

## RELEVANT LEGISLATION

### Role and Function

#### Part 4 Safeguarders

##### Section\* 32: The Safeguarders Panel

- (1) The Scottish Ministers must establish and maintain a panel of persons (to be known as the Safeguarders Panel) from which any appointment under this Act of a safeguarder is to be made.
- (2) The Scottish Ministers may by regulations make provision for or in connection with—
  - (a) the recruitment and selection of persons who may be appointed as members of the Safeguarders Panel,
  - (b) the appointment and removal of members of the Safeguarders Panel,
  - (c) qualifications to be held by members of the Safeguarders Panel,
  - (d) the training of members and potential members of the Safeguarders Panel,
  - (e) the payment of expenses, fees and allowances by the Scottish Ministers to members and potential members of the Safeguarders Panel,
  - (f) the operation and management of the Safeguarders Panel.
- (3) For the purpose of complying with the requirements imposed by subsection (1) and regulations under subsection (2), the Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than CHS or SCRA.

##### Section 33: Functions of safeguarder

- (1) A safeguarder appointed in relation to a child by virtue of section 30 must—
  - (a) except where subsection (2) applies, on being so appointed, prepare a report setting out anything that, in the opinion of the safeguarder, is relevant to the consideration of the matter before the children's hearing,
  - (b) so far as reasonably practicable, attend the children's hearing, and
  - (c) prepare any report that the safeguarder is required to prepare by a children's hearing.
- (2) This subsection applies where the children's hearing directs the Principal Reporter under section 93(2)(a) or 94(2)(a) to make an application to the sheriff.

##### Section 34: Safeguarders: regulations

- (1) The Scottish Ministers may by regulations make further provision about safeguarders.
- (2) Regulations under this section may in particular make provision for or in connection with—
  - (a) imposing additional requirements on safeguarders,
  - (b) conferring additional powers (including rights of appeal) on safeguarders,
  - (c) the termination of safeguarders' appointments.

**Rule\* 60.**

(2) The chairing member— .....

(b) must take all reasonable steps to obtain the views of ..... any appointed safeguarder in relation to—

- (i) any relevant report, document or matter being considered by the hearing; and
- (ii) what, if any, measures would be in the best interests of the child;

(3) Where the children's hearing has been given an interim report and statement prepared by the safeguarder under these Rules the hearing must consider that interim report and statement.

(4) After considering the interim report and statement the children's hearing may set a further date up to a maximum of 35 days for the provision of the report from the safeguarder and defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.

**Rule 65.**

(2) ..... the children's hearing must .....—

- (a) discuss the case with ..... any safeguarder appointed;
- (b) seek the views of ..... the safeguarder on the arrangements which would be in the best interests of the child; and .....

**Rule 73.**

(2) The chairing member— .....

(b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—

- (i) any report, document or matter being considered by the hearing; and
- (ii) what, if any, measures would be in the best interests of the child; and .....

**Rule 74. (contact direction review hearings)**

(5) ..... the children's hearing must, where proceeding to review a contact direction, seek views on the contact direction from— .....

(c) any appointed safeguarder; .....

**Rule 78. (consideration of a warrant to secure attendance)**

(2) The children's hearing must seek the views of the child, each relevant person, and any appointed safeguarder, if present at the hearing.

**Rule 87.**

(1) A non-disclosure request may be made during a children's hearing by ..... any appointed safeguarder, .....

**The Children's Legal Assistance (Scotland) Regulations 2013 - Applications by or on behalf of children Regulation 8.**

(1) Without prejudice to any right of a child to apply under regulation 7 (form of application), an application on behalf of a child may be made by the child's relevant person, safeguarder or other representative of the child (other than a solicitor).

## **Pre-hearing Panels**

### **Section 78: Rights of certain persons to attend children's hearing**

- (1) The following persons have a right to attend a children's hearing— ....  
(f) if a safeguarder is appointed under this Act in relation to the child, the safeguarder, .....

((7) In this section 'children's hearing' includes a pre-hearing panel.)

### **Section 82: Appointment of safeguarder**

- (1) A pre-hearing panel may appoint a safeguarder for the child to whom the children's hearing relates.  
(2) A pre-hearing panel must record an appointment made under subsection (1).  
(3) If a pre-hearing panel appoints a safeguarder, it must give reasons for the decision.  
(4) Subsection (1) does not apply where a safeguarder has already been appointed.  
(5) A safeguarder appointed under this section is to be treated for the purposes of this Act (other than this section) as being appointed by a children's hearing by virtue of section 30.

### **Rule 66: Procedure where there is a review of determination that person be deemed a relevant person**

- (2) The chairing member—  
(a) must invite ..... any appointed safeguarder to express their views in relation to whether the individual should continue to be deemed to be a relevant person;

## **Appeals**

### **Section 154: Appeal to sheriff against decision of children's hearing**

- (1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.  
(2) The persons are—  
(c) a safeguarder appointed in relation to the child by virtue of section 30.

### **Section 163: Appeals to sheriff principal and Court of Session: children's hearings etc.**

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against—  
(a) a determination by the sheriff of—  
(i) an application to determine whether a section 67 ground (other than the ground mentioned in section 67(2)(j) if the case was remitted to the Principal Reporter under section 49 of the Criminal Procedure (Scotland) Act 1995) is established,  
(ii) an application under section 110(2) for review of a finding that a section 67 ground is established,  
(iii) an appeal against a decision of a children's hearing,  
(iv) an application under section 98 for an extension of an interim compulsory supervision order,  
(v) an application under section 99 for a further extension of an interim compulsory supervision order,  
(b) a decision of the sheriff under section 100 to—  
(i) make an interim compulsory supervision order,

(ii) make an interim variation of a compulsory supervision order.

(2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).

(3) The persons are—

- (a) the child,
- (b) a relevant person in relation to the child,
- (c) a safeguarder appointed in relation to the child by virtue of section 30,
- (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly, and .....

(4) Despite subsections (1) and (2), a safeguarder may not—

- (a) appeal against a determination by the sheriff of a type mentioned in subsection (1)(a)(i) or (ii), or a decision of the sheriff of a type mentioned in subsection (1)(b),
- (b) appeal to the Court of Session against the sheriff principal's decision in such an appeal.

### **Removal/Termination**

#### **Regulation 7 (*The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012*)**

(4) This paragraph applies if the person is unfit to be a member of the Safeguarders Panel by reason of—

- (a) inability;
- (b) conduct; or
- (c) failure without reasonable excuse to comply with any training requirements imposed by the Scottish Ministers under regulation 8.

(5) The Scottish Ministers may remove a member from the Safeguarders Panel ..... if satisfied that paragraph (4) applies.

Regulations 3, 4 and 5 of the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 covers termination of a safeguarder appointment under the new legislation.



## Safeguarder Training Wednesday 11<sup>th</sup> January and Sunday 15<sup>th</sup>

Who Cares? Scotland 10-12.30

Activity	Aims
Warmer -Post-it-note draw concepts (Wed) -Guided reflection (Sun)	<ul style="list-style-type: none"> <li>- - Imagine entering care from the point of view of a young person</li> </ul>
Panel drama	<ul style="list-style-type: none"> <li>- Build empathy</li> <li>- View the hearing system from a young person's perspective</li> <li>- Reflect on how professionals associated with the system can modify their behavior/ practice to support young people more</li> </ul>
Case study -Chat with Lynzy (Wed) -Chat with Alicia (Sun) Followed by questions	<ul style="list-style-type: none"> <li>- -Hear an individual's lived experience of a safeguarder</li> </ul>
Break	
Jargon busting game -'Taboo' like game	<ul style="list-style-type: none"> <li>- Energise group</li> <li>- Practice explaining key terms in more simplified, young person appropriate language</li> </ul>
Role play -In groups (Wed) -Individually (Sun)	<ul style="list-style-type: none"> <li>- Understand in groups the role of a safeguarder</li> <li>- Practice explaining the role of a safeguarder to a young person</li> <li>- Receive feedback form young person and peers on role description / delivery</li> </ul>



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## **Day 4 Pre-appointment Training & Assessment**

### **The role of the safeguarder in gathering & analysing information**

#### **Aim**

To consider and reflect on the role and responsibility of the safeguarder in gathering & analysing information.

#### **Learning Outcomes**

By the end of this session, participants will:

1. Consider the process of assessment from the perspective of safeguarders.
2. Have increased knowledge of assessment tools utilised by professionals.
3. Examine the role of reasoned analysis in making recommendations for children.

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## **Day 4 Pre-appointment Training & Assessment**

### **The role of the safeguarder in gathering & analysing information**

#### **Programme**

Coffee/ registration / networking

Introduction to the day

What is assessment?

Introduction to Lucy

#### **Comfort Break**

Common issues in inter agency assessments

Case studies

Tools

#### **Lunch**

Analysis

Revisiting Lucy and Recommendations

Resistance, Tipping Points and Line Dancing

Review of day

Next steps & home

## Pre-Appointment Training Day 4

### The role of the safeguarder in gathering and analysing information

#### Intended Learning Outcomes

By the end of this course participants will:

- Consider the process of assessment from the perspective of safeguarders.
- Have increased knowledge of assessment tools utilised by professionals.
- Examine the role of reasoned analysis in making recommendations for children.

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Assessments are often viewed as an event to do TO families. Assessment is a process which may offer a range of possible therapeutic outcomes of assessment. Many studies in substance misuse treatment (e.g. Project Match and Kypri's (2009) work on brief assessment) have highlighted that change by adults with substance use issues is often initiated by the assessment process itself, by raising critical consciousness / problem awareness. Change provoked by assessment is often significant in predicting outcomes for adults in treatment.

For safeguarders, the purpose of assessment is to understand what it is like to be that child, and what the future may look like if things do not change - or change significantly enough in relation to the care of that child. Several issues have been identified by Significant Case Reviews around assessment, including

'Rule of optimism': This has been a significant issue in many SCRs, practitioners want progress and minimise areas of concern, want to believe that intervention is 'working' and have overly positive interpretations of what is going on. Practitioners should have 'healthy scepticism' and 'respectful uncertainty'.

Intuitive rather than Analytical reasoning:

'There is a tendency for decisions to rely heavily on intuitive reasoning, partly because this aligns more closely with a practice that focuses on relationships and empathy, and partly because pressures on time and resources leave little room for measured, analytical deliberations (Munro, 1999; Holland, 1999). In fact, when most people make decisions they tend to rely on experience and short cuts 'rather than face the laborious task of sifting through all the evidence and reaching a rational conclusion' (Kahneman, Slovic and Tversky, 1990). However, this 'everyday' approach is prone to a number of errors. When people rely

too much on intuitive thinking they become attached to their initial impression and are slow to revise their judgment even when new and challenging information comes to light (Sutherland, 1992). They tend to base their decisions on the most readily available evidence – for instance events that are most dramatic or recently, the tendency to become attached to one’s first impression means that some practitioners are reluctant to alter their initial decisions, even after further allegations of maltreatment have been made; this has major implications in serious cases of abuse that are first assessed erroneously as having a low risk of significant harm (see Farmer and Owen, 1995; Munro, 1999') DOE 2104:28 [Assessing Parental Capacity to Change when Children are on the Edge of Care](#)

Sharing chronologies are critical in seeing more of the whole lived experience of children, particularly in situations of chronic neglect. Government guidance can be found [here](#).

'Start Again Syndrome' was identified in Brandon's (2010) review of SCRs, read her report more [here](#). 'Knowledge of the past is put aside with a focus on the present and on short term thinking. There may, for example, be an unfounded assumption that a new baby, or a different partner, presents an opportunity for the family to embark on a more successful period of parenting, without adequate professional reflection about whether the parental capacity to care for the child has in reality, changed. This way of thinking and behaving tends to happen when workers are overwhelmed. 'Starting again' is a way of dealing not only with overwhelming amounts of information but also the feelings of helplessness generated by families, especially in long term neglect cases'.

Impact of detox /change and the over emphasis on substance use. There are assumptions about reducing /stopping substance use that parenting and care giving will improve which may be unfounded. This may be a trigger for changing roles, children able to express anger

at their situation and mental health difficulties for those detoxing. It is important to consider the impact on mental wellbeing and domestic abuse when substance use changes. We will visit this issue in more depth later in this course.

Faith/Religious Beliefs are an area often not discussed in assessment though clearly key to several children's outcomes including Victoria Climbié. An excellent briefing from the [NSPCC can be found here.](#)

Cultural Relativism refers to the 'elastic norms and standards about the care of children and family life linked to perceived cultural differences' This can also critically refer to families from specific areas, or acceptance of thresholds being different across different communities.

Assumption of 'natural love'. Love even if we can identify there is 'love' does not secure good enough care giving.

Findings of SCR the [full SCR](#) can be found here and the [FAI here](#). There are clear issues with parental manipulation and compliance, communication and risk assessment throughout the case review, never identifying Declan 'at risk' and agencies withdrawing in the context of 'change' in substance /drug use without a formal handover/ case closure.

### **Assessment tools**

including National Framework, [Risk Assessment Framework](#), [Impact of Parental Substance Misuse](#), [Graded Care Profile](#)

## Analysis in Assessment

The challenges of remaining 'open' to challenge in views of children's lives and consider the different types of information that is being held . There is a need to analyse the material to establish which factors support and which factors undermine the child's development and welfare, and, how these various factors interact with each other. Sometimes, apparently minor issues, when brought together, can have a significant impact on the child's well-being (Turney et al, 2011).

Munro (1999) into child death inquiries highlights a common error made was a 'failure to revise risk assessments and there was a failure to check more widely to reappraise original judgements when new evidence arose. Hollows names this as 'unconflicted adherence', that is a new risk is discounted and the current view unchanged.

One challenge lies in finding effective ways to manage different professional perspectives and cultures. A second challenge concerns the role of 'expert' assessments and how they relate to social work assessments, particularly in family court proceedings. As noted above, specialist assessment can be immensely helpful. But some studies suggest that a hierarchy can emerge in the court arena with 'higher status' professionals' assessments (usually medical or psychological) taking precedence over those of social workers. Furthermore, there is evidence that additional and/or repeated assessments may be used to defer difficult decisions and can increase delay in complex cases (Dickens, 2007; Masson et al., 2008).

Morrison's 2009 information matrix aids in understanding the nature and status of the information we have about a child's situation. Consider Lucy – where does information sit in this framework and what the implications are for the assessment?

The common pitfalls identified in assessment are detailed [here](#) in an NSPCC report.

**Assessing change.**

Much of the work of all professional is to secure change, and Harnett (2008) has suggested these areas as key to consider in understanding change. A key element of assessment is to 'undertake an analysis of the parenting capacity gap, with the reasons for professional pessimism if the judgment is that the gap either cannot be bridged at all, or cannot be bridged in the child's timescale' (Cafcass/ADCS, 2012, p.2) Conceptual maps such as the GIFREC practice model offer a way to make sense of many interrelating factors including environmental factors.

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## **Day 2 Pre-appointment Training & Assessment**

### **The role of the safeguarder in communication & participation**

#### **Aim**

To consider and reflect on the role and responsibility of the safeguarder in communicating with children, families and professionals and encouraging participation within the Children's Hearing system.

#### **Learning Outcomes**

By the end of this session, participants will be able to

- a. explain what is meant by gathering the views of children
- b. describe the role and responsibilities of the safeguarder in communicating with children, families and professionals and encouraging participation
- c. provide examples of good practice considerations when planning to meet with children and families
- d. provide examples of practice which is contrary to the role and associated Practice Standards when communicating and encouraging participation
- e. explain data management responsibilities and privacy notices to children and families

## **Day 2 Pre-appointment Training & Assessment**

### **The role of the safeguarder in communication & participation**

#### **Programme**

Coffee/ registration / networking

Recap/ Welcome to the day/ programme outline

Activity & discussion - the role of safeguarder in gathering the views of children & encouraging participation

Listening to what children tell us about the hearing system

#### **Comfort Break**

Activity & discussion - communicating with children, families and professionals

Listening to what children tell us about how hearings may affect them

#### **Lunch**

Activity & discussion – the journey from receiving papers to explaining the role

Reflections & learning from day

Next steps & home