



Centre for excellence
for looked after children in Scotland



lawyers for
children & young people

From Act to Practice Practitioners Seminar

Handout 1

Scenario

Jess is a thirty-year old woman with a four-year old daughter, Lucy.

Lucy attends nursery while Jess works part-time in a shop and has done so since Lucy was two years old. Lucy's father, David, lives with his new partner and baby son in the same town. Lucy stays with him every second weekend and sees him intermittently in between. Jess and David get on quite well, but do not socialise.

Jess started seeing Harry nine months ago. He does not live with the family, but he stays over at least twice a week. He is a heavy drinker and Jess has recently begun to drink heavily too.

Jess split up with Harry three months ago and became more lethargic and seemed depressed. She told the manager of the nursery that she is frightened of Harry and now only leaves the house to take Lucy to nursery and to go to work. She suffered from serious depression two years before Lucy was born and feels that it has returned. Jess agreed that the manager of the nursery could talk to her Health Visitor. She does not want David, Lucy's father, to know about any of this.

Lucy has increasingly been tired and sometimes hungry when she arrives at nursery. Three times she told staff she does not like Harry, but did not elaborate. Twice, Jess picked Lucy up from nursery looking very tired. One time Jess had a bruise on her face that she said happened when bumped her head on a kitchen cupboard.

Anne, the Health Visitor, visits Jess and Lucy, then calls a Team Around the Child meeting. At this meeting, Jess reveals that she has begun to see Harry again, saying that she is afraid he will hurt her if she does not. She agrees for Women's Aid to be involved.

After two more months, Jess has avoided several meetings with any professionals. She has left her job and taken Lucy out of the nursery. The Women's Aid worker had met her twice and was very concerned about her mental health. The Health Visitor talks to the GP and discovers that Jess has seen her and been prescribed anti-depressants and that the GP has concerns about the welfare of her child.

The Children's Hearing System

A referral is made to the Reporter and a Children's Hearing arranged. Lucy is subject to a Compulsory Supervision Order.

At the first annual review Children's Hearing, Lucy remains on the Order. Progress in the work with Jess has been slow and Lucy's demeanour has remained unhappy even though her attendance at nursery is increased.

After the first annual review Children's Hearing, Jess appears to work more positively with the Team Around the Child. She has been able to address her drinking and her depression is improving.

Jess has a new job and does not see Harry. Lucy has moved from nursery to school. After a difficult start, she is now attending consistently and seems happier there. She seems happier at home too.

At the first annual review Children's Hearing, Lucy is taken off the Compulsory Supervision Order.

Moving to Compulsion

REFERRAL TO THE REPORTER

Referral Requirements:

Duties are placed on a **local authority** if it considers that a child is *in need of protection, guidance, treatment or control and that it might be necessary for a compulsory supervision order to be made* in relation to the child. The local authority must make all necessary enquiries and give any information to the Reporter (Section 60 of the Children's Hearings (Scotland) Act 2011). The **police** must also refer but are under no duty to investigate (Section 61). **Any other person** who considers a child to have the above needs can also give information to the reporter but is under no duty to do so (Sections 64).

Compulsory Supervision Orders requirements:

A Children's Hearing can only make a compulsory supervision order where it is satisfied that

- a ground (as listed in Section 67) relating to the child is accepted by the child and each relevant person or established by a court if the grounds are not accepted, and
- that it is necessary to make a compulsory supervision order for the protection, guidance, treatment or control of the child (Sections 91 and 119).

The order must contain a measure or measures available from a range of measures required to meet the needs of the child. These measures are listed in the legislation (Section 83). A compulsory supervision order must specify a local authority to implement the order and the timescale (up to a year maximum) for how long the order needs to last.

INVESTIGATION AND DECISION MAKING BY THE REPORTER

Role of the reporter on referral:

Where the reporter has received information about a child or where the reporter feels that a child might be *in need of protection, guidance, treatment or control*, the reporter can investigate to the extent that the reporter considers is necessary for the reporter to make a decision about the need to refer the child to a hearing. The reporter can require a local authority to provide a report (Section 66).

The reporter must decide

- if a ground from the list of grounds in section 67 applies to the child. The reporter can investigate specifically to be satisfied that there is sufficient evidence in law to show that the ground can be proved in a court if necessary, and
- that it is necessary for a compulsory supervision order to be made for the child (Section 66).

If there is no, or not enough, evidence or if there is no need for an order, the reporter will not refer the child to a hearing. If the reporter decides that there is evidence for a ground and a need for an order then the reporter must arrange a children's hearing for the child (Sections 68 and 69).

REFERRAL TO THE CHILDREN'S HEARING

Moving to Compulsion (continued)

ARRANGING THE CHILDREN'S HEARING

Arrangements for the Hearing:

The National Convenor of Children's Hearings Scotland appoints panel members who sit as a children's hearing locally (section 4, 5 and 6). The Scottish Children's Reporter Administration is responsible for providing a venue for the hearing to sit (Section 15).

The reporter must make sure that:

- the correct people are notified of a child's hearing (Rules Parts 6 - 11)
- the statement of the grounds detailing the concerns for the child is written (Section 89)
- the information required for the hearing to make a decision is available and sent to all the appropriate people (Rules Parts 6 - 11)
- that any matter needing a decision from a pre-hearing panel is arranged (Section 79 and Rules Part 12)

The order must contain a measure or measures available from a range of measures required to meet the needs of the child. These measures are listed in the legislation (Section 83). A compulsory supervision order must specify a local authority to implement the order and the timescale (up to a year maximum) for how long the order needs to last.

AT THE CHILDREN'S HEARING

Children's Hearings' requirements:

The hearing for a particular child has duties to make sure that

- anyone with a duty to attend the hearing is there or is excused from attending (Sections 73-78)
- papers have been received within appropriate timescales (Rule 58)
- there has been a chance for people to look at papers and understand them (Rule 58)
- the purpose of the hearing is explained (Rule 58)
- the views of the child are available if the child wants to express these (Section 27, 121 & Rule 58)
- the substance of any report or document is clear (Rules 60)
- steps are taken to support the participation of the child or relevant person (Rule 61)
- views are taken about the information in papers or discussed at the hearing and what measures are required (Rules Part 15)
- the decision and reasons for the decision of the hearing are told at the hearing and recorded (Rules 61-4)
- information about rights to challenge and review decisions are given at the hearing (Rules 61-4)

The hearing can

- defer making a decision and ask for further information (Section 91)
- send the ground of concern to the court if the ground is not accepted or understood (Section 93)
- make short term interim orders whilst a decision is deferred (Sections 91 and 93)
- discharge the matter from the hearing whether the grounds are accepted or not (Section 91 & 93)
- make a decision to make a compulsory supervision order with one or more measures attached (Sections 91 & 120)

The reporter is responsible for notifying decisions within appropriate timescales (Rules Part 20).

COMPUSORY SUPERVISION ORDER MADE

Exercise 1

On your own, please think about the following question. Then have a short discussion in your group.

Q. How can things change in your relationship with parents and carers when the team around the child decides to refer to the Reporter?

Moving to Compulsion | Rights of the Child or Young Person

Pre-hearing Panel:

- Right to ask for a pre-hearing panel to consider someone being made a relevant person (s.79*)
- Right to ask for a pre-hearing panel to consider excusing a child or relevant person from attending the hearing (s.79)
- Right to ask for a pre-hearing panel to consider whether it is likely that secure accommodation authorisation will be made (and therefore legal representation for the child may be accessed) (s.79)
- Right to notification of a pre-hearing panel (r.45*)
- Right to provide written representations or to give a report or other document to the pre-hearing panel (r.26)
- Right to attend a pre-hearing panel and to make verbal representations (s.78)
- Right to ask for special methods to communicate with a hearing or pre-hearing panel in certain circumstances (r.19)
- Right to be notified of a decision and the reasons for the decision of a pre-hearing panel (r. Part 12)
- Right to appeal the decision of a pre-hearing panel to deem or not deem a relevant person (s.160)

Before the Children's Hearing:

- Right to notification of a hearing (Rules Part 12)
- Right to provide written representations or to give a report or other document to a hearing (r.23)
- Right to get a copy of grounds, reports or other information being provided for the hearing (unless the Reporter decides that the child is incapable of understanding (r.18)
- Right to have the report writers include views in a report provided, including views provided to the local authority by another person (r.8)
- Right to have a safeguarder provide an opportunity to express views and for the safeguarder to include the views and the means by which the safeguarder obtained the views in the safeguarder's report
- Right to be told of information being withheld from a person (r.15)

At the Hearing:

- Duty to attend a children's hearing unless excused (s.73)
- Right to attend a children's hearing (s.78, s.79 and s.103)
Right to have a representative attend a children's hearing and to have a legal representative attend (s.78)
- Right to Legal Aid and advice (s.191)
- Right to object to the chair of the hearing granting permission to someone (who is not considered necessary for the proper consideration of the matter before the hearing) to attend the hearing (s.78)
- Right to be informed of the substance of any relevant report or other relevant document at the hearing
- Right to have the panel members introduced and for the purpose of the hearing to be explained (r.59(1))
- Right to object to someone attending the hearing who is not necessary to the discussion at the hearing (s.78)

* 's.' refers to a section of the Children's Hearings (Scotland) Act 2011 and 'r.' refers to a rule of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

Moving to Compulsion | Rights of the Child or Young Person (continued)

At the Hearing (continued)

- Right to have the chair of the hearing explain the grounds and to ask if the grounds are accepted (s.90)
- Right to be asked whether documents provided for the hearing accurately reflect any views expressed by him or her (s.121) and if they do not, for the chair to try to clarify their views (r.58(2)).
- Right to be given the opportunity to express a view and for the hearing to have regard to that view (s.27).
- Right to be informed of the availability of children's advocacy services (s.122).
- Right to have the chair of the hearing take reasonable steps to ensure that he or she understands and participates in the proceedings (r.6).
- Right, during the hearing, if wishes to express a view, for the chair to make reasonable arrangements to express views in a manner preferred by the child (r.6, 19)
- Right to ask for the hearing to be adjourned (r.7)
- Right to be asked if all relevant information and documents for the hearing have been received and that there has been an opportunity to review and whether they have been understood (r.58).
- Right to be informed of the substance of any relevant report or other relevant document (r.60).
- Right to have their views obtained, in relation to reports, documents or any matter that the hearing consider, as to what measures would be in their best interests (r.60).
- Right to have an interpreter or to have other steps taken to secure participation (r.61)
- Right to be told of decision, reasons and appeal and related suspension rights at a hearing (r.62).

At court:

- Right to be represented at court by another person who need not be a solicitor (s.104, 113)
- Right to accept the grounds at court (s.105)
- Right to ask the court for a hearing on evidence (s.106)
- Right to apply to the court to have a review of the grounds established (s.110)

Reviewing the compulsory supervision order:

- Right to request a review of a compulsory supervision order (s.132)
- Right to request a review of a court decision on grounds (s.110)

Appealing decisions:

- Right to appeal a decision of a children's hearing including a decision that gives or removes relevant person status (s.142, 154, 160)
- Right to appeal the grounds for referral established by the sheriff to a higher court (s.163)
- Right to request that evidence be heard at an appeal against a hearing's decision (s.155)
- Right to request a hearing to consider suspending a hearing decision that is being appealed against (s.158)
- Right to obtain leave of the court to appeal if deemed a frivolous or vexatious appellant (s.159)
- Right to appeal a decision to deem or not deem or to undeem a relevant person (s.160)
- Right to appeal against a decision to implement or not to implement a secure authorisation (s.162)
- Right to appeal from the sheriff to a higher court in certain circumstances (s.163-5)
- Right to appeal to the Sheriff Principal about a decision of the sheriff court about which local authority is the relevant local authority for a child (s.167)
- Right to legal aid and advice (s.191)

Moving to Compulsion | Rights of the Relevant Person

Pre-hearing Panel:

- Right to ask for a pre-hearing panel to consider someone being made a relevant person (s.79*)
- Right to ask for a pre-hearing panel to consider excusing a child or relevant person from attending the hearing (s.79)
- Right to ask for a pre-hearing panel to consider whether it is likely that secure accommodation authorisation will be made (and therefore legal representation for the child may be accessed) (s.79)
- Right to notification of a pre-hearing panel (r.45*)
- Right to provide written representations or to give a report or other document to the pre-hearing panel (r.26)
- Right to attend a pre-hearing panel and to make verbal representations (s.78)
- Right to ask for special methods to communicate with a hearing or pre-hearing panel in certain circumstances (r.19)
- Right to be notified of a decision and the reasons for the decision of a pre-hearing panel (Rules Part 12)
- Right to appeal the decision of a pre-hearing panel to deem or not deem a relevant person (s.160)

Before the Children's Hearing:

- Right to notification of a hearing (r. Part 12)
- Right to provide written representations or to give a report or other document to a hearing (r.23)
- Right to get a copy of grounds, reports or other information being provided for the hearing (Rules Part 12)
- Right to be told of information being withheld from a person, unless that person is the relevant person that the information is being withheld from (r.15)

At the Hearing:

- Duty to attend a children's hearing unless excused or a hearing decides that it is appropriate to proceed in the absence of them (s.74 and s.75)
- Right to attend a children's hearing unless excluded from all or part of the hearing (s.78 ,76 and rule 59)
- Right to be told what has taken place if excluded from a children's hearing (s.75)
Right to have a representative attend a children's hearing and to have a legal representative attend unless excluded from the hearing (s.78 and s.77)
- Right to Legal Aid and advice (s.191)
- Right to object to the chair of the hearing granting permission to someone (who is not considered necessary for the proper consideration of the matter before the hearing) to attend the hearing (s.78)
- Right to be informed of the substance of any relevant report or other relevant document at the hearing

* 's.' refers to a section of the Children's Hearings (Scotland) Act 2011 and 'r.' refers to a rule of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

Moving to Compulsion | Rights of the Relevant Person (continued)

At the Hearing (continued)

- Right to have the panel members introduced and for the purpose of the hearing to be explained (r.59)
- Right to object to someone attending the hearing who is not necessary to the discussion at the hearing (s.78)
- Right to have the chair of the hearing explain the grounds and to ask if the grounds are accepted (s.90)
- Right to have the chair of the hearing take reasonable steps to ensure that the relevant person understands and participates in the proceedings (r.6)
- Right to ask for the hearing to be adjourned (r.7)
- Right to be asked if all relevant information and documents for the hearing have been received and that there has been an opportunity to review and whether they have been understood (r.58)
- Right to be informed of the substance of any relevant report or other relevant document (r.60)
- Right to have their views obtained, in relation to reports, documents or any matter that the hearing consider, as to what measures would be in their best interests (r.60)
- Right to have an interpreter or to have other steps taken to secure participation (r.61)
- Right to be told of decision, reasons and appeal and related suspension rights at a hearing (r.62)

At court:

- Right to be represented at court by another person who need not be a solicitor (s.104, 113)
- Right to accept the grounds at court (s.105)
- Right to ask the court for a hearing on evidence (s.106)
- Right to apply to the court to have a review of the grounds established (s.110)

Reviewing the compulsory supervision order:

- Right to call a review of a compulsory supervision order (s.132)
- Right to request a review of a court decision on grounds (s.110)
- [Duty if intend to take child to live outwith Scotland to tell the local authority and the Reporter \(s.134\)](#)

Appealing decisions:

- Right to appeal a decision of a children's hearing including a decision that gives or removes relevant person status (s.142, 154, 160)
- Right to appeal the grounds for referral established by the sheriff to a higher court (s.163)
- Right to request that evidence be heard at an appeal against a hearing's decision (s.155)
- Right to request a hearing to consider suspending a hearing decision that is being appealed against (s.158)
- Right to obtain leave of the court to appeal if deemed a frivolous or vexatious appellant (s.159)
- Right to appeal a decision to deem or not deem or to undeem a relevant person (s.160)
- Right to appeal against a decision to implement or not to implement a secure authorisation (s.162)
- Right to appeal from the sheriff to the Sheriff Principal and or Court of Session in certain circumstances (s.163-5)
- Right to appeal to the Sheriff Principal about a decision of the sheriff court about which local authority is the relevant local authority for a child (s.167)
- Right to legal aid and advice (s.191)

RELEVANT PERSONS

AUTOMATIC STATUS AS A RELEVANT PERSON

- **Mother** (but not if they had parental rights and responsibilities and a court has removed these)
- **Father** (but not if they had parental rights and responsibilities and a court has removed these)
- **Persons with parental rights and responsibilities** (but not if only have a contact order or a special issue order)
- **Persons with a residence order**
- **Persons with parental rights and responsibilities under a permanence order**

DEEMED TO BE A RELEVANT PERSON

Only a Pre-Hearing Panel or a Children's Hearing can deem someone a relevant person if they do not fit in the box above and if they fit the criteria:

that they have or have recently had a significant involvement in the child's upbringing

Moving to Compulsion | Information - Disclosing & Not Disclosing

Rights to information:

The child and all relevant persons have rights to all information that is to be available and discussed at a children's hearing unless the provisions of the legislation, including rules and regulations, that relate to the non-disclosure of information apply.

Non-disclosure of information provisions:

The legislation allows for information not to be disclosed to a person if the disclosure of the information to that person would be likely to cause the child significant harm (s.178 and r. Part 19).

It is a hearing that makes the decision and there is a process for requesting non-disclosure contained in the rules. The information not to be disclosed must be specified as well as the person or persons to whom the information is not to be disclosed and why. The person has a right to know that there is information that they have not yet seen and that there will be a decision by the hearing about the disclosure of the information. At the hearing deciding on non-disclosure, all persons with rights can give their views about non-disclosure to the hearing.

The threshold for the hearing deciding not to disclose information is high: *significant harm to the child*.

The reporter also has a right under r. 16 to withhold information that the reporter would normally be obliged to disclose where the reporter considers that disclosing the *whereabouts of the child or any relevant person* would be *likely to cause significant harm to the child or any relevant person*.