

Briefing for the Public Petitions Committee

Petition Number: [PE01835](#)

Main Petitioner: James A Mackie

Subject: Criminalise the submission of misleading or false information in child protection cases

Calls on the Scottish Parliament to urge the Scottish Government to make it a criminal offence for any person to knowingly submit misleading and false information to a sheriff or Children's Hearing in child protection cases.

Introduction

The petition calls on the Scottish Parliament to urge the Scottish Government to make it a criminal offence for any person to knowingly submit misleading or false information to a sheriff or children's hearing in child protection cases. In the accompanying information, the petitioner states a belief that professionals involved in child protection cannot be effectively held to account.

This briefing sets out current procedures for children's hearings and Child Protection Orders. It also looks at the professional standards for social workers and children's reporters.

Children's hearings

The children's hearing system is provided for in the Children's Hearings Scotland Act 2011. The key elements are the children's hearings (made up of lay members) and the children's reporters (officials who bring cases before children's hearings). It is administered through the [Scottish Children's Reporter Administration](#) (SCRA) and [Children's Hearings Scotland](#) (CHS).

Anyone can refer a child to the children's reporter, although in practice most referrals come from the police. [Children's Hearing Improvement Partnership \(CHIP\) guidance](#) summarises the statutory criteria for referrals set out in the Act as follows:

“(a) the child is in need of protection, guidance, treatment or control; and
(b) it might be necessary for a Compulsory Supervision Order to be made in relation to the child.

The Local Authority and the Police **must** refer a child when the criteria apply. Any other person **may** do so.”

Once a referral is made to the children's reporter, the reporter must decide whether there is enough evidence for a Compulsory Supervision Order (CSO). If so, they will arrange a children's hearing.

Prior to the hearing, reporters prepare a statement of grounds setting out the grounds for a CSO and supporting facts. [CHIP guidance explains](#):

“The Hearing may only proceed to consider whether to make a Compulsory Supervision Order if the child, and relevant persons present at the Hearing, accept a ground, or a ground is found established by the Sheriff.”

The [SCRA website explains](#) that if the child (or young person), parent or carer does not agree with the statement of grounds, panel members can refer the case to the sheriff court so that a sheriff can decide if the reasons are correct. This is called an 'application for proof'.

- If the sheriff decides the statement of grounds is correct, then the matter will be sent back to a children's hearing and panel members will decide what help or support will be given to the child or young person.
- If the sheriff decides the statement of grounds is not correct, there will not be another children's hearing about the matter and this is the end of the case.

Children have the right to attend court, though the sheriff may decide they do not have to. The child or young person and their parents or carers have the right to have a lawyer represent them in court. Parties have the right to challenge evidence led by the reporter. Specifically, they have the right to challenge the truth of anything said by a witness or included within any report they have compiled. The sheriff considers all of the evidence and decides what factual matters are proved and whether the grounds for referral have been established.

Appeals

Appeals against the decision of a children's hearing are different to non-agreement with the statement of grounds. If a child, young person, their parent or carer does not agree with the decision reached by the children's hearing, the decision can be appealed within 21 days (currently extended to 42 days under Coronavirus legislation). When hearing an appeal, the sheriff can consider whether a hearing acted fairly in a case where a hearing's decision turned on information that was disputed, even, in certain cases, hearing evidence. Anyone wishing to appeal may contact a lawyer for information and advice.

Child Protection Orders

Child Protection Orders (CPOs) are emergency orders under the 2011 Act which enable the sheriff court to require a child to be removed to 'a place of safety'. They are temporary measures which are subject to strict time limits.

Applications for CPOs are normally made by local authorities, although the legislation also allows other persons to apply. They must be accompanied by, “supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application” (section 37(5) of the 2011 Act). The forms used to apply for CPOs ([child care and maintenance forms 47 or 48](#)) state that evidence should include reports, statements and affidavits (sworn, notarised statements).

Sheriffs can only make a CPO if there are reasonable grounds to believe:

- (1) that the child has been, is being or is likely to suffer significant harm or neglect; and
- (2) that the order is necessary to protect the child from further harm.

The Stair Memorial Encyclopaedia (a key legal source) explains the role of the sheriff in assessing evidence as follows:

“The sheriff will require more than mere suspicion that a child is at risk. A belief will be based on some information, such as observations by teachers, nursery nurses or neighbours, or disclosures or partial disclosures given by the child him - or herself, or any other information on which a belief may be based. It is not necessary that the child has actually suffered significant harm, since the provision allows an order to be made where the sheriff is satisfied that the child 'will suffer such harm'. However, if the case for an order were to be made on the basis of a potential risk, it might be expected that the applicant would require to present the court with several pieces of evidence, all pointing in the same direction.” (Child law, para 455)

It also explains that CPO hearings are *ex parte* (the parents are not heard) (Social work, para 97). [In the past this has been challenged on human rights grounds.](#)

It is not possible to appeal the decision to grant a CPO (for example to the Sheriff Appeal Court).¹ An application can, however, be made to the sheriff court to have a CPO varied or set aside (for example on the basis of new evidence). If a CPO isn't set aside, a children's hearing must take place within 8 working days of the CPO being made or the child being removed to a place of safety. There is therefore a process for CPOs to be replaced with longer term protection under the children's hearing system.

Accountability for information given in court

Children's hearings have more informal procedures than courts. There are, however, detailed procedural rules in the [Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Rules 2013](#) (“2013 Rules”).² In addition, there are also rules in the 2011 Act which impact on procedures.

¹ Professor K. Norrie, “The Law Relating to Parent and Child in Scotland” 3rd edition at 16.32

² For details see [the Scottish Government's Training Manual – Legislation and Procedure](#)

Evidence is not given under oath in children's hearings as panel members do not have the authority to do put anyone under oath. An oath would be taken in court settings, for example in cases where a sheriff is required to decide on the statement of grounds.

The children's reporter leads evidence in a sheriff court setting to establish whether the grounds are proven based on balance of probabilities.³ Evidence can be given by any professional involved in the case.

In cases where an oath is taken, the criminal offence of perjury would apply. The 'Criminal Law of Scotland' (Vol. 2, 4th Ed.) notes that:

"Perjury is committed by wilfully giving false evidence on oath or affirmation in any judicial proceeding." (para 55.02)

In practice, it is prosecuted under the common law offence of perjury but is also covered by the statutory offence in section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995.

While perjury would apply in child protection cases heard in a court setting where an oath was taken, it should be noted that:

"Normally the expression of an opinion cannot constitute perjury, if only because of the difficulty of proving that the witness did not hold the opinion he gave. But where the opinion can clearly be shown to have been given dishonestly, for example by showing that the witness was bribed to give it, or that it was clearly an untenable opinion, perjury may be committed." ('Criminal Law of Scotland', para 55.12)

Professional standards for social workers and children's reporters

The petitioner states concern about holding professionals working in child protection to account. There are professional standards which children's reporters, social workers and other professionals involved in child protection cases must abide by.

Individual children's reporters act on the delegated authority of the Principal Reporter who is given powers by the 2011 Act. That delegated authority is delineated by a Practice Direction which reporters are obliged to follow.

[Practice Direction 1](#) (Fundamental Practice Principles) states: "Case actions and decisions should be based on relevant, reliable information and objectively justifiable".

The [SCRA Code of Conduct](#) places a duty on reporters (and all staff) to act honestly, to be as open as possible in all the decisions and actions taken, and

³ Except in cases where the child has committed an offence. In such cases, the criminal standard – beyond reasonable doubt – applies.

to give reasons for any decisions made. Disciplinary action can be taken in the event of a serious breach of the code.

All social workers in Scotland must be registered with the Scottish Social Services Council (SSSC). The [SSSC's Codes of Practice](#) set out national standards of conduct and practice that apply to all social service workers.

Section 2.8 of the Code for Employers sets out employers must “Report workers whose fitness to practise may be impaired to the relevant authority”.

Section 2 of the Code for Workers states workers must create and maintain trust, being “truthful, open, honest and trustworthy”.

[If a concern is raised about a social services worker, this will be investigated.](#) The investigation may result in: no further action being taken; imposed sanction with consent; or referral to a Fitness to Practise Panel hearing. Other professionals involved in children’s hearings will also be subject to their own organisation’s code of practice.

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