

Grounds of Referral - Transcript

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The purpose of grounds of referral is to outline the difficulty the child is facing and that is trying to be tackled. They also provide the justification for any interventions being considered. These are the 17 grounds of referral which are listed in section 67 of the Children's Hearings (Scotland) Act 2011. The child's circumstances must fall into one of these categories, otherwise the Reporter cannot convene a Children's Hearing for the child. The grounds, however, are very wide ranging and cover the vast majority of situations.

Ground J relates to a child who has committed an offence – this ground, if referred for proof is the only one where the criminal standard of evidence applies in that it must be proved beyond a reasonable doubt that the child has committed the offence. If this ground is established, then the disposal of the matter by the Children's Hearing is considered no differently than if the child was referred on care and protection grounds. If a child is having offence grounds put to them at a hearing, then I would suggest that he or she should be legally represented as offence grounds admitted or established by the court can have long-lasting effects on the child's criminal record, and they are recorded as convictions which are then subject to disclosure in later life.

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This is an example of the document that the Reporter produces which sets out section 67 of referral. Each ground that applies to a child must be underpinned by a statement of facts – these are tailored to each child and their particular circumstances. This document is given to the child ahead of any hearing that has been arranged to consider grounds of referral.

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A child, if old enough to understand, and all other relevant persons must have the grounds and supporting statements of fact put to them at the first children's hearing. Each person will be asked if they agree to the grounds and if they agree with each statement of fact in turn. If the grounds are accepted by the child and each relevant person then the hearing can move on to the discussion part of the hearing and determine if a CSO is necessary. If either the child or a relevant person denies the grounds, then the hearing can either discharge the referral – in effect, dropping the grounds and take no further action in relation to them – or it can direct the Reporter to apply to the Sheriff for a proof to determine whether or not the grounds are established. At this point, the hearing may also wish to consider if any other urgent orders are required to keep the child safe – we will look at these orders and their legal tests for them later. If a child or any relevant person accept the grounds in part, then the hearing can either proceed to a discussion based only on the grounds that have been accepted, or it can instruct the Reporter to refer the grounds to the Sheriff for proof in the same way as if the grounds were denied in full.

If the child is too young to understand the grounds, or a relevant person is, in the majority view of the hearing, unable to understand the grounds, then the hearing will either discharge the referral in relation to the ground not understood, or again, instruct the Reporter to refer the grounds to the Sheriff for proof. The children's hearing can also make amendments to the statements of fact. If the deletion of statements or re-wording would allow for the ground to be agreed, however the grounds themselves cannot be changed. The hearing must also be careful: the statement of facts, once amended, must still amount to the ground that they are supporting.

If the grounds are referred to the Sheriff for proof, the Reporter must lodge the application with the Sheriff court within 7 days and then there must be a hearing on the matter within 28 days by the Sheriff. The case does not need to be concluded within that 28 days, and in fact – unless grounds are agreed between the parties – there will usually be a number of hearings before the Sheriff, before the evidence is heard at proof. The first hearing, and possibly more after that, are procedural in nature and give the parties an opportunity to inform the court of whether or not the grounds might be capable of agreement. But if not, the Sheriff will want to know how much of the statements of fact



are in dispute. Parties can agree to make changes to the statements of fact to allow an agreement to be reached. The majority of cases are concluded in this way, without need for evidence to be led. Ultimately, however, if parties cannot reach agreement, then a date will be set for the Sheriff to hear evidence. Evidence will be led by the Reporter and it will depend on the case but it is usually largely in the form of witness testimony, documents and other evidence can also be lodged. Often evidence will be led from social workers, police officers or teachers, but in more complex cases the court may hear from expert witnesses such as medical experts – they give their professional opinion on matters before the court. The child or relevant persons can also lead evidence of their own to counter the Reporter’s evidence. If one or more of the grounds are held established either by agreement or after hearing evidence, the Sheriff must direct the children’s Reporter to arrange a children’s hearing to consider whether or not a Compulsory Supervision Order is necessary. If none of the grounds are established by the evidence, then the referral is discharged and there is no further action in relation to those grounds.