SHERIFFDOM OF LOTHIAN AND BORDERS AT LIVINGSTON

[2021] SC LIV 43

LIV-B122-21

NOTE OF REASONS

by

SHERIFF JOHN A MACRITCHIE, SSC

Summary Sheriff of Lothian and Borders

in the application under section 94(2)(a) of the Children's Hearing (Scotland) Act 2011

by

Locality Reporter Manager, Livingston

in respect of the child

CM

For the reporter: McPeake
For the mother: Hotchkiss
For the father: McGuire

21 May 2021

Introduction

[1] All references to statutory sections in this note, are to the Children's Hearings (Scotland) Act 2011, unless specifically provided otherwise.

[2] On or about 19 March 2021, the reporter determined in terms of section 66(2), that they considered that a section 67(2)(a) ground applied in relation to the child CM, in that "the child [was] likely to suffer unnecessarily, or the health or development of the child [was] likely to be seriously impaired, due to a lack of parental care". The reporter also considered that it was necessary for a compulsory supervision order to be made in respect of

the child. Accordingly, the reporter arranged for a "grounds hearing" (as it is referred to in section 90(1)) to be convened at Livingston, as required by section 69(2). A statement of grounds (specifying said one ground) was prepared by the reporter, as required by section 89(2). Essentially, the statement asserted that the child's mother, with whom the child habitually resided, misused drugs to such an extent that the child's physical and emotional health and development was not being adequately provided for.

[3] On 12 April 2021, such duly convened grounds hearing were satisfied that, taking account of the child's age and maturity, the child was not capable of understanding an explanation of the ground. Such an explanation is required to be given by the chairing member, by virtue of section 90(1)(a). Section 94 provides that:

> (1) Subsection (2) applies where the grounds hearing is satisfied that a child … -
>
> (a) Would not be capable of understanding an explanation given in compliance with section 90(1) in relation to a ground ...
>
> (2) The grounds hearing must-
>
> (a) Direct the … reporter to make an application to the sheriff to determine whether the ground is established, …

The grounds hearing therefore directed the reporter to make such an application to the sheriff to determine whether the ground is established. The grounds hearing also considered that the nature of the child's circumstances were such that for the protection, guidance, treatment or control of the child it was necessary as a matter of urgency for an interim compulsory supervision order to be made in relation to the child, in terms of section 93(5). Such order required that the child reside with her paternal grandmother, allowing for supervised contact with her mother.

[4] The 2011 Act itself, does not prescribe any time-limit in respect of the reporter's compliance with such a direction to make an application to the sheriff. However, Rule 3.45(1) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 provides that:

> **3.45** - (1) Within a period of 14 days [currently temporarily extended from 7 days, by virtue of section 4 and schedule 3, part 1, paragraph 7(10) of the Coronavirus (Scotland) Act 2020)] beginning with the date on which the … reporter was directed in terms of section … 94(2)(a) of the 2011 Act to make an application to the sheriff, the … reporter shall lodge an application … with the sheriff clerk...

[5] On 29 April 2021, the reporter sent such an application to the sheriff clerk at Livingston, along with a motion to allow such application to be lodged, although 4 days outwith said prescribed time limit.

[6] On 14 May 2021, a hearing on the motion and application was assigned for 21 May 2021, thereby also providing relevant persons with the opportunity to make submissions.

Submissions

[7] On 21 May 2021, I considered written submissions of and heard via telephone conference call from the reporter and the solicitors for the father and mother.

Submissions for reporter

[8] The submissions of the reporter were in summary as follows. A new computer system had failed to automatically generate a systematic requirement to lodge the application with the court, as it had been expected to do. Staff who had been working individually from home due to the coronavirus pandemic, had not immediately realised that

this systematic failure had taken place, as they might normally be expected to do. A similar application in respect of the child's half-brother, with an identical ground, had however been lodged timeously and was assigned for a substantive hearing of even date (LIV-B97-21). Total invalidity of such an application, could not fairly be taken to have been intended, where such application in relation to the child, had not been lodged within the time-limit specified in Rule 3.45 (*R* v *Soneji* [2006] 1 AC 340, applied in *N* v *Mental Health Officer, North Ayrshire Council* 2011 SLT (Sh Ct) 135; *AM* v *Locality Reporter, Aberdeen,* [XA122/13], unreported, Inner House, 9 October 2013; *Dumfries & Galloway Council* v *James Duff* 2013 GWD 12-258; and *Locality Reporter Manager, Stirling* v *AM*, 2018 SCLR 45). The relevant time limit is administrative, contained in secondary legislation and relates to the lodging of an application in implementation of a statutory direction, mandated by primary legislation (distinguishing the circumstances here, from those in *H* v *Mearns* 1974 SC 152; *S* v *McGregor*, unreported, Inner House, 8 July 1980; and *A* v *Chief Constable Strathclyde*, unreported, 23 April 2012). Neither the 2011 Act nor the 1997 Rules detail any specific consequences of an application being lodged late. There is no unfairness or inconvenience to any of the parties resulting from the late lodging of this application. The reporter would otherwise require to arrange another grounds hearing to consider an identical statement of grounds, with resulting unnecessary delay and inconvenience to all parties. Any delay could impact on the progress of not only the child's referral, but also that of her said sibling in the directly related referral. The current interim compulsory supervision order would fall and the child would require to be returned to the care of her mother, potentially placing the child at risk. The consequences of the application not being received, would frustrate the purposes of the 2011 Act, in which the welfare of the child is central. In practice, some sheriffs have concluded that the late receipt of such an application

is competent (*Locality Reporter Manager, Inverness* v *SS*, unreported, Inverness Sheriff Court, 22 August 2013 and *Locality Reporter Manager, Ayr* v *BR, MR, AD and JD,* unreported, Ayr Sheriff Court, 3 May 2016) and others, that it is not (the reporter did not have any knowledge of notes having been issued in this respect). In the circumstances of this case, the application should be received and proceed as normal.

Submissions for mother

[9] The mother's solicitor indicated that he was instructed to formally oppose the reporter's motion, simply because successful opposition could result in the child being returned to her mother's care, which is what she wished to happen. He however did not seek to make any detailed submissions in support of such opposition. It was accepted that there was otherwise no prejudice to the mother, by the application being allowed late.

Submissions for father

[10] The father's solicitor indicated that he was instructed not to oppose the reporter's motion to allow the application to be lodged late. Having considered the reporter's detailed written submissions, he agreed with the same. Although there may well have been a technical error in lodging the application slightly late, the father did not seek to take advantage of that fact, or to cause further unnecessary procedure. The overriding objective is to consider what is in the best interests of the child, rather than technical aspects of rules.

Discussion

[11] In Norrie, *Children's Hearings in Scotland,* (3rd edn, W Green, 2013 para 8-04) the learned author writes:

> "If the application is not made timeously, the referral falls, though there would seem to be nothing to prevent the reporter in that case, founding upon the same facts and the same grounds to make a new referral to the children's hearing (See *McGregor* v *L*, 1983 SLT (Sh Ct) 7). As the delay inherent in such proceedings would clearly be contrary to the interests of a child in respect of whom it may be necessary to make a compulsory supervision order, reporters should make every effort to ensure that applications are made in time."

This text appears to support a conclusion that the referral in the instant case has "fallen" and that the remedy open to the reporter, where such time limit has not been met, is to reconvene a further grounds hearing and to seek re-direction in respect of similar grounds. The views of Professor Norrie in this field of law, are entitled to considerable weight. However, in my respectful opinion, the hereinafter referred to more recent case law, which has been decided since this publication, appears to be supportive of a different conclusion on this point.

Applying time limits strictly

[12] I have initially considered the earlier case law, applying a strict approach to the interpretation of statutory time limits, in the comparative child welfare legislation then in force. In *H* v *Mearns*, *(1974 supra)* a children's hearing directed the reporter to make an application to the sheriff for a determination as to whether a ground was established, as then required by section 42(2)(c) of the Social Work (Scotland) Act 1968. Section 42(4) of the 1968 Act provided (as now does section 101(2) of the 2011 Act), that such an application shall be heard by the sheriff in chambers within 28 days of the lodging of the application. The reporter had lodged such an application with the sheriff clerk, within 7 days of being so directed, as then required by Rule 4 of the Act of Sederunt (Social Work) (Sheriff Court Procedure) Rules 1971. Whilst a diet had been assigned within 28 days, it had also been intimated to the child and relevant persons with their citations, that this diet was simply to

be continued to a later date (outwith the 28 days) and that they need only attend for such later diet. The Inner House determined that no proceedings could competently follow from the first assigned diet, as there had not been a "hearing" or "part of a hearing" within 28 days for the purposes of section 42(4), as the child and relevant persons had not been advised that they could have appeared and objected at the first diet, to the continuation of the same.

[13] In *S* v *McGregor*, *(1980 supra)*, a children's hearing had likewise directed the reporter to make an application to the sheriff. Again, the reporter had timeously lodged such an application as directed within 7 days. The application was however heard by the sheriff 1 day after the prescribed 28 days. The court stated at paragraph 4:

> "Once a timetable set out **in an act** [my emphasis] is disregarded to any extent the possibilities are endless and one could have case after case depending not on the Act but on circumstances attendant on each individual case with no rule whatsoever to give general guidance."

And in the penultimate paragraph:

> "In short, where section 42[(4)] of the [1968] Act states that the sheriff shall hear an application 'within twenty eight days of the lodging of the application' it means exactly what it says. An initial hearing outwith twenty eight days is incompetent. The case is remitted to the sheriff with the direction that he will hold the application to be incompetent as being outwith the permissible period of time allowed **by the Act** [my emphasis]."

These cases of *H* v *Mearns*, and *S* v *McGregor*, might therefore *prima facie* suggest that any proceedings following upon the late lodging of such an application, as here, would likewise be incompetent, as suggested by Professor Norrie.

Competency of restarting referral proceedings

[14] In *McGregor* v *D* 1981 SLT (Notes) 97, a children's hearing had directed the reporter to make such an application to the sheriff, in respect of, as here, a "lack of parental care"

ground. The Inner House of the Court of Session determined that the sheriff was wrong in holding that he was entitled to decline to hear evidence anent three incidents which had already been considered at a previous referral, and in effect treating them as *res judicata*.

[15] In *McGregor* v *L* (1983 *supra*), a children's hearing had directed the reporter in May 1981, to make such an application to the sheriff in respect of a ground alleging that the child had committed an offence. Owing to civil service industrial action the application could not be made. Some 4 months later, in September 1981, the reporter convened a children's hearing, which re-directed the reporter to apply to the sheriff in identical terms. The child's agent however contended at the assigned hearing, that the application was incompetent as the said Rule 4 (7 day) time-limit was mandatory and that as the initial referral had "failed", all subsequent proceedings were incompetent. Sheriff Kearney however, (following *McGregor* v *D*), held that the new proceedings were completely separate from those which had taken place in May and that there was no lawful bar, to the lodging by the reporter of such a referral on the same ground and facts, as had been the subject of the previous direction. *McGregor* v *D and McGregor* v *L,* therefore support a conclusion that a remedy open to the reporter (although not necessarily the only remedy), where a time limit has not been met, is essentially to start again and reconvene a further grounds hearing and to seek re-direction in respect of similar grounds, as is suggested by Professor Norrie.

Appraising legislative intention of time limits

[16] A less strict approach to the legislative interpretation of time limits has however been applied by the courts since *H* v *Mearns,* and *S* v *McGregor*. In the English case of *R* v *Soneji, (2006 supra)*, the Court of Appeal (Criminal Division) had quashed confiscation orders made by a judge in the lower court, on the basis that they had been made more than 6 months after

the date of conviction, without any finding that there had been exceptional circumstances. Section 72A of the Criminal Justice Act 1988 *inter alia* provided that in such confiscation proceedings, a court shall not exceed 6 months beginning with the date of conviction, before determining whether the defendant has benefited from any relevant criminal conduct, unless it was satisfied that there were such exceptional circumstances. In a further appeal against the decision of the Court of Appeal, the House of Lords considered what the correct approach should be, to determining the legal consequences of failures to accord with time limits contained in legislation. Lord Steyn (at para 14) indicated that:

> "In the course of the last 130 years a distinction evolved between mandatory and directory requirements. The view was taken that where the requirement is mandatory, a failure to comply with it invalidates the act in question. Where it is merely directory, a failure to comply does not invalidate what follows. There were refinements. For example, a distinction was made between two types of directory requirements, namely (1) requirements of a purely regulatory character where a failure to comply would never invalidate the act, and (2) requirements where a failure to comply would not invalidate an act provided that there was substantial compliance."

Lord Steyn, however, then summarised the collective view of the court when stating (at para 23):

> "… the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness …' and that '… the emphasis ought to be on the consequences of non-compliance and posing the question whether Parliament can fairly be taken to have intended total invalidity."

Lord Carswell then stated (at paras 63 to 65) that;

> "There is, however, some value still in the principles enshrined in the dichotomy [between mandatory and directory provisions] … The traditional consequence of finding the provision was merely directory was that substantial performance would constitute a sufficient compliance with the statutory requirement … minor and insubstantial deviation from the requirements will not make the resulting proceedings invalid."

Upholding the appeal, the House of Lords determined that "an objective appraisal of the intent, which must be imputed to Parliament, point[ed] against total invalidity …" (para 25).

[17] In *Locality Reporter Manager, Inverness* v *SS*, *(2013 supra)*, a children's hearing had directed the reporter to make such an application to the sheriff, in respect of a "lack of parental care" ground. The application had been received some 4 days late, due to staff illness. In allowing the application to be lodged, Sheriff Miller stated:

> "In the context of the 1997 rules as a whole it seemed to me that rule 3.45(1) was simply part of a procedural framework which was intended, for perfectly sound and understandable reasons, to ensure that applications to the sheriff under Section … 94(2)(a) of the 2011 Act are dealt with in an expeditious manner as a matter of public interest. It seemed to me that to interpret rule 3.45(1) in a way which prevented an application of this nature from proceeding if submitted outwith the specified seven day period, at least in the absence of some consequent prejudice to an interested party, would be to frustrate the purpose of the legislation and to undermine the public interest in the expeditious handling of legal proceedings concerning the welfare of children. In the circumstances of this case it appeared to me that a decision to allow the Principal Reporter's application to proceed despite its late submission to the sheriff clerk could not of itself result in any prejudice to any interested party but that, on the other hand, prejudice to the public interest in the form of unnecessary delay in the resolution of this important matter would result if the seven day time limit was applied in too rigid a manner."

This supports a conclusion that despite being late, the referral in the instant case remains competent.

[18] In *AM* v *Locality Reporter, Aberdeen, (2013 supra)*, a Children's Hearing had determined that children were in continuing need of compulsory measures of care and ordered the variation of existing supervision requirements such that the children were required to reside with a great aunt but allowed for supervised contact with their parents. The father appealed to the sheriff against this decision, as then provided for by section 51(1) of the Children (Scotland) Act 1995 (as currently provided for by section 154(1) of the 2011 Act). Rule 3.54(5) of the 1997 Rules provides that the date assigned for the hearing of an appeal to the sheriff, "shall be no later than 28 days after the lodging of the appeal". The sheriff clerk however assigned a hearing for a diet, 41 days after the lodging of the appeal. At the hearing, the sheriff, following what they considered to be the reasoning in *H* v *Mearns*

and *S* v *McGregor*, dismissed the appeal as incompetent. That decision was appealed to the Inner House of the Court of Session, under section 163. In allowing the appeal, the now Lord President (Carloway) in giving the reasons of the court for doing so, stated:

> "… in enacting the Rules, it cannot have been intended that supervision requirements, made to ensure the appropriate care of children, would fall as a consequence of a failure by a court official to comply with a procedural regulation, compliance with which is outwith parties' immediate control (*R* v *Soneji (supra)*, Lord Steyn at para 23). Any prejudice that may have been caused to the appellant as a result of the delay in hearing his appeal is outweighed by the need, ultimately, for the continuing compulsory supervision of the appellant's children to be determined upon consideration of the substantive merits of the case. *H* v *Mearns (supra)* and *Smith* v *McGregor (supra)* were concerned with references to the sheriff by the reporter regarding whether grounds for referral were established. The time limit there is one imposed upon the court by primary legislation. It is not a purely procedural step, but a bar to future proceedings' (at para 8); '… the court confirms that proceedings could have competently followed the [date of the assignation of the hearing outwith the 28 days] (at para 9)."

This case not only applies *R* v *Soneji* but suggests that the fundamental incompetency which followed from non-compliance with the time limit in *H* v *Mearns* and *S* v *McGregor* need not so follow, where such time limit is "a purely procedural step", prescribed in secondary legislation. The other distinguishing aspects referred to by the Lord President, in respect of these being referral proceedings and compliance being outwith the parties' immediate control, would however not distinguish the courts conclusions in *H* v *Mearns* and *S* v *McGregor* from the present circumstances.

[19] In *Locality Reporter Manager, Ayr* v *BR, MR, AD and JD (2016 supra)* a children's hearing had directed the reporter to make a number of such applications to the sheriff. The applications had been "lost in the post" despite being sent by recorded delivery and therefore certified copies were received by the sheriff clerk some 14 and 15 days late, respectively. In allowing the applications to be lodged, although late, Sheriff Mactaggart stated:

> "… the court should consider the purpose of such timescales and, when necessary, apply appropriate discretion to allow late applications to be warranted' as 'the purpose of such a timescale is to ensure the efficient progress of Children's Referral proceedings through the court part of the process … It is in the interests of families that every stage of such proceedings is dealt with efficiently and effectively with as little delay as possible."

This supports a conclusion that despite being late, the referral in the instant case remains competent, as in *Locality Reporter Manager, Inverness* v *SS*.

[20] In *Locality Reporter Manager, Glasgow* v *LZ* 2017 SLT 961, the Inner House of the Court of Session determined that in an application under inter alia section 94(2)(a) of the 2011 Act, in respect of a child who was present in Scotland but habitually resident in Poland, can competently be made to the sheriff whose territorial jurisdiction includes the area of the local authority with which the child has the closest connection. This is notwithstanding that Rule 3.45 requires that such an application be lodged with the sheriff clerk of the sheriff court district in which a child is habitually resident. In the judgment of the court, Lord Brodie, when referring to Rule 3.45 stated (at para 54):

> "Counsel accepted that the rule was procedural only, as is clearly the case; *prima facie* the rule purports to do no more than indicate with which sheriff clerk a particular form should be lodged. As such, the rule could not change what is a matter of substantive law derived from a proper construction of an Act of the Scottish Parliament, even had that been the intention when the Act of Sederunt was made, which we do not consider that it was. Thus, while the terms of Rule 3.45 may be inapposite, that is of no matter, it cannot deprive the sheriff of a jurisdiction that he otherwise has any more than it has any impact on the jurisdiction of the Children's Hearing."

This case supports a conclusion that Rule 3.45 is procedural only and should not in itself be interpreted as effectively removing the jurisdiction of the sheriff, to determine such an application, as provided for as a matter of substantive law in the 2011 Act, as aforesaid.

[21] In *Locality Reporter Manager, Stirling* v *AM (2017 supra)* a children's hearing had determined that a child was in continuing need of compulsory measures of care and ordered

the continuation of an existing compulsory supervision order, requiring that the child reside with her grandparents. Although contact with the mother had been discussed and there was no issue taken in respect of the existing level of contact with the mother, no specific direction was included in the compulsory supervision order. The mother appealed to the sheriff in terms of section 154(1), on the ground that the decision was not justified, as it was silent as to a contact, consideration of which is required by section 29A. The sheriff considered that the omission to make any reference to contact was sufficiently egregious to undermine the validity of the order and terminated the order, in terms of section 156(2)(b). The reporter appealed against this determination to the Sheriff Appeal Court, in terms of section 163(3). The issue was whether the failure on the part of the children's hearing to refer to their consideration of contact, was such as to justify termination of the compulsory supervision order. The Sheriff Appeal Court indicated that the purpose of section 29A is that consideration of contact by the hearing is a material statutory requirement, but failure to comply with this requirement to the letter should not have the effect of undoing an order which is *ex facie* valid and conducive to the child's welfare. This was a procedural irregularity but not of such seriousness that it was "damaging to the proceedings". A procedural irregularity must be of such seriousness that it is "damaging to proceedings". Following *R* v *Soneji (supra)* "[t]he emphasis ought to be on the consequences of non-compliance by posing the question whether Parliament can fairly be taken to have intended total invalidity". This case not only applied the test set out in *R* v *Soneji* but suggests that in considering what can fairly be taken to have been intended, a procedural irregularity must be of such seriousness that it is "damaging to proceedings", if to invalidate such proceedings.

[22] I did not find the said further examples of the application and non-application of *R* v *Soneji* referred to by the reporter namely: *N* v *Mental Health Officer, North Ayrshire Council* (where partial compliance with the time limit for an application to the Mental Health Tribunal and complete compliance shortly thereafter, was deemed valid); *Dumfries & Galloway Council* v *James Duff* (where late compliance with a time limit in a sequestration, was in effect of no practical moment and therefore deemed valid); and *A* v *Chief Constable Strathclyde* (where a summary application had been refused after being lodged late); to significantly add to this discussion and particularly the guidance derived from the Inner House of the Court of Session and the Sheriff Appeal Court respectively, in *AM* v *Locality Reporter, Aberdeen* and *Locality Reporter Manager, Stirling* v *AM,* in their application of *R* v *Soneji.*

Decision

[23] Applying the *ratio decidendi* in *R* v *Soneji,* I am required to answer the question of whether on making the 2011 Act and 1997 Rules, it can fairly be taken to have been intended, that the effect of the reporter sending the application to the sheriff clerk 4 days late, in a case where the welfare of the child is potentially at immediate risk, would lead to the total invalidity of these referral proceedings.

[24] Any procedural inefficacy which would allow for the possibility of avoidable harm to the welfare of the child, *prima facie* is antithetical to the purposes of the 2011 Act and the 1995 Act, the relative sections of which latter Act were in force and applicable at the time of the 1997 Rules being made. In both Acts the need to safeguard and promote the welfare of the child throughout the child's childhood, generally requires to be the paramount consideration when making relative decisions, in terms of section 16 of the 1995 Act and

section 25 of the 2011 Act. Whilst such considerations of the welfare of the child cannot validate what would otherwise be incompetent proceedings, a consideration of the purpose of the 1995 and 2011 Acts respectively, can assist in determining whether it can fairly be taken to have been intended that total invalidity, in these circumstances, would follow. As stated by Lord Steyn in *R* v *Soneji* and applied by the Sheriff Appeal Court in *Locality Reporter Manager, Stirling* v *AM,* the emphasis in answering such a question ought to be on the consequences of non-compliance.

[25] As a matter of general principle and on an objective appraisal of the intent, which must be imputed, it cannot fairly be taken to have been intended, that a failure by a reporter to perform their duty to carry out the direction of a tribunal timeously, would necessarily totally invalidate the direction of such tribunal, particularly where Parliament in primary legislation has specifically mandated that the tribunal shall make such a direction. The time limit in Rule 3.45 is one imposed on the reporter (as opposed to on a court or tribunal) by secondary legislation and is purely a procedural step (applying *Locality Reporter Manager, Glasgow* v *LZ)*, as was considered a significant factor by the now Lord President, in *AM* v *Locality Reporter, Aberdeen* when considering Rule 3.54. I do not consider that the temporary replacement of the applicable time limit, (by virtue of the said current emergency provisions in the Coronavirus (Scotland) Act 2020*)*, changes the nature of Rule 3.45, as being but a procedural step, prescribed ultimately in secondary legislation. The purpose of such time-limit in the rules appears to be, to facilitate the timeous lodging of an application, so as to avoid unnecessary delay in the determination of matters relating to the child's welfare. A conclusion that such a time limit to avoid unnecessary delay, was intended to result in total invalidity and thus potentially significant, and in this instance pointless, further delay in addressing the welfare of the child, (requiring the restarting of the entire referral process

and thereby potentially frustrating the said purposes of the 1995 and 2011 Acts), does not appear to be a reasoned conclusion to come to. The cases of *H* v *Mearns* and *S* v *McGregor* can be distinguished, as the relevant time-limit applicable in those cases were substantively in primary legislation and these cases also related to the commencement of a judicial hearing before a court and not to the lodging of an application as directed by a tribunal.

[26] This does not necessarily mean that it must have been intended that all such applications be received late. A sheriff will still require to consider all relevant factors in deciding whether to allow the application to be so received. Such factors might include for example whether there are human rights issues, eg in respect of a ground alleging that the child had committed an offence and where there has been a substantial delay affecting the fairness of proceedings.

[27] In the instant application, however, it is not submitted that there would be any unfairness to the child or any relevant person were the application to be allowed to be lodged late. On the contrary, there appears to be the potential for harm to the welfare of the child, from any unnecessary delay in proceedings, were the application to be refused. Any delay could also in turn either delay the sibling's said application or unnecessarily replicate proceedings first for the sibling and then for the child, all with potentially significant and entirely unnecessary costs, extra use of resources and/or inconvenience to the child, relevant persons, witnesses, the children's panel, reporter and generally to the administration of justice. Whilst it may be that, were receipt of the application to be refused, in the absence of any specific statutory provision discharging the existing interim compulsory supervision order that the same would continue, or if not that a new Child Protection Order could urgently be sought; as the learned Professor Norrie wrote, as aforesaid,

> "… the delay inherent in such [restarting of] proceedings would clearly be contrary to the interests of a child in respect of whom it may be necessary to make a compulsory supervision order …"

[28] There therefore do not appear to be any significant countervailing factors which could decisively outweigh the public interest in seeking to prevent a child from suffering harm. The late lodging of the application was the result of a relatively minor administrative error, in the present particularly challenging times of the coronavirus pandemic. Applying *Locality Reporter Manager, Stirling* v *AM*, the procedural irregularity, being but 4 days late, is not of such seriousness as to be in any way "damaging to proceedings", such as to invalidate the same. Following the respective sheriffs' similar reasoning in the said unreported cases of *Locality Reporter Manager, Inverness* v *SS* and *Locality Reporter Manager, Ayr* v *BR, MR, AD and JD*, I have concluded that, on an objective appraisal of what the intent of Rule 3.45 is, that such points against total invalidity of the application in these circumstances and indeed points for receipt of the application, even though late. Having heard parties, on the reporter's opposed motion, I accordingly allow the application under section 94(2)(a) of the Children's Hearing (Scotland) Act 2011 to be lodged outwith the 14 days prescribed in terms of Rule 3.45 of the 1997 Rules, so as to allow the proceedings to proceed as normal, thus endeavouring to safeguard and promote the welfare of the child, as the priority of this court.