances when children can be excused** by the Sheriff from attending all or part of the hearing. In summary, these are:
 - that the grounds relate to a schedule 1 offence against the child or another child in the household or the person committing the offence, or certain offences under Sexual Offences legislation, has a close connection to the child and the child's attendance is not necessary for a fair hearing to occur
 - that the child's attendance would place the child's physical, mental or moral welfare at risk
 - the child would not be capable of understanding what happens at the hearing.
- The court rules at 3.3 allow the court to **dispense with service on the child** where the Sheriff is satisfied that it would be inappropriate to order service on the child. This means that the child would not know at all about the proceedings if no-one else has told them.
- SCRA Practice Direction 23 on Court Applications for Reporters at 4.5 directs the Reporter who requests dispensation of attendance or service (usually in the appropriate part of the grounds application) to include **reasons in the application**. The Safeguarder will have a copy of the application with the reasons.
- The Sheriff can of his or her own motion dispense with attendance and or service.
- Even with dispensation, a child still has the right to attend the hearing and to have their voice heard and to have their voice heard.
- When notified, including being **notified that their attendance is not required**, the child is provided in the notice with an **opportunity to provide their views**.
- Excusal, when authorised by the Sheriff, lasts throughout the court proceedings. If excused the child will not be provided with notification of continued dates of court hearings but will be advised of the outcome of the grounds' determination.

²⁴ The Children (Scotland) Act 2020 <https://www.legislation.gov.uk/asp/2020/16/contents> introduced new requirements to ensure that children's views are heard and had regard to by decision-makers including the courts.

15. Grounds Applications

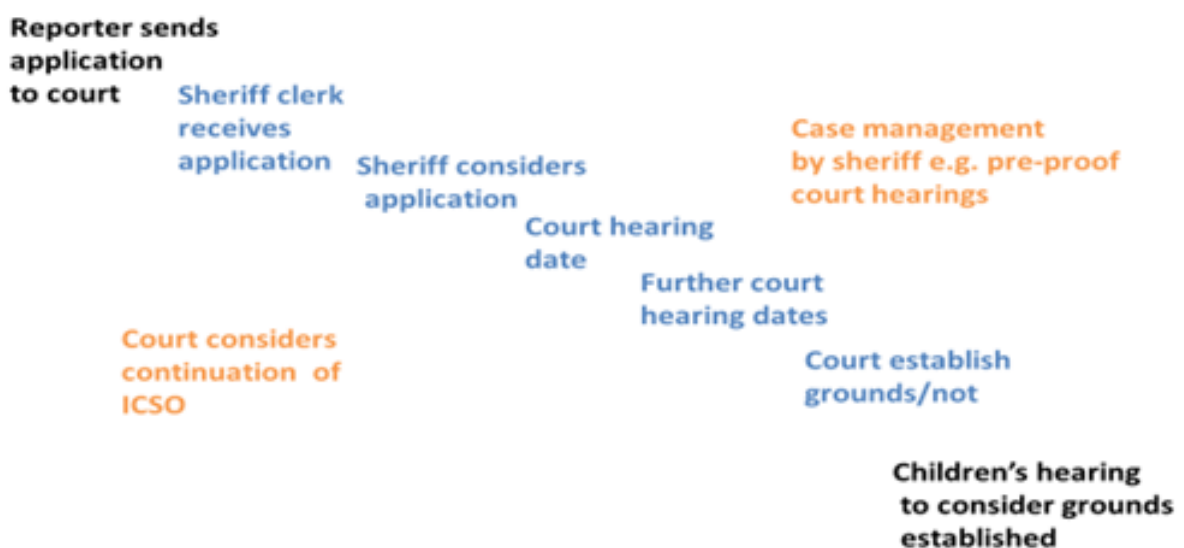
Purpose of the grounds application

The purpose of the application is to determine if the grounds for referral, with or without amendment, are established. If so, this allows the Children's Hearing to consider the need for and the nature of, compulsory measures of protection, guidance, treatment or control. In determining the grounds, the court is focused on the grounds and the grounds alone, not any future measures and their need.

Law and Procedure

The proceedings are sometimes called civil proceedings *sui generis* which means a special type of civil proceedings. The 2011 Act and court rules lay out the procedure to be followed. The general civil rules of evidence apply but are not 'to thwart the interests of the child by over-rigid application'²⁵.

The **diagram below** shows the procedure in basic terms. The parts in amber colour at either side of the diagonal are significant matters that may or may not also be involved in the process.



The proceedings are **not criminal proceedings**, even where the grounds allege an offence against a child or an offence by a child.

The **standard of proof** to establish grounds is the balance of probabilities (i.e. more likely than not). However, only where the ground is an **offence by the child**, has the matter to be proved to the criminal standard of proof, i.e. beyond reasonable doubt. This is a protection for the child given the implications of having an offence established even in the hearing system. SCRA provides a leaflet informing children what they can do when offence grounds are sent to them so that they are aware of the implications. <https://www.scra.gov.uk/wp-content/uploads/2018/10/Rehabilitation-of-Offenders-October-2018.pdf>

Offences against children are to be proved to the standard of the balance of probabilities.

²⁵ W v Kennedy 1988 S.L.T. 583

16. Appointment and Reasons

Appointment usually occurs at the point that the Sheriff first sees the grounds application, but it can occur at any stage of the court proceedings (court rule 3.7(1)(b)). It is the Sheriff's decision to appoint although the Sheriff may wish to consider any views expressed by the Reporter in the application or first consider the views all parties attending the first court hearing. This is proposed in the Sheriff Principal Practice Note No. 1, 2018 for Glasgow and Strathkelvin ([link](#)).

Reasons for appointment require to be provided by the Sheriff (section 31(6) of the 2011 Act) and recorded in an interlocutor (rules of court 3.7(2)). The [Practice Note on the Role of the Safeguarder](#) at section 1 covers reasons for appointment and their impact.

Reasons for appointment are rarely provided by the Sheriff and when they are, they can be generic in nature, such as 'the age of the child' or 'in the child's interests'²⁶.

²⁶ McDairmid, C., Barry, M., Donnelly, Corson, S. The Role of the Safeguarder in the Children's Hearings System, published by Scottish Government September 2017

17. Grounds Applications – Summary of Process

Process for applications to be made to court

1. The Reporter has **7 days** starting from the date of the Children's Hearing that made the decision to refer to court to **complete the application and send it to the Sheriff Clerk.**
2. An application is to be made on **Form 60** which is attached as Appendix 4 and shows the information which the Reporter has to provide.
3. If a **Safeguarder** has been appointed by a Children's Hearing already (either by the hearing which sent the grounds to court or a previous hearing has and the appointment has not ended), the Reporter will **note this on the application.**
4. If there is a Safeguarder report, the Reporter must lodge that with the application.
5. The application will have **grounds for referral attached** and the application will **note what parts of the grounds were accepted or not or not understood at the hearing.**
6. Any **position given at the Children's Hearing is not binding** on the child or Relevant Person and any of them can change their position on the grounds until the determination is made at court.
7. The application will only relate to grounds referred to court. Any **grounds accepted at the hearing** will not be included in the application as the grounds disputed are the focus for the court. The Children's Hearing papers which the Safeguarder will get from the Reporter, includes details of any other grounds that were at the hearing and what has happened to them. The Sheriff does not get the panel papers.
8. The Reporter can ask in the application, with reason, for the **child to be excused** from attending the court and also from being notified.
9. The application asks the Reporter to give a list of **witnesses and their roles.** These are the people who, if necessary, can give evidence to support the establishment of the grounds. This information or a separate list of witnesses provided by the Reporter, sometimes at a later date, should say how the witness can be contacted.
10. The Reporter can also provide an **estimate for how long the hearing of evidence may take** although there is no requirement to state this in the application. Case management considerations encourage the Reporter to indicate how many days of court time may be needed where the grounds cannot be resolved without hearing evidence.
11. The grounds in the application are the only **paperwork that the Sheriff gets** that were also available to the Children's Hearing – the court is not given any other papers, in particular the reports or other papers before the Children's Hearing or the record of proceedings with decision and reasons.

For more detail on the process that the Reporter follows in relation to the application, see SCRA Practice Direction 23 on Court Applications <http://www.scra.gov.uk/wp-content/uploads/2016/03/Practice-Direction-23-Court-Applications.pdf>

Process when Sheriff Clerk and Sheriff Consider the Application

1. The Sheriff Clerk on receipt of the application **fixes a date** for the court hearing for the application, which must be within 28 days from receipt of the application.
2. The **Sheriff Clerk** completes part of the application, confirming the date, time and place of the court hearing and allowing the **Reporter to then notify** people (called a 'warrant to cite') with a copy of the application.
3. The Reporter then must 'forthwith' **serve a copy of the application** and warrant to cite with a notice of citation on the persons named in the application i.e. the Relevant Persons and child. A copy of the application is also served on the Safeguarder with the warrant to cite and a Form with notice using [Form 40](#).
4. The Safeguarder has a **right to receive** from the Reporter copies of all applications, all productions and any papers before the Children's Hearing. The Safeguarder is also entitled to get from the Sheriff Clerk all interlocutors and all documents lodged in the process unless the Sheriff directs otherwise (court rules 3.8f and 3.5A(1))
5. The **Sheriff** is shown the application by the Sheriff Clerk and the Sheriff will decide on matters such as **dispensing with the child's attendance** and or notification of the application.
6. At this stage the Sheriff must consider if it is necessary to **appoint a Safeguarder** if no Safeguarder is already appointed. If one is appointed by the Sheriff, the Sheriff Clerk should include the decision and reasons in the interlocutor. '**Interlocutor**' is the name for the document capturing the order of the Sheriff and this will confirm the date, etc. and any order made regarding dispensation, appointment of Safeguarder etc.
7. All papers with the court i.e. the application, interlocutors, etc. are kept by the Sheriff Clerk and this is called the '**process**'. These papers are provided to each Sheriff who has to consider the case at a court hearing, on the day.

18. Dispensing with Hearing Evidence – Fast-track and Grounds accepted

There are 2 different occasions when the Sheriff can find the grounds established without the need to hear any evidence, the first rarely used and the second most commonly used:

1 - Fast track applications: The Sheriff can dispense with hearing evidence and determine the grounds established when the application is made by the Reporter. ([section 106 of the 2011 Act](#)).

- This occurs where grounds are sent to court when Relevant Persons have accepted the grounds at the Children's Hearing but the **child has been incapable of understanding the grounds after explanation, or is incapable of understanding the grounds, due for example to their young age.**
- If Relevant Persons are present at a court hearing called a **procedural hearing, which must be within 7 days** of the grounds application being lodged, and they accept the grounds (with or without amendment) the Sheriff **may** dispense with a need for a hearing on evidence and find the grounds established.
- The Sheriff has the option to **not to dispense with hearing evidence** where he or she considers that it would be appropriate for evidence to be heard.
- Where the child, a Relevant Person, a Safeguarder or the Reporter requests that a hearing be held, the Sheriff **must not dispense** but fix a court hearing.

Therefore, if

- the Relevant Persons accepted the grounds at the Children's Hearing but the child was too young to understand
 - and
 - to proceed to deal with the case, the Children's Hearing had to send the grounds to court, and,
 - the Relevant Persons attend the court hearing within 7 days of the Reporter lodging the grounds application at court, and
 - the Relevant Persons accept the grounds at that 7 day hearing at court, and
 - no-one asks for a hearing to be held,
- then the matter can be sent immediately back to a Children's Hearing to proceed.

In practice, Relevant Persons often wish legal advice and as most legal representatives need time to advise appropriately, the short timescales for the 7-day hearing mean that this provision is rarely able to be used.

2 - grounds accepted: The Sheriff can dispense with hearing evidence and determine the grounds established at any time during the proceedings: ([section 105 of the 2011 Act](#)).

If Relevant Persons (and child if able to) are **present at the court hearing and they accept the grounds** (with or without amendment) the Sheriff must dispense and find the grounds established. The Sheriff has the option to **not to dispense** with evidence where he or she considers, in all the circumstances, that evidence should be heard.

If a Relevant Person does not accept grounds at a Children's Hearing and **does not attend court** without good reason, the grounds can be established in their absence.

19. Grounds Applications – Outcomes

Determination on the grounds – what the Sheriff can do

The options open to the Sheriff in determining the grounds are:

- Accept grounds agreed (with or without amendment) and find the grounds established (and dispensing with the hearing of evidence where the child is too young to understand/unable to accept the grounds)
- Find the grounds established after evidence heard in full or in part
- Where grounds established in full or in part, the Sheriff must direct the Reporter to arrange a Children's Hearing to consider need for a compulsory order – the Safeguarder is still appointed for this
- Where the Sheriff establishes the grounds and directs the Reporter to arrange a Children's Hearing, the Sheriff can issue an interim order where there has been no interim order before, or where there is one, this must be re-issued on determination of the grounds, if required, until the Children's Hearing is held within 22 days.
- Not find the grounds established in full – the Safeguarder has no right of appeal against this decision
- Where the grounds are not established – the Sheriff must dismiss the application and discharge the referral – all associated interim orders or warrants will fall
- Where the grounds are not established but the Children's Hearing that referred the grounds to court has other outstanding accepted grounds to consider, the Sheriff must order the Reporter to arrange a Children's Hearing for these accepted grounds to be considered. The Safeguarder is still appointed for this subsequent hearing (even where the appointment was made by the Sheriff for the grounds proceedings at court).

The established grounds can be the subject of appeal (see sections 21-32 below on appeals) or a review of the grounds established where there is significant evidence available which was not available at the time of the determination with good reason (see section 25 below on these reviews). The Safeguarder has no rights to ask for this latter review.

20. Appeals

Purpose of appeals

Appeals allow an opportunity for challenge to be made to important decisions as 'an essential aspect of fairness'²⁷. Children's Hearing decisions and some decisions made at court can be the subject of appeal.

An appeal is not an opportunity to rehear the matter but to see if a decision was justified and followed law and procedure. If not, the decision can be undone and or reconsidered, and in some cases replaced.

Different types of appeals

In very general terms, there are 3 categories of appeals:

1. Appeals to the Sheriff **against a Children's Hearing decision** (including pre-hearing panel decisions)
2. '**Specific issue**' appeals to the Sheriff against certain hearing and Chief Social Work Officer decisions
3. Appeals **against a Sheriff decision** to the Sheriff Appeal Court and further appeal to the Court of Session.

Law

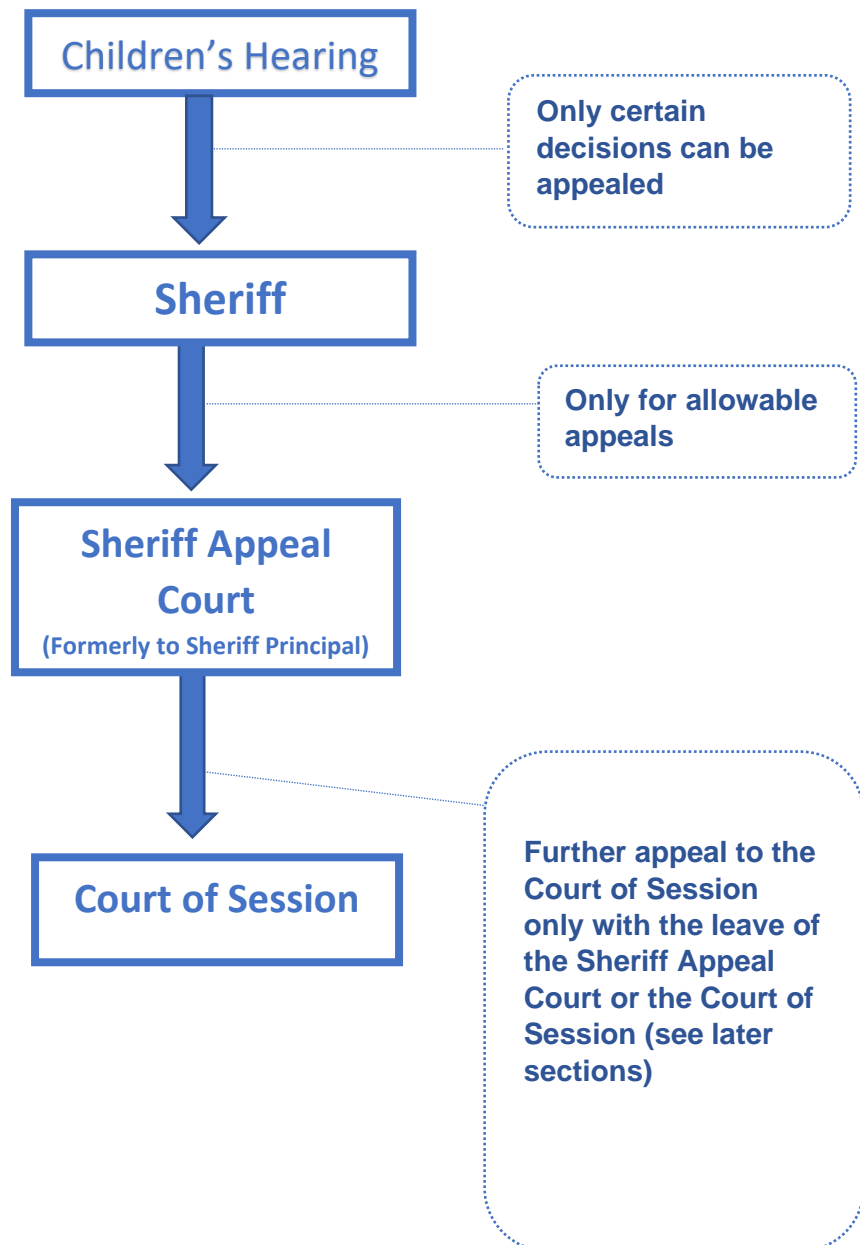
The main pieces of legislation relevant to appeals are:

- Part 15 The 2011 Children's Hearings (Scotland) Act
- Act of Sederunt (Child Care and Maintenance Rules) 1997, as amended
- The Children's Hearings (Scotland) Act 2011 (Safeguards: Further Provision) Regulations 2012
- Courts Reform (Scotland) Act 2014
- Act of Sederunt (Sheriff Appeal Court Rules) 2015.

²⁷ Norrie, Children's Hearings in Scotland, 3rd edition at 14.01

21. Courts Involved in Appeals

Appeals can be made against certain decisions of a Children's Hearing or a Sheriff and in some cases, the Sheriff Appeal Court's decision. The final court of appeal is the Court of Session²⁸.



²⁸ See section 2 on court structures - the Supreme Court for the United Kingdom and European Court may provide relevant judgements where Children's Hearing matters are considered as part of appeals from other court proceedings e.g. civil actions for rights or judicial review.

22. Timescales for Appeals

There are timescales for:

- a) when after a decision, that an appeal **must be made**
- b) when an appeal **must be heard** in court
- c) when an appeal has to have been **decided** upon
- d) when decisions need to be **provided and communicated**

a) **when appeals must be made:**

- 1) appeals against Children's Hearing decisions - before the expiry of the period of **21** days beginning with the day on which the hearing made their decision.
- 2) specific issue appeals – as above apart from relevant person determination which must be appealed within **7** days beginning with the day the determination made.
- 3) appeal to the Sheriff Appeal Court – before the expiry of **28** days beginning with the day on which the determination or decision of appealed against was made

b) **when appeals must be heard in court:**

- 1) appeals against Children's Hearing decisions – usually a date must be set within **28** days of lodging unless the appeal is against a decision to
 - make a CSO with a secure authorisation or movement restriction condition (MRC)
 - make an ICSO
 - make an interim variation of a CSO (IvCSO)
 - make a MEO, or
 - grant a warrant to secure attendance
 when the appeal must be heard and disposed of within **3** days beginning the day **after** the day the appeal is made.
- 2) specific issue appeals – within 3 days beginning the day the appeal was made.
- 3) appeal to the Sheriff Appeal Court– There are regulated procedures for appeals to this higher courts. There are set times for the Sheriff to state the case, for adjustments to be made and for the Sheriff Appeal Court to hear and decide on the appeal. (See section 31 below for further details)

c) **when appeals must be decided upon (or disposed of):**

- 1) appeals against Children's Hearing decisions – unless the appeal requires to be disposed of within **3** days (see box above at 1)) there is no time limit.
- 2) specific issue appeals – **3** days beginning with the day the appeal was made.
- 3) appeal to the Sheriff Appeal Court– apart from the limits set within the stated case procedure and Sheriff Appeal Court Rules, there is no overall time limit.

d) **when decisions on appeals must be provided and communicated:**

- 1) appeals against Children's Hearing decisions – orally at the conclusion of the appeal or on another day set by the Sheriff. If the Sheriff wishes to issue a note of the reasons for the decision, this must be issued with the decision or within **7** days of the decision.
- 2) specific issue appeals – as immediately above
- 3) appeal to the Sheriff Appeal Court– the Sheriff Appeal Court may give its decision **at the conclusion of the appeal** or reserve judgement and if so, the decision must be given in writing within **28** days.

Timescales (Appeals Against Decisions of Children's Hearings)

Appeal time limits under the Children's Hearings (Scotland) Act 2011		
TYPE OF DECISION APPEALED	DEADLINE FOR LODGING APPEAL AT COURT	DEADLINE FOR DISPOSAL OF APPEAL AT COURT
Make, vary or continue a CSO (except secure authorisation / MRC)	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal
Discharge referral of the Principal Reporter	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal
Terminate the CSO	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal
Make a CSO including a secure authorisation	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Make a CSO including an MRC	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Make an ICSO	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Make an interim variation of a CSO	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Make an MEO	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Grant warrant to secure attendance	21 days beginning with the day the hearing's decision was made	3 days beginning the day after the appeal is made
Determination of Relevant Person status	7 days beginning with the day the determination was made	3 days beginning the day the appeal is made
Decision affecting a contact order / permanence order	21 days beginning with the day the decision is made	3 days beginning the day the appeal is made
Implementation of secure authorisation / failure to implement	21 days beginning with the day the decision is made	3 days beginning the day the appeal is made

If it is not possible for the appellant to lodge the appeal on the 21st day because the court is closed, it is likely that the court will allow the appeal to be lodged on the next day on which the court is open. The Practice Direction for the Reporter is that the Reporter will not object to the late lodging of an appeal in such circumstances. Other than in these circumstances, there is no authority for an appeal to be lodged late and nor is there any discretion for the Sheriff to allow an appeal to be lodged late²⁹.

²⁹ SCRA [Practice Direction 24](#) on Appeals at 4.2

Specific Issue Appeals - Timescales and Outcomes

SPECIFIC ISSUES APPEALS				
Decision appealed against	Days to lodge appeal	Days to dispose of appeal	Sheriff's disposal options	
	Beginning on day decision made	Beginning on day appeal lodged	Decision justified	Not justified
Determination of Relevant Person status	7	3	Confirm determination	Must quash determination and deem RP (if decision of hearing/PHP not to deem)
Contact direction review hearing	21	3	Confirm decision	Must vary CSO by varying or removing the contact direction
To implement secure authorisation	21	3	Confirm decision	May (1) direct the CSWO to remove the child from secure; and/or (2) require Reporter to arrange a Children's Hearing for any purpose
To not implement secure authorisation	21	3	Confirm decision/may require Reporter to arrange a Children's Hearing for any purpose	May (1) direct the CSWO to place the child in secure; and/or (2) require Reporter to arrange a Children's Hearing for any purpose
To remove from secure	21	3	Confirm decision/may require Reporter to arrange a Children's Hearing for any purpose	May (1) direct the CSWO to place the child in secure and vary the order to include a SAA; and/or (2) require Reporter to arrange a Children's Hearing for any purpose

23. Decisions That Can be Appealed

The legislation specifies **what** decisions can be appealed:

1. **Decisions of Children's Hearings** that can be appealed are specified in section 154 of the 2011 Act:

- a) to make, vary or continue a compulsory supervision order (CSO)
- b) to discharge a referral by the Principal Reporter to the Children's Hearing
- c) to terminate a compulsory supervision order (CSO)
- d) to make an interim compulsory supervision order (ICSO)
- e) to make an interim variation of a CSO (IvCSO)
- f) to make a medical examination order (MEO)
- g) to grant a warrant to secure attendance (WSA)

NB Decisions by Children's Hearings that are not substantive decisions, such as to appoint a Safeguarder or to defer a decision/continue a hearing, are not appealable.

2. **'Specific issue'** appeals include:

- an appeal against a relevant person determination by a hearing (section 160)
- an appeal against the decision of a contact direction review hearing (section 126)
- an appeal against the decision of a Chief Social Work Officer to implement a secure accommodation authorisation or not, or, to remove a child from secure)

3. Appeals **against a Sheriff decision** are made to the Sheriff Appeal Court and can be made against the following decisions of the Sheriff:

- a) a determination as to whether a ground is established
- b) a determination of a review of a finding that a ground is established
- c) a determination of an appeal against a decision of a Children's Hearing
- d) a determination of an application for extension of an ICSO
- e) a determination of an application for a further extension of an ICSO
- f) a decision to make an ICSO
- g) a decision to make an interim variation of a CSO (IvCSO)

Further appeal from the Sheriff Appeal Court to the Court of Session

Appeal can be made to the Sheriff Appeal Court and from that court to the Court of Session if certain criteria is met. An appeal to the Court of Session can only occur if the appeal would raise an important point of principal or practice, or there is some other compelling reason. Further appeal requires the leave of the Sheriff Appeal Court to do so, or if refused, with the permission of the Court of Session.

24. Reviews of Children's Hearing Decisions at Court

There are two reviews that are not termed appeals but which the Sheriff will consider in relation to Children's Hearing decisions:

Review of grounds established (section 110)

A child who was the subject of the grounds established (including a child now an adult at the time of requesting this review) and a relevant person (a relevant person at the time the grounds were established or now), may apply to the Sheriff for a review of grounds established.

There must be significant and relevant, admissible evidence, not available when the grounds were originally being considered, with reasonable explanation for the failure to lead that evidence then, for the review request to be made.

If this test is met, the Sheriff will review the grounds determination and if after doing so is satisfied that

- the ground is established, will refuse the application, or
- the ground is not established – will recall the grounds determination and order discharge of the referral of the ground to the Children's Hearing (if the only ground – if not and another ground is accepted or established, the Sheriff will ensure that a Children's Hearing is arranged to review the need for compulsion and can issue an ICSO or warrant to secure the child's attendance if required (all if the child is still a child))
- another ground is established – will ensure that a Children's Hearing is arranged to review the need for compulsion and can issue an ICSO or warrant to secure attendance (all if the child is still a child)
- if the ground is not established but there is a supervision order which was in place already when the ground was originally determined, the Sheriff can instruct a review of any current order
- if the ground is not established and the child needs supervision or guidance can order the local authority to provide this

Review of requirement on a local authority (section 166)

This review to the Sheriff can only be made

- by a local authority who has had a duty imposed on it by compulsory supervision order or ICSO or medical examination order and
- the local authority is satisfied that it is not the 'relevant authority' i.e. the authority defined in the legislation (section 202 of the 2011 Act) who would be responsible for the child.

If successful, the Sheriff can vary the order containing the requirement.

The Sheriff's decision on this review can be appealed further but only to the Sheriff Appeal Court by the child affected and or a relevant person on a point of law or procedural irregularity.

25. Legal Criteria for Appealing / Grounds to Appeal

1. Appeals **against a Children's Hearing decision** - The grounds of appeal are not prescribed other than the need for the Sheriff to determine whether the **Sheriff is satisfied that the decision of the Children's Hearing is justified**.

2. **Specific issues** appeals -

Relevant person determination – the **Sheriff is satisfied that the determination by the hearing is justified**.

Contact direction review hearing decision - the **Sheriff is satisfied that the decision by the hearing is justified**.

Chief Social Work Officer decision to implement a secure accommodation authorisation (or not or to remove from secure) - the **Sheriff is satisfied that the decision by the CSWO is justified**.

3. Appeal **against a Sheriff decision** to the Sheriff Appeal Court

- against a Sheriff's decision on an appeal against a Children's Hearing may be made only on a **point of law or a procedural irregularity**.

- against a Sheriff's decision in a specific issue appeal must also be on a **point of law or procedural irregularity**.

- from **Sheriff Appeal Court to Court of Session** – must be on **an important point of principle or practice or there is some other compelling reason**. Permission to appeal must be obtained from the Sheriff Appeal Court or, if refused, from the Court of Session.

Appealing on a point of law or procedural irregularity

A **point of law** means that the appellant feels that the law has not been applied correctly. A **procedural irregularity** means that there has been a significant misapplication of the procedure required when the decision being appealed was being made.

The task of the Sheriff – “*the task facing a Sheriff ... is not to reconsider the evidence which was before the hearing with a view to making his own decision that evidence. Instead, ... to see if there has been some procedural irregularity in the conduct of the case; to see whether the hearing has failed to give proper, or any, consideration to a relevant factor in the case; and in general, to consider whether the decision reached by the hearing can be characterised as one which could not, upon any reasonable view, be regarded as being justified in all the circumstances.*”

Sheriff Principal Nicholson in the case of *W v Schaffer*, 2001 S.L.T. (Sh Ct) 86 at 87A-***A

Suspension of the decision being appealed

In an appeal against a Children's Hearing decision to make, vary, continue or terminate a compulsory supervision order, the person appealing the decision can have a Children's Hearing held to consider suspending the decision being appealed whilst the appeal is being determined. The appellant simply requests the Reporter to arrange the hearing and the Reporter must arrange a hearing as soon as practicable, (section 158 of the 2011 Act). [Rule 76](#) of the Children's Hearing rules covers notification and procedure for the hearing.

26. Who Can Appeal Decisions

An appeal **against a Children's Hearing decision** can be made (jointly or individually) by:

- a) the child
- b) a Relevant Person in relation to the child
- c) a Safeguarder appointed to the child

In addition to the Safeguarder's independent right of appeal, a Safeguarder can sign an appeal by a child. An appeal must be signed by the appellant and if the appellant is a child, their representative or the Safeguarder can sign the appeal on their behalf. (court rule 3.53(3)).

Specific issues appeals can be made by:

- 1) Relevant person determination: a) the person determined, b) the child, c) a Relevant Person and d) Reporter (but not for further appeal against a Sheriff's decision to confirm a children's hearing decision)
- 2) Contact direction review: a) a person, not a Relevant Person, who has a contact or permanence order in force regulating contact with the child or a person who satisfies the set conditions for being a Relevant Person
- 3) Implementation of secure authorisation: a) the child and b) Relevant Person.

Appeals **against a Sheriff's decision** to the Sheriff Appeal Court can be made by:

- (a) the child;
- (b) a Relevant Person in relation to the child;
- (c) a Safeguarder appointed in relation to the child by a Children's Hearing or Sheriff;
- (d) two or more of the child, Relevant Person or Safeguarder acting jointly; and
- (e) the Principal Reporter

but only in relation to certain matters (see later sections).

The following persons can seek leave to appeal (from Sheriff Appeal Court to Court of Session):

- (a) the child;
- (b) a Relevant Person in relation to the child;
- (c) a Safeguarder appointed by a Children's Hearing or Sheriff;
- (d) two or more of the child, Relevant Person or Safeguarder acting jointly; and
- (e) the Principal Reporter

NB the Safeguarder is restricted in not being able to appeal certain of these decisions – the **appeals that a Safeguarder can and cannot make** are noted below.

The Reporter cannot appeal a Sheriff's decision in a Children's Hearing decision appeal apart from some appeals on the determination of Relevant Person status (2011 Act s.164 as amended).

Only the person appealing the contact direction review can appeal the Sheriff's appeal decision.

What can/cannot be appealed by the Safeguarder

Safeguarders **can** appeal:

1. The **Children's Hearing decisions**:
 - a) to make, vary or continue a CSO
 - b) to discharge a referral by the Principal Reporter (to the Children's Hearing)
 - c) to terminate a CSO
 - d) to make an ICSO
 - e) to make an interim variation of a CSO (IvCSO)
 - f) to make a medical examination order (MEO)
 - g) to grant a warrant to secure attendance.
2. a) the **Sheriff's decision** in appeals at 1) above to the Sheriff Appeal Court and on to the Court of Session
- b) the **Sheriff's decision** to extend or further extend an ICSO.

Safeguarders **CANNOT** appeal the following decisions:

1. '**Specific issue**' appeals against decisions by a Children's Hearing:
 - a) Relevant Person determinations (NB a Safeguarder cannot ask for a Pre Hearing Panel to deem a Relevant Person)
 - b) contact review hearing decision
 - c) implementation or non-implementation of secure authorisation
2. Appeal to the Sheriff Appeal Court and on to the Court of Session where the appeal is against the Sheriff's decision which is:
 - a) a grounds determination or review of established grounds determination
 - b) to make an ICSO

Although a Safeguarder cannot appeal, they may have been involved in the Children's Hearing that made the decision being appealed and therefore they may still be involved in the appeal or be appointed in the appeal.

27. Frivolous and Vexatious Appeals

Where an appeal is disposed of by the Sheriff upholding the hearing's decision, the Sheriff can decide that an appeal is frivolous or vexatious. (section 159 of the 2011 Act)

An appeal is **“frivolous”** if it is time-wasting; an appeal is **“vexatious”** if it is designed to frustrate the process.

The Sheriff can order that for 12 months the person who appealed must obtain the leave of the Sheriff before making another appeal against a decision of a Children's Hearing in relation to a compulsory supervision order (CSO). The order only relates to appeals in relation to a CSO, not any other decision of a Children's Hearing.

The order does not prevent any other person with a right of appeal from appealing.

The procedure for the person applying for leave to appeal is set out in the court rules. If leave to appeal is granted, the appeal proceeds as normal. If the Sheriff decides the appeal is frivolous or vexatious, the Scottish Legal Aid Board (SLAB) is notified of this.

28. Outcomes of Appeals

Outcomes depend on the appeal made:

1. Appeals **against hearing's decisions**:

a) If the Sheriff decides that the **hearing decision was justified**:

the Sheriff **must**

- confirm the hearing decision, and then

the Sheriff **may**

- proceed to consider whether the circumstances of the child have changed since the hearing's decision was made and if the Sheriff decides the child's circumstances have changed,

the Sheriff **may**

- require the Reporter to arrange a hearing for any purpose for which a hearing can be arranged under the 2011 Act (*NB a hearing cannot be arranged under the Act to reconsider a previous decision of a Children's Hearing*)
- continue, vary, terminate any order, interim variation or warrant
- discharge the child from any further hearing or other proceedings in relation to the grounds that gave rise to the decision
- make a ICSO or IvCSO
- grant a warrant to secure attendance

b) If the Sheriff decides the **hearing decision was not justified**:

the Sheriff **must**

- if the appeal is against a warrant to secure attendance, recall the warrant
- if the appeal is against an ICSO or MEO, terminate the order, and

the Sheriff **may**

- require the Reporter to arrange a hearing for any purpose for which a hearing can be arranged under the Act
- continue, vary, terminate any order, interim variation or warrant
- discharge the child from any further hearing or other proceedings in relation to the grounds that gave rise to the decision
- make a ICSO or IvCSO
- grant a warrant to secure attendance

2. Special issues appeals -

a) Relevant Persons determinations – if the Sheriff is **not satisfied that the determination is justified**, the Sheriff **must**:

- quash the determination, and
- where the determination is that an individual is not a Relevant Person, **must** make an order deeming that individual to be a Relevant Person in relation to the child.

b) contact direction reviews - if the Sheriff is **not satisfied the decision is justified**, the Sheriff **must**:

- vary the CSO by varying or removing the measure contained in the order (the direction regulating contact between the child and a person / persons).

c) secure authorisation – if the Sheriff is **not satisfied the decision is justified**, the Sheriff **may**:

- direct the CWSO to place or remove the child from secure accommodation
- if removed, direct the CSWO to place and vary the child's order or warrant to authorise secure

3. Appeals against the Sheriff's decision to the Sheriff Appeal Court

The Sheriff Appeal Court must, on deciding an appeal against a Sheriff's decision on appeal, remit the case to the Sheriff for disposal in accordance with instructions that they may give.

29. Appeals Against Interim Compulsory Supervision Orders (ICSOs)

These appeals are less common for Safeguarders. When they occur, they are usually appeals against a Children's Hearing decision to make or extend or vary the order. Children's Hearings (see sections 92(2), 93(5) and 96(3)) and the Sheriff in determining a grounds application (see sections 98(4), 99(4) and 100), can make, extend and vary an interim order. Their decisions can be appealed (see sections 154(3) and 163(1)), but it is very unusual for a Sheriff's decision to be appealed to the Sheriff Appeal Court and on to the Court of Session.

[Part 3.59 of the court rules](#) covers the process for applying for these orders at court (see section 4.6.), but the appeal of the decisions made is subject to the usual appeal process for decisions of a Children's Hearing except in the following respects:

Timescales – although appeal against a hearing's decision can be made within 21 days beginning with the day the decision was made, the time limit for the appeal to be heard and disposed of is **3** days beginning with the day after the day on which the appeal was made (i.e. appeal lodged on Friday must be heard and disposed of by midnight on the Monday).

Impact of failure to meet disposal deadline - If the appeal is not heard and disposed of within the timescale (see immediately above), the order made, variation, measure made, or warrant (to secure attendance) issued ceases to have effect. ([section 157\(3\)](#))

30. Appeals from the Sheriff to the Sheriff Appeal Court/Court of Session

Generally, these appeals are not common for a Safeguarder, either as a Safeguarder who is already involved in the decisions being appealed or as the Safeguarder appealing. All appeals go to the Sheriff Appeals Court (Civil) which was established in 2016³⁰.

Courts appealed to:

- **Sheriff Appeal Court**
 - The court replaces all previous appeals to the Sheriff Principal.
 - The court is comprised of 'Appeal Sheriffs' who are Sheriffs Principal and Sheriffs with more than 5 years' experience and who are appointed to be Appeal Sheriffs.
 - In considering cases, the court usually consists of 3 Appeal Sheriffs although procedural matters can be decided by a single Appeal Sheriff.
 - Decisions from the court on legal issues now bind all Sheriffs in all Sheriffdoms.
 - Rules govern this court³¹ with a specific section 30 on Children's Hearing proceedings.
 - Decisions of the court are published on the [Scottish Courts and Tribunals website](http://www.scotcourts.gov.uk).
- **further appeal from the Sheriff Appeal Court to the Court of Session**

The Sheriff Appeal Court must give permission for further appeal to the Court of Session (see sections 163-5 of the 2011 Act as amended by section 27 of the Children (Scotland) Act 2020).

The Sheriff Appeal Court may grant leave to appeal only if it is satisfied that the appeal raises [an important point of principle or practice or there is some other compelling reason](#).

Where permission to appeal is refused by the Sheriff Appeal Court, the Court of Session can grant permission, again only if the appeal raises [an important point of principle or practice or there is some other compelling reason](#).

Rule 30.5 of the Sheriff Appeal Court Rules 2015 covers the procedure. Application for leave to appeal must be made within **7** days after the date when the Sheriff Appeal Court made its decision, using the Form required and sent to the Clerk³² of the Sheriff Appeal Court. A hearing before a procedural Appeal Sheriff³³ is fixed within 14 days of lodging with parties intimated to attend.

Where leave to appeal is provided, the provisions for appeal to the Court of Session are to be followed. Chapter 41, Part V covers appeals under Part 15 of the Children's Hearings (Scotland) Act 2011 and subject to its provisions, it applies Part II of the Rules to the stated case process for appeals.

³⁰ Established by the Courts Reform (Scotland) Act 2014.

³¹ The Act of Sederunt (Sheriff Appeal Court Rules) 2015 SSI 2015/356 called The Sheriff Appeal Court Rules (Civil). <http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/Sheriff-appeal-court-rules/Sheriff-appeal-court-rules>

³² The 'Clerk' is the title of the clerk to the Sheriff Appeal Court.

³³ A procedural Appeal Sheriff is an Appeal Sheriff who can sit alone and hear procedural matters.

The Court of Session expects matters to be progressed where possible with provisions available (e.g. hearing review provisions) without appeal causing unnecessary delay³⁰. Decisions on appeals at the Court of Session are final and there is no further appeal.

Decisions appealable:

Appeals **against a Sheriff decision** are made to the Sheriff Appeal Court (Civil) and can be made against the following decisions of the Sheriff:

- a) a determination as to whether a ground is established
 - b) a determination of a review of a finding that a ground is established
 - c) a determination of an appeal against a decision of a Children's Hearing
 - d) a determination of an application for extension of an ICSO
 - e) a determination of an application for a further extension of an ICSO
 - f) a decision to make an ICSO
 - g) a decision to make an interim variation of a CSO (IvCSO) (see section 163 of the 2011 Act)
- (i) A determination on Relevant Person status (see section 164 of the 2011 Act)
 - (ii) A determination on contact direction review (see section 165 of the 211 Act)
 - (iii) A determination on a review of a requirement placed on a local authority (see section 167 of the 211 Act³⁴)

Who can appeal

A child, Relevant Person, Safeguarder and Reporter can usually appeal. However,

a Safeguarder cannot appeal (a), (b) (f) or (g) or (i), (ii) and (iii) above

or appeal to the Court of Session against a Sheriff Appeal Court's decision on an appeal on these matters (see [section 163\(4\) of the 2011 Act](#)).

but a Safeguarder may be involved in these proceedings as a Safeguarder already appointed and whose appointment has not terminated.

The Reporter cannot appeal a Sheriff's decision in a Children's Hearing decision appeal³⁵.

Only the person appealing the contact direction review (who is the person affected by the decision about contact) can appeal the Sheriff's appeal decision.

Only a local authority can appeal a Sheriff's decision on a requirement placed on a local authority.

³⁴ An appeal against the Sheriff's determination for this matter (section 166) can only be made to the Sheriff Appeal Court where the decision is final.

³⁵ Section 26 of the Children (Scotland) Act 2020 amended the 2011 Act to allow the Reporter to appeal certain relevant person determinations.

Legal criteria to appeal:

Appeal to the Sheriff Appeal Court may be made only on a **point of law or a procedural irregularity** (section 163(9) of the 2011 Act). See Part 2 section 25 in this Note for more information on these terms. Further appeal to the Court of Session must be with permission and the appeal must involve an important point of principle or there is some other compelling reason.

Process with timescales for appeals:

General – Appeal to the Sheriff Appeal Court or Court of Session is by way of **stated case** (section 163(1) of the 2011 Act). This is civil process used in such appeals generally. In effect, the Sheriff who made the decision being appealed is asked to state a case, i.e. set out the decision and the basis for it and posing legal questions for the appeal court to determine in the appeal.

Legislation - The procedure for appealing by stated case is set out in Part IX of the court rules in relation to how a stated case is provided. In relation to appeal to the Sheriff Appeal Court the procedure for how the Sheriff Appeal Court deals with the appeal is contained in the Sheriff Appeal Court Rules of 2015. The procedure for appeal to the Court of Session is set out in the Court of Session Rules 1994 Chapter 41 which incorporates the general procedure for appeal by stated case to the Court in Part II of the rules.

Appeal to be made – The note of appeal, requesting a stated case and specifying the point of law and or procedural irregularity of the appeal, must be lodged with the Sheriff Clerk - before the expiry of **28 days** beginning with the day on which the decision of appeal against was made (section 163(8) of the 2011 Act - *the court rule 3.59(1) specifies 14 days to lodge the appeal but the 2011 Act is to be followed*). The appellant must also intimate the appeal to other parties.

Stated case to be produced – The Sheriff must issue a draft stated case containing his or her findings in fact and law with a narrative of the case (if appropriate); appropriate questions of law (for the appeal court to determine e.g. 'Was I entitled to have regard to the evidence of XX (witness)?) or the procedural irregularity alleged; and a note stating the reasons for his or her decision in law – within **21 days** of the lodging of the note of appeal. When issued the Sheriff Clerk sends a copy of this to parties.

Responses to the draft stated case by parties – The appellant or any other party can lodge a note of any proposed adjustments to the draft stated case and, any points of law or procedural irregularity that they wish to raise in the appeal. This latter right is important in that once the appeal is to be heard, new matters can only be raised with the permission of the court and with good reason for them not being raised earlier (Sheriff appeal court rules 30.3) Notes of adjustments must be lodged with the Sheriff Clerk within **7 days** of the issue of the draft stated case. (court rule 3.59(4))

Hearing on Adjustments – The Sheriff **may** allow a hearing on adjustments to be held where he or she wishes this or where the appellant or a party request this. Where the Sheriff intends to refuse the adjustments proposed by the appellant or a party, he or she **must** hold a hearing on adjustments. Where a hearing is held, there are **no timescales** for this to be arranged. (court rule 3.59(5)) the hearing itself can take place in court or sometimes in chambers. The proposals are considered and parties can have an opportunity to clarify or argue for what they

have proposed. The Sheriff will decide what the final stated case should include, having considered parties' positions.

Production of the final stated case – The Sheriff must produce a signed stated case which must include questions of law; any rejected proposed adjustments; and, a note of any procedural irregularity and any question of law or other issue that arise from this. The signed stated case must be produced within **14 days** from the latest date for lodging of notes of adjustments or from the date of any hearing on adjustments. (court rule 3.59(6)(7))

Extension of timescales - The Sheriff can reduce the above time limits for a reasonable period in relation to the stated case (court rule 3.59(10)). If the Sheriff is temporarily unavailable, the time limits can be extended. (court rule 3.59(11)).

Further Process - Sheriff Appeal Court

Transfer of the stated case to the Sheriff Appeal Court – The Sheriff Clerk must send the stated case and all documents and productions in the case to the Clerk to the Sheriff Appeal Court – within **4 days** after the Sheriff has signed the stated case. The Sheriff Clerk must also send a copy of the stated case to the appellant and parties within the same time. (Sheriff appeal court rules 30.2)

Appeal heard in the Sheriff Appeal Court – The Clerk to the Sheriff Appeal Court fixes a hearing of the appeal on receipt of the stated case and notifies parties of the date, time and place. There is **no timescale** for this hearing to be held.

Appeal disposed of by the Sheriff Appeal Court - There is no overall time limit for the appeal to be determined. Case management will be in place to ensure that unnecessary delay in the determination of the appeal is made³⁶.

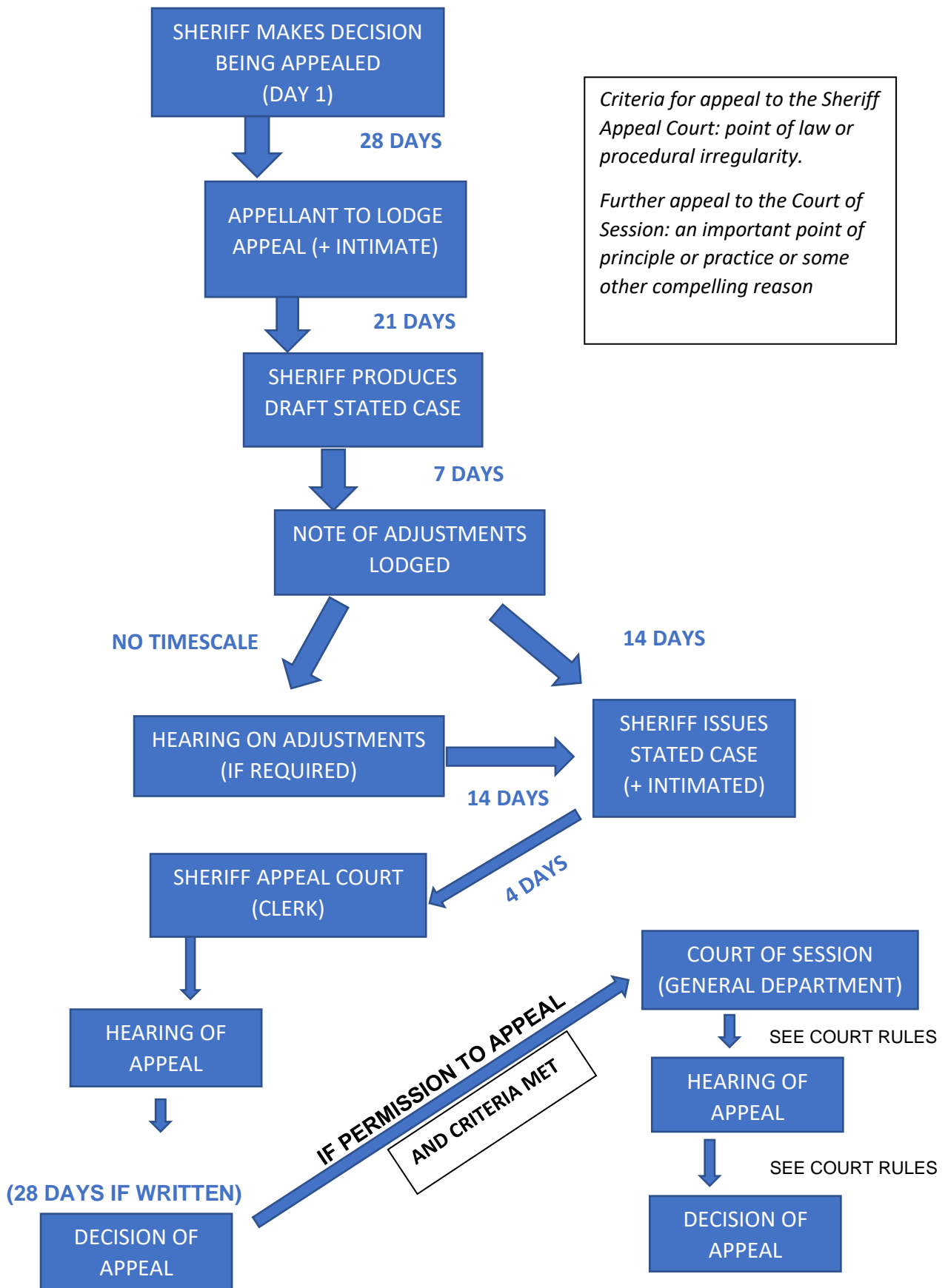
Decision of the Appeal Court notified - The Sheriff Appeal Court may give its decision at the conclusion of the appeal or reserve judgement and if so, his or her decision must be given in writing within **28 days**. (see Sheriff appeal court rules 30.4)

Further Process - Court of Session

The process where there is a further appeal to the Court of Session, is governed differently and reference should be made to the current rules. Chapter 41, Part V covers appeals under Part 15 of the Children's Hearings (Scotland) Act 2011 and subject to its provisions it applies Part II of the Rules to the stated case process for appeals.

³⁶ The Sheriff Appeal Court (Civil) Practice Note No. 1 of 2016 gives details of how the appeal is expected to be conducted. **Paragraphs 40-43** relate specifically to Children's Hearing appeals. The Note which is relevant to other civil proceedings, contains interesting information about general practice expected by the court. [http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/Sheriff-appeal-court/Sheriff-appeal-court---practice-note-\(civil\)---no-1-of-2016.pdf?sfvrsn=5](http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/Sheriff-appeal-court/Sheriff-appeal-court---practice-note-(civil)---no-1-of-2016.pdf?sfvrsn=5)

APPEAL BY STATED CASE TO THE SHERIFF APPEAL COURT



Decisions possible:

The Sheriff Appeal Court must, on deciding an appeal against a Sheriff's decision, remit the case to the Sheriff for disposal in accordance with instructions that they may give (section 163(10) of the 2011 Act). The Safeguarder would be entitled to attend and contribute as appropriate at any hearing that the Sheriff held.

Safeguarder role and involvement

- The Sheriff Appeal Court and Court of Session have **no express legislative authority to appoint a Safeguarder** in these appeal proceedings where a Safeguarder has not already been appointed³⁷.
- Although a Safeguarder may not be able to appeal, he or she may **have been involved in the Children's Hearing that made the decision being appealed** and therefore they may be involved in or be appointed in the appeal.
- The **extent of involvement** that a Safeguarder will have in the appeal by others, is dependent on a need for the Safeguarder's role to safeguard the interests of the child and this will be individual to each child's case.
- A Safeguarder can be an **appellant in these proceedings**. It is likely, although not to be assumed, that a Safeguarder appealing to the Court of Session where a significant point of law is to be considered, might involve legal advice and or representation for the Safeguarder. Reference is made to section 10 of the Practice Note on Court Part 1 regarding representation. In practice, Safeguarders have attended and contributed at Court of Session matters without representation.
- The **Safeguarder's role in these proceedings** continues to be to safeguard the interests of the child as required for the individual child and their circumstances, within role.

³⁷ In theory, a Safeguarder can be appointed by a Sheriff in proceedings under Part 15 of the Act, which Part includes these appeals, therefore if there is a remit to the Sheriff, it might be argued that the Sheriff could appoint a Safeguarder at this stage although this is unlikely.

31. Rights and Duties of Safeguarders (Appeals Against Children's Hearing Decisions)

The rights, powers and duties of a Safeguarder in relation to an appeal are set out in the court rules 3.8 and 3.6. The following gives general information on these rights and duties. For a fuller list of these, with references to all relevant rules and sections of the 2011 Act, see Appendix 3 to this Note.

The Safeguarder

- has the powers and duties of a *curator ad litem*
- is entitled to receive from the Reporter copies of the court applications (which includes appeals (rule 3.6)), all productions and papers before the hearing.
- is to find out whether the child wishes to express a view in relation to the application and, if so, transmit these to the Sheriff. (*NB Rule 3.5(1)(a) permits the Sheriff to order such steps as he consider appropriate to ascertain the views of the child. Section 27 of the 2011 Act specifies that the Sheriff must give the child an opportunity to express their views, if possible in a manner preferred by the child, with the child to be presumed capable of forming a view unless the contrary is shown.*)
- make such relevant enquiries as the Safeguarder considers appropriate
- without delay, must intimate in writing to the Sheriff Clerk whether or not s/he intends to become a party to the proceedings.
- can appear personally or instruct an advocate or solicitor to appear on their behalf. (*An advocate or solicitor cannot represent both a Safeguarder and the child.*)
- can be permitted to remain in the appeal hearing if the child is excluded.
- is entitled to receive all court interlocutors.

- is to be notified of any appeal.
- can lodge answers to an appeal.
- must intimate his/her answers to others notified of the appeal.
- as a party, be entitled to receive copies of any reports requested by the Sheriff.
- as a party, is to be heard at the start of the appeal, before the Sheriff examines the Reporter or any authors of reports or statements.
- as a party, can make a motion to have an appeal continued or adjourned.
- is to receive a copy of the court's decision and any note from the court.
- may be asked to provide evidence if the Sheriff considers the Safeguarder to have material additional evidence.
- may be asked to provide a report to the Sheriff in an appeal.

PART 3 PRACTICE

Introduction

Part 3 of the Practice Note on Court provides **step-by-step practical guidance** on the more common court proceedings for Safeguards.

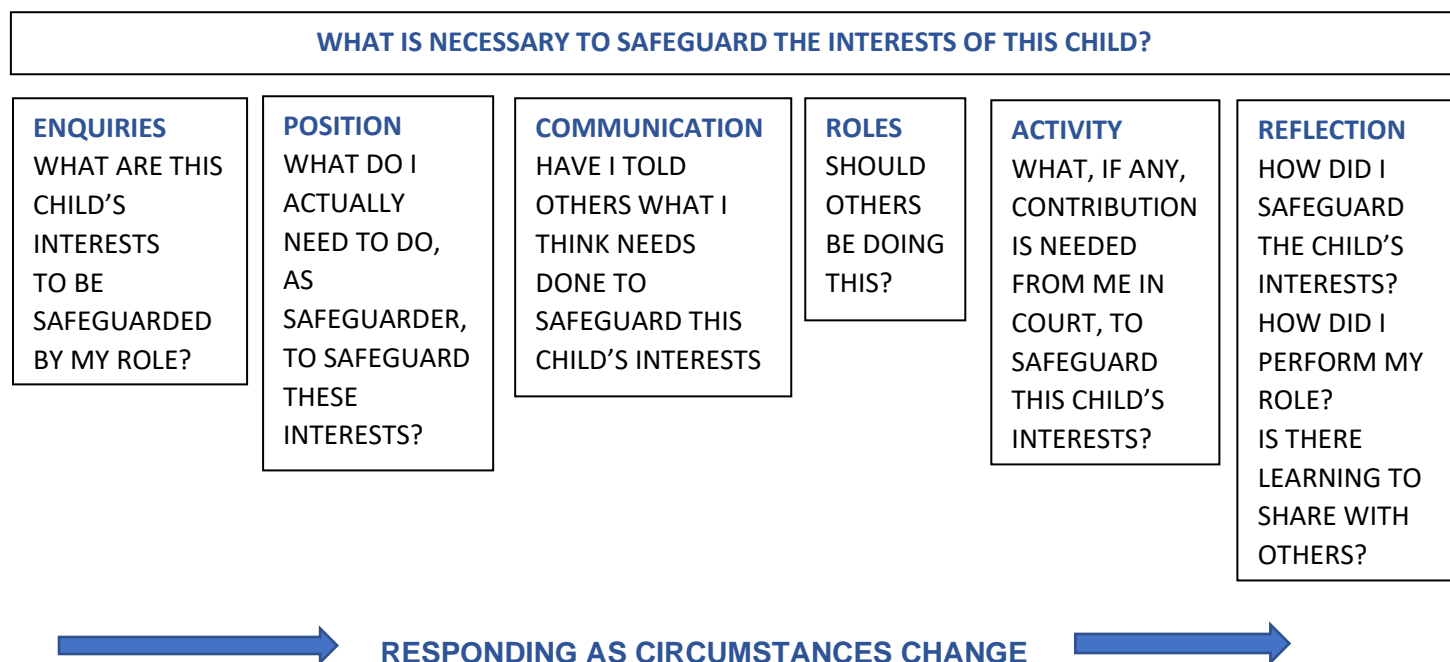
This Part is intended to work together with Parts 1 and 2, which can be referenced for detail where required. This document can only provide limited guidance and reference to information but is written to work with learning and development opportunities provided through training, local events and support and monitoring for all Safeguards.

1. Considerations

Key themes in this document for practice at court include:

- Keeping the focus on the individual child and being flexible to meet the child's needs
- Keeping within the boundaries of the role
- Keeping engaged with others in an open, honest and respectful way
- Understanding the impact of the role and the impact of court on the child and family
- Reflecting on practice
- Keeping up to date with knowledge and skills and sharing learning with others
- Preventing delay especially where this causes stress to the child.

Considerations to be kept in mind throughout the Safeguarder's involvement with court include:

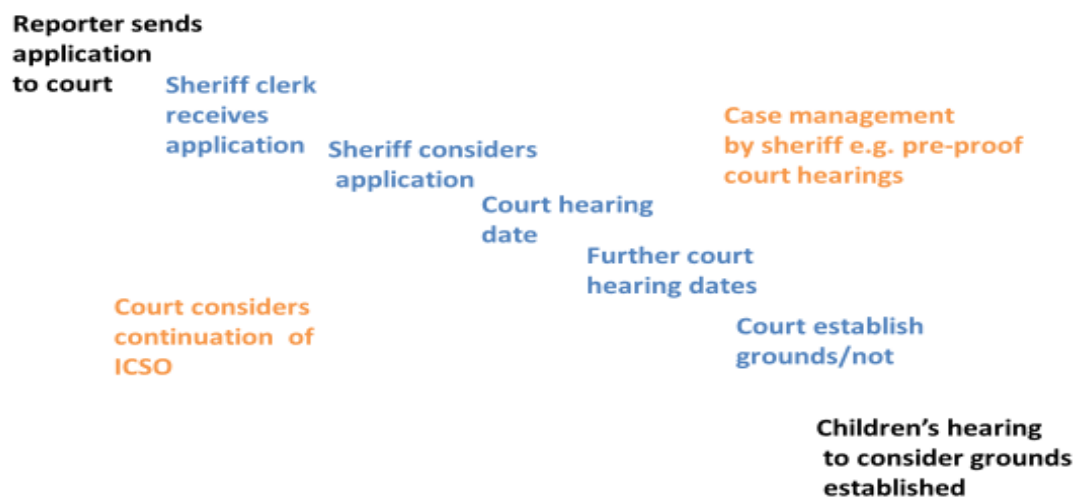


CONSIDERATIONS?	WHAT MAY HELP YOU?
<p>What interests of this child need safeguarded?</p>	<p>Any focus provided with your appointment. Paperwork provided Further clarification from people involved Speaking to the child, Relevant Persons and lead professional</p>
<p>Is this within your role – or is it part of the responsibilities of another role, e.g. the Reporter, social worker, a solicitor or advocate for the child?</p>	<p>People being clear about your role Having good professional relationships with others already Being clear about what you are communicating</p>
<p>If matters cannot be resolved and evidence is to be considered, are you clear about what and how the things you think are needed to safeguard the interests of the child will be achieved? And what you need to do and what others could do?</p>	<p>Knowing your role and its boundaries Knowing the roles of others</p>
<p>What activity do you need to do in the court proceedings to safeguard the interests of the child as you have identified these, e.g. do you need to ensure the child's views are heard and considered, that the grounds should be changed to reflect something different?</p>	<p>Being clear about your options Being clear about what you can and cannot do in the process Understanding other roles in the process</p>
<p>Have you established and kept in communication with others involved in the proceedings, so that they are aware of what you are doing and can help to achieve what you need to happen to safeguard the child's interests?</p>	<p>Knowing what actions you can take Knowing what is expected of you Knowing what others should be doing</p>
<p>At the end of the court proceedings, are you clear on what you have achieved to safeguard the child's interests and how you got your role to do this. Is there learning for you or other Safeguarders?</p>	<p>Constructive self-reflection to identify skills and good practice and any development needs Feedback from others Using support and monitoring sessions</p>

2. Grounds Applications

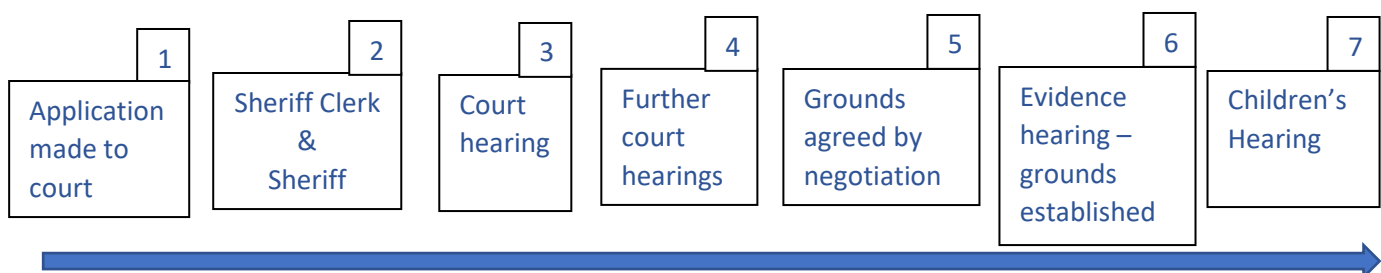
Overview

The **diagram below** shows the procedure in basic terms. The parts in amber colour at either side of the diagonal are significant matters that may or may not also be involved in the process.



Detail in terms of general process and procedure is contained in the [Practice Note for Court Part 2 – Information](#).

7 Process Steps



The following pages take a Safeguarder through each step.

Step 1 - Application Made to Court

Purpose: An Application is made by the Reporter on the instructions of the Children's Hearing, where grounds are not accepted or understood and the Children's Hearing wish to proceed to consider the need for compulsory measures of supervision for the child and not discharge the referral.

To proceed the Children's Hearing cannot themselves decide if the grounds are correct but must refer the matter to the court for a determination on whether the grounds, in full or part are established. A Sheriff can consider the matter of the grounds and the evidence to establish these, within a set of rules of legal procedure specific to Children's Hearing cases.

Once the court has determined the matter and if the grounds are established, with or without amendment, the matter can be sent back to the Children's Hearing that can then decide on the need for and nature of compulsory measures for the child. The Children's Hearing is the appropriate place for this to happen.

Summary Process:

1. The Reporter has **7 days** starting from the date of the Children's Hearing that made the decision to refer to court to **complete the application and send it to the Sheriff Clerk.**
2. An application is to be made on **Form 60** (attached as Appendix 4). This Form shows the information which the Reporter has to provide.
3. If a **Safeguarder** has been appointed by a Children's Hearing already (either by the hearing which sent the grounds to court or a previous hearing has and the appointment has not ended), the Reporter will **note this on the application.**
4. If there is a Safeguarder report (which is extremely unlikely), the Reporter must lodge that with the application.
5. The application will have **grounds for referral attached** and the application will **note what parts of the grounds were accepted or not or not understood at the hearing.**
6. Any **position given at the Children's Hearing is not binding** on the child or Relevant Person and any of them can change their position on the grounds until the determination is made at court.
7. The application will only relate to grounds referred to court and any **grounds accepted at the hearing** will not be included in the application as the grounds disputed are the focus for the court. The Children's Hearing papers which the Safeguarder will get from the Reporter (the section below covers this), includes details of any other grounds that were at the hearing and what has happened to them. The Sheriff does not get the panel papers.
8. The Reporter can ask in the application, with reason, for the **child to be excused** from attending the court and also from being notified, so the child may not be aware at all of the application.

9. The application asks the Reporter to give a list of **witnesses and their roles**. These are the people who, if necessary, can give evidence to support the establishment of the grounds. This information or a separate list of witnesses provided by the Reporter, sometimes at a later date, should say how the witness can be contacted.
10. The Reporter can also provide an **estimate for how long the hearing of evidence may take** although there is no requirement to state this in the application. Case management considerations encourage the Reporter to indicate how many days of court time may be needed where the grounds cannot be resolved without hearing evidence.
11. The grounds in the application are the only **paperwork that the Sheriff gets** that were also available to the Children's Hearing – the court is not given any other papers, in particular the reports or other papers before the Children's Hearing or the record of proceedings with decision and reasons.

For more detail on the process that the Reporter follows in relation to the application, see [SCRA Practice Direction 23](#) on Court Applications.

Step 2 - Sheriff Clerk and Sheriff Consider the Application, Appointment and Enquiries

1. The Sheriff Clerk on receipt of the application **fixes a date** for the court hearing for the application, which must be within 28 days from receipt of the application.
2. The **Sheriff Clerk** completes part of the application, confirming the date, time and place of the court hearing and allowing the **Reporter to then notify** people (called a 'warrant to cite') with a copy of the application.
3. The Reporter then must 'forthwith' **serve a copy of the application** and warrant to cite with a notice of citation on the persons named in the application i.e. the Relevant Persons and child. A copy of the application is also served on the Safeguarder with the warrant to cite and a Form with notice using [Form 40](#).
4. The Safeguarder has a **right to receive** from the Reporter copies of all applications, all productions and any papers before the Children's Hearing. The Safeguarder is also entitled to get from the Sheriff Clerk all interlocutors (see 6 below for an explanation of this) and all documents lodged in the process unless the Sheriff directs otherwise ([court rules 3.8f and 3.5A\(1\)](#))
5. The **Sheriff** is shown the application by the Sheriff Clerk and the Sheriff will decide on matters such as **dispensing with the child's attendance** and or notification of the application.
6. At this stage the Sheriff must consider if it is necessary to **appoint a Safeguarder** if no Safeguarder is already appointed. If one is appointed, the Sheriff Clerk should include the decision and reasons in the interlocutor. '**Interlocutor**' is the name for the document capturing the order of the Sheriff and this will confirm the date, etc. and any order made regarding dispensation, appointment of Safeguarder etc. Allocation by the Safeguarders Panel Team follows the standard taxi-rank process.
7. All papers with the court i.e. the application, interlocutors, etc. are kept by the Sheriff Clerk and this is called the '**process**'. These papers are provided to each Sheriff who has to consider the case at a court hearing, on the day.

Appointment Facts

Most appointments are made at the point that the Sheriff first sees the grounds application but it can occur at any stage of the court proceedings (court rule 3.7(1)(b)).

It is the Sheriff's decision to appoint although the Sheriff may wish to consider any views expressed by the Reporter in the application or first consider the views of all parties attending the first court hearing. This is proposed in the Sheriff Principal Practice Note No. 1, 2018 for Glasgow and Strathkelvin ([link](#)).

Reasons for appointment are rarely provided by the Sheriff and when they are, they can be generic in nature, such as 'the age of the child' or 'in the child's interests'. This does not prevent the Safeguarder from acting to safeguard the child's interests.

Appointment of Safeguarder – Immediate Next Steps

Getting papers: Once the Safeguarder is appointed and confirmed, the Safeguarder should have in their possession as soon as possible:

- **court papers** which will contain a copy of the application (with grounds and list of witnesses/ productions included), warrant to cite, notice to the Safeguarder and interlocutor with any orders of the Sheriff on e.g. excusing the child (and including confirmation of appointment by court if Safeguarder appointed by court). The Safeguarder should also receive any documents lodged by the Reporter as productions.
The Safeguarder is entitled to receive these papers from the Reporter ([rule 3.8b](#)). Safeguarders appointed prior to the court application (and whose appointment is not terminated) receive the same paperwork as the Safeguarder appointed by court and there is no differentiation between Safeguarders appointed by court or Children's Hearing once the court proceedings commence.
- **Children's Hearing papers** which were before the Children's Hearing ([rule 3.8b](#)). As the Safeguarder has a right to be involved in any Children's Hearing proceedings running concurrently to the court whilst their appointment lasts, these papers will be added to as the Safeguarder receives these as matters progress.

Interim orders at Children's Hearings: There may be interim orders in place for the child, which need to be considered at a Children's Hearing. There are 2 types of interim orders:

- **Interim compulsory supervision orders (ICSOs)** – these are issued where required when a child is not already subject to compulsory measures. The order lasts for a maximum of 22 days and then further orders have to be made by the Children's Hearing or court. If grounds are at court, further orders can only be considered by a Children's Hearing for a total of 66 days before the court must consider further orders. There is no limit on the number of orders that can be made by the Sheriff. The Safeguarder has rights to be notified and contribute to the consideration of these orders at the Children's Hearing.
- **Interim variations of a compulsory supervision orders³⁸ (IvCSOs)** These are used when a child is already subject to a compulsory order and they are similar in all respects to the requirements of ICSOs except that even where grounds are sent to court, the **Children's Hearing** continues to consider all further orders, with no overall maximum time limit. The court's only involvement is if the Sheriff makes one or there is an appeal against the issue of one. The Safeguarder has rights to be notified and contribute to the consideration of these orders at the Children's Hearing.

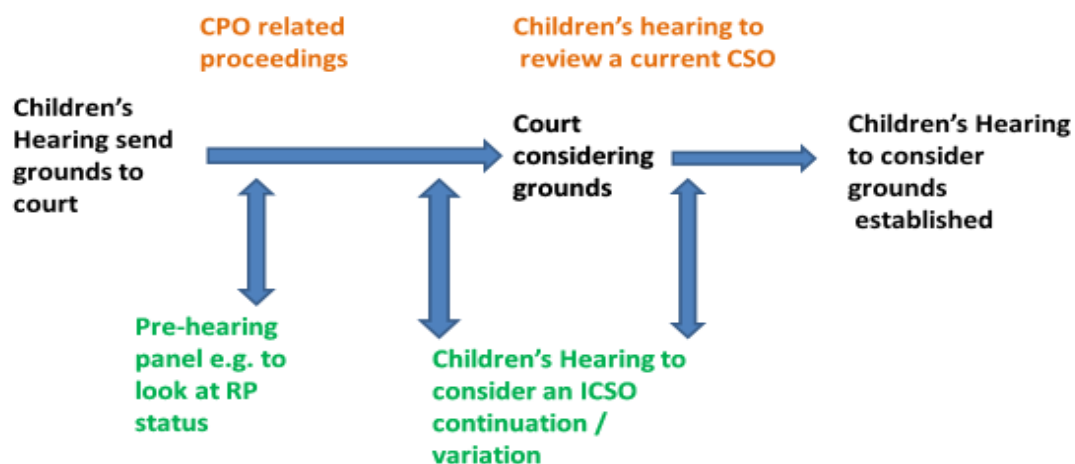
For further detailed information on these orders [SCRA's Practice Direction 19](#) on Orders etc. is helpful.

³⁸ Technically these are not orders in their own right, but changes to the compulsory supervision order in force, on a temporary basis.

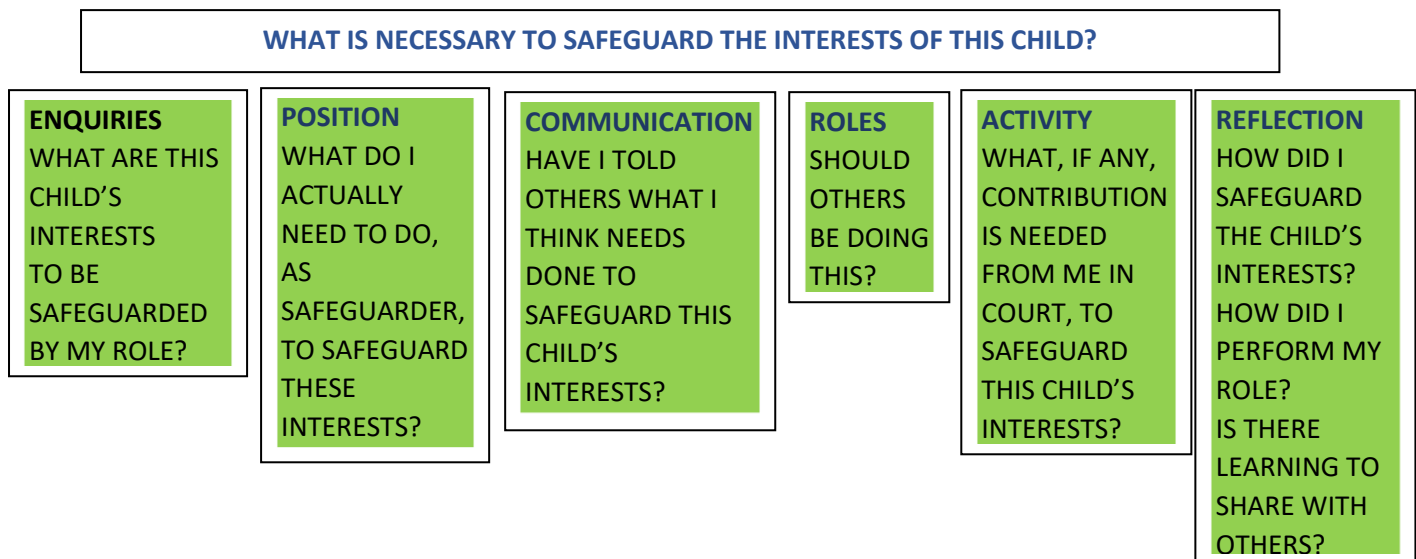
Other concurrent matters at Children's Hearings: The diagram below shows other matters (green is more common and orange much less so) which can potentially occur whilst the Safeguarder is appointed and grounds are at court.

The Safeguarder, no matter the source of their appointment (Children's Hearing or court), has rights to be notified and contribute to these hearings and be involved in any appeals (or court applications) arising from them, whilst their appointment has not ended.

Grounds & other hearings



Enquiries



RESPONDING TO CIRCUMSTANCES CHANGING

Considerations for the role at court

At the start of this document the above considerations for the Safeguarder were highlighted. These considerations are particularly relevant for the Safeguarder when enquiring and so they are referenced alongside the following pages which look at enquiries whilst at court.

Rights to enquire - A Safeguarder 'shall make such enquiries so far as relevant to the application as he considers appropriate' (court rule 3.8(d)).

The purpose of enquiries must always be to identify what is needed to safeguard the interests of the child. This is done by:

- **considering the grounds** and the evidence to establish and or to challenge them, to be satisfied that the grounds will safeguard the child's interests
- **understanding the proceedings** sufficiently to be able to contribute appropriately to safeguard the child's interests and to explain the proceedings to the child if they request this
- **understanding the child's needs** and the measures being recommended to meet these needs
- **considering the need for compulsory measures** and therefore the need to determine the application
- **providing an opportunity for the child to provide views** and if provided, ensuring they are heard to inform decision making in his or her interests in the proceedings
- **being clear that the child is sufficiently supported** and if necessary protected whilst the grounds are being determined. Their rights must be respected and fulfilled.

Stages to enquiries

Enquiries involve 4 stages:

Stage A - Reviewing the paperwork – this involves ensuring you have everything that you are entitled to get.

Stage B - Seeking clarification or missing information – this may involve speaking to people or seeking further or new information. This stage should involve planning as to what is needed, from whom and why.

Stage C - Coming to a conclusion or a position in relation to the enquiries – as to what is necessary to safeguard the interests of the child and if so, broken down into the activity necessary to do so.

Stage D - Sharing your position and intended activities – to support the resolution of the grounds with or without the need for evidence.

Enquiries Stage A - Reviewing the paperwork/information available

Information which the Safeguarder is entitled to get can provide certain information to the Safeguarder:

Information provided	Information this can give the Safeguarder
The papers before any Children's Hearing	Information on the child and their circumstances; assessment of their needs and recommendations to meet these; Relevant Persons and their circumstances; any orders granted or in existence.
The grounds application and or other application papers	Child and Relevant Person details; any ICsOs in existence; reasons provided for dispensation or Safeguarder requests; acceptance and understanding at the Children's Hearing.
The court interlocutor appointing the Safeguarder	Reasons for Safeguarder appointment; any dispensation of the child and reasons; date and time of the 1 st court hearing.
The witness list and any statements and any documents or information to be used in evidence (productions)	Taken with the hearing papers, clarity regarding what evidence may be being used by the Reporter to establish the grounds.

Disclosure of relevant information is an important part of the proceedings, so that information relevant to the consideration of applications should be shared by others with the Safeguarder. The Reporter is committed to sharing information (SCRA Practice Direction 39 Disclosure of Evidence). This means that **statements of witnesses** and other evidence should be made available to the Safeguarder.

Enquiries Stage B - clarifying the information

Once the paperwork has been reviewed, it may be necessary to clarify information, speak to people or seek new information to allow the Safeguarder to identify what they need to do to safeguard the interests of the child.

In seeking additional or new information the Safeguarder should be aware of any sensitivities in the case. For example, where there are parallel criminal proceedings or vulnerable witnesses, or parents (or others) with legal representation in the proceedings.

It is for the Safeguarder to consider what is necessary and justifiable in relation to performing their role but it is important to inform others, e.g. Reporter and legal representatives, of what the Safeguarder is proposing to do, to avoid any unintended difficulties or upset. Legal representatives will not prevent the Safeguarder speaking to their client unless there are particular reasons when they can advise their client to decline to do so, but they welcome being aware that this is happening. Practice Standard 2 on relationships is relevant.

Extent of enquiries:

The **Practice Standards, Practice Notes and regulations** are relevant in that they require Safeguarders to enquire

- to the extent required for the individual child
- within role
- in a purposeful and proportionate way
- using information available
- acting in a respectful, open and collaborative way³⁹.

It is the Reporter's role to satisfy the court as to the grounds to be established. The Reporter is also bound to disclose the witnesses, productions and all other evidence that he or she will be using to establish the grounds. Disclosure of information, evidence and arguments by those challenging the establishment of the grounds (most commonly Relevant Persons and their legal representatives) also provides the Safeguarder with information.

It is for the Safeguarder to review and critically consider this information which is available and it should only be when this information does not provide sufficient clarity to let the Safeguarder identify and safeguard the child's interests, that they should dig deeper into the information by speaking to witnesses or searching for additional information. Where this activity is justified in particular situations, the Safeguarder should share any additional information uncovered by them with others in the proceedings.

³⁹ See [Practice Note on Court – Part 2 information](#)

Contact with child and Relevant Persons

Contact with the child is expected in terms of the role:

- For the views of the child to have an opportunity to be expressed and had regard to (section 27 of the 2011 Act and Court Rule 3.8(c))
- For the Safeguarder role and functions to be explained (Safeguarders: Further Provisions regulation 8)
- As a requirement to meet Practice Standards for a 'meaningful and purposeful relationship' to be made with the child (Practice Standard 2)
- As a requirement of the Practice Note on the Role of the Safeguarder, section 3 to meet the child
- The level of contact with a child is dependent on the child and their individual circumstances but meeting a child more than once and for the amount of occasions proportionate to the child's needs, is to be expected (Practice Note on Court Practice Position 9).

Contact with Relevant Persons

There is a similar expectation that the Safeguarder meet with Relevant Persons –

- to explain the role, and
- to establish 'meaningful and purposeful' relationships which allow information and views to be exchanged.

Discussing the grounds with child or Relevant Person

Where grounds are to be determined in the court process, the acceptance or not of these by the child or Relevant Person is an important part of the process. Ultimately it is for the child and Relevant Person to confirm any acceptance with the court. Where they have legal representation in the proceedings, this can be done on their behalf.

The Safeguarder in speaking with child or Relevant Person, may be aware of the child or Relevant Person's position on the grounds and they can encourage and support the child or Relevant Person to relay the position to court. Where the person has legal representation, the Safeguarder can relay this position to that person's representative.

What the Safeguarder must be extremely careful not to do – is to advise the child or person on what their position should be. If the Safeguarder feels that the person needs assistance to formulate their position, the Safeguarder should point the person in the direction of someone who can help them. This may be a lawyer given the legal nature and implications of the process

If the Safeguarder is relaying the position of any person to the court in their absence, this is in terms of advising the court of their enquiries and information that was provided to the Safeguarder. The Safeguarder should not represent the absent person i.e. appear on their behalf as a legal representative can do. It is for the court to consider what to do as a result of the information provided by the Safeguarder.

Level of knowledge required to consider grounds – process and law

Practice Standard 7 requires Safeguards to take a significant degree of responsibility for their own learning and development in relation to their role at court and otherwise. Safeguards should have or receive, through induction, through this Practice Note and other related Notes for Safeguards, and through continuing professional development, sufficient information so that they have a good baseline understanding of the following, but also so that they can access further detail at their own hand if required. Areas that Safeguards are expected to have knowledge of for the purposes of grounds proceedings include:

- Grounds – their purpose, structure and differences between a ground and statements of fact
- Grounds – their nature and subject matter
- Significant legal criteria for grounds to be met
- Significant case law
- Amendment of grounds
- Grounds where the child is already subject to compulsory measures
- Practice Direction for Reporters relating to grounds
- Process and procedure for determining grounds
- Impact of parallel criminal proceedings
- Roles of professionals in determining grounds
- Common legal procedural issues that can arise
- Court structure
- Legal terms relevant to grounds
- Principles of evidence relevant to the proceedings
- Evidence to be introduced to court - witnesses and productions
- Implications for establishing grounds
- Case management of ground applications
- Rights, duties and expectations of Safeguards
- Rights of children and young people

Legal issues

Reporters and legal agents should provide notice of any legal process or argument in relation to grounds. It is usually the legal representative of the Relevant Person challenging the grounds who will raise legal issues. It is not expected of the role of the Safeguarder to have sufficient legal knowledge to identify or engage in complex legal argument related to sufficiency of the grounds. They can be informed by the Reporter or legal agent sufficiently to understand.

The Safeguards Panel Team can help Safeguards to access information on general matters but cannot be involved in advice or guidance relating to the case itself.

The Safeguarder is not required to be legally qualified to perform their role at court. The information and training provided to Safeguards is to enable them to fulfil their role and not the roles of others in the process.

Where the Safeguarder is prevented from fulfilling *their role* in the proceedings due to the complexity of legal argument or process, the Safeguarder can request legal advice. It is possible for the Safeguarder to fulfil their role to safeguard the interest of the child without having to be part of complex legal debate. If the child requires legal representation, this should

be pursued appropriately (see Practice Note on Court - Part 1, section 9).

Enquiries Stage C - coming to a conclusion/position on the grounds

There are 2 aspects to this:

(i) **What do I need to do as Safeguarder to safeguard the interest of the child in these proceedings?**

This is reaching a stage in your enquiries where you have enough information and clarity to know what you need to do for this child. (see previous discussion on becoming a party above)

POSITION
WHAT DO I
ACTUALLY
NEED TO DO,
AS
SAFEGUARDER,
TO SAFEGUARD
THESE
INTERESTS?

(ii) **What, if any, is my position on the grounds?**

A Safeguarder will usually have considered the grounds and looked at the information/evidence that seems to support the grounds or not. The Safeguarder may be unsure as to what to make of the potential evidence and feel that it needs to be tested by the evidence being heard in court as part of a proof.

The court, in reaching a point where it is clear what is in dispute and what is not, will be expecting the Safeguarder to have an opinion on this and the Safeguarder should be clear in their own mind what they think of the grounds.

The position is about the grounds – not the need or nature of compulsory measures. The court is only interested in the establishment or not of the grounds and cannot look further to whether compulsory measures are indicated (or not).

If a Safeguarder has formed a view already that there is no need for compulsory measures even if the grounds are established, this should be communicated to the Reporter (and other parties) as it is only the Reporter who can decide to withdraw (sometimes called abandon) the grounds entirely, if they are in agreement with the Safeguarder.

It is important for the Safeguarder in reaching any conclusion or position in relation to the grounds – that he or she is clear about what that conclusion or position is **and** what this is based on.

Enquiries Stage D - sharing information with others

- The Safeguarder should make **appropriate links with the Reporter and any legal representatives** for the sharing of information and positions as these unfold.
- There is an expectation that information relevant to the grounds and safeguarding the child's interests is shared so that parties are aware of each other's positions and the child's interests are safeguarded during the process.
- During enquiries Safeguarders may identify a need for the child which they should pass on to the appropriate person responsible for that aspect of their welfare. As with Children's Hearing proceedings, everything does not need to wait to be fed through the formal court hearings⁴⁰.
- Where the Safeguarder has identified a gap or deficiency which is affecting the child's interests and the responsibility for this lies with another role, the Safeguarder should not fill that gap whatever their ability to do this (perhaps from another role they have). The Safeguarder has a responsibility to raise the issue with the appropriate person – professional or more senior person, to try to have the matter resolved. ([SPT - support for Safeguarders when raising issues paper](#)). Ultimately, if it is not possible to resolve the issue, the Safeguarder should alert the court to this, allowing the court to resolve or not as it sees fit.

COMMUNICATION
HAVE I TOLD
OTHERS WHAT I
THINK NEEDS DONE
TO SAFEGUARD THIS
CHILD'S INTERESTS?

ROLES
SHOULD
OTHERS
BE DOING
THIS?

⁴⁰ Subject to child protection responsibilities.

Preparation for the first court hearing

In theory and sometimes in practice, this 'first' hearing is the only date required to resolve the grounds and for them to be agreed, or established after evidence is heard. In practice, it is common for this court hearing to be called a 'first calling' and for it to be used to try and resolve what is an issue and where a hearing of evidence, if required, will be fixed.

The benefit of considering this to be a procedural hearing is that witnesses do not need to be in attendance or placed on stand-by for the court.

ACTIVITY
WHAT, IF ANY, CONTRIBUTION IS NEEDED FROM ME IN COURT, TO SAFEGUARD THIS CHILD'S INTERESTS?

The Sheriff has powers and responsibilities to try and resolve matters as quickly as possible which involves preventing unjustifiable delay in the determination of the grounds and where a hearing on evidence (sometimes called a proof – see later sections) is required (because negotiation to agree the grounds is not possible) to ensure a focus on the areas of dispute for the court to resolve. Some of the case management actions that the Sheriff can take are covered in the court rules (3.46A):

- ordering a single expert
- using affidavits (see Appendix 2 – Information on legal terms)
- restricting the issues for proof
- restricting witnesses
- applying for evidence to be taken by live link

Some Sheriffs Principal, for example in Glasgow, have issued Notes ordering how procedure should be conducted.

Parties and the Safeguarder even if not a party, should be prepared to explain verbally their position in relation to the grounds or at least explain where they are at with any enquiries and justify any delay on their part ([link to Sheriff Principal's Note for Glasgow](#)).

The Safeguarder will be expected:

- to have received notification and paperwork relevant to the child and the court proceedings (this may include witness statements if available)
- to have started such enquiries as are relevant to the application
- to have made contact with the child to determine if the child wishes to express a view (and if so, transmit these)
- to have made contact with Relevant Persons and key professionals in the matter
- to have confirmed whether they intend to become a party to the proceedings
- to be enquiring to see what they need to do, if anything, to safeguard the child's interests and what, if any, position they have in relation to the grounds.

Not all of the above may be possible in the time available, but the Safeguarder should be clear about why there has been any delay on their part and the reasons for this - in case they are asked.

Practical preparations – where the Safeguarder is to attend a court which the Safeguarder is not familiar with, he or she should find out about travel arrangements and parking etc. It is important that Safeguarders are up to date regarding their future availability to allow any future court dates to be fixed without difficulty.

Step 3 - First Court hearing

At the court hearing

- **who will be there** – all parties are expected to be there if notified. If the **child** is excused, the child is not expected to be there, although he or she can still exercise their right to be there. If not excused and the child does not attend without good reason, a warrant to secure attendance can be considered. The Safeguarder has a role to contribute to this consideration to try and inform and influence the decision in the child's interest. (see [Practice Direction 19](#) for Reporters on Orders, etc. at section 6 and [Practice Direction 23](#) on Court Applications at section 13 for more details of this warrant). **Relevant Persons** have a right but no duty to attend. Most Relevant Persons have legal representation. **Legal representatives** can appear on behalf of their clients. When the court is sitting i.e. the proceedings have started, the **Sheriff** will be in the court room with his or her **bar officer**. The **Sheriff Clerk** is usually in the court room immediately before and during the court hearing. The **Safeguarder** is expected to be there and if not able to be present, this should be notified to the court with the reason why (see Practice Note on Court - Part 1 Practice Position 4 on attending court).

- **waiting and establishing relationships** – waiting arrangements differ in courts and the Safeguarder should identify where they are expected to wait as they familiarise themselves with the courts that they attend. Most courts have an agent's room or bar common room (a place set aside for legal agents) which the Reporter usually waits in as well, unless the court has provided the Reporter with their own room at the court. Other courts have seating or standing areas immediately outside the court where people are expected to wait. Some expect the Safeguarder to wait in the areas set aside for families or witnesses. If there is a bar common room or agent's room, the Safeguarder should wait there. This is a place where conversations with Reporters and legal agents can occur before going into court. Sometimes some agents do not feel that Safeguarders are entitled to be in the agent's room. Even where the Safeguarder has a separate role as legal agent, Safeguarders should try and resolve whether this is a common view held and if so, can this be influenced by the Safeguarder.

- **telling the court that you are there** – different courts have different arrangements so that on entering some courts there is a reception area where you confirm your attendance for the case you are attending and find out what court your case is being heard in (this is usually the same court each time but, in some courts, this can change). Other courts you can go straight to the court and when the Sheriff Clerk appears at the court, you can confirm your attendance to him or her. Confirm the protocol at the court you attend for having to book in at the main front desk. In larger courts with many people checking in through a main reception or front desk, this can take a long time and the Safeguarder may not be expected to book in there and can go straight to your court. Security at court can also take time and you should factor this in in larger courts or where business is expected to be high. It may be that you can access a security pass for courts that you regularly attend. It is important that the court knows you are there so that if the case that you are there for starts, people know where to find you within the court building.

- **contact with the Sheriff Clerk** – the Sheriff Clerk identified for the court hearing will be available in the court before the cases start to be heard. If you need to speak to the Sheriff Clerk before this, they will be found in their office in the court (usually the civil administration office). The Sheriff Clerk will have details of the Reporter and any legal agent who is appearing that day, so that you can identify who that is to introduce yourself to or speak to. It is important

that you keep the Sheriff Clerk advised of matters. Usually, following discussions with the Reporter and the legal agents before the court starts, agreement on what is going to be proposed can occur and the Reporter will indicate to the Sheriff Clerk what is likely to happen (although always subject to the Sheriff's approval when asked for). If a new court date is to be fixed, it can be helpful to the Sheriff Clerk for people to indicate what dates are suitable and what are not, so that this can be confirmed as a suitable next date when the matter is decided on in court, without delaying the business in court. Any written confirmation of becoming a party can be given to the Sheriff Clerk at this point, if not already communicated to him or her beforehand.

- speaking to family and child (if attending) – this may be the first opportunity for you to meet the child (if there and not excused) and family, if there has been insufficient time to do this following your appointment. Often courts do not provide sufficiently private areas for you to discuss matters and therefore an introduction and making arrangements to meet are all that can be achieved. Safeguarders should always try to speak to the family so that the family are aware that the Safeguarder is there. There is nothing to prevent the Safeguarder waiting with the child and or family if this is felt to be appropriate by the Safeguarder.

- speaking to Reporter and legal agents – the Safeguarder should be speaking to the Reporter and any agents. There may have been opportunities to speak to people e.g. by phone before the first calling but if not, it is important to discuss what everyone wishes to happen when the case is to be heard in court and agree in advance if possible or at least be aware of matters where there is no agreement and will need to be argued in court. If something comes up at this point that the Safeguarder needs to check out before coming to a position on it, the Safeguarder can try and do this before the case is heard. Usually, many cases are calling that day and cases may be able to be held back (by the Sheriff Clerk re-ordering the calling of cases) if this is required.

- discussions before being in court and facilities to do so – discussions are important and the Safeguarder should be included in them. However, if legal agents wish to speak to the Reporter without the Safeguarder, there is nothing to stop this. The implications of not including the Safeguarder in discussions are that when the matter is aired at court, the Safeguarder will need to indicate (and the Sheriff will usually ask the Safeguarder) what their position is on the matter. The Safeguarder's input may well prevent matters proceeding as people hoped if the Safeguarder is not in agreement. The Safeguarder should try and avoid this by trying to ensure that they are involved in discussions, seeking the support of the Reporter or agents for this to happen. Facilities for discussions at court on the day are often poor and many discussions take place in corridors outside the court. Safeguarders should be mindful of their confidentiality responsibilities where any discussions are taking place within hearing of people with no right to hear case specific details.

- the case 'calling' - this literally means that usually the bar officer will come out from the court room and say the name of the case to be heard. Usually the Sheriff and Sheriff Clerk will be in the room already and if the Reporter has had previous cases being heard, the Reporter will be there also. If not, the Reporter for the case, the child and family and their legal representatives and the Safeguarder would go into the court room and take their seats. If everyone is in the court already (perhaps because it is the first case to be heard) and the Sheriff enters the court, everyone will stand and then sit when the Sheriff sits – this is a matter of respect for the court convening as a court. Usually the Safeguarder would be waiting in the vicinity of the court and can hear the case called. If the Safeguarder needs to be away from the vicinity for any length of time, which should be avoided if at all possible, he or she should

advise others in the case of this and the reason so that the court knows they are in the court and intend to attend.

- seating in court - Court rooms differ. Some courts have an elevated bench that the Sheriff sits at, with a table below for parties and sometimes separate seating for the child and Relevant Persons; others have the Sheriff sitting down at the head of the table below the bench; others use a board room type layout in smaller, less formal court rooms. On entering the court room people should take their seats. The Sheriff Clerk will sit below and in front of the Sheriff who is on an elevated bench or to the left facing the Sheriff, if the Sheriff is at the table. It is usual for the Reporter to sit to the left facing the Sheriff and for agents to sit to the right. The Safeguarder, in theory, can sit wherever they wish but it is customary for the Safeguarder to sit on the same side of the court as the Reporter and to the right of the Reporter, furthest away from the Sheriff. This seating implies no sides in terms of the matters to be determined so that the Safeguarder's seating next to the Reporter does not indicate this. Courts', and Sheriffs', expectations can be different and the Safeguarder should be guided by the Reporter or Sheriff Clerk as to what the Sheriff or court expects in terms of seating. The child and family will usually sit with their legal agents or can be seated in seats at the end of the table. Safeguarders will become familiar with different court expectations.

- order to be heard – once everyone is in the court room, either the Sheriff Clerk will confirm with everyone who they are and their role, or the Sheriff will go around asking people to indicate who they are. Sometimes this will not happen at all. Sometimes at the start the Sheriff expects the Reporter to introduce all parties. It is up to the Safeguarder how they introduce themselves by name. If the Sheriff Clerk is aware beforehand as to what parties will be asking, the Clerk may have alerted the Sheriff to this. Usually the Sheriff will look to the Reporter who will explain the position with the case and what is proposed. The Sheriff will check this position with parties, including the Safeguarder, clarify any matter and then make a decision which the Sheriff Clerk will repeat. A future court date will usually be set and if not discussed beforehand, there is an opportunity for the Safeguarder to indicate their ability to attend. Dates should be set without delay and preferably when all parties are available, unless matters need to go ahead on a certain date. Practice Position 4 on Attending court and Practice Position 15 on the Safeguarder's responsibilities to prevent delay in Part 1 of this Note cover the expectations of Safeguarders in these matters.

- what will and can happen – at a first calling there is a possibility that **matters can be resolved**, agreement reached on the grounds and the Sheriff asked to send the matters as agreed back to a Children's Hearing for the consideration of compulsory order. This may happen with a fast-track case (see Part 2, section 18).

It is possible but extremely unusual that the **Reporter has decided to withdraw (or abandon) the grounds** entirely (see SCRA [Practice Direction 23](#) on Court Applications section 8, regarding the Reporter's considerations when withdrawing grounds). This would end the grounds and the involvement of the child in the hearing system unless they were already on an order or other grounds previously accepted were still to be considered at a future hearing (if so, the Safeguarder would be involved in these latter matters). Where a Safeguarder feels that grounds should be withdrawn e.g. where there is a lack of evidence or where the proceedings themselves are not in the interests of the child, the Safeguarder should speak to the Reporter to try to convince the Reporter to withdraw.

Most likely to happen is that the **matter is deferred** (i.e. continued or adjourned) to another court date to allow parties further time to make enquiries and reach an opinion on what, if

anything, is in dispute. Most Relevant Persons have legal representation in court proceedings and these representatives need to look at the evidence for the grounds and any legal issues, advise their client appropriately, take their clients instructions and then represent these. Many Relevant Persons require legal aid to be represented and this may still be outstanding.

As indicated above, the Safeguarder may be asked and should be prepared to **indicate to the Sheriff what stage his or her enquiries are at**. The Sheriff may also ask the Safeguarder regarding the welfare of the child and any views expressed by the child. It is therefore helpful for the Safeguarder to have some information on the child's current welfare, especially if the child is being accommodated away from their parents or carer.

- asking for a short continuation/adjournment – during the time in court, should a question arise whereby the Safeguarder needs time to look into something or clarify information to contribute to the consideration, the Safeguarder can ask for a short adjournment which the Sheriff may or may not grant. If the Sheriff does, everyone may remain in the court until the Safeguarder returns or, the court may give an allocated time for people to leave the court and to reconvene.

- etiquette in court – politeness and respect are vital. It is important that the Safeguarder is respectful to people in the court and shows respect for the court itself (which the Sheriff represents and is reflected in the coat of arms usually displayed in all court rooms). The Sheriff should be addressed as 'my lord' or 'my lady', if this is required, but not 'your honour'. The Sheriff is in charge of the proceedings and will indicate when he or she wishes you to contribute. If you wish to contribute you will need to politely indicate that you have something to say and wait for the Sheriff to provide you with a chance to do so. Some people address the Reporter or legal agents as 'my friend Mr or Ms ...'. It is usual to call Reporter, agent or family by their title and surname e.g. Mr Smith, never first names, especially when speaking to or of family members, although the first name of the child may be appropriate. People are usually asked to stand when the Sheriff comes into the court and sit when the Sheriff has sat down. Some agents will bow to the Sheriff when leaving the court and walk out backwards but this is much less common. The Safeguarder should watch what people do or ask the Reporter or other court practitioners and, if he or she feels that there is behaviour that everyone is expected to do, then do this. If the Safeguarder doesn't do something that is expected, this should be pointed out to him or her, politely, and people should understand their position. Most courts are focussed on the business to be dealt with and operate on politeness and respect rather than on very formal behaviour. Safeguarders should avoid trying to be overly formal or legalistic in their manner but concentrate on their contribution, its clarity and ability to influence. Courts appreciate succinct, clear articulation. Dress at court is expected to be smart and respectful – again to the court and the importance of the proceedings. The Judiciary of Scotland website contains a helpful [note which covers court etiquette](#).

- fixing a further date for the next court hearing – notification if not there – the Safeguarder should be aware of their future availability and should indicate, even if not asked, if they are available for dates proposed. It is a judgement call for the Safeguarder if they cannot attend the only date available or a date when the matter has to be heard (due to, for example, expiry of interim orders or availability of essential witnesses in an evidence hearing). The Safeguarder should judge avoiding further delay or whether their presence at court is crucial, in the interest of the child. If the Safeguarder cannot attend in these circumstances, they should ensure that the next court hearing is aware of this and the reasons why and that any matter that they wish to communicate to the court were they able to be in attendance, is

covered by writing to the court or ensuring this is relayed to the court. It may be helpful to include dates when the Safeguarder is unavailable to assist the court organise further court hearing dates.

Safeguarders should always try and minimise any impact of not being able to attend court, by ensuring that any contribution that is required to be made is made by writing to the court or, if not possible, ensuring their position is relayed to the court by e.g. the Sheriff Clerk or the Reporter.

When a Safeguarder is at court and a further court hearing date is set, the Safeguarder is responsible for ensuring their attendance at that date without further formal notice by the court or Reporter. If the Safeguarder is not in attendance when a future date is set, the **Safeguarder is responsible for finding out about that next court date** and making arrangements to attend. (see Practice Position 4 on attending court). SCRA Practice Direction 23 on Court Applications at section 4.11. confirms that there is no duty on the Reporter to inform a Safeguarder of a continued hearing.

Step 4 - Further court hearings

Safeguarder's role regarding delay

After the first calling court hearings can be adjourned to another date on a number of occasions.

PRACTICE POSITION: ROLE REGARDING DELAY

The Safeguarder has a role to actively try to prevent delay in determining the proceedings.

The Safeguarder can prevent delay:

- By not causing delay by their own action or inaction,
- By raising issues of unnecessary delay, including pointing out any impact of delay on the child, and
- By taking action to assist in the avoidance of delay, including having information about e.g. witness's availability to allow early dates for hearing of evidence to be set.

Having a position in relation to the grounds

It is important that the Safeguarder move from enquiring to having a position on the grounds (even if this position is that he or she does not know and needs to hear the evidence to decide). This allows the process of discussions to focus on what is still in issue or can be resolved, to start. The court has expectations that it will only be involved where dispute is an issue and that parties sort this out as quickly as possible. If there is no dispute – perhaps because the grounds can be amended so that they reflect what everyone can agree is a correct reflection of the concerns – then there is an expectation by the court that this will be communicated to the court. If everyone there agrees (and especially as most parties have legal representation) then the Sheriff may be more inclined to dispense with the hearing of evidence (see Part 2, section 18), and send matters back as agreed to the Children's Hearing.

Step 5 - Grounds Agreed by Negotiation

Many grounds are agreed by negotiation between parties. It is hard to imagine in practice how a Safeguarder would be involved in negotiations if he or she is not a party. As a party, it is expressly stated that a party has a right to ask for amendment of the grounds. This is subject to the agreement of the Sheriff. A Safeguarder not a party can be asked and or indicate their position in relation to proposed amendments to the grounds (that have been discussed with them or not) and it is for the Sheriff to take into consideration their view when making his or her own decision. As a party, a Safeguarder has the right to apply for amendment themselves ([court rule 3.48](#)).

Negotiation occurs in different ways and depends on the individual case and its needs. Some may take place over the phone or by secure email, some may involve meeting to discuss different positions and options. Some take place on the day of the court before the case is heard in court.

Where agreement is reached, some Reporter practice and some court expectations are that the grounds are re-typed with the agreed content that is proposed, to assist the Sheriff determine if the proposed grounds are acceptable to be established on his or her determination. This helps to be clear what is being proposed as grounds established, rather than where there are written amendments on the face of the grounds.

Negotiation is an important part of the Safeguarder's role. Having reached a position on the grounds, the Safeguarder will have a view on what the grounds need to reflect for the child's interests to be properly safeguarded.

To be a part of negotiations, the Safeguarder should be prepared to go into these with a clear understanding of what they believe can be proved if necessary and what is important and what is not so important. It is helpful to have a 'bottom line' i.e. what is the point when anything less than this is unacceptable.

The focus will be on the grounds to be established and the content of the grounds to be agreed. The measures necessary to meet the child's needs as a result of the established grounds, are for the Children's Hearing to consider and decide in the forum of the hearing.

The court has some latitude to allow amendment of the grounds, but amendment should not be proposed to the extent that it completely changes the grounds or brings in new factors never a part of the grounds. The Safeguarder should not try to negotiate amendment that does this. The court rules ([rule 3.50](#)) allow the Sheriff to determine, in an application alleging an offence by or against a child, that any other offence against or by a child is established.

Negotiation is a skill. Pre-appointment training and CPD opportunities for existing Safeguarders cover this area of competence for court proceedings.

Where attempts are made to exclude the Safeguarder from negotiations, the Safeguarder should resist this and ask for support from other parties to be included. The Safeguarder can point out the potential implications of him or her not being involved.

Case management

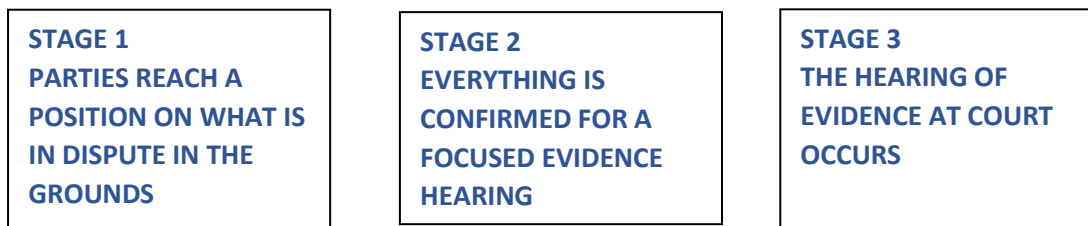
The Sheriff has responsibilities to secure the expeditious determination of the grounds application and can order parties to take such steps as are necessary to do this (court rule 3.46A).

The [Sheriff Principal's Note No.1 2018](#) for the Sheriffdom of Glasgow and Strathkelvin provides an example of what steps Sheriffs can take. The Sheriff can order a Safeguarder to take steps, which the Safeguarder must follow, unless he or she can convince the Sheriff that these steps are not necessary or appropriate. Where expectations are laid out regarding, for example, attendance at court, the Safeguarder should carefully consider their position in relation to this in individual cases, to ensure that they are able to comply with the responsibilities of their role. (see Practice Note on Court Part 1, section 4 on attending court).

Step 6 - Fixing a date for hearing evidence and pre-proof hearing

Where agreement to the grounds, amended or not, is not possible, the matter moves to a stage when a hearing on evidence must be fixed. This can involve a procedural hearing, sometimes called a pre-proof hearing, being fixed.

A hearing on evidence is sometimes called a 'proof' and this is where issues in dispute are determined by the Sheriff hearing evidence from the Reporter and from other parties including the Safeguarder (if this is appropriate) and submissions from all. To arrive at a hearing on evidence there are basically 3 stages:



Case management requirements mean that the Sheriff will actively manage grounds application to get to a point when a hearing of evidence can proceed focused on the areas of dispute and determined in a fair but expeditious manner.

Stage 1 may take several adjourned court hearings to get to this point.

Stage 2 usually involves court hearings sometimes called '**pre-proof hearings**' or '**case management hearings**' or a '**procedural hearing**'. These hearings are set to occur before the hearing of evidence (step 3) and allow the court to confirm with everyone that the hearing on evidence is ready to proceed. The Sheriff can direct that certain things happen (see Sheriff Principal's Note ([link](#))) for some examples of what this can entail). Some hearings on evidence can be set for several days and rather than hear of difficulties on the day that prevent the matter proceeding, the pre-proof hearings allow any potential difficulties to be raised for discussion and resolution.

Stage 3 is the hearing on evidence where it is expected that the matter proceeds as focused and predicted by previous court hearing discussions.

Stages 1-3 can occur over 3 separate court hearings and this is usually required for complex court cases where there is a large body of evidence potentially to be heard. Sometimes stage 2 is not required.

Safeguarder preparations for a hearing of the evidence

- **Case analysis** - A useful tool⁴¹ can help a Safeguarder consider their position against what is necessary to be proved in any hearing on evidence. The tool poses 3 questions (with sub questions) to be asked:

1. **What am I trying to achieve?**

What do I want the Sheriff to do?
 What does the Reporter have to prove?
 What are the issues?

2. **What material do I have?**

Identify relevant facts
 What facts are helpful to me on each issue?
 What are the best facts?
 What inferences?
 What more facts do I need?

3. **Why should my position be accepted?**

Create lines of argument
 Why should the Sheriff accept the facts which support the outcome I want?
 Why should the Sheriff reject any facts which don't support the outcome I want?
 Why should the Sheriff draw the inferences I think?
 Why does the law say the ground is/not established?

Considering this, in the context of potential evidence and later, after actual evidence, allows the Safeguarder to see what they may need to do, or not to do in relation to the grounds.

- **Agreeing evidence by Joint Minute** - Where it is possible to agree evidence that is not in dispute, a joint minute will capture this and the agreement of parties. Usually, the Reporter will draw such a document up, but any party can, and can seek agreement to the wording of what can be agreed. Case management welcomes such agreements being prepared as soon as possible to reduce the need for evidence to be heard. There may be a style of Minute already available from other court documents in the papers in the case.

- **Witnesses** – the Reporter is responsible for leading evidence to establish the grounds (sometimes called the burden or onus of proof being on them). This is usually done by calling witnesses to speak to matters that the witnesses are aware of and to be challenged on this as required. The Safeguarder should be aware of the Reporter's witnesses and may already have looked at the witnesses' potential evidence in detail or want to do so at this stage. The witness can be spoken to if required but the **witness statements** and or **precognitions**⁴² should be available from the Reporter. The Safeguarder may also be able to access precognitions for any witnesses for the Relevant Persons and may not need to speak to these witnesses

⁴¹ This tool and others were developed by Clan Childlaw, who have provided training for Safeguarder in relation to court.

⁴² Precognition is a means of parties interviewing a person to hear their potential evidence. Precognitions are not formal statements, checked and signed by the giver as a record of what was said. They are a record of what the taker has written and cannot be used as formal statements in evidence.

themselves. Speaking to a witness when statements or precognitions are available, is dependent on these providing the information that the Safeguarder needs, to the depth that they require this information to go. The [Practice Note on Reports](#) for Safeguarders provides some useful tips on the preparation for and conduct of interviews. After hearing the Reporter's evidence, the Sheriff may allow the Safeguarder to call witnesses but may not ([court rule 3.47\(4\)](#)).

Case management expectations may result in **affidavits**⁴³ being used instead of witnesses being required at court. SCRA [Practice Direction 23 on Court Applications](#) at section 5.4 and Appendix 3 of this document sets out how the Reporter practices in relation to this.

Where a **Safeguarder needs to call their own witness**, this must be justifiable. At pre-proof hearing, the Sheriff may restrict witnesses as part of case management steps or affidavits may be expected. It is usual that if the Safeguarder identifies a witness, additional to those that the Reporter (the Reporter has responsibility to lead sufficient evidence to establish the grounds) feels is necessary, then discussion with the Reporter may convince the Reporter to add this witness to their list. If the witness is supportive of the Relevant Person's position, the Relevant Person's legal representative may wish to call that witness. Where the Safeguarder independently feels that they wish to have this additional witness and no-one else does, they must arrange to have this witness attend.

- **Citing a witness** – The Safeguarder is not listed in the court rules as someone who can effect service on a witness by using recorded delivery post. Citation is not required if the witness will come to court. If a witness does not come, with good reason, the matter can be adjourned for the witness's future attendance. A witness who does not attend without good reason, who is cited, can have a warrant of apprehension issued by the Sheriff, to compel them to attend. If the Safeguarder has no intention of doing this and or is confident the witness will come to court without the need to cite them, then they should not/not need to cite the witness.

The court rules on service are contained in rules 3.12-18. The Reporter, legal agent and Sheriff Clerk all have authority to cite witnesses, where they require to do so. Usually citation is made by recorded delivery post with sufficient notice as required by the rules. SCRA [Practice Direction 23](#) on Court Applications at Appendix 1 of that document sets out the details about service and in particular at page 26, the citation of witnesses.

If the Safeguarder needs to cite, the options are to have the Reporter or Sheriff Clerk cite the witness in terms of court rule 3.16, on the Safeguarder's behalf or ask the Sheriff to allow you to effect service. Forms to cite include the Citation (Form 41), certificate of execution of citation (Form 42) and a certificate of execution of service (Form 43).

The Safeguarder could cite a witness using Sheriff Officers, but would need authorisation for this expense through the Safeguards Panel Team, before doing so. It is preferable and less costly for recorded delivery service to be used, where possible.

- **Vulnerable witnesses** – if a Safeguarder wishes to call a witness who can be considered vulnerable, the Safeguarder must make certain provision for the witness. See [Vulnerable Witnesses \(Scotland\) Act 2004 Information Guide](#) for the legislation and process required.

⁴³ An affidavit is a written statement confirmed by oath or affirmation, made in front of a Notary Public or Commissioner of Oaths, for use as evidence in court.

All witnesses should be given information and supported if required, by adequate preparation for coming to court. A person calling a witness has a duty of care towards that person.

- **Productions** – where the Safeguarder wishes to have their own documentary or video evidence for the proof, the Safeguarder must arrange for this to be available to the court. This is done by lodging the evidence in court, copy or original if copy is not possible, and, providing a copy or access to the production to other parties.

- **Specification of documents** - Sometimes, there is a need to go through a court process to have access to documents. The SCRA [Practice Direction 29](#) on the Recovery of Evidence in Court Proceedings covers this process in detail.

- **Submissions** – the case analysis (see above) is an important tool in preparing for submissions, which come at the end of the evidence heard. Submissions sum up the evidence heard and its weight and relevance and highlight the arguments for why the grounds (as the evidence justifies) should be established. Any legal points can be added too. Some preparation for submissions at this stage allows the Safeguarder to see what evidence might be critical to establishing the grounds (or not if this is the Safeguarder's position). The Safeguarder can check what the Reporter or others intend to prove on the day through the evidence that they have notified and consider if there is a need for any additional evidence that the Safeguarder feels is required. If so the Safeguarder can try and influence others as to the need to have this evidence heard or arrange him or herself to have the evidence available for court by citing witness or lodging productions (see sections above).

Pre-proof court hearing

Purpose – to allow the court to confirm with parties that the hearing on evidence is ready to proceed. Some hearings on evidence can be set for several days and rather than hear of difficulties on the day that prevent the matter proceeding, this hearing allows any potential difficulties to be raised for discussion and resolution.

Expectations of Safeguarders at pre-proof hearings - a Safeguarder should be aware of their position in relation to the grounds which may be supportive of the Reporter's position, or that of a Relevant Person or a child, or, may be a **position different to other parties**. The Safeguarder's position is an independent position and where he or she cannot convince others of what is required in terms of additional evidence to safeguard the interests of the child, the Safeguarder should be prepared to **provide evidence to the court in the form of witnesses and or productions**.

If in agreement with the Reporter or another party, the Safeguarder should allow the parties to put forward their case and challenge evidence that contradicts this. The Safeguarder can add to, clarify or challenge what has actually been heard in evidence on the day, by cross-examining a witness (see section below for more detail on this) or adding to submissions made. The Safeguarder can do this where it is necessary to support what the Safeguarder feels is needed to safeguard the child's interests in the determination of the grounds. There is no expectation that cross-examination is made and no inference in not making. Unnecessary cross examination will cause unnecessary delay in the expeditious determination of the grounds.

In practice the Safeguarder often has to do very little during the proof as evidence comes out more or less as the Safeguarder predicted it to, to support their position. Where they provide a submission on the grounds at the end of the proof, this may be to simply indicate support of their position as said in submission by another party.

Where the evidence and the basis of the Safeguarder's position does not come out in court as expected by the Safeguarder from their preparation for court, they must re-consider what impact this has on their position in relation to the grounds – do they now think the grounds should not be established? - in full or in part? – is their further evidence which will be relevant? The Safeguarder can cross-examine a witness to clarify a matter. The evidence that is heard may show the need for additional new evidence to be heard involving new witnesses or productions. Case management should have ensured that all requisite evidence is available at the hearing and that everyone involved has had a chance to consider this and arrange for their own evidence. The court will not be inclined to introduce new evidence as evidence starts to be heard. Any requests to introduce new evidence at this stage will be treated with scrutiny to see if this is critical to the case. The difference in evidence heard to that predicted should also be obvious to those calling the witness (usually the Reporter) who can look to see what can be done without the need for the Safeguarder to do so.

When witnesses give evidence, what is predicted to be said can change on the day in court. This can be for different reasons – the purpose of the court is to scrutinise evidence and make sure that, where possible, the information that is provided through evidence to the court shows what has actually happened or is happening.

Remember – A Safeguarder is not required in every case. The proceedings need to operate for the Reporter to establish the grounds and for any challenge to try to prevent this in full or in part to occur - without a Safeguarder's involvement. A Safeguarder who is involved can play an important part in safeguarding the child's interests, but where they have been critical to the establishment of the grounds or to the grounds not being established, this should be a matter for reflection for those normally tasked with these roles.

Practice Notes supplement the [Practice Standards for Safeguarders](#) by providing further clarity on the expectations of Safeguarder practice and conduct.

Court Hearing on evidence/proof

- **Activity before proof starts** – on the day of court, there are sometimes negotiations which can result in agreement on the grounds in full or usually with amendment. The Safeguarder should be part of these negotiations. Sometimes there can be problems with attendance of the family or of witnesses. There should be no surprises on the day and where anything happens that requires any party to have to make enquiries, the party will ask for time whether a short adjournment or matters being put off to another day.

The Reporter will have provided a **witness list** for the Sheriff and parties, which allows everyone to know the 'running order' of witnesses. Sometimes it is necessary to hear witnesses out of order of the witness list due to witness availability. Witnesses wait in witness waiting rooms or if there are none in the court, in a separate waiting room to the family, if this is required. Once the witness gives evidence, he or she should leave the court and should not wait with other witnesses about to give evidence.

There may be a need to sort out preliminary matters, usually procedural matters, at the start of the hearing.

Sometimes there is discussion about the order of party's questioning witnesses before evidence is heard (see below regarding this).

PRACTICE POSITION: ORDER OF HEARING PARTIES IN COURT

Whilst it is for the Sheriff to decide on the order of questioning in a proof, the Safeguarder should argue to question a witness last i.e. after child or relevant person has cross-examined a Reporter's witness or after the Reporter has cross-examined a child or relevant person's witness.

- **Order of parties** – The **Reporter starts** by leading their evidence, calling each of their witnesses in turn. Each witness will have non-leading questions put to them by the Reporter and then the Relevant Persons and any child who wishes to, may cross-examine the witness, then the Safeguarder can cross examine, then the Reporter gets a chance to re-examine the witness. The Sheriff can ask any question of the witness. Further witnesses are called and the same process repeated until the Reporter has no further witnesses to call.

After the Reporter has completed the evidence they wish to put before the court further witnesses can be called by the **Relevant Persons or child**. If this happens the person calling the witness questions first (with non-leading questions), then the Reporter, then child or other Relevant Person can cross examine then the person calling the witness can re-examine. Once Reporter, any Relevant Person and child have had a chance to call any witnesses, the **Safeguarder** can call witnesses and again the Safeguarder must ask non-leading questions, then the child and Relevant Persons can cross examine in turn and the Safeguarder can re-examine.

The order of **cross examining of Reporter witnesses** is usually based on the principle of the 'principal contradictor', usually the Relevant Person who is felt to have the most to challenge in the grounds goes first in cross examination, then others (usually other Relevant Persons and then child usually where the child is legally represented).

With **Relevant Person or child's witnesses**, the Reporter would usually cross examine first then other Relevant Persons then child then Safeguarder.

Then the Safeguarder would call any witnesses of theirs, if they did have any to call. The order of cross-examination of the Safeguarder's witness may change, dependent on what this evidence says and who is considered to be the principal contradictor. The Sheriff is responsible for the overall fairness of the proceedings and may allow parties to ask further questions of a witness where this is considered to be appropriate.

- Questioning of witnesses

Questioning follows evidential principles:

Examination-in-chief – this is the questioning of the witness by the party who has called the witness. Questioning cannot be leading, unless the matters led on are not in dispute. **Cross-examination** – this is questioning by other parties following examination-in-chief. Questioning can be leading. Any matter not raised in examination-in-chief can be raised. Matters important to positions challenging the grounds which are to be argued in submissions can be put at this point. There is no onus on any party to cross examine a witness and no inference can be drawn from a party not cross examining a witness. **Re-examination** – this is questioning of the witness by the party who's witness they are. This questioning can only relate to matters raised in cross-examination.

Remember: the Sheriff can restrict the issues for proof, or witnesses in terms of the Sheriff's powers to ensure expeditious determination of the application in terms of case management responsibilities.

Swearing in witnesses who are giving evidence – Witnesses are sworn in before they give their evidence, by the Sheriff. The witness is usually asked to stand and raise their right hand. The Sheriff says the oath: 'I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.' and asks the witness to repeat. If the witness wishes to affirm which is the same process but the Sheriff says 'I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth.' and asks the witness to repeat. A witness can take the oath according to their own religion, a Muslim witness may swear on the Koran, if this is made practicable.

Expert witnesses – an expert is a witness with special knowledge of their subject matter and their evidence enables a judge to form the judge's own judgement about that subject matter and any conclusions to be drawn from it. Such a witness should have their 'expertise' shown from their explanation of their education i.e. qualifications and experience; their knowledge of the particular matter based on what they have been told, observed, assumed; and the basis of their opinion i.e. their method, knowledge of the matter before the court and expertise about the general subject matter.

Witness referring to notes – usually witnesses speaking to facts give their evidence based on their own recollection. Sometimes the witness is speaking to a document that has been lodged as a production and it is available for the witness to refer to. In some circumstances a witness may be able to refer to notes that were made at or soon after an event, but only to refresh their memory. A witness needs to ask permission for this to occur – if important, the notes may need to be lodged as productions in advance of the witness giving evidence.

Productions - productions are documents or videos or photos or any physical evidence. These are usually required to be referred to or confirmed or explained by a relevant witness. In some cases, productions can be agreed without the need for a witness to speak to them. Productions, or copies of them, are usually lodged with the Sheriff Clerk in advance of the proof. All parties will have had access to them in advance by either having been given a copy or having arranged to see or view them. They will be available in court either with the Sheriff Clerk in court or for the Bar Officer can have them brought to the court when required. They will only come into play where the person who lodged them refers to them or puts them to a witness.

Objections – any party can object to a question put to a witness or unacceptable behaviour towards a witness. Objections can, for example, be about a question's relevance or if a question is leading when it should not be. The party making the objection should say 'objection' as soon as possible so that any answer to the question is stopped until the Sheriff decides on the objection. The person objecting is asked for their reason and parties can then each be asked for their position on the objection. Sometimes the questioner withdraws the question. Sometimes the consideration of the issue objected to necessitates the witness being excused from the court whilst the matter is considered. The Sheriff can uphold the objection or not and may allow the question 'under reservation'. This means that at the end of the evidence in total, the Sheriff will consider the issue objected to and its impact on the overall hearing of evidence, at that stage.

Offence by child ground – these grounds are not criminal proceedings but these have a criminal standard of proof and follow criminal procedure for example the need for corroborated evidence, for hearsay not to be admissible and for the offence to be proved in the terms of a criminal offence and to the criminal standard of beyond reasonable doubt. Additionally, once evidence is concluded by the Reporter in such a case, the sufficiency of the evidence must be considered by the Sheriff, with parties having an opportunity to be heard on this issue, before any further evidence is heard. ([court rule 3.47.2](#)) The Safeguarder as a party, will be asked if they wish to comment on this question of sufficiency.

Sufficiency relates to the Reporter having led enough evidence to show that all the factual and legal requirements for the offence to have been committed exist and, that there is sufficient evidence within the evidential requirements necessary to show that that child committed the offence, has been led.

If there is found to be an insufficiency of evidence, then the offence is not established without any need for the child or Relevant Person (or Safeguarder if they wish to) to lead any evidence. If there is found to be a sufficiency of evidence, the matter will continue with child and Relevant Person (and Safeguarder) leading any further evidence that they wish to, to contest the grounds.

Legal arguments – these can arise before or during a proof. Matters raised at the start will be resolved by arguments made and challenged in front of the Sheriff who will decide on these. Examples include witnesses being called who are considered vulnerable and have not had suitable legal preparation and protection offered.

Issues raised during the proof may involve time being allowed for parties to consider the issues.

All parties will be asked to comment on legal matters raised by others and the Safeguarder

may wish to comment or not. Where a legal issue is raised and time allows for the Safeguarder to wish to be clear about the matter, the Safeguarders Panel Team may be able to assist in providing general information about the issue, where the Safeguarder cannot access this him or herself. The Safeguarder can ask other parties for clarification.

The Safeguarder is not expected to be an expert on legal issues and whilst understanding of what is happening is important, the Safeguarder may be able to fulfil their role without the need to play an active role in legal debate, where the interests of the child are being protected by the process.

Some complex legal issues may be felt to need legal advice or even legal representation for the Safeguarder and this can be considered and may be requested (see Part 2, Practice Position 9) As with all requests this will be dependent on the need for the Safeguarder to have this advice or representation to fulfil their role.

Adjournments and in between adjournments – sometimes cases need to be adjourned to another day after the proceedings have started. Sometimes a number of court days are required to hear evidence and they cannot take place consecutively. Parties and witnesses, including those witnesses who are part heard, should not speak about evidence heard to anyone meantime, especially to other witnesses who are to be heard. This can have the effect or be perceived to have had an effect on the evidence that the witness then gives. Where extra court dates are needed as well as those set aside already, the Safeguarder should be aware of their availability for new dates to be found without delay.

Submissions – these are usually given verbally by each party following the order of parties already in place. In some more lengthy or complex cases, written submissions may be asked for by the Sheriff.

Verbal submissions are provided at the end of the evidence. A short time may be provided for parties to reflect on the evidence but there is no guarantee that this will happen. The Reporter will provide their submissions first, then the Relevant Persons and child (in the order of questioning) and then the Safeguarder.

The Safeguarder can adopt other party's submissions (by simply saying that they are adopting them) and if they wish to, to add to these. The Sheriff can ask parties to comment on aspects of the case during or after their submissions.

Where **written submissions** are required by the Sheriff, time is given for these to be prepared, shared and submitted. There is no set style for these but guidance for headings, content and style may be indicated in the case.

By having a draft submission prepared in advance, based on predicted evidence, and by considering evidence as it unfolds on the day, the Safeguarder can adjust their submission, to be in the best position to give this verbally on the day or later in written form.

Decision – the Sheriff will give his or her decision orally at the end of the hearing ([court rule 3.51](#)). This usually occurs after submissions are heard but the Sheriff can adjourn the hearing to another date and give the decision then. The Sheriff can issue a note of the reasons for the decision when giving the decision or within 7 days thereafter and if so, the Sheriff Clerk will send a copy of this to persons entitled to get, which includes the Safeguarder. It is for the Sheriff to decide if a note is to be provided. Parties can ask the Sheriff to do so.

Step 7 - Reporting to a Children's Hearing following grounds determination

Reference is made to the [Practice Note for Safeguarders on Reports](#), sections 2 and 3 regarding this.

In particular, this directs that a Safeguarder should not wait until attending a Children's Hearing after grounds are established to have it confirmed by the Children's Hearing that a report is required.

3. Interim Compulsory Supervision Orders (ICSOs)

Purpose of an ICSO

Where:

- a child needs measures of protection, guidance, treatment or control (which a compulsory supervision order can put in place) and
- a compulsory supervision order is not in place but
- grounds are being determined at court which would justify such an order and
- if the child needs these measures as a matter of urgency or necessity, then an interim compulsory supervision order can be put in place whilst the justification is determined - to give the child the measures that the child needs.

Criteria

1st ICSO issued: ICSO - 'is necessary as a **matter of urgency**' for the protection, guidance treatment or control of the child'

Further ICSOs: - 'is necessary for the protection, guidance treatment or control of the child'

For more detail on these orders see the SCRA [Practice Direction 19](#) for Reporters on Orders etc.

Because this is an interference in people's rights until grounds are determined, the orders are **short in nature and require to be applied for to be extended**. When being extended, the necessity for the order and the measures it contains are re-considered each time. Although the Children's Hearing considers the extension of these orders initially, after 66 days, the orders have to be considered by a Sheriff.

If there is a compulsory supervision order already in place, an interim variation of that order (IvCSO) is the relevant order (section 140 of the 2011 Act) and thereafter the Children's Hearings, not the court, always consider and extend these.

A Sheriff can issue an ICSO during court proceedings where there is no order. (s.100 & s.118 of the 2011 Act)

A Sheriff can make an IvCSO during court proceedings, but any further extensions are considered by the Children's Hearings and not the court (s,118 of the 2011 Act).

Measures can be attached to the orders – very similar to those for a CSO – measures are usually for residence & for contact

A Safeguarder cannot apply for an ICSO but may propose variations to the ICSO terms. If so, they should give notice of their proposals to Reporter and parties as soon as possible.

A Safeguarder can **appeal** the making of an ICSO or IvCSO by a Children's Hearing but cannot appeal the making of an ICSO or IvCSO by a Sheriff. They can appeal a decision to extend or further extend an ICSO by a Sheriff and also IvCSOs made or extended by Children's Hearings. See later sections on appeals of ICSOs.

Once grounds are determined but the Children's Hearing is unable to come to a substantive decision (i.e. make a compulsory supervision order or discharge the grounds) the Children's Hearing can consider and issue these orders for as long as it is necessary for the hearing to be in a position to make the substantive decision.

Process for ICSO applications at court

The Reporter is responsible for applying for an ICSO:

- when grounds have been sent for proof and whilst a **Children's Hearing are still considering an ICSO** (for up to 66 days), the Reporter arranges a Children's Hearing to be arranged within the 22 day period of the ICSO and notifies people (including any Safeguarder); provides papers for the hearing (NB a Safeguarder is not required to provide a report for this hearing). The Reporter also notifies the result of the hearing and reasons, provides copy orders and notifies the right of appeal against the decision (which the Safeguarder can appeal).
- whilst the **court is considering any ICSOs** – the Reporter is responsible for applying to the court for an extension with or without variation of the ICSO on the requisite Form (Form 65C and D), notifying people, making representations for the order at court and notifying the result.
Similar to grounds applications, on receiving the application the Sheriff Clerk fixes a date and the Reporter notifies (as the Sheriff determines matters).

At the court hearing, the Reporter will be heard as will all other parties.

The Sheriff can decide not to extend the interim order or extend with or without variation, whether the variation is asked for or not. The notification of the decision (Form 65E) includes a section for the reasons for the decision to be given. The order is to be notified to the local authority responsible to implement.

The Safeguarder can **appeal** the extension/variation decision i.e. to issue or not and to vary or not.

Safeguarder involvement

Most ICSOs have measures of residence and contact attached to them and the Safeguarder can often be asked in relation to the need for, and extension of, these measures.

In preparing for the consideration of the order at court, the Safeguarder should be giving the child an opportunity to express a view, enquiring as to the up-to-date circumstances of the child, enquiring of the local authority as to the up to date circumstances and needs of the child and the authority's views on the order and its measures, and, sharing the Safeguarder's own position on the order and its measures with all.

The sheriff has responsibilities to ensure that the child's voice is heard in deciding on these applications (section 27 of the 2011 Act as amended by the Children (Scotland) Act 2020) and the Safeguarder may be able to assist the sheriff in fulfilling their responsibilities but only if the child's views have been provided to the Safeguarder in a way that accords with the requirements of the Act. In particular, the views must be given in a manner preferred by the child, where possible.

Attendance of Safeguarder

Safeguarders should attend so far as reasonably practical (see Practice Note on Court Part 1, Practice Position 4).

The Safeguarder has a right **to attend** and is often asked to comment on the up to date circumstances of the child and the appropriateness of measures being proposed.

Interim variations of compulsory supervision orders

Where the child is already subject to a compulsory supervision order and the review of that order has been deferred as new grounds have been sent to court, any interim variation of the compulsory order (equivalent to an ICSSO in length and criteria) in place pending the determination of the grounds, is considered at all times at Children's Hearings. The Safeguarder should be attending these hearings to contribute as required to their consideration.

Other matters potentially at court during grounds applications

Appeals against ICSSOs made by Children's Hearings – the Safeguarder would be part of these proceedings (see Part 2 on appeals)

Appeals against IvCSSO by Children's Hearings – the Safeguarder would be part of these proceedings (see Part 2 on appeals).

Appeals against Relevant Person determination – the Safeguarder has no right to appeal the decision themselves but can be part of the appeal proceedings because their appointment has not ended. (see appeal section below regarding this type of appeal).

4. Appeals Against Children's Hearing's Decisions

Step-by-step guide for the process for Safeguarder (who is not the appellant)

The following guidance has most relevance to an appeal against a Children's Hearing decision, usually to make, continue or vary a supervision order, the most common appeal for Safeguarders to experience. Some of the following will have relevance to all appeals.

Appointment – already appointed/appointed on appeal

In general terms there are two ways for a Safeguarder to be/have a right to be involved in an appeal:

1) If a Safeguarder is already appointed to a child

If a Safeguarder is appointed and the appointment has not ended, then the Safeguarder has a right to be involved in any proceedings until the appointment ends.

The Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 ([link](#)) provide further detail on when appointments end.

The Safeguarder is entitled to be notified by the court of any appeal by any person. It is for the Safeguarder to determine the extent of their involvement in any appeal, dependent on the circumstances of the child's case and what if anything is needed for the Safeguarder to safeguard that child's interests.

2) If the Sheriff appoints a Safeguarder to the appeal

When an appeal is made and a Safeguarder has not already been appointed for the child, the Sheriff must consider whether to appoint a Safeguarder for the child. The Sheriff must do so as soon as reasonably practicable after the start of the appeal proceedings.

A Safeguarder can be appointed at any later stage in the proceedings and if so, the Sheriff has the option of starting the appeal proceedings again.

If the Sheriff appoints a Safeguarder the Sheriff must give reasons for the decision and record the appointment and the reasons in the court interlocutor.

There is no difference in the role or functions of a Safeguarder due to the manner of their involvement. Whilst the appointment lasts, the role and function and, rights and duties are not affected.

Duration of the appointment

The appointment lasts **until the appeal process is finished**. Where the appeal decision is to remit matters back to a Children's Hearing, the Safeguarder's appointment is still in place and the Safeguarder has rights and duties in relation to that Children's Hearing and any appeals that flow from it.

Where appeals are specific issue appeals but only relating to Relevant Person determination or contact review, the appointment of the Safeguarder ends when the court involvement ends (this can be after a higher court sends it back to a lower court to make a decision). This means that for Relevant Person and contact review appeals, the Safeguarder's appointment ends before any remit back to a Children's Hearing.

However, for specific appeal relating to secure implementation, the Safeguarder is still involved for any remit back to a Children's Hearing.

NB All are subject to other justification for continuing the appointment - where other matters continue and the Safeguarder appointment is not ended. ([reg 3](#) and [reg 4](#) of the Further Provision regs)

Appointment process

Where the appeal is part of the Safeguarder's continuing appointment already, there is no appointment process involving the Safeguarders Panel Team and the Safeguarder does not need to notify the Team of the appeal.

Where the appointment is new, having been made by the court in the appeal, the usual appointment process will be carried out by the Team and where possible, the appointment will be offered to a Safeguarder who has had a previous appointment for any child. The Safeguarder will be given information of the appeal date if known.

Reasons for appointment

Where the Sheriff has appointed a Safeguarder in the appeal, reasons are expected to be provided and are to be included in the interlocutor (court rule 3.7(2)).

Where the Sheriff appoints in an appeal where there is no Safeguarder involvement, the reason usually specifies what the Sheriff is asking for from the Safeguarder e.g. to have the views of the child if these are able to be provided.

Reports for the Sheriff in appeals

A Sheriff can ask for a report from a Safeguarder to assist the Sheriff to determine the appeal (regulation 8 of the Further Provisions regulations). As with all appointments, the Safeguarder has discretion to cover any matter where this is needed to safeguard the interest of the child per the Practice Note on Role of the Safeguarder. This report is shared with all parties (court rule 3.56(2)).

When an appeal is lodged the Sheriff can ask for a report from any person to assist the Sheriff to determine the appeal (section 155(6)). This report is shared with parties (rule 3.56(2)), including the Safeguarder as a party. It is unclear if reports for appeals are included in papers for any subsequent children's hearing.

Rights and duties of a Safeguarder in an appeal

The rights, powers and duties of a Safeguarder in relation to an appeal are set out in the court rules 3.8 and 3.6. The following gives general information on these rights and duties. For a fuller list of these, with references to all relevant rules and sections of the 2011 Act (see Appendix 3).

The Safeguarder

- has the powers and duties of a curator ad litem.
- is entitled to receive from the Reporter copies of the court applications (which includes appeals (rule 3.6)), all productions and papers before the hearing.
- is to find out whether the child wishes to express a view in relation to the application and, if so, transmit these to the Sheriff. (*NB Rule 3.5(1)(a) permits the Sheriff to order such steps as he considers appropriate to ascertain the views of the child. Section 27 of the 2011 Act specifies that the sheriff must give the child an opportunity to express their views, if possible in a manner preferred by the child, with the child to be presumed capable of forming a view unless the contrary is shown.*)
- make such relevant enquiries as the Safeguarder considers appropriate
- without delay, must intimate in writing to the Sheriff Clerk whether or not s/he intends to become a party to the proceedings.
- can appear personally or instruct an advocate or solicitor to appear on their behalf. (*An advocate or solicitor cannot represent both a Safeguarder and the child*).
- can be permitted to remain in the appeal hearing if the child is excluded.
- is entitled to receive all court interlocutors.
- is to be notified of any appeal.
- can lodge answers to an appeal.
- must intimate his/her answers to others notified of the appeal.
- as a party, be entitled to receive copies of any reports requested by the Sheriff.
- as a party, is to be heard at the start of the appeal, before the Sheriff examines the Reporter or any authors of reports or statements.
- as a party, can make a motion to have an appeal continued or adjourned.
- is to receive a copy of the court's decision and any note from the court.
- may be asked to provide evidence if the Sheriff considers the Safeguarder to have material additional evidence.
- may be asked to provide a report to the Sheriff in an appeal.

Becoming a party to the proceedings

Although it is the Safeguarder's decision as to whether to become a party or not, in most cases Safeguarders will become a party to the proceedings to allow the Safeguarder to fulfil their role to safeguard the interests of the child. (Practice Position 5 in Part 1).

The following rights are referred to as rights relating to parties as opposed to including specific mention of the Safeguarder having this right:

- To receive from the Reporter a copy of any further report requested by the Sheriff in the appeal – *in practice the Safeguarder would be given a copy even if not a party*
- To be heard at the start of the appeal before the Sheriff examines the Reporter and any authors or compilers of reports – *'being heard' means being able to give views and or recommendations. Most courts will wish to know if a Safeguarder has anything to say, whether a party or not*
- To make a motion to have the appeal continued or adjourned – *the Safeguarder, even if not a party, can still ask in practice where there is good reason for any request.*

Notification

The procedure for an appeal against a hearing's decision follows a similar general pattern as that for the grounds application:



The appeal [Form 61](#) will have been lodged with the court, a date set and the child perhaps excused. The appellant will have notified the Reporter and any other parties including the Safeguarder, by providing a copy of the appeal, and any court orders. (See the section below on appeals by Safeguarder, regarding the form of appeal including its format, what it should include, lodging and service.) The Safeguarder has an independent right to be notified (court rule 3.54(1) of the date, etc. and be given a copy of the appeal.

The appeal Form should be filled in to **indicate that a Safeguarder has been involved in the decision being appealed**. The wording of the Form asks if 'the' hearing appointed a Safeguarder. The hearing whose decision is being appealed will not have done so, as a Safeguarder was already in place. Therefore, this section may not have been completed properly to indicate that a Safeguarder is involved and therefore to be notified. The Reporter or other parties should be aware that there is a Safeguarder and can notify the court of any oversight. If the Safeguarder becomes aware of the appeal but has not been notified – he or she should contact the court and, if required, the Reporter.

Papers and Information available

The Safeguarder has rights to receive all court papers etc. and as a party receive a copy of any reports that the Sheriff has asked for from others.

Enquiries

The Safeguarder is entitled to make such enquiries so far as are **relevant to the appeal** as the Safeguarder considers necessary (court rules 3.8(d) and 3.6).

The Safeguarder is not the appellant and **will have had involvement in the child's case** and the decision being appealed. Therefore, in practice, enquiries are usually limited to those

required to clarify matters relevant to the appeal. The nature of the appeal is focused on whether the decision was justified and should **not be a rehearing of the matter** before the Sheriff.

Where the Sheriff upholds the appeal and there is an argument that there has been a change of circumstances justifying the Sheriff changing the orders, then the Sheriff may be looking for information on the **up to date circumstances of the child** in relation to any consideration of changes to be justified. The Safeguarder is often someone who is asked regarding this and therefore being aware of the up to date situation can be helpful. It is for the Safeguarder to decide in the circumstances of the child and the appeal what enquiries are justified and the discussion above in relation to enquiries in grounds applications above is relevant.

Contact with child and family

In line with:

- the Practice Standards and Note on the Role of the Safeguarder regarding keeping the **child at the centre** and **establishing good relationships and communication** with the child (and others)
- responsibilities to provide the child with **an opportunity to provide their views** and if so, communicate these to the court⁴⁴
- responsibilities in **providing any report** required, to comply with Standards and Practice Note on reports in relation to the proportionality and quality
- responsibilities to **explain the role and functions**, which may require further input in relation to the appeal

the Safeguarder would normally be in contact with the child during the court process.

Answers

Purpose of answers

Answers show the position of other parties to the appeal, in particular what is agreed and what is disputed. Answers give notice of this position in a structured written format and allow the Sheriff when considering the papers before the appeal, to know what the points in issue are.

The appeal Form should have laid out the basis of the appeal and will be stating certain facts and arguments as to why the appeal should be upheld by the Sheriff. Answers respond to the points in each of the paragraphs of the appeal and raise any new information or matters which are relevant to the issues raised in each paragraph. Answers also allow parties to organise their thinking around the appeal and its merits.

Style of answers

The court rules do not set out a style, but most written court documents need to have basic information which is included at the start of the document. Answers should refer to each paragraph in the appeal with a response relating to each. The responses are limited and follow expected terminology which is recognised in legal forums. The terminology does not have to

⁴⁴ NB the where the court is fulfilling their responsibilities to hear the child's views they must do so in accordance with the requirements introduced by the Children (Scotland) Act 2020.

be followed as long as the responses to matters in the appeal paragraphs are clearly laid out. Different styles may be available and other court papers may indicate how parties are framing answers.

The following terms can be used in answers in relation to the numbered paragraphs in the appeal:

1. **Admitted** (which mean this matter is agreed to be correct) – e.g. ‘Admitted that the mother did not attend the Children’s Hearing on...’
2. **Not known and not admitted** (which means that this matter is not something that is known about and because of that it is not agreed to be correct but is not denied) – for example ‘Not known and not admitted that Mr Smith...’
3. **Quoad ultra denied** (which means everything else that has not been responded to by an ‘admitted’ or ‘not known and not admitted’ is not agreed)
4. **Explained and averred** (which is the term used before additional information is added which is felt to be relevant to the appeal) – e.g. ‘Explained and averred that on 4 July 2018, the child...’. Explained and averred can be added in to any response to an appeal paragraph or added as an extra paragraph at the end of the answers or as additional information not able to be linked to any appeal paragraph.

Answers are **optional** and there may be inadequate opportunity to provide answers, due to time constraints.

Answers, if provided,

- must be **lodged** with the Sheriff Clerk no later than **7** days before the date of the hearing of the appeal (unless there is restricted time for certain appeals, e.g. they must be heard within 3 days)
- if lodged, a **copy must be given to all others** notified of the appeal (as specified on the appeal court papers i.e. appeal form and court orders directing service, which the Safeguarder will have and can reference for details). ([court rule 3.55](#))

Preparations for the appeal hearing

The following activities are common in relation to activity before the hearing of the appeal takes place

- reviewing the paperwork for the appeal
- enquiries (as required)
- contact with the child (as required)
- coming to a position in relation to the appeal (with appropriate research (if required))
- providing answers (if decided on)
- the usual practical preparations to attend
- engaging in any discussions with parties in advance of the court (as required)
- re-familiarising yourself with your report to prepare for any questioning/being examined by the Sheriff (or other parties), if required, regarding your report for the Children’s Hearing whose decision is being appealed OR for a report provided by you for the appeal
- preparing for your potential contribution at the court – what do you want to say (and why) and how are you going to say it.

Support for Safeguarders

Safeguarders can receive support but not advice, if required and on a non-case-specific basis, from the Safeguarders Panel Team. Practice Standard 7 requires Safeguarders to take a significant degree of responsibility for their own learning and development in relation to their role at court and otherwise. Safeguarders should have or receive, through induction, through this Practice Note and other related Notes for Safeguarders, and through continuing professional development, sufficient information so that they have a good baseline understanding of the following, but also so that they can access further detail at their own hand if required:

- criteria for appeals
- significant case law relevant to appeal
- common human rights challenges
- specific (and uncommon) appeals
- judicial review (an overview)

Hearing of the appeal at court

The Sheriff will have papers for the appeal which will consist of the appeal, any answers, court orders made, and, the papers that were before the Children's Hearing that made the decision being appealed, together with the record of the hearing's decision, the decision and any compulsory orders made. The Sheriff will usually have read these papers but if not, will ask for time to read before hearing from parties. The procedure (covered by court rule 3.57) is:

- the appellant or his representative is heard first
- other parties are then heard – if not a party, the Safeguarder may be heard at this stage usually at the end – the order of hearing parties is determined by the court
- the Sheriff can then examine (i.e. ask questions of) the Reporter and any authors or compilers of reports that were before the hearing, or of any report requested by the Sheriff (per section 155(6) in the appeal ([court rule 3.56\(1\)](#)) – this can be the stage where the Safeguarder is asked about his or her report
- the Reporter's role in an appeal is relevant and reference is made to the Reporter's [Practice Direction 24](#) on Appeals at 4.6 where the role is laid out. In practice, although it is for the Sheriff to examine the Reporter by asking questions that the Reporter can answer, in many appeals, the Reporter responds to the appeal as a representative of the Children's Hearing and its decision, taking an active role to promote the decision, if defensible.
- the Sheriff can decide to hear evidence in the appeal but does not have to (section 155(5)(6)). Parties often wish evidence to be heard and will have witnesses and productions available. Evidence can be relevant to appeals where it is necessary to hear from those at a Children's Hearing whether or not there has been a procedural irregularity. The Reporter will consider involving witnesses where required in connection with a procedural irregularity or where evidence in relation to a change of circumstances argument is required. The [Reporter's Practice Direction on Appeals](#) at 4.4 covers hearing of evidence. A child can be excused during evidence being heard although the Safeguarder can remain during the excused period. Where evidence is heard, this follows the process of witnesses, sworn in or affirmed, examination, cross and re-examination etc. (see grounds section above in relation to this)

- Appeals can be adjourned or continued and any appeal heard in part before a Safeguarder becomes a party, can be ordered to commence of new ([rules 3.57](#) and [3.56\(7\)](#)).
- Once the appeal is concluded, the Sheriff will give his or her decision orally at that time or on another day, subject to any statutory timescales for the appeal to be disposed of by (see Part 2 – Information for more details on these timescales). The Sheriff may issue a note of the reasons for the decision and can issue this with the decision or within 7 days thereafter. Disposals open to the Sheriff are noted in Part 2 – Information, section 28.
- Any further appeal possible against the Sheriff's decision has time limits within which it must be made (see section on appeals to Sheriff Appeal Court and Court of Session in Part 2 - Information).

Giving evidence

The Safeguarder may be

- examined by the Sheriff regarding their report
 - for the Children's Hearing whose decision is being appealed, or
 - requested by the Sheriff for the appeal
- cited and or questioned as a witness in the appeal as to
 - what has happened (usually in connection with a procedural irregularity), or
 - their report
 - for the Children's Hearing whose decision is being appealed
 - requested by the Sheriff for the appeal

A Safeguarder may be examined without being sworn in/affirmed as a witness, so that they are asked questions by the Sheriff and parties may be given an opportunity to ask for clarification.

A Safeguarder may be sworn in or asked to affirm if providing evidence and asked to answer questions as any witness would. The court will direct them as to how this is done, for example whether it is done in a witness box or not and whether they sit or stand whilst speaking. If speaking to their report, the report should be available. As a party, the Safeguarder may be allowed the opportunity to make comment on their evidence to compensate for his or her inability to ask questions of him or herself. Once the Safeguarder has given evidence, he or she returns to his or her role as Safeguarder in the proceedings.

Any party intending to have the Safeguarder give evidence in an appeal should give the Safeguarder notice of this in advance of the appeal and may send a formal citation to the Safeguarder. If formally cited as a witness for the appeal, the Safeguarder may be asked to be precognised by a party before the hearing. Precognition is a means of parties interviewing you to hear your potential evidence. Precognitions are not formal statements, checked and signed by the giver as a record of what was said. They are a record of what the taker has written and cannot be used as formal statements in evidence.

Where a Safeguarder's report is to be considered in the appeal, a copy will be made available for the Safeguarder to refer to during any questioning, if this is required.

Decisions

In basic terms the decisions in an appeal are:

- Appeal upheld – case remitted back to hearing for the hearing to reconsider
- Appeal upheld – Sheriff makes decision rather than remitting to the Children's Hearing
- Appeal not upheld (even so – Sheriff can still take some action in certain circumstances)

In most cases, where the appeal **is upheld** the Sheriff will send matters back to the Children's Hearing, sometimes with a written note explaining why the appeal was upheld. This allows the hearing to understand the appeal decision. The Sheriff cannot direct the hearing as to what it should do.

Sometimes the Sheriff can simply act as the Children's Hearing without sending matters back to the hearing and make or change an order as a hearing would do.

It is possible for a Sheriff to **not uphold** an appeal and if there has been **a change of circumstances for the child since the decision appealed against was made**, the Sheriff can act as the hearing would e.g. make or vary orders or measures, without sending matters back to the hearing. The Sheriff is not bound to consider a change of circumstances in all appeals – only when asked to in the appeal. The change of circumstances should be such to justify a change to the terms of the order⁴⁵. In making any change to an order, the Sheriff is bound to comply with the principles of the child's welfare being paramount, of the need to provide an opportunity for the views of the child to be given and considered (and arguably the Relevant Persons'), and of the making of or variation in the order being better for the child than no order or variation. SCRA [Practice Direction 24](#) on Appeals at 4.5.1 covers the role of the Reporter in this matter.

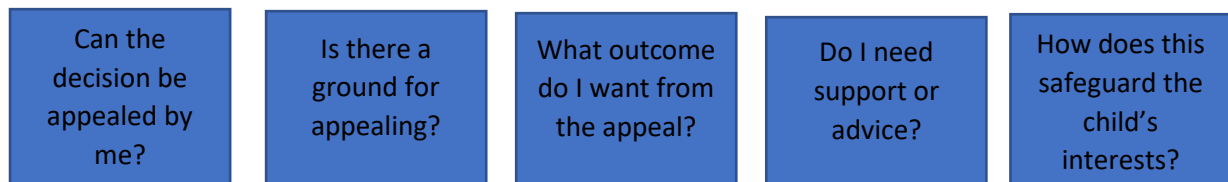
In general, Sheriffs are keen to keep the separation of functions between the Children's Hearings and courts and therefore will avoid deciding themselves on measures needed for the child and allow the appropriate forum i.e. the Children's Hearing to be the place to discuss and decide on these measures.

⁴⁵ Norrie, Children's Hearings in Scotland, 3rd edition, 14-19

Step by step guide to the process for Safeguarder (as appellant)

Considering whether to appeal

This involves several considerations for the Safeguarder:



What can be appealed by the Safeguarder

Safeguarders can appeal:

1. The **Children's Hearing decisions**:
 - a) to make, vary or continue a CSO
 - b) to discharge a referral by the Principal Reporter (to the Children's Hearing)
 - c) to terminate a CSO
 - d) to make an ICSO
 - e) to make an interim variation of a CSO (IvCSO)
 - f) to make a medical examination order (MEO)
 - g) to grant a warrant to secure attendance.
2. a) the **Sheriff's decision** in appeals at 1) above to the Sheriff Appeal Court (and with permission to the Court of Session)
- b) the **Sheriff's decision** to extend or further extend an ICSO

Safeguarders **CANNOT** appeal the following decisions:

1. '**Specific issue**' appeals against decisions by a Children's Hearing:
 - a) Relevant Person determinations (NB a Safeguarder cannot ask for a PHP to deem a RP)
 - b) contact review hearing decision
 - c) implementation or non-implementation of secure authorisation
2. Appeal to the Sheriff Appeal Court where the appeal is against the Sheriff's decision which is:
 - a) a grounds determination or review of established grounds determination
 - b) to make an ICSO

Although a Safeguarder cannot appeal, they may have been involved in the Children's Hearing that made the decision being appealed and they may be involved in or be appointed in the appeal.

What are the grounds for an appeal / legal criteria to appeal

Section 25 in Part 2 covers the legal criteria for an appeal to occur.

It is important that a Safeguarder allows some time to digest a hearing's decision and see the written reasons provided after the hearing.

Even if the decision was not what the Safeguarder thought was the right decision for the child, the Safeguarder should consider - could the decision be considered to be justifiable?

If there was a procedural irregularity, how significant was this and what impact is directly attributable to it? Did it have a material effect on the conduct of or outcome of the proceedings? Did it materially prejudice the child or Relevant Person? Was it damaging to the justice of the proceedings.⁴⁶

Was there an error of law? Was the decision based on a misinterpretation of the law? What impact did it have? Was there an opportunity to correct the unfairness during the hearing and if so, why was this not taken?

Outcome sought from the appeal

The Safeguarder needs to be clear what they want to achieve from successfully appealing the decision. Is what is wanted achievable, even with a successful appeal? Can the outcome be achieved from the appeal?

An appeal needs to be clear about the outcome sought and preparing the appeal form itself, allows the Safeguarder to fully consider the outcome sought.

Support for the Safeguarder

Information about the relevant statutory provisions and the procedure in appeals is contained in:

- Part 15 of the Children's Hearings (Scotland) Act 2011, and Part VIII of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended.
- Children's Hearings in Scotland, Kenneth McK. Norrie (3rd edition) Chapter 14 and section 2-24.
- SCRA Practice Direction 24 on Appeals provides details of appeal procedure from the perspective of the Reporter.

The Safeguarders Panel Team on behalf of Scottish Government offers support of a general nature in relation to appeals in line with their commitment in the Practice Standards for Safeguarders, page 15.

⁴⁶ Norrie, Children's Hearings in Scotland, 3rd edition 14-13 discusses grounds of appeal and references relevant case law

Where a Safeguarder requires legal advice or representation in relation to an appeal, this request can be considered and funding authorised by the Scottish Government if felt to be appropriate. (see Part 1, section 9).

Safeguarding the child's interests

The Safeguarder should consider how appealing safeguards the child's interests. In practice, most appeals are taken by parties, whether Reporter, Relevant Person or child. The Safeguarder has an independent right to appeal and this is connected to their role to safeguard the child's interests.

If the Safeguarder feels that someone else should appeal the decision, then this is for that person to consider and the Safeguarder cannot advise them to. In terms of the **Practice Note on the Role of the Safeguarder, section 6 covers contact after decision during appeal period.**

If the Safeguarder appeals, the Safeguarder is still appointed to the child and is responsible for carrying out that role for the child, during the appeal. The Safeguarder should ensure that their role and function in the appeal is clear to the child, Relevant Person and others in line with their responsibilities to do so ([regulation 8 of the Further Provisions Regulations](#)).

Putting in an appeal (against a Children's Hearing decision)

Drafting

[Form 61](#) is the form to be completed when an appeal is made against a hearing's decision (decisions covered by section 154(1)).

The information required to complete page 1 of the form should be available to the Safeguarder apart from the court reference number which will be completed by the court when the appeal is lodged.

The Safeguarder should complete page 1 but page 2 will be completed by the Sheriff Clerk when the appeal is lodged.

Paragraph 4 is where the appeal reasons should be included. This part should be completed succinctly (the Form states 'state briefly'). As with report writing, the Safeguarder should be clear as to what is being said, what this is based on and what is wanted as an outcome. Considering the appeal and its merits (see section immediately above) will have focused the Safeguarder on what should be included here. The Sheriff and others need to be clear from the terms of the appeal, what is being appealed and on what basis.

The appeal must be signed by the Safeguarder ([court rule 3.53\(3\)](#)).

Lodging

The appeal must be lodged timeously (see Part 2 - Information) with the Sheriff Clerk. The completed Form 1 must be accompanied with a copy of the decision to which the appeal relates and any document relevant to the decision which was before the Children's Hearing ([court rule 3.55](#)). The Reporter is responsible for lodging the Children's Hearing papers and decisions and record ([section 155\(2\)](#)) so that the Sheriff will have these papers, but the Safeguarder appealing must still attach documents relevant to their appeal, to the appeal. The court in which the appeal is to be lodged is the court in the Sheriff court district that the child is habitually resident (court rule 3.55(1A)(c)). If the Safeguarder is unsure what court to lodge the appeal in, he or she can contact the Sheriff Clerk in the court that seems most suitable for the appeal to be heard, to confirm the position.

Notifying

Once lodged, the Sheriff Clerk will assign a date for the appeal hearing (which must be within **28** days of the lodging of the appeal or earlier if a particular appeal needs that (see Part 2 above on timescales to be heard) (court rule 3.54(5)). The Sheriff Clerk also completes page 2 of the Form 61 once the Sheriff has confirmed intimation of the appeal; any dispensation of service on the child and the reasons for this and, appointing answers advised to be lodged the appropriate number of days (e.g. 7) before the appeal hearing.

The Sheriff Clerk, at the same time, intimates the date and time of the appeal hearing with a copy of the appeal Form as completed (with any documents attached to the appeal by the appellant) to the Reporter, the child (unless intimation has been dispensed with), any Relevant Person and any person that the Sheriff considers necessary (this includes authors or compilers of reports before the hearing whose decision is appealed). The child gets a separate intimation Form (64).

Considering answers from others

Parties to the appeal, usually the Reporter, Relevant Persons and child, have the right to provide answers to the appeal. These must be notified to the Safeguarder as appellant. The Safeguarder should consider any answers provided. These may or may not affect the Safeguarder's position on the appeal but will allow the Safeguarder notice of any matter that they may wish to look into further and or have a position on, when the appeal is heard.

Responsibilities in relation to the child

The Safeguarder is still appointed to safeguard the interests of the child during the Safeguarder's appeal and whilst focusing on what is needed for them to conduct their appeal, the Safeguarder needs to ensure that the child's interests are safeguarded appropriately.

The explanation of role and function may require to be revisited by the Safeguarder so that the child is clear about the role.

When considering whether to appeal or not, the Safeguarder should not seek the views of the child (Practice Note on the Role of the Safeguarder at section 6.10) but should consider the impact on the child.

Preparing for the appeal hearing

The Safeguarder should be clear about their appeal and the arguments for the appeal when completing and lodging the appeal.

If answers have been provided or parties have indicated their positions in relation to the appeal, the Safeguarder will have been able to consider these and prepare to answer these or adjust their appeal.

The appeal can be withdrawn by the Safeguarder at any time by indicating this formally to the court and all parties.

If the Safeguarder hopes to lead evidence at the appeal hearing, any witnesses and productions should be intimated to the parties so that they have fair notice and can consider this potential evidence before the hearing. It is for the Sheriff to confirm if evidence will be heard.

The Safeguarder should have cited witnesses appropriately. Copies of any productions (reports or other documents) should be available for all parties, the Sheriff and any witness speaking to them, for use in the court on the day if required. See sections above on citation in grounds applications, which are also relevant for appeals by the Safeguarder.

If the Safeguarder is referring to any relevant case law, copies should also be available for all as a courtesy and for the smooth running of the appeal.

The appeal at court (against a Children's Hearing decision)

Sections above on appeals cover this in general terms. Noted below are differences relevant to the Safeguarder being the appellant.

- **order to be heard** – the Safeguarder will be heard first as appellant – the Sheriff may question the Safeguarder during this – the Reporter usually as 'principal contradictor' would go last in responding to the appeal
- **process** - the process is as described in sections on appeals by others above and should be more discursive, with arguments being made, and supported or challenged, with supporting information or argument by other parties
- **role of Safeguarder as appellant** – the role is to present the appeal and respond to questions about the Safeguarder's position and opposing positions
- **hearing of evidence** – hearing evidence is at the discretion of the Sheriff – where evidence is required, the Safeguarder will be responsible for leading evidence from his or her witnesses (see sections above in relation to witnesses in grounds applications which are relevant)
- **submissions** – these are more relevant when evidence is heard, due to the nature of appeals being largely focused on legal argument, but as appellant the Safeguarder may be asked for final submissions at the end of the appeal hearing. (see grounds section)
- **decision by Sheriff** – the Safeguarder should carefully note the decision and reasons provided and can ask for a written note to be provided by the Sheriff, which is the Sheriff's discretion to agree to. This may be helpful if the Safeguarder is not happy with the appeal and wishes to consider further appeal
- **further appeal** – further appeal against the decision can be made by anyone entitled to do so (see section in Part 2 – Information on appeals to the Sheriff Appeal Court and Court of Session)

Court Practice Note – Word Index for Part 3

TERM	PAGE
Abandoning grounds	93
Affidavits	101
Answers (in appeals)	116, 124
(Case) 'calling'	92
Cross-examination	103
Etiquette	94
Examination in chief	105
Expert witness	105
First calling	90
Joint Minute	100
'Leading' evidence	100, 104-5
Objections	106
Order of parties	104, 107
Precognitions	100, 119
Procedural irregularities	60
The process/record (i.e. court papers)	49
Productions	106
Re-examination	105
Specification of documents	102
Submissions	102, 107, 126
Swearing in witnesses	105
Withdrawing/abandoning an appeal	125

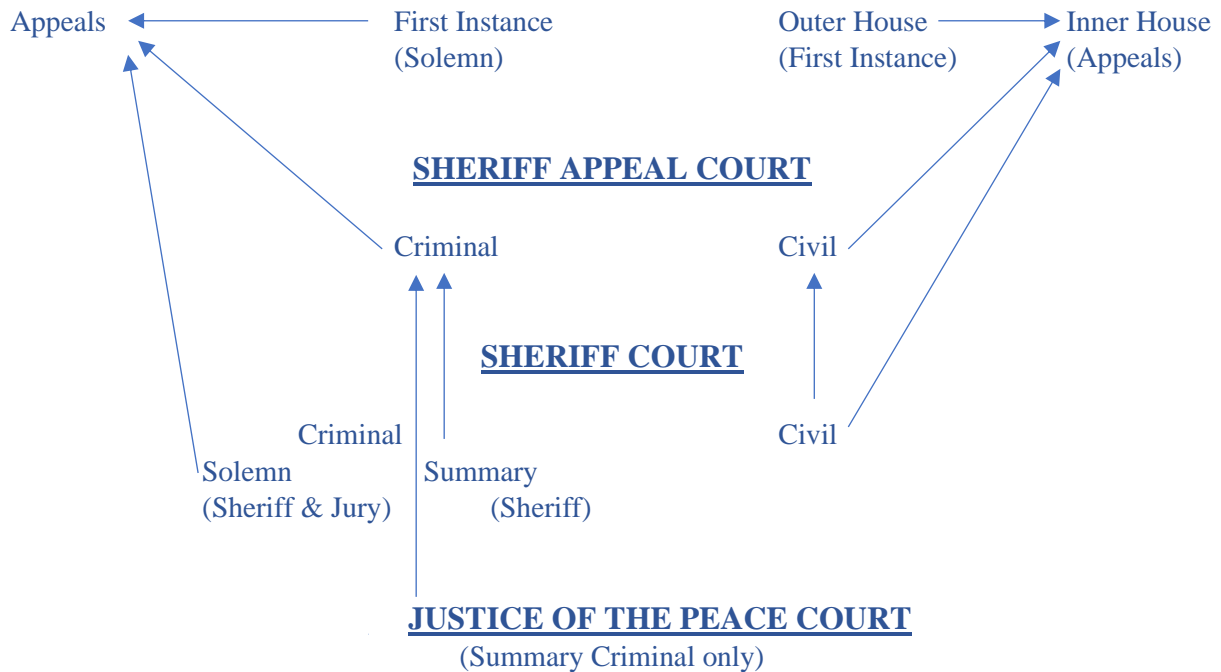


Appendix 1

Scottish Court System

HIGH COURT OF JUSTICIARY
(Criminal)

COURT OF SESSION
(Civil)



COURT OF SESSION

The Court of Session is Scotland's highest civil court and sits in Parliament House in Edinburgh. The Court of Session deals with all forms of civil cases from contract and commercial matters, judicial review or family law matters. Some Judges have specialisms but generally Judges can hear all kinds of cases. The court is headed by the Lord President (The Right Hon Lord Carloway from 2016 previously the Right Hon Lord Gill since 2012) and the second in rank being the Lord Justice Clerk (now The Right Hon Lady Dorrian QC from April 2016 previously the Right Hon Lord Carloway). There are 34 Judges in total.

The Court of Session is divided into the Outer House and the Inner House. The Outer House hears cases at first instance i.e. cases which have not previously been to court. The Judge sits alone or in certain cases with a civil jury of 12. The Inner House is primarily the appeal court hearing civil appeals from both Outer House and Sheriff Courts. Cases are heard by 3 Judges but 5 or more Judges may hear more complex or significant cases. Appeals from the Inner House may go to the Supreme Court of the UK in London.

HIGH COURT OF JUSTICIARY

The High Court is Scotland's highest criminal court. When sitting at first instance as a trial court, it hears the most serious criminal cases such as murder and rape. A single Judge hears cases with a jury of 15 people. At first instance, it sits in cities and larger towns around Scotland often using the Sheriff court in that jurisdiction for the sitting. As an appeal court, it sits mostly in Edinburgh and hears cases from the High Court, Sheriff Courts and Justice of the Peace Courts.

Cases in the **Court of Session** or **High Court** can be presented by

- an **Advocate** - a member of the Faculty of Advocates, equivalent to barrister in England
- a **Solicitor-Advocate** - a member of the Law Society of Scotland, experienced solicitors who obtain an extension of their rights of audience by undergoing additional training in evidence and the procedure of the court of Session.
- A practitioner from another **member state** of the European Union in certain circumstances prescribed by European Communities (Services of Lawyers) Order 1978
- An **individual** who is a party to the case however a firm or company must always be represented by an Advocate or Solicitor-Advocate.

SHERIFF APPEAL COURT – CRIMINAL

The Sheriff Appeal Court (Criminal) was established in September 2015 as part of Lord Gill's court reforms and deals with criminal appeals. It hears appeals against summary criminal proceedings from Sheriff and Justice of the Peace courts. The Bench generally comprises 2 or 3 appeal Sheriffs depending on the type of appeal to be considered.

The Sheriff Appeal Court also hears appeals against bail decisions, heard by a single appeal Sheriff.

SHERIFF APPEAL COURT – CIVIL

The Sheriff Appeal Court (Civil) is also a product of court reforms. It commenced in January 2016 to hear civil cases. The idea is to improve the efficiency and consistency of cases throughout Scotland. The role of Sheriff Principal as adjudicator for determining appeals is now abolished. Decisions of the Sheriff Appeal Court will be binding across the whole of Scotland. Previously, Sheriff Principal decisions were only binding within that particular jurisdiction.

There are 10 Appeal Sheriffs. Now 3 Appeal Sheriffs sitting in Edinburgh will hear appeals although there is provision for procedural business, routine appeals and appeals from small claims and summary cases to be dealt with by a single Appeal Sheriff in the local Sheriffdom. The Sheriff Appeal Court can remit a case to the Inner House of the Court of Session if it considers that the appeal raises a complex or novel point of law. Permission must be sought to appeal from a decision of the Sheriff Appeal Court to the Inner House and will only be granted if the appeal would raise an important point of practice or principle or some other compelling reason. There remains an ability to appeal from a Sheriff direct to the Inner House where existing statute (law) provides for it. E.g. it is possible to appeal against a Sheriff's decision in an appeal against a Children's Hearing decision to either the Sheriff Appeal Court or the Court of Session in particular circumstances.⁴⁷

SHERIFF COURT

The Sheriff Court is where the majority of cases are dealt with unless they are of sufficient seriousness to go to the higher courts we have discussed.

There are 6 Sheriffdoms in Scotland –

- Glasgow and Strathkelvin
- Grampian, Highland and Islands
- Lothian and Borders
- North Strathclyde
- South Strathclyde, Dumfries and Galloway
- Tayside, Central and Fife

If appealing against a Children's Hearing Decision, the Chairperson will tell you which court to appeal to but can check Scottish Courts website www.scotcourts.gov.uk

Each Sheriffdom has a Sheriff Principal who is charged with a number of duties in respect of the courts for which they are responsible, including a duty to secure the efficient disposal of business. Most Sheriffdoms have more than one court however Glasgow and Strathkelvin has only Glasgow Sheriff Court.

Criminal cases are heard by a Sheriff and jury (15 people) in solemn cases (more serious matters) or by a single Sheriff in summary cases.

Civil cases are heard by a single Sheriff sitting alone.

⁴⁷ The Children (Scotland) Act 2020 amended the Children's Hearing's (Scotland) Act 2011 so that appeal is no longer possible directly to the Court of Session.

JUSTICE OF THE PEACE COURT

Justice of the Peace Courts (also known as JP courts) are a unique part of Scotland's criminal justice system. Less serious **criminal** matters are heard in Justice of the peace courts at first instance. The JP courts are located in the same cities as the Sheriff Courts and often within the Sheriff Court building, but there are additional JP courts in other locations throughout Scotland. From 2008 to early 2010, Justice of the Peace Courts gradually replaced the former District Courts which were operated by local authorities.

A Justice of the Peace is a lay magistrate, appointed from within the local community and trained in criminal law and procedure. Justices sit either alone, or in a bench of three, and deal with the less serious summary crimes, such as speeding, careless driving and breach of the peace. In court, Justices have access to advice on the law and procedure from lawyers, who fulfil the role of legal advisers or clerk of court.



Appendix 2

LEGAL JARGONBUSTER

To safeguard the best interests of the child is central to everything Safeguarders do

Absolvitor The judgement pronounced when a court finds in favour of the accused (criminal) or defender (civil).

Accused A person charged with committing a crime or offence.

Action Proceedings started by a person in a civil court.

Acts of Adjournal Regulations as to criminal court procedure made by the High Court of Justiciary.

Acts of Sederunt Acts passed by the Lords of Council and Session relating to civil procedure.

Ad interim In the meantime.

Adjust To alter the written basis of an action or its defence in its early stages.

Ad litem For the purposes of this action only.

Advocate A member of the Scottish Bar (*also Counsel*).

Advocate-depute An advocate or solicitor appointed by the Lord Advocate to prosecute under his directions in the High Court.

Advocate, Lord A senior of the Scottish legal profession who is the Government's chief legal adviser in Scottish matters with responsibilities including the prosecution of crime and the drafting of legislation for Scotland.

Affidavit A signed statement made on oath which, in some cases, the Court can take into account and means witnesses don't have to turn up.

Affirmation The non-religious promise a witness makes that they will tell the truth when they give evidence in court.

Appearance The formal act whereby the defender in a civil action notifies his intention to defend the action.

Aver To state or allege.

Avizandum Judgement deferred (verbal or written decision to be given later).

Brevitatis causa For the sake of brevity

Caveat "Warning" A legal document lodged in court by a party so that no order or ruling affecting him passes in his absence or without his receiving prior notice.

Cite / Citation (i) To summon to court, whether of party, witness, or juror.

(ii) To refer in argument to some authority such as a statute or decided case.

Complaint A document instituting summary (minor) criminal proceedings in a Sheriff or district court setting out the offence charged.

Conclusion In a Court of Session summons the conclusion is the statement of the exact order sought.

Condescendence A printed or written statement in an action setting out the grounds of action of the Pursuer.

Counsel In Scotland a member of the Faculty of Advocates practising at the Bar (*also Advocate*).

Debate Intermediate step in procedure which can result in the end of a civil case prior to proof proceeding. It is a legal argument without evidence being led.

Decree Final judgement.

De facto In point of fact.

Defences The statement by way of defence lodged by the defender being the party against whom a civil action is brought.

Defender A person who disputes the claim of the pursuer and lodges defences.

Diet The date for hearing of a case for any one of a variety of purposes, fixed by the court.

Discharge Release

District Court The court in each district or island area dealing with the most minor criminal offences.

Ex facie On the face of it.

Ex parte Proceedings are *ex parte* when the party against whom they are brought is not heard, e.g. in interdict proceedings an *interim* interdict may be granted *ex parte*.

Ex proprio motu On the court's or judge's own initiative.

Indictment A document setting out the charge(s) against the accused which will be tried by a jury in serious cases in the High Court or Sheriff court in more serious crimes (known as – Solemn Crime).

In hoc statu For the time being, at this stage.

Initial Writ The document by which civil proceedings in the Sheriff court are started.

Inner House The two appellate divisions of the Court of Session.

Instance The part of a summons or writ in which the parties to the action are identified.

Interlocutor An order of court made during the course of an action.

Inter alia among other things.

Interdict A court order sought to prevent a particular action being carried out.

Judicial Review A remedy whereby the Court of Session may review and if necessary rectify the decision of inferior courts, tribunals and other public officers and authorities where no other form of appeal is available.

Jurisdiction (i) In international law the power of the state to enact and enforce legislation. (ii) In national systems the power of a court to hear particular cases as determined by factors such as location or district or the value or type of the case.

Jury A group of lay persons chosen to decide upon issues of fact in legal proceedings. 15 - criminal cases; 12 – civil cases.

Locus Place

Lord Justice-Clerk The second most senior Scottish judge, who presides over the Second Division of the Court of Session.

Lord Justice-General The most senior criminal judge in Scotland. The position is, in modern times, held by the Lord President.

Lords Ordinary The judges who try cases at first instance in the Court of Session.

Lord President The highest civil Judge in Scotland who presides over the First Division of the Court of Session.

Mace An ornamental staff of authority carried by a macer before a judge of the Court of Session or High Court of Justiciary and displayed in his court while it is sitting.

Mens rea Guilty purpose.

Motion An application made in court during the course of an action.

Oath The religious promise a witness makes that they will tell the truth when they give evidence in court.

Obtemper To obey a court order.

Opinion A statement by a court or judge of reasons for the decision in a case.

Outer House The part of the Court of Session which hears cases which have not already been before a court (they may have been before a tribunal or panel).

Parole evidence Oral evidence of witnesses.

Perjury Crime committed by witness of wilfully giving evidence he/she knows to be untrue.

Precognition Written account of evidence witness is likely to give.

Procurator-fiscal Lawyer who presents the prosecution case in the Sheriff Court against the person accused of a crime,

Production An article produced as evidence in court.

Proof Hearing in court when witnesses come to give evidence in civil cases.

Pursuer The person suing in a civil action.

Quantum An amount fixed or specified in money as in a claim for damages.

Quoad ultra As regards everything else.

Record The statements of their respective claims and answers by parties to an action, lodged in court; when finally adjusted it is closed by order of the court and becomes the closed record; up to then it is the open record.

Respondent The party in a civil action defending on appeal.

Rolls Official lists of cases as set down for hearing.

Sheriff The judge in the Sheriff Court.

Sist (i) To stay or suspend court proceedings;

(ii) To add another person in court proceedings as a litigant.

Solemn Procedure The procedure under which a person charged with a serious crime on indictment is tried by a judge of the High Court of Justiciary or a Sheriff with a jury of 15, the votes of eight being sufficient for a conviction.

Solicitor Lawyer who advises on all legal matters, works both in office and can represent clients in court.

Solicitor Advocate Solicitor with specialist qualification to appear in higher courts.

Statute An Act of Parliament.

Statutory Instrument (S.I.) The form in which orders, rules and regulations or other subordinate legislation are made.

Summary Procedure The procedure under which a person charged with a less serious crime on complaint is tried by a Sheriff.

Summons The usual form of writ in the Court of Session to start a civil action.

Trial Criminal proceedings (when an accused person has pled not guilty) where the court hears the evidence of witnesses to the alleged crime(s).

Verdict The decision of a jury on the matter or matters submitted to it by the court.

Vexatious litigant A person who takes proceedings primarily for the annoyance or embarrassment of the defender and whose activities in raising actions may be restrained by the Court of Session.

Warrant A written authority, e.g. from a court, authorising certain actions such as a search of premises or an eviction of occupiers. Also used to signify a document evidencing a right of some kind, e.g. in a title to heritable property. Formal permission by the Court to cite.

Appendix 3

RIGHTS AND DUTIES OF THE SAFEGUARDER AT COURT

DUTIES	PARTY		TIMESCALES
General ⁴⁸ - To ascertain views of the child , if asked by the Sheriff under this rule.		r ⁴⁹ 3.5	
General – Where a report is provided or a recommendation made by the Safeguarder to the Sheriff to assist the Sheriff to determine any matter, the Safeguarder must give the child an opportunity to express their views ; to have regard to these views and to include these, and the means of obtaining them, in the report for the Sheriff.		reg ⁵⁰ 7	
General – To inform the child, any Relevant Person and any person whom the Safeguarder interviews in pursuance of their functions, of the Safeguarder's functions and powers . In particular, to inform the child and any Relevant Person and any other person that the role of the Safeguarder is to safeguard the interests of the child.		reg 8	
General – To treat documents in the court proceedings as confidential and all information obtained in the exercise of the role's duties as confidential and to not disclose any such information unless disclosure is necessary for the purpose of the role's duties.		3.5A	
General - Has the duties at common law of a curator ad litem (see <i>Practice Position 7 in this Note</i>)		r3.8	
General - To determine if child wishes to express a view in relation to the application and if so, transmit views to the Sheriff		r3.8	
General - To make such enquiries relevant to the application as Safeguarder considers appropriate		r3.8	
General – To intimate to the Sheriff Clerk in writing whether or not intends to become a party to the proceedings		r3.8	Without delay, and in any event before the hearing of the application

⁴⁸ 'general' refers to and includes all applications, reviews and appeals to the Sheriff under the Children's Hearings (Scotland) Act 2011 (so covers grounds, child assessment orders, exclusion orders, appeals, reviews by local authorities, review of grounds established, Interim Compulsory Supervision Orders and appeals but not Child Protection Orders (court rule 3.1.(3)).

⁴⁹ 'r' refers to a rule of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended.

⁵⁰ 'reg' refers to a regulation of the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012.

DUTIES (continued)			
General - If an applicant in an application, give notice of the application by serving a copy of the application and order or warrant to cite together with a notice of citation on the persons named in the application and any person who should receive notification		r3.12	Forthwith (<i>after Sheriff Clerk assigns a diet for the hearing and issues a 1st order or warrant to cite</i>)
General – If servicing or citing , to comply with the rules set out (<i>see Practice Note on Court Part 3 section 2 Step 3 under citing a witness where service is discussed</i>)		r3.12-18	Citation/notice not later than 48 hours (72 if postal) before the date of the diet (apart from certain appeals and other matters covered in r3.13(2))
Grounds – To comply with any order (on parties) by the Sheriff to secure the expeditious determination of the application.	P	r3.46A	
Grounds – To comply with any exclusion by the Sheriff during any child’s evidence.		r3.47(6)	
Appeal – To provide a report to the Sheriff for the purposes of assisting the Sheriff in determining an appeal under s ⁵¹ 154, if required by the Sheriff.		reg 6	
Appeal – To sign appeal on behalf of a child.		r3.53(3)	
Appeal – intimate answers lodged on any person served a copy of the application (see rule 3.54(1)).		r3.55	
Appeal – As an author or compiler of a report be examined by the Sheriff.		r3.56(1)	
Appeal – To comply with any exclusion by the Sheriff during any child’s evidence .		r3.56(5)	
Appeal – To comply with any order by the Sheriff to secure the expeditious determination of the appeal on adjournment or continuation granted by the Sheriff.	P	r3.57(2)	
Application for Review by Local Authority – as a party, to comply with a requirement to lodge answers .	P	r3.58B	Lodge within such time as the Sheriff shall appoint

⁵¹ ‘s’ refers to a section of the Children’s Hearings (Scotland) Act 2011.

RIGHTS TO NOTICE OF COURT HEARINGS	PARTY		TIMESCALES
General – To receive notice of an application - to be given to a Safeguarder in Form 40 .		r3.12(2)	
General – The Sheriff Clerk to cite Safeguarder as an author or compiler of any reports or statements or as a person whom the Sheriff may wish to examine in an appeal against a Children's Hearing decision (s154), if the Sheriff so wishes.		r3.16(3)	
Grounds – Applications for evidence of a witness or party or a submission to be made through live link by a party - intimation on Safeguarder as a party.	P	r3.22-23	Application to be lodged with the Sheriff Clerk prior to hearing at which the witness is to be heard/submission made
Grounds – To be intimated by the Reporter of the withdrawal of the whole or part of the application.		r3.46	
Appeal – To be intimated by the Sheriff Clerk of the date of the appeal together with a copy of the appeal.		r3.54(1)	On lodging Sheriff Clerk to forthwith assign a date and at the same time intimate with copy appeal
Applications for Review by Local Authority – To be notified of the application by the Sheriff Clerk by being served with a copy of the application and warrant to cite.		r3.58B	On lodging Sheriff Clerk assigns date and issues a warrant to cite (requiring any party to lodge answers) -after issuing give notice forthwith
Appeal - Leave of Sheriff Appeal Court to appeal to the Court of Session – to be intimated of the application and the date of the hearing, as a party.	P	Rule 30(5)(4)(b) of the Sheriff Appeal Court Rules 2016	'On receipt of the application, the Clerk must intimate the date, time and place of the hearing fixed to occur no later than 14 days after the application is received.'
Application to Review Grounds Determined – To be served notice of the application by the applicant by being served a copy of the application and warrant.		r3.62-3	Forthwith (after applicant receives warrant to cite from Sheriff Clerk)
Orders - ICSOs – To receive intimation of the application from the Reporter, if the Sheriff considers the Safeguarder to be a person to receive intimation.		r3.64A	<i>Nb If Sheriff specifies place of safety, must be an urgent Children's Hearing - see s109(7)</i>

	RIGHTS TO INFORMATION	PARTY		TIMESCALE
	General - Right to all documents lodged in process unless Sheriff directs otherwise.		r3.5A(1)	
	General – Right to receive from Reporter copies of the application .		R3.8	
	General – Right to receive from the Sheriff Clerk, all interlocutors subsequent to appointment.		r3.8	
	Appeals – Right to receive a copy of any further report required and received by the Sheriff, as a party.	P	r3.56(2)	

RIGHTS TO PROVIDE INFORMATION/CONTRIBUTE	PARTY		TIMESCALE
General – To convey views of child to the Sheriff, <i>where Sheriff has asked under r3.5</i>		r3.5	
General – Has the powers at common law of a <i>curator ad litem</i> (see <i>Practice Note on Court Part 1 section 7</i>)		r3.8	
General - Right to make such enquiries relevant to the application as the Safeguarder considers appropriate.		r3.8	
General – Right to appear personally or instruct a solicitor or advocate who cannot also act for child in the proceedings.		r3.9	
General – Right to serve, cite and give notice (see <i>Practice Note on Court Part 3 section 3 Step 6 under citing a witness where service is discussed</i>)		r3.12-18	
General – Evidence – -make live link applications for witness or party -make representations at the hearing of these applications, if intimated as a party	P	r3.22-23	
Grounds - Fast track grounds application – ask Sheriff to hear evidence.		r3.45(4)-(7)	
Grounds - Sheriff can dispense with evidence if grounds no longer in dispute – if Safeguarder still in dispute – can have evidence heard.		r3.47(A1)	
Grounds – As a party, be provided with an opportunity to be heard on the question of sufficiency of evidence in offence by child grounds.	P	r3.47(2)	
Grounds – To give evidence and, with the permission of the Sheriff, call witnesses .		r3.47(4A)	
Grounds - When child excused , stay in the court in the child's absence.		r3.47(5)	
Grounds – As a party, apply for evidence of a witness or party or, a submission to be made, through a live link .	P	r3.22-3	
Grounds - If appointed after evidence heard in part, Sheriff may order evidence to be reheard in full or in part.		r3.47(8)	
Grounds –If a party, apply for amendment .	P	r3.48	
Grounds – If a party, ask for adjournment .	P	r3.49	
Appeal – To appeal (see <i>Practice Note on Court Part 2 on the Safeguarder as Appellant</i>)			
Appeal – To provide and lodge answers to an appeal.		r3.55	Lodge no later than 7 days before the diet fixed for the hearing of the appeal

	Appeal - As appellant and or as a party, to be heard first in the appeal.	(P)	r3.56(1)	
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RIGHTS TO NOTIFICATION OF DECISIONS	PARTY		TIMESCALE
Grounds - To be sent by the Sheriff Clerk a copy of the interlocutor containing the Sheriff's decision (provided orally at the conclusion of the hearing). - To be sent any note of the reasons for the decision provided at the conclusion of the hearing or within 7 days thereafter.		r3.51	Forthwith
Appeal – To be sent by the Sheriff Clerk a copy of the interlocutor containing the Sheriff's decision (provided orally at the conclusion of the hearing or on such day as the Sheriff appoints (unless legislation does not allow deferring decision). - To be sent any note of the reasons for the decision provided at the same time as the decision or within 7 days thereafter (<i>where s156(2) or (3) applies - Sheriff must provide note</i>).		r3.58	Forthwith
Application for Review by Local Authority – receive copy of decision - as r3.51 above		r3.58B	
Appeal Sheriff Appeal Court – to be intimated, by the Sheriff Clerk, of the Sheriff Appeal Court's written decision where the Court has reserved judgement rather than providing the decision on hearing the appeal.	P	Rule 30(4) of the Sheriff Appeal Court Rules 2015	Sheriff Appeal Court, where judgement is reserved, to give written decision to Sheriff Clerk within 28 days of hearing the appeal
Application to Review Grounds Determined – To receive copy of decision - as r3.51 above.		r3.63(4)	
Orders -Interim Compulsory Supervision Order –To receive intimation from the Reporter of the Sheriff's order , if Sheriff considers Safeguarder to be a person to receive this -Medical Examination Order – If the Sheriff varies or continues the Order, to receive intimation of the order (as a party).	P	r3.64A(6)	

Appendix 4

Form 60 **Form of application to Sheriff under section 93(2)(a) or 94(2)(a) of the Children's Hearings (Scotland) Act 2011**

Rule 3.45(1)

Court ref. no.:

SHERIFF COURT AT (*insert place of Sheriff court*)

Application to Sheriff under section *93(2)(a) and/or 94(2)(a) of the Children's Hearings (Scotland) Act 2011

by

The Principal Reporter

in the case of

[insert name of child]

1. At *[insert location of Children's Hearing]* on *[insert date]* a Children's Hearing gave a direction to the Principal Reporter under section *93(2)(a) and/or 94(2)(a) of the Children's Hearings (Scotland) Act 2011 in respect of *[insert name of child]*
2. *The hearing appointed *[insert name and designation]* as a Safeguarder/no Safeguarder was appointed.
3. *[An interim compulsory supervision order is in force in relation to the said *[insert name of child]*, which *[insert details of what that order specifies]*] OR [No interim compulsory supervision order is in force in relation to the said *[insert name of child]*].
4. A copy of the statement of grounds by the Principal Reporter setting out the section 67 grounds of referral of the case of the said *[insert name of child]* to the Children's Hearing is attached [*together with the report(s) of the Safeguarder].
5. (a) The said **[insert name of child]* and/or **[insert name and address and status of the relevant person or persons (within the meaning of Rule 3.1(1))]* did not accept *[specify ground(s) not accepted]* of the statement of grounds.
 (b) The **[Children's Hearing]**[grounds hearing]* was satisfied that the said **[insert name of child]* and/or **[insert name and address and status of the relevant person or persons (within the meaning of Rule 3.1(1))]* would not be capable of understanding or has not understood the explanation given in compliance with section 90(1) of the 2011 Act in relation to a section 67 ground.

6. The Principal Reporter applies to the Sheriff to determine whether the section 67 ground(s) not accepted by the said *[insert name of child] or [insert name of relevant person or persons (within the meaning of Rule 3.1(1))] are established.
7. The Principal Reporter intends to call the following witnesses (*specify names and roles of witnesses*):
- *8. The Principal Reporter requests the Sheriff to remove the obligation on the child to attend the hearing in view of [insert reason]. The Principal Reporter requests the Sheriff to dispense with service on [insert name of child] on the basis that [insert reason].

(Signed)

(name, designation and address, telephone number, [DX and fax numbers])

(Date)

[Insert place and date]

The Sheriff—

1. Assigns *[insert date]* at *[insert time]* within chambers at *[insert name and place of court]* for the hearing of evidence in respect of the application.
- *2. Appoints the Principal Reporter forthwith to serve a copy of the application and relative statement of grounds and this warrant on—
 - a. the child, *[together with a notice in [*Form 31 or Form 31A]] or [orders service of the following documents only *[insert details of documents to be served on child e.g. notice in Form 31/Form 31A only]*]; and
 - b. *[insert name of relevant person or persons (within the meaning of Rule 3.1(1))]* together with a notice in Form 39 or Form 39A as the case may be.
 - c. any Safeguarder *[insert name and designation]*.
- *3. Orders that the address of *[insert name]* should not be disclosed in the application.
- *4. Dispenses with service on the child or any other person for the following reasons *[insert details]*.
- *5. Dispenses with the obligation on the child to attend the hearing in view of *[insert details]*.
6. Grants warrant to cite witnesses and havers.

(Signed)

(Sheriff or Sheriff Clerk)

*7-day hearing (where child unable to understand grounds)

[Insert place and date]

The Sheriff assigns *[insert date]* at *[insert time]* within chambers at *[insert name and place of court]* for a procedural hearing in terms of section 106(4) of the 2011 Act and ordains parties to attend if so advised.

(Signed)

(Sheriff or Sheriff Clerk)

*(*delete as appropriate)*