



## Children's Hearings (Scotland): a foster carer's guide

Many of the children and young people now in foster care in Scotland are subject to a supervision requirement made at a Children's Hearing. Consequently, more and more foster carers are coming into contact, directly or indirectly, with the Children's Hearings system, or 'the panel' as it is often called. It is therefore important for foster carers to know about Children's Hearings and how such placements are made within the Children (Scotland) Act Regulations and Guidance 1996.

The Children's Hearing makes decisions about children, such as where they are to live, and agrees work by social workers and others and contact with parents. As carers, you have a part to play and you should discuss your views on what is the best for the child with social workers and parents and at the Children's Hearing.

### Why Children's Hearings?

The Children's Hearings system is unique to Scotland and has been in operation since 1971. (Social Work (Scotland) Act 1985)

The system has key responsibilities for children and young people who may be in need of compulsory measures of supervision.

This includes children and young people who have committed offences, who are beyond parental control or have persistently failed to attend school, and children and young people who have been abused or neglected. It is cases of abuse or neglect that increasingly involve foster carers, either in emergency placements whilst allegations are investigated, or in more permanent placements which may involve carers in attending reviews at Hearings.

The Reporter to the children's panel, an independent official appointed by the Scottish Children's Reporters Administration, is responsible for the day-to-day running of the Children's Hearings system. Any member of the public concerned about the welfare of a child can contact the Reporter.

The majority of referrals come from the police, social work department and education authorities. The Reporter, when receiving information, will make enquiries about the children and young people referred and may initially seek reports from the social work department on the circumstances of the child and family. This process is the same whether the referral concerns offences allegedly committed by the child or young person, or where the child is thought to be 'at risk'. The Children (Scotland) Act 1995 specifies the conditions to be considered regarding the need for compulsory measures of supervision. These are known as the 'grounds of referral'. Following this initial investigation, the Reporter will only convene a Children's Hearing if compulsory measures of supervision are thought necessary and, when this is done, the local authority social work department will provide a report to be considered at the Hearing.

## What happens at a Hearing ?

The law provides special arrangements for Hearings. They take place in a relatively informal setting, often around a table, but not in courtrooms. Parents, guardians and other 'relevant persons' (see page 3), who include foster carers, have a right to attend the Hearing, and are obliged to attend unless the hearing agrees otherwise.

At the Hearing, the child or young person, parent(s) and other relevant persons will be introduced to three members of the local children's panel.

Panel members are people from the local community who volunteer their services. They receive training, both before and during their service as panel members, and are appointed by Scottish Ministers. At each Hearing there must be one male and one female panel member.

A Children's Hearing does not concern itself with questions of guilt or innocence, or whether the child has offended or been offended against. Any dispute about the 'grounds of referral' is referred to the sheriff court for proof. The aim of the Hearing is to consider all the circumstances with the child and family and to decide whether there is a need for compulsory measures of supervision.

The Reporter and the child's social worker will also be present. A friend of the family – perhaps a relative, neighbour or youth leader – can accompany the child or parents as a representative. The child or young person and parents can have separate representatives.

Foster carers who have looked after a child or young person for a period of time are now recognised as relevant persons in the Hearing system. This means that they have a right to be notified of a Hearing, receive all relevant papers, attend the Hearing, and appeal against the decision if they are unhappy with it. They may also take a representative to the Hearing.

The Hearing can only start discussing the case if the child or young person, parents and relevant persons agree to the grounds of referral.

If the child is too young to understand, or if there is any dispute or doubt about the grounds, the matter has to go to the local sheriff court to be proved.

Once the grounds are established, the Hearing will openly discuss – on the basis of reports provided – how best to help the child or young person. Relevant persons, including parents and foster carers, and children and young people over a certain age, now have a right to see reports presented to the Panel. It is up to the Hearing to decide, giving reasons, whether compulsory measures of supervision are required. If so, they will make a supervision requirement that may contain any conditions relating to the child, which have been imposed by the Hearing. The social work department supervises most children at home, but others will be supervised in a residential establishment or with foster carers.

## Safeguarder

A safeguarder is a person (from amongst a panel of approved persons) appointed by the chair of a Hearing, or by the sheriff, to provide additional information on what decision would be in the interests of the child.

Each Hearing must decide whether it is necessary to appoint a person to safeguard the interests of the child in the proceedings. There does not need to be a conflict of interest between the child or young person and their parent.

The safeguarder will provide an independent report to the Hearing/court, and will speak to it as required in the Hearing.

## Deciding on a foster home

The decision to place a child or young person with foster carers as a condition of a supervision requirement rests with the Children's Hearing. For this to happen, the local authority will have to provide a report to the Hearing that gives appropriate information about the placement and its suitability for meeting the needs of the child or young person. This report should also confirm that the foster carers have been approved within the requirements of the Regulations. A report will not, however, be required if the placement is only made under a temporary warrant issued by the Hearing.

## Can carers attend?

Foster carers' status, rights and responsibilities in the Children's Hearing system have changed since a court of session appeal judgement in February 2002 (S v N) which included foster carers in the definition of 'relevant person' in the Children's Hearing system.

Prior to this decision foster carers did not have a right to attend the Hearing but could be invited by the Reporter, the chair of the panel or the child or young person or their parent as their representative. However, in practice many reporters were inviting foster carers and recognising their role in the Hearing system

'**Relevant person**' is a legal definition in the Children (Scotland) Act 1995 and can include relatives, friends and now foster carers. *'Any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.'* [Section 93 (2) ]

The relevant person's rights and responsibilities include:

### **Before the Hearing**

- To be notified of any business meeting, to make comments to be passed to the meeting and to be notified of the decision.
- To receive formal notification of the Hearing and all the reports that panel members are given, in the same timescale.

### **At the Hearing**

- Has the right and duty to attend each Hearing, except business meetings.
- Has the right to submit a written report to the Hearing.
- Has the right to accept or reject grounds of referral.
- Has the right to take a representative to the Hearing, eg a friend, solicitor, etc.
- Has the right to participate in the Hearing.
- Has the right to be told of the decision, the reasons and the right of appeal.

### **After the Hearing**

- Has the right to receive in writing the supervision requirement, the reasons and be told of the right of appeal.
- Has the right of appeal, which must be done within three weeks.
- Has the right to request a review Hearing three months after the last decision.

### **At Court**

- Has the right to attend a proof Hearing.
- On appeal, has the right to be heard by a sheriff.
- Has the right to appeal to a higher court.

The Scottish Children's Reporter's Administration (SCRA) has issued *Guidance to Reporters* about how the court decision should be put into day-to-day practice. The guidance says that foster carers who have a child living with them as a result of a supervision requirement should be treated as relevant persons when the situation has become 'a settled factual arrangement'. Each case will be looked at on its own circumstances.

In practice, if a child has been placed with foster carers on a supervision requirement, the carers will normally be treated as a relevant person at the next review Hearing, unless that takes place only a few weeks later, when the arrangement could be said not yet to be a settled one.

*Remember, that as a relevant person, you have a right to be notified of and attend the Hearing of any child or young person placed with you and/or submit a written report. If your views conflict with those of the social work department you should discuss this with your social worker and the child's social worker. However, the Panel will want to hear all views and weigh these up in reaching a decision which they believe is in the best interests of the child.*

## **Who brings the child to the Hearing?**

The Reporter is responsible for seeing that the child or young person attends a Children's Hearing. Usually, the child will be notified directly;

Occasionally for younger children the notification will be to the social work department. If it is considered that the Hearing will be too distressing for the child, or the child is too young to understand, an application can be made to dispense with their attendance.

Foster carers who are relevant persons should be notified directly of the Hearing.

## **Follow-up Hearings**

One of the concerns of foster carers, especially those taking children on an emergency or short-term basis, is the number of Children's Hearings some children have to attend. It is possible for a child to have to go to several Hearings before a final decision is made. This can be a worrying time, not only for the child but also for the foster carer.

Reasons for the delays and the subsequent hearings are numerous and understandable, such as the need for the child's case to go to the sheriff for proof. Sometimes, delays occur when a parent does not attend, or occasionally a Hearing can be continued to another date for specialist reports or to facilitate the attendance of a particular teacher, social worker or childcare expert. The delay in making firm decisions to allow planning for the child in care can be frustrating for all. However, remember that the well-being of the child is what really counts.

Once the Children's Hearing has made a supervision requirement, another hearing must be held – within a year – to review progress. That Hearing can continue the supervision requirement as it stands, vary it or bring it to an end. As long as the supervision requirement is running, the child, parents or relevant person can ask the Reporter to arrange a review after three months from the last Hearing. The social work department can request the Reporter to arrange a preview at any time. A review will always take place within a year of the last Hearing, until the Hearing decides to end the requirement.

## **Removal from a foster home**

A Children's Hearing can end a foster placement of a child on a supervision requirement. No child should continue to be subject of a supervision requirement longer than necessary in

the interests of promoting or safeguarding his or her welfare. Such a decision would not be taken without a lot of careful thought and reports from social workers, school, etc. The Hearing will always consider a social work recommendation, whether it is to continue or end a foster placement, but may ultimately come to an alternative conclusion.

For longer-term placements, a decision to terminate placement and its timing can cause much anguish, for both foster carers and the child or young person. Preparation is essential, and most Children's Hearings will recognise this, although there have been instances in the past of Hearings' decisions to end long-term fostering being implemented immediately and without preparation.

## **Conclusion**

As carers, you want to understand the legal process for any child in your care to enable you to offer the best possible advice on the rights of that child in the Hearing, and to make sense of the whole decision-making process. Remember that the child's social worker influences the decision-making, and you should carefully consider whether any legal advice or representation is needed for the child. The child will also have questions, and will need to be helped to make sense of this (at times) complicated and lengthy process. As carers, you can help if you take time to find out and answer questions yourself.

You should ask yourself whether you know what the child's views are. Have you tried to find out? How can you best ensure that the child is involved in the process?

***Remember that it is the child or young person who is most directly affected.***