

To:
Hon. Douglas Ross, MSP,
Convener,
Education, Children and Young People Committee

6 November 2025

Dear Convener,

I hope you will not mind my writing to offer clarification of certain matters arising from the evidence of the Minister for Children, Young People and The Promise during yesterday's session.

It was in relation to the matter of grounds hearings and the indication given that I am more comfortable with the Bill proposals in this regard. This arises from a misunderstanding on my part of the numbers involved. During the work of the Hearings System Working Group a statistic was occasionally referred to that in 97% of referrals the grounds are not opposed. It is one I repeated in my written response. In a meeting with the Minister and officials and later with SCRA statisticians I was provided with information which indicated that the position was more nuanced. It appears that the 97% figure is one that emerged from SCTS statistics which measure the business from the Childrens' Hearings to the Sheriff Court differently. This is the information with which I have been provided.

Table 3.2 Number of children with Reporter decisions in 2024/25*, by decision

Reporter decision	Non-offence	Offence	Total
Arrange a Children's Hearing (on new grounds)	2,377	37	2,406
No Hearing – Compulsory Supervision Order not necessary	1,610	830	2,398
No Hearing - Compulsory Supervision Order not necessary and refer to LA	2,481	792	3,180
No Hearing - Current order/measures sufficient	599	893	1,323
No Hearing - Insufficient evidence	761	109	860
No Hearing - Insufficient evidence and refer to LA	287	20	307
No jurisdiction	46	27	71
Total	7,656	2,425	9,539

* Data in this table relates to cases decided in 2024/25 as opposed to referrals received in 2024/25.

** The totals do not equal the sums as children can be referred more than once in the year and may have multiple Reporter decisions. The totals count each child once.

The table above shows that, 25.2% of children (2,406) with cases decided had a Reporter decision to arrange a children's Hearing on at least one referral in the year in 2024/25. This ties up with the 2,402 new grounds Hearings arranged during the same period (a small difference due to time taken to arrange Hearings etc.). As noted in the document, overall, 2,054 (85.5%) directed the Reporter to apply to the Sheriff to determine whether the statement of grounds for referral is established within the 24/25 data. That figure of

the mid-80% is a pretty consistent number in terms of percentage of applications to the Sheriff over the years.

And so I was much reassured that the numbers were lower than I had previously understood. I recognise that of the 2,054 / 85.5% referred to the Sheriff a number were because the child was too young or unable to understand the grounds for referral. Nonetheless, under the regime sought to be created by the Bill many, possibly most of those cases will have the potential to be either referred direct to the Sheriff by the Reporter because the grounds and accompanying Statement of Facts are disputed or because Relevant Persons alone, most commonly parents, have been able to accept the grounds without input from the child due to age or capacity. These factors make me feel more comfortable with the Bill provisions than before.

I remain of the view, nonetheless, that the Bill could go further and that it would be possible to take the opportunity of its promulgation make a categorical and transformational change to the effect that there should be no grounds hearings at all. It would be possible, in my respectful view, to have a process offering clarity and certainty that if the Statement of Facts and grounds for referral cannot be agreed the matter will go direct to the Sheriff. In all other cases either through the agreement of the child, parents and other relevant persons, or relevant persons alone should the child be too young or incapable of understanding the grounds, the Statement of Facts and grounds for referral would be capable of being agreed without a grounds hearing.

It is not enough, of course, for parties to simply agree the Statement of Facts and grounds for referral; the Children's hearing would require to be satisfied that the evidence relied upon by the Reporter is sufficient to support the grounds; and so, as in, for example, undefended divorces, the evidence might be presented in the form of Affidavits, possibly with certification by the child and / or parents and other relevant persons demonstrating that the decision not to oppose is properly informed, so that the Chairing Member could deal with the establishment of grounds 'in chambers' without a hearing.

My critical views on the complexity of the provisions around grounds, especially the new section 90, remain unchanged.

I hope this is of some assistance and remain at the service of the Committee to expand upon this or to address any other queries that arise in the course of its work.

Yours sincerely,

Sheriff David N Mackie