SHARED PARENTING SCOTLAND

Representing Yourself in a Scottish Family Court

A guide for Party Litigants in child contact and residence cases

October 2021

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INTRODUCTION

This is an updated and revised edition of the Guide reflecting the position at October 2021, including recent changes in court rules.

Shared Parenting Scotland encourages those who contact us to avoid going to court if possible. The adversarial system tends to polarise attitudes and can even generate entirely new grievances. It can also be crushingly expensive. It is a common refrain at group meetings that *"the thousands we are both spending on legal costs is money that ought to be there for our kids."*

Sometimes, however, the courts can't be avoided where negotiation is not possible. This guide is intended to help anyone who has to go to court get a grasp of the procedures and relevant laws in Scotland. It will be of particular assistance to anyone who is considering whether to conducting a court case without a lawyer. This is called being a Party Litigant.

We are aware that for a variety of reasons the number of people opting to conduct their own case is increasing. The civil justice system acknowledges that it is anyone's right to represent themself and acknowledges this in the rules of court

Some solicitors are willing to give party litigants advice and help with the paperwork for a fee.

If you do end up representing yourself in court, we may be able to put you in touch with one of the people we have trained as a lay supporter. They don't give legal advice, but they can provide you with personal support plus help with things like note taking in court.

Many thanks are due to Shared Parenting Scotland members, lawyers and others who have contributed ideas and information for this publication. Particular thanks are due to Keira Greer and Debbie Reekie of BTO Solicitors who gave us a great deal of help with the 3rd edition.

Nothing in this guide should be taken as forming or constituting legal advice. It is a general guide only which provides an overview of the process and is not designed to provide a comprehensive examination of the law. You must read and ensure you follow the court rules as well as the practice notes applicable to the court your case is being heard in. Mistakes and omissions are the responsibility of Shared Parenting Scotland and they will be rectified in future editions - see www.sharedparenting.scot for the most recent edition.

If you find this information useful please consider making a donation to support our work at https://fundraising.sharedparenting.scot/home

Ian Maxwell
Shared Parenting Scotland
October 2021

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SHOULD YOU REPRESENT YOURSELF?

As noted in our introduction, it is possible to represent yourself either in negotiations with a lawyer representing your ex-partner or in court action.

It is not an easy role to fulfil and anyone considering being a Party Litigant has to be ruthlessly honest about their capacity to conduct their case successfully - especially when they may be locking horns with an experienced solicitor or advocate.

The disciplinary codes of both the Faculty of Advocates and the Law Society of Scotland spell out that their members should not take unfair advantage of a Party Litigant, but this does not prevent them from vigorously representing their client by making good use of their knowledge of the workings of the law and the courts.

You have the advantage of knowing far more about the details of your case than any lawyer. It is possible to succeed if you are prepared to put in a lot of hard work in order to understand how the court operates and the most effective ways to promote your case.

You also have to think very hard about why you are raising an issue in court and how it will be perceived by the Sheriff. A family lawyer is able to take an outside view of the dispute and prepare your court case accordingly, whereas you are right in the middle of the dispute and may find it hard to be objective.

Shared Parenting Scotland has produced this guide to help Party Litigants understand how the family court works in Scotland, but we don't encourage people to represent themselves.

We also hope that this guide will help parents who have a lawyer to know more about the legal machinery. Making yourself better informed about the legal nuts and bolts and the peculiar language should help in your conversations with your solicitor.

DO YOU HAVE TO GO TO COURT?

If you are trying to settle a dispute with your ex-partner, you should always be willing to discuss matters by post or email or use family mediation to try and reach agreement.

You may also correspond with your ex-partner's lawyer. Try all these methods before going to court and be willing to compromise if it does achieve a reasonable result.

Only raise a court action if the above efforts are not succeeding. In the approach to court you may be able to settle - some agreements are reached through discussion outside the courtroom prior to the first hearing or during the hearing itself.

Court action on family matters such as contact is expensive and often magnifies the original dispute through allegations and counter-allegations. This guide should help you if it does become necessary, but we strongly advise you to avoid court if you can.

THE BASIS FOR COURT ACTION

Throughout this Guide, the assumption has been made that your case is one in which a "Section 11 Order" for contact or residence is being asked for. This refers to Section 11 of the Children (Scotland) Act 1995. You should read this as it is very likely to be relevant to your case.

The Children (Scotland) Act 2020 made various changes to the 1995 Act which will be implemented over the next few years.

Other matters such as obtaining parental rights and responsibilities (see next section), one parent wanting to move away or choice of school may also be raised at the same time.

The person who raises the court action is called the Pursuer. The other side - usually the other parent of the child - although in certain circumstances it may be another family member or a local authority that has care of the child - is called the Defender.

These labels remain throughout the time that a case is being considered by the court, even if the defender is also asking the court to decide something.

The 1995 Act sets out the terms of rights and responsibilities for parents and also for public authorities that may have taken over the role of parent.

It spells out clearly that when a judge is considering an application for contact or residence that the welfare of the child is "paramount" (see section on Principles of the Court below). It is important to keep this principle at the forefront of your mind at all times in your application.

It should not be a competition between the parents. Judges are increasingly impatient when they perceive that a contact/residence action is being used to continue conflict between the parents at the expense of the children involved.

Parents should try to demonstrate both in the written documents and the way they conduct themselves that they are positively focused on their relationship with the children, even when unfounded and personal criticisms are made about them by the other party.

The European Convention of Human Rights includes Article 8 on the right of all individuals, including children, to family life. http://www.hri.org/docs/ECHR50.html#C.Art8

The United Nations Convention on the Rights of the Child (UNCRC) sets out the fundamental rights of all children. The UNCRC covers areas including children's rights relating to health, education, fair and equal treatment, the right to be heard, protection from exploitation and leisure and play. Article 9 of the UNCRC is about children remaining in contact with their parents.

In 1991, the UNCRC was ratified by the UK. In 2020 the Scottish Parliament passed legislation to directly incorporate the UNCRC into Scots law, which will oblige a wide range of organisations to take full account of the UNCRC. The Bill has now been overturned by the UK Supreme Court but the Scottish Parliament is likely pass an amended law to achieve this aim.

WHAT ARE PARENTAL RIGHTS AND RESPONSIBILITIES?

The Children (Scotland) Act 1995 specifies the rights and responsibilities of parents in Scotland (PRRs).

Responsibilities are the fundamental obligations of parenting, such as the responsibilities to safeguard and promote children's health, development and welfare and to provide direction and guidance to the children in accordance with their stage of development.

Parents have rights only in order enable them to carry out these responsibilities.

Rights include the ability to control, direct or guide the children in a manner appropriate to their stage of development, and importantly, to have your children living with you or to maintain personal relations and direct contact with your children on a regular basis unless there are specific reasons why it is not in the interests of the children that you should have contact.

A mother who has given birth to the child automatically has PRRs. A father who is married to the birth mother of a child automatically has PRRs.

The Family Law (Scotland) Act of 2006 extended PRRs to unmarried fathers for children born after May 6th 2006 but only if that father is noted on the child's birth certificate.

An unmarried father whose child was born before May 6th 2006 does not have PRRs even if his name is on the child's birth certificate. For children born to same-sex parents who are not married or in civil partnerships the parent who doesn't carry the child may also not have PRRs.

it is possible to acquire PRRs either with the written agreement of the mother or, if no agreement is possible, by applying to court for them.

An application to the court for PRRs can be made at the same time as an application for contact with a child.

RAISING AN ACTION IN THE SHERIFF COURT

The great majority of child contact cases are conducted in the local Sheriff Court. There are 39 Sheriff Courts in Scotland, arranged in six districts (sheriffdoms).

You must make sure you raise your action in the correct place. For most cases, it will be the Sheriff Court in the town nearest to where the child is "habitually resident." This usually means the child has lived there for the last 40 days.

The Scottish Courts website: http://www.scotcourts.gov.uk/the-courts/sheriff-court/find-a-court has a list of all the sheriff courts and the sheriffdom they are in. You need both of these pieces of information to proceed. If you are not sure which court should be used look at the court descriptions on the Scotcourts web site and contact the most likely sheriff court to ask if they cover the place where your child lives.

It is possible though unusual to raise a case in the Court of Session which is a higher level court which only sits in Edinburgh. It will be much more expensive there if you are funding the case yourself. Legal Aid is unlikely to sanction raising an action in the Court of Session unless there are unusual circumstances or complex points of law in your case. There is an excellent downloadable guide to representing yourself in the Court of Session at http://bit.ly/1lzilwM

Family courts each with a group of specialist family Sheriffs have been established in Edinburgh and Glasgow. There are family Sheriffs in Dundee and Aberdeen courts but not a family court. The other Scottish Sheriff Courts do not have that degree of specialism. You may not see the same Sheriff each time your case calls, although most Sheriffs try to hang on to their cases.

Family law procedures in the Sheriff Courts are governed by the Ordinary Cause Rules (OCR). They can be found at: http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/Sheriff-court---civil-procedure-rules/ordinary-cause-rules.

The most relevant sections are Chapter 33 and Chapter 33AA which relate to Family Law Actions. If you are representing yourself, you should identify and familiarise yourself with this section. Note that there are different versions of the rules applicable depending on what date your case was originally raised in court. Although the rules are not written in plain English and can be difficult to read, you need to follow them and use the accompanying forms.

This guide includes references to these rules and tries to explain how they should be used.

SPEAK TO THE SHERIFF CLERK

Sheriff Courts have a Civil Department with trained staff and Sheriff Clerks. They are usually very helpful and can answer many questions about procedure, fees and technical matters. They cannot give legal advice.

FEES

There are court fees to be paid when lodging documents. Information about fees, and Fee Exemption application forms for those on certain benefits can be found at: http://www.scotcourts.gov.uk/rules-and-practice/fees/Sheriff-court-fees mostly under Ordinary Procedure.

If you are still unsure, the Sheriff Clerk's staff should be able to help. Cheques should be made out to the Scottish Court Service. Most courts should now be able to take credit or debit card payments.

PROCEDURE

Sheriff Court procedure can be quite difficult to navigate, especially in a complex family law case. **There is a flowchart below**, showing the basic procedure in a case involving children. You should refer to this to keep you on the right track but be aware that it is not set in stone - there may be a number of Child Welfare Hearings, motions or other things that will affect the progress of your case.

The final stage in the procedure flowchart is the 'Proof'. A Proof is relatively rare in family law cases. The court usually prefers the parties to sort out as much as possible, and as early as possible, between themselves. It is usually better for the children if they can. However, if you feel the other parent is being unreasonably controlling or is withholding contact you can press for an early proof. If you do, be careful that it doesn't appear to be you that is being intransigent.

A practice has evolved in some courts of holding an "evidential child welfare hearing" on those issues in which witnesses may give evidence under oath but short of a full-on proof. This can happen if a Sheriff considers there are specific issues holding up agreement between the parties. Consult Shared Parenting Scotland if this is happening in your case, as there are certain drawbacks to this type of hearing. There are no rules covering this process and it may be difficult to appeal because the hearing isn't noted or recorded.

FLOW CHART

Stages of a Sheriff Court court action

See a solicitor. Investigate whether you might be eligible for legal aid/explore the various Alternative Dispute Resolution options available to you

Draft an application to the court - known as as an Initial Writ & Form F9 (if required)

Send your signed Initial Writ (and Form F9 if required) to the Sheriff Clerk for Warranting. Ensure you have included the necessary birth certificates in an Inventory of Productions.

When the Warranted writ is returned, serve the Service Copy on each defender. Include NID (Notice of Intention to Defend) and F9 forms. Always make sure you have confirmation that service has been successful. Lodge Form F16 with the Court

If a NID is not lodged by the Defender within 21 days the court is unlikely to grant an Order without further information

Defender has 21 days from date of service to respond. Pursuer can do nothing in this time except check it has been served

If a NID is lodged by the Defender, the Court will send a G6 form with all the important dates on it. This is the court timetable so make sure to put all the dates in your diary! Refer to the OCR to ensure you comply with the rules regarding Form F9

Adjustment Period - both parties adjust their pleadings. The pleadings are sent back and forth between themselves, not to court.

A CHILD WELFARE HEARING will almost always be fixed. This will be more than 21 days after the Defences are lodged unless the Sheriff thinks it should be earlier. See the section on Child Welfare Hearings.

Pursuer must lodge a Record no later than two days before the Options Hearing

OPTIONS HEARING - Sheriff can select one of the following three options

Continuation
OH can be continued for a maximum of 28 days. An OH can only be continued once.

PROOF
The case may be assigned to the evidential hearing called the Proof.

The Pursuer should suggest a number of days for the Proof to be "set down" for - this depends on the complexity of the evidence to be led and the number of witnesses. Parties often try to agree an appropriate number of days.

Debate or Proof Before Answer
These options are very unusual in family cases.

TIMESCALES

You can see from the flowchart that there are a number of steps to be taken in any case. These steps can take a long time from start to finish, with many frustrating weeks between. It is impossible to state how long a case may take as it is highly dependent on the individual circumstances and the issues in dispute. Negotiation with your former partner is worth considering at any time in the process as a speedy resolution to the case may be beneficial for everyone involved, especially the children.

When a NID (Notice of Intention to Defend) is lodged by the Defender in a case, the court will prepare a timetable and send it to you. Be sure to put each date in your diary. Be aware that dates will change if hearings are continued or additional motions (new information or requests made to court by either party) are enrolled.

It is important not to let your case drift. The passing of time in itself can undermine the relationship you have with your children and deliberate delaying tactics by the other side are not unknown. There have been cases where Sheriffs have indicated that the length of time taken to reach a resolution in court and the distance that has grown between the children and the pursuer has influenced their final decision to minimise or refuse contact.

If you are represented ask for a meeting with your solicitor to agree your strategy to the case and decide when to press on. If you are representing yourself, you must make your own judgment on the balance between being seen to be difficult and standing your ground.

The law in Scotland requires the Court to consider any risk to the child's welfare that a delay in proceedings would pose. This was reinforced in section 30 of the Children (Scotland) Act 2020 with the statement that: "When considering the child's welfare, the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose."

TERMINOLOGY

There are certain words used all the time in court proceedings. It is a good idea to be familiar with these terms so that you can follow what is going on more easily. There is a Jargon Buster in APPENDIX THREE.

In particular, note the pronunciation of Record (Re-CORD) and Decree (DEEcree) which are different from their usual pronunciation in conversational English.

Although it is useful to understand the terminology, if you are representing yourself it's perfectly ok to use normal language and not a good idea to try to use "legal speak".

If in doubt, ask the Sheriff what something means.

PRINCIPLES OF THE COURT

In order to give yourself the best possible chance of success, it is important to understand what the court will consider when making a decision. The Court must abide by something called the "Welfare Principle" when dealing with cases involving children. In applying the Welfare Principle the court tries to establish what is in the child's best interests using a "non-interventionist" approach where possible.

The court has a duty to ascertain and take account of the child's views where appropriate, depending on the child's age, maturity and understanding of their circumstances and this principle will be strengthened when the Children (Scotland) Act 2020 come into force. A recent appeal judgment emphasises the need to take children's views

The Principle can be broken down into three parts:

BEST INTERESTS OF THE CHILD

The main principle in family law is "the welfare of the child is paramount."

Every step taken by the court should be in the best interests of the child. It can be difficult to separate what you want, what your former partner wants and what is objectively in the best interests of the child.

You have to be honest with yourself. DO NOT think about your interests and what YOU want. That won't work in court. Think always what is best for the child. At the same time remember that it is normal for a child to have a close and supportive relationship with both parents.

The adversarial nature of court procedures often makes it feel that the parent trying to increase contact is having to prove their worth as a person, never mind as a parent.

It can be very frustrating to discover that the things considered as normal parenting prior to separation may now be challenged and argued as unnecessary or somehow suspect and have to be explicitly justified.

THE CHILD'S POINT OF VIEW

When a Court is deciding whether or not to make an order, it must give the child an opportunity to express their views and the Court must have regard to any views expressed by the child, taking into account the child's age and maturity. The child is presumed to be capable of forming a view unless the contrary is shown. The court will consider each child's level of maturity and understanding when deciding how much weight to place upon their views. Generally, the older a child is, the more weight their views will have.

One way a child's views may be expressed is by way of a Form F9. Unless the child is too young to be aware of the separation and legal proceedings s/he will receive a Form F9 which has been approved by the Court. This is a form designed for children who are old enough to write down their opinion. When completed it is sealed in a confidential envelope and given only to the Sheriff. See APPENDIX TWO for a copy of the form.

The Scottish Child Law Centre www.sclc.org.uk has also devised a child friendly "Helping Hands' template that the child can fill in with the help, for example, of a teacher or other neutral adult s/he can trust.

There are other ways a child's view may be taken into account - often by way of a Child Welfare Report. These are intended to be independent reports for the assistance of the court. (See section on Reports below.)

Take a look at the rules relating to taking a child's point of view into account which are at OCR 33.7A & 33.19 and how those views are recorded at OCR 33.20.

A curator ad litem is another available option, however this is much less common. The curator ad litem is appointed by the Sheriff to independently represent the interests of a child who is the subject of the court action. A child can also be represented by their own lawyer in a court action, but this is not common.

'NO ORDER' PRINCIPLE

The court will only make an order where it believes that making an order would be better than making no order at all. This is called the "No order" or "non-interventionist" principle. In practice it means that if the court is satisfied that the current arrangements are in the best interests of the child, and that to make an order varying the current arrangements would not be in the best interests of the child, the court will not make an order.

An Initial Writ should address this in the "condescendence". There should be a sentence or two explaining why it would be better that an order is made than that no order is made.

PROTECTION OF CHILDREN FROM ABUSE

The Family Law (Scotland) Act 2006 introduced the need to protect the child from abuse and also the risk of abuse in granting an order for contact or residence. It refers to the effect such abuse, or the risk of such abuse, might have on the child, or on the ability of people to co-operate safely with one another in making arrangements for parenting time with the child.

The court has to balance the benefit to the child of maintaining contact with the detriment of exposing the child to conflict between the parents, if it can be shown that violence has taken place or there is a justified fear of violence.

If either party already has a conviction for domestic violence this should be mentioned in the initial writ. Allegations of domestic violence may be made in response to the Initial Writ. If these allegations are false they must be denied or else they will be accepted as fact.

Additionally, since 7 November 2020, all forms of physical punishment of children are against the law. The defence of "reasonable chastisement" is no longer available for anything happening after this date. This change in the law was introduced by the Children (Equal Protection from Assault) (Scotland) Act 2019. It means that children have the same legal protection from assault as adults in Scotland.

DRAFTING DOCUMENTS FOR COURT

The keys to the success of any court case are the document(s) it is founded upon. The document that raises a court action in the Sheriff Court is known as an Initial Writ. This should follow the style of Form G1 which can be found on the Scottish Courts & Tribunals Service website. A sample initial writ is included in APPENDIX ONE

It is extremely important that this document sets out your case succinctly and accurately. It is essentially an overview of all the points of your case and you must ensure you include all relevant matters. It is impossible to stress enough how important it is to get the Initial Writ accurate from the outset. If important elements are left out, it is possible but difficult to add them later.

You should set aside enough time to draft the documents well.

If you are represented make sure you prepare properly for the relevant meeting with your solicitor. S/he may give you a pro forma template to fill out in advance, but you should make your own list of important facts and insights into your relationship with your child or children. Make sure you check your solicitor's draft carefully for errors or omissions. It happens. You are the expert on your own situation. It is also very important that the Initial Writ is factually accurate and true.

The documents should be in the proper format and sent to the other side and to the court within the prescribed time limits which are set out in the Court rules. You must give fair notice to the other side.

If you send the documents or productions late, or turn up with them on the day, there is a strong chance they may not be accepted by the court no matter how important they are to your case.

SERVING COURT PAPERS

As well as lodging your Initial Writ with the court you must 'serve' it on the other side. You can only serve the Initial Writ on the other side once you receive the Writ and the Warrant from the Court. You should also include any documents that you have lodged in Court to support your position. The rules of service in Sheriff Court actions can be found in Chapter 5 of the OCR. There are two methods of citation:

1. First class recorded delivery post. This is the most common method used and it is also the cheapest. Please read OCR 5.3 for the requirements. The downfall is that you may have to re-serve the court papers if it was unsuccessful the first time.
2. Sheriff Officers. Please see OCR 5.4. There is a substantial fee for this. The Sheriff Clerk will be able to give you a list of local Sheriff officers.

There are forms that you must also serve on the other side. For example, when you are serving the service copy of the Initial Writ on the Defender, you must also include the Warrant of Citation (Form F14), citation of the defender (Form F15) and a notice of intention to defend (Form F26). You must also send a copy of your proposed Form F9 to the Defender. If you use Sheriff Officers they will prepare the necessary forms on your behalf.

Once you have cited the defender, you must complete Form F16 which is the Certificate of Citation. This should be appended to the Initial Writ and returned to the Court.

You may also have to serve your writ on other people connected with the case, such as the former partner of the other parent. If this applies to your case, please refer to the OCR to ensure you also include the correct forms.

LOCATING THE OTHER PARENT

If you don't have an address or know which lawyer is representing the other parent, you can try the following:

Sheriff Officers/Messengers-at-Arms have access to "public domain" databases and other resources. See https://www.smaso.org.uk/member/search/ to find a service in your area

There are other commercial tracing services - use an online search to find them.

You can also look into Social Media for the other parent or wider family. Check Facebook, Twitter, SnapChat etc.... to see if an address might be obvious. Also try the 192.com service.

If these options don't work you can ask the Court to ask the UK Government Benefits Agency to disclose the address to the Court for the purpose of serving papers. This is sometimes called a Section 33 address

disclosure request - https://www.legislation.gov.uk/ukpga/1986/55 /section/33

THE INITIAL WRIT

It is very important that the Initial Writ is drafted very carefully and precisely so that all of the appropriate facts have been put to the other side from the start. This makes the adjustment period easier. We will go through each part of it and discuss what it is for and how to draft it.

The Initial Writ is Form G1. This is the format that must be used. It must be on A4 sized paper, printed single-sided. The specimen in APPENDIX ONE shows what an Initial Writ looks like.

HEADING

Remember to check which court the case should be heard in, and which Sheriffdom the court is part of. If the case is not in the right court, the other side can challenge the jurisdiction of the case and the Sheriff may decide that it should be raised in a different court. If this happens you will have to pay the costs.

DESCRIPTION

This is so the court knows what the document is. Here you put "Initial Writ"

INSTANCE

This is the name for the part that explains who the parties are. You write "in the cause" and then the full name and address of the person bringing the action (you!), and then the word "against" then the full name of your former partner, or whoever you are bringing the case against.

Do not write "versus" or "v" you should only write "against." If they have a married name and a maiden name, write both, (example: Mary Ann Cairns or Black) as they could be known under both names.

You might not know the address of a person. Look at OCR 33.4. If you do not know the address of a party to the action, you should explain in the condescendence the steps you have taken to try to find out the address of that person.

Once the instance is drafted it will stay the same for the rest of the case unless one party asks the court for permission to amend it, for example if the address changes or there is a mistake in it. If you draft a Minute or any other court documents, be sure to use the same instance that has been used in the Initial Writ.

The person who raises the initial action remains as the Pursuer throughout the case. An extra description such as "minuter" or "respondent" is added to show what that person is actually doing in subsequent documents.

CRAVES

The next part of the Initial Writ is the "Craves." A Crave is what you are asking the court for, so it is likely a Crave would be for "residence" or "contact." You can have alternative Craves so that if the court doesn't grant one Crave, they might grant the alternative. See the specimen Initial Writ template.

You need to be able to support ALL Craves with the rest of the Initial Writ and the evidence you lead.

Party Litigant pursuers are often taken by surprise when the judge's first words to them are "What do you want?" The answer is what you have set out clearly and concisely in the Craves.

The Crave should be short, very precise, and should be capable of forming part of the "interlocutor" (the written decision of the judge). It should be legally competent and enforceable - it must be something that the court has the power and ability to grant.

Make sure you ask for only what you can guarantee to sustain. Don't be the one who breaks arrangements. Keep in mind what suits your children. If you have more than one child think whether you always want to see them all at the same time, or whether you can see them sometimes together and sometimes individually. Try to be generous and flexible as well when it comes to birthdays and religious holidays - offer to alternate and think ahead to possible clashes between a regular contact arrangement and holidays etc.

And think about what is appropriate for the children. What suits a three-year-old will be different from a ten-year-old or a teenager.

Think about their other commitments - clubs, sports, sleepovers - and work out how to accommodate them in the plans that looked fine on paper!

KEEPING THE CHILDREN INFORMED

In the Craves you need to ask for a "Warrant to Intimate" on the various people involved in the case, usually your former partner. This means you have the court's authority to serve them with the Initial Writ. Look at OCR 33.7.

You should also look at OCR 33.7A. This relates to Form F9 which is used to obtain the views of the children.

You must include a crave asking the Sheriff to allow the Form F9 to be served on the child. Alternatively, if you consider that it would be inappropriate to serve Form F9 on the child, you need to include a crave asking the Sheriff to dispense with this requirement and why, for example, the child is too young to understand the proceedings.

When presenting the initial writ for warranting, submit a draft Form F9 (OCR 33.7A(1)(b)) showing the details of what is proposed to be included on the F9.

The F9 is in the form of a letter sent to the child, see APPENDIX TWO

This can explain the proposal as follows:

Your dad is asking the court if you can spend more time with him - he would like you live with him for half of the time when you are at school and for half of the holidays. *[or whatever is being asked]*

The views of the other parent can be added in response:

Your mum is asking for things to stay the same so that you see your dad every second weekend and spend half of the holidays with him.

And the child is asked the question:

How do you feel just now about spending more time living with your dad?

If the Sheriff is satisfied that the form has been drafted appropriately, an order granting warrant for intimation in Form F9 will be granted.

If your child is of an age and maturity that they can provide their views in Form F9, you should draft this form at the same time as your Initial Writ. You will need to lodge it in Court at the same time as the Initial Writ. The Initial Writ should NOT be sent to any child.

Remember - all Craves should be supported by the averments in the condescendence.

CONDESCENDENCE

This is the part of the Initial Writ where you narrate the FACTS you wish to rely upon. These are called averments.

You shouldn't stray into narrating the law or the evidence you think will prove your facts.

The relevant law comes in your "Pleas in Law" later in the Writ.

The evidence is what is said by witnesses (including you) at Proof or evidential hearing. It can be very difficult to distinguish the facts, law and evidence, but you should try.

When drafting the facts, use only one fact per sentence. Use simple straightforward language so that the Sheriff will see what you are saying immediately. The Sheriff will not be impressed by long, complicated and unnecessary words and, similarly, will be unimpressed by emotive language. Steer clear of adjectives.

Think carefully about the words you use as you could be asked to provide evidence of any facts you write. If you cannot provide evidence when asked it may make your case appear less credible.

PARAGRAPHS OF THE CONDESCENDENCE

The Condescendence should be laid out in numbered paragraphs, each paragraph narrating a different set of facts.

Paragraph 1: This should be the background of the case, and should confirm the addresses of the parties, details of the relationship, details of the children including dates of birth, details of the separation, and reference to birth certificates being lodged as evidence. This information is likely to be non-contentious.

You should provide the court with the information it needs to be sure that it has jurisdiction over the case. Say why that court is appropriate - usually because the child is habitually resident in that area.

Look at OCR 33.3. It states that an application for a s11 order needs to include certain averments within the condescendence; notably that there are no other proceedings elsewhere that the person making the application knows about and that no permanence order is no force in respect of the child.

When the case involves a child, you must lodge an extract Birth Certificate as a production (see above "Productions"). You must narrate the fact that you are referring to that particular birth certificate. The wording should be:

"An extract Birth Certificate is produced herewith."

Paragraph 2: Include averments to support why warrant to intimate Form F9 on the child should be ordered by the Sheriff. Alternatively, if the child is too young to understand the action, and you are asking the court for permission not to serve Form F9 on the child you should narrate this here. See the specimen Initial Writ.

Paragraphs 3,4: Set out the facts of your case, beginning with the breakdown of the relationship and what happened after that. Explain the facts surrounding the children and the current situation. Describe the factual basis for the Craves you have asked for.

Use each paragraph to make a different point, and to explain a different set of facts. Even if facts are related, if they are complex you might want to split them up to make it easier to follow.

PLEAS IN LAW

Look at your Craves. Each Crave must have a Plea in Law that supports it. This shows the court that for each thing that you are asking for, there is a relevant bit of law to support it. Look to the Children (Scotland) Act 1995 which sets out the principle that the welfare of the child is paramount.

GOLDEN RULES

- Follow the correct structure and layout
- Get the names, addresses and jurisdiction correct
- Try not to mix up fact, evidence and law
- One fact per sentence
- Keep your language simple and straightforward
- Make sure each Crave is supported by a plea-in-law
- Review your Craves and pleas-in-law - do you have facts to support them? Can you support all of those facts with evidence?

You will not be able to lead evidence in court unless there is a factual basis already stated in the Condescendence.

For example, if you want to talk during the case about three instances of domestic violence you MUST narrate the FACTS of each incident.

EXAMPLE:

On the evening of 23rd March 2009, the pursuer and defender were together at home. They disagreed over Jamie's school work. The disagreement escalated until both parties raised their voices. The defender struck the pursuer. The pursuer did not retaliate. He packed an overnight bag. He did not speak to the defender during this time. He left the house at approximately 7.30 pm. He went to his parent's house in Kilmarnock and stayed there overnight. He returned to the house at 5.30pm on 24th March 2009 after finishing work for the day.

This incident can then be explored in court and evidence led about what happened. You cannot bring up other instances of domestic violence unless you have narrated the facts in the averments.

If there were many instances you can say that there were many instances. But to talk about specific instances you should narrate the facts of each instance.

You cannot introduce new facts or evidence during your court action if there are no averments to support it in your pleadings.

This applies to both the Pursuer and Defender. If there have been developments since you last revised your pleadings, you should consider whether you require to amend your pleadings to incorporate any relevant update you wish to refer to.

AFTER THE INITIAL WRIT

Once the Initial Writ has been sent there is an exchange of responses between the Pursuer and Defender, called adjusting and amending (see below). This is usually carried out by email between solicitors. It is quicker, cheaper and accepted by the courts. It would be sensible to ask the solicitor for the other side if s/he will accept a similar email exchange with you as party litigant.

If they agree - and it would be unusual to refuse - remember this is for formal exchange of documents. Take care to not 'think out loud' in an email or respond to what you think are untrue, unfounded or unhelpful contents in what they send you. Keep your arguments about the other side's evidence - and your own evidence rebutting it - for the court.

GET ORGANISED

The key to minimising stress and to running your case efficiently is good organisation.

From the very start you will have a timetable with dates when the case is calling in court. Use this to keep a diary of when various items need to be lodged with the court and the other party in advance of hearing dates. You will need to keep this timetable constantly updated to take account of court dates being set, as well as changes, continuations and other factors. By keeping on top of the dates, you will be less likely to lodge things late and will minimise delay.

You will need a folder or ring binder to keep all of your documents together. Make divisions in it to keep everything separate but easy to find when you are on your feet.

You should think about having two folders: one for the court papers (the "Pleadings" and the "Productions" lodged by you and by the other side). Keep only the most up to date court papers in this file.

The other should be a correspondence file and should hold everything else: letters, emails, rough drafts, notes of telephone calls, print outs, photocopies from textbooks etc. Keep everything in chronological order to make it easier to find.

PRODUCTIONS

Productions are items of paper-based evidence that are lodged with the court. In contact cases they are usually Birth Certificates, affidavits, letters, bank statements etc. They should be there to back up everything you have written in your "averments" (the statements of fact you are relying upon in your written pleadings).

Productions must be listed in a separate document called an inventory (see the sample inventory in APPENDIX ONE). The Ordinary Cause Rules (OCR 9a) state that the inventory should be sent to the other side no later than 14 days after the date of the interlocutor setting a date for the proof.

In practice, you may have to assemble more than one inventory at different stages of the case. For example, you may wish to have productions lodged before a Child Welfare Hearing. It may be that there will never be a proof so make sure anything you think is relevant is lodged for the Child Welfare Hearing. You don't have to use everything in your inventory but may be refused permission to refer in court to anything that isn't in the inventory.

You should send your Inventory of Productions to the other side as soon as possible, and lodge a separate copy with the court for the Sheriff.

A useful production might be a chronology of events, particularly if there is a long and complex history of the case or the relationship.

You must provide a copy Birth Certificate for any child about whom you are seeking a s11 order. These should be lodged with the Initial Writ as productions. You can get copies of birth certificates from your local Registrar's office for a fee. There should be averments referring to the Birth Certificate (see below and style Initial Writ in APPENDIX ONE).

It is important that your averments refer to the productions you wish to rely upon. There is particular wording you can use rather than repeat word-for-word what the productions says.

The wording is:

"X Production is produced"

You can use this same wording for any documentary evidence you are relying upon in your averments. Example:

"A copy of the Defender's Bank of Scotland statements dated 4th December 2008 to 14th May 2009 relating to Current Account Number 001234567 are produced"

THE RECORD

The Initial Writ (see **above**) is the founding document of the case. It is drafted by the Pursuer in the case, the person who is asking for something to happen. The answers are drafted by the other side.

The Record (pronounced re-CORD) is made up of the Initial Writ; the answers to the writ by the other side (also called Defences); and your responses to their defences.

All court cases rely on the Writ, Defences and Record. These documents should include all the information on what the case is about.

ADJUSTING AND AMENDING

The Record is sent back and forth between the parties and adjusted until both sides feel they have stated all of the facts they plan to rely on at the proof or evidential child welfare hearing and have answered the points raised by the other side. This is what is called the adjustment period. The document that is sent back and forth is called the "Open Record". The document is sent directly between the parties, not to the court. Read OCR 9.8 for the rules about adjustments.

The Record cannot be adjusted later than 14 days before the "Options Hearing". After that, the adjustment period is finished, and no more changes can be made. It is now the "Closed Record". The Sheriff will normally formally close the Record at the Options Hearing.

In exceptional circumstances if some significant new evidence has just become available, not just because you missed the deadline, you can ask the court for permission to "amend" the Record. The other side may oppose your request. If the Sheriff does not think you have a good reason, s/he may refuse. You should be aware that if you seek to amend the Record after the adjustment period has ended, you may have an award of expenses made against you.

PREPARING FOR COURT

A party litigant will not be expected to know all of the rules of the court or follow the same protocols as a solicitor. The Sheriff will grant you some leeway and will take into account that you are not a trained or experienced court practitioner. However, the Sheriff will still expect you to have some understanding of the court rules and therefore it is a very good idea to be well-prepared and reasonably familiar with the court procedures.

That way you are giving yourself the best chance to put your case across clearly and efficiently. There is less chance of delay and frustration. Sheriffs are human beings too and the more you can demonstrate that you are assisting the court by being prepared, organised and as focused as possible the more you will make a favourable impression. Thinking out loud and rambling through minute details of incidents that are not relevant to the best interests of your children will not make a favourable impression.

LAY SUPPORTERS

Lay Supporters are recent arrivals on the Scottish legal scene. They are partly equivalent of McKenzie Friends in England and Wales. They are sometimes called Courtroom Supporters.

There are strict limits to what a Lay Supporter can and cannot do. The rules are found at OCR 1.3A and you should ensure you read this thoroughly.

The rules state that with the permission of the Sheriff, a named individual may accompany a party into the court and assist them in the following ways:

- Provide moral support
- Manage court documents and other papers
- Take notes
- Quietly advise on points of law and procedure, issues the litigant may wish to raise with the Sheriff, and questions which the litigant might wish to ask witnesses

The Lay Supporter is not there to speak for you in court. It is very important that the Lay Supporter should not receive any money for the service they provide. It is a voluntary support role only.

If you are going to take a Lay Supporter along to a Sheriff Court, you can write to advise the court and the other side in advance or let the court know before the hearing. It is up to the other side to object and they will have to have good reasons for doing so. Your Lay Supporter can sign and provide a note as well to reassure the court that they are familiar of the rules they are working within. There is no fee for applying for the help of a Lay Supporter in the Sheriff Courts though there is a fee and an application form for Lay Supporters in the Court of Session.

The Lay Supporter cannot continue to be in court if you start being represented by a lawyer (see OCR 1.3A(4)).

The main advantage of having a Lay Supporter is to provide you with support and help with note taking and handling court papers. It may also assist you if you are not a confident speaker, or you find it hard to detach from your emotions in a case. Shared Parenting Scotland has trained a number of volunteers to act as Lay Supporters - contact us if you want to have this support in your case.

LAY REPRESENTATIVES

Lay Representatives are a more recent innovation than Lay Supporters, officially accepted in December 2012 for the Court of Session and April 2013 in the Sheriff Courts. Both courts are still getting used to them. In the Sheriff Court, the rules can be found in OCR Chapter 1A and the Scotcourts web site has a guide at https://scotcourts.gov.uk/taking-action/lay-representation-in-civil-cases.

You need to ask the Sheriff's permission for the Lay Representative to appear on your behalf. This request is to be made orally on the day of the first hearing you wish to have a Lay Representative represent you in Court. This request should be accompanied by Ordinary Cause Form 1A.2 which is to be completed by your Lay Representative.

A Lay Representative is permitted to speak on behalf of the Party Litigant who must be present. The Lay Representative can make oral submissions - speak directly to the judge - in terms of the evidence and the points of law raised by the evidence. If you have a Lay Representative, they are likely to do almost all of the speaking in court to present your case, although you may be asked to speak by the judge. Make sure that you are sitting close enough to attract your Lay Representative's attention if there is something to which you want to draw their attention.

Some judges are comfortable in asking the Lay Representative to clarify points of evidence as they arise. They are aware that court time is an expensive resource and Lay Representatives can help keep up the momentum of the proceedings.

The Lay Representative is now allowed to examine or cross examine witnesses and do anything that a lawyer could do, since the rule change in July 2017. See https://www.sharedparenting.scot/new-powers-for-lay-representatives-in-scottish-courts/ for further details.

The new rule also adjusts the test that the court applies in considering the grant of permission for a lay representative to act for a litigant. The new test is "whether it is in the interests of justice to grant permission" which should make it more likely that permission is granted than the previous test of "where it may assist the court". If you are refused as a lay representative, consider appealing and let Shared Parenting Scotland know the circumstances.

The Lay Representative is permitted to view all relevant papers but agrees to be bound by confidentiality about the proceedings.

Both Lay Supporters and Lay Representatives are sometimes called "McKenzie Friends". in Scottish courts, even though the term only applies in other parts of the UK. McKenzie Friends are well established in the English courts and some of them charge for their services. This has not developed in Scotland so far.

Lay Supporters and Lay Representatives are not allowed to be paid for any of the work that they do, although they are allowed to accept re-imbursement of travel, refreshments and copying costs. Because of this restriction, there are very few people available to act as lay representatives in family cases.

This document focuses on the rules in the Sheriff Court as this is the most commonly used Court for child-related actions. See the Scotcourts website for further information.

For rules on Lay Representatives in the Court of Session, please see: http://www.legislation.gov.uk/ssi/2012/189/article/2/made. The Court has interpreted the rule so far that a new application must be made in advance for each court appearance.

HOW SHOULD I PREPARE MYSELF?

CHANGES IN COURT BECAUSE OF COVID

Since the start of the pandemic the operation of all courts has been significantly changed, with many hearings held by telephone conference or online using Webex videoconferencing.

It is likely that online hearings will continue for procedural hearings, but Child Welfare Hearings and some proofs are likely to move back to in-court hearings. Look on the Scotcourts web site https://scotcourts.gov.uk/ for current details of how these arrangements are changing. Some courts will be able to give you an approximate time slot, but others will set all cases for 10am or 2pm and you will have to log in then and wait for your case to be called.

Try and make sure that the court will send you login details for Webex or phone hearings - ring or email the court the day before a hearing if you haven't received any details by then.

IN THE WEEKS BEFORE:

Find out where the court is.

Plan how you will get there - parking or public transport?

Visit the court so that you know where everything is located.

Check your timetable again - have you sent all of the necessary documents in on time?

THE DAY BEFORE:

Look out what you will wear - you should dress as though you are going to an interview.

Make sure your papers are well-ordered.

Try to get a good night's sleep.

ON THE DAY:

Get there early. Most court business is scheduled for 10am (Ordinary Court); 12 noon or 2pm (Child Welfare Hearings) although this pattern is different in some courts. Check the time of your case and turn up at least half an hour early. You will need to go through a security check and this can take a while.

Find your court. The front desk can usually help with this. In larger courts they will direct you to an usher with a list called "The Rolls." S/he will tell you which courtroom you will be in. The Rolls can be checked online on the Scotcourts web site beforehand for cases that will call but courtrooms are only allocated on the morning and Child Welfare Hearings often aren't listed to maintain confidentiality of the parents.

Some sheriff courts have a waiting room for each side of the case, so ask at the front desk which waiting room you should use. In other courts you may have to wait in a general area. It is wise to keep away from your ex-partner at this stage and certainly avoid getting into an argument.

Find the solicitor on the other side, introduce yourself and your Lay Supporter or Lay Representative if you have one. Don't worry if the opposing solicitor doesn't show up until 10-15 minutes before the start of the hearing. They may wish to discuss things with you to try to reach an agreement before the case calls. Just because you are in attendance at court it does not mean you must continue with the case. You might be able to sort things out just beforehand and reach an agreement which can be presented to the court.

Listen carefully to what the solicitor on the other side has to say and take time to consider whether that might be the best course of action. Don't be bounced but do consider whether a "Joint Minute of Agreement" could be a better option. Negotiations regularly take place right outside the court room or even during proceedings if the Sheriff feels the parties are getting closer so prepare your thoughts in advance about what you will accept or you can offer by way of compromise. Don't find yourself thinking on your feet.

If the court is open, go in and tell the Sheriff Clerk (sitting at the desk in front of the Bench) that you are here. Take a seat and wait for court to begin. Make sure to turn your mobile phone off!

PROCEDURAL HEARINGS

This type of hearing is in an open court and it is about particular matters that need to be settled, such as asking the court for more time to do something. Sometimes all the cases will be about family matters, and sometimes there will be a whole range of civil court business considered during the hearing. Although you may have a procedural hearing in your case, the most likely type of hearing in a family case is a Child Welfare Hearing - see the section below on Child Welfare Hearings, which also includes general information on what to do in court hearings.

All the lawyers and their clients who are taking part in this hearing sit in the back of the court and they come forward once their case is called

Cases are called in the order they are on the Rolls. In ordinary court, there may be a lot of business to get through and you may be waiting for a long time for your case to call. You should be quiet and still during this time. If you eat, drink, use a mobile phone, talk or anything else that is seen as disrespectful you may be asked to leave. The Sheriff will also notice and that is likely to put you on the back foot with your case before you have even started.

When your case is called by the Sheriff Clerk, stand up and approach the Bench. If you are the pursuer, stand on your right (the Sheriff's left). If you are the defender/respondent stand on the left (the Sheriff's right). Smile and say Good Morning/Afternoon to the Sheriff and introduce yourself. Speak slowly and clearly.

Listen carefully to what the Sheriff and the other side say. Ask for something to be repeated or explained if you need it. Try not to fuss around with bits of paper. If your papers are well ordered and neat it will make it easier to find what you are looking for.

CHILD WELFARE HEARINGS

If a Notice of Intention to Defend is lodged following the Initial Writ, the Sheriff Clerk will fix the date for the Child Welfare Hearing and let you know. You are still entitled to enrol motions or make other applications to the court while waiting for the Child Welfare Hearing. You will also be in the adjustment period and pleadings will be being amended before the date of the Hearing.

A Child Welfare Hearing is a discussion in court based on the representations of the parties. It should be held early in the proceedings with the intention of trying to sort things out between the parties by agreement while ensuring the best interests of the child are looked after. The Ordinary Cause Rules governing Child Welfare Hearings are copied at APPENDIX FOUR.

PREPARING FOR A CHILD WELFARE HEARING

You might want to consider preparing affidavits as evidence. An Affidavit is a written statement that is sworn by the witness whilst under oath. It is the equivalent of a witness giving evidence orally in court. As your witnesses will not be heard at a Child Welfare Hearing affidavits are the only way to introduce witness evidence.

Affidavits can be useful in support of your case. They can also be helpful in persuading the court that certain issues require further investigation or evidence will need to be to be heard at proof. It is extremely important that an Affidavit contains only that witness's evidence. It should be in their own words. The content of the Affidavit must be honest and truthful. It is a criminal offence to give false or misleading evidence in an Affidavit. As it requires to be sworn under oath, you will need to pay for a solicitor who is also a Notary Public to prepare the affidavit.

You may also wish to lodge productions as you would for a Proof. There may be no witnesses at a Child Welfare Hearing, but the Sheriff will read the pleadings and look at the productions. Be sure to intimate everything to the other side in advance. See the draft covering letter (sample inventory) to include with the productions.

IN COURT

If your case is calling as a Child Welfare Hearing, this will be held in a closed court. At a Child Welfare Hearing, only the parties to the action, their representatives and the Sheriff and court officials will be in the Court. Nobody else is in the court, and you will either wait in a waiting room or outside the court door to be called in for the hearing.

Some Sheriff Courts have the practice of leaving the parents outside the courtroom or not including them in the online hearing so that only lawyers are in the Child Welfare Hearing, this cuts across the normal

procedure and is against court rules (OCR 33.22A (5)) unless a reason is given. You can object to this - let Shared Parenting Scotland know if this happens to you.

When you are called in court the Pursuer sits on the Sheriff's left hand side, and the Defender on the Sheriff's right hand side of the court.

If you have managed to agree some or all of the issues with the opposing lawyer, let the clerk know before the Sheriff enters that you are going to put forward a joint minute of this agreement. The Sheriff may still want to know more from each side but then is likely to put this agreement into the interlocutor (note of decision).

When the Sheriff comes in, the Bar Officer (Security Guard) will shout "Court Rise" or "Court" and everyone stands up for the Sheriff to come in. The Sheriff should be the first to be seated. This is repeated when the Sheriff leaves the court.

The Sheriff should ask the Pursuer to speak first, but if the Defender is represented and you are representing yourself the other lawyer may try to jump in first. Stand up and give the Sheriff a few sentences saying what you are asking the court to do. You should introduce your Lay Supporter if you have one.

Speak slowly and clearly. The Sheriff will be taking notes as you speak so watch what s/he is writing. Pause after each sentence. When the Sheriff stops writing you can start speaking again.

All civil court cases are essentially about asking the Sheriff to do something or decide something. Start by saying something like "I am requesting the court to grant me contact with my children" then say why in a sentence or two why this is necessary. This is not the time to tell the whole story or complain about what has happened in the past.

Remember that your conversation in court is with the Sheriff. That will help you defuse possible provocations from the other side. Don't talk directly to your former partner or their solicitor.

Be prepared for the Sheriff to interrupt you and ask questions for clarification. You should still be well prepared, but it will be more conversational than other court hearings.

The Sheriff will then give the other side a chance to speak. If matters can't be agreed, the Sheriff may ask for a child welfare report, or make an interim order for supervised contact and for a report on how that goes.

Try not to be nervous or allow yourself to be provoked by the things the other side says. You will get your turn to respond. Try not to use overly emotive language. You want to come across as rational, sensible, calm, and most importantly you want to convey that the welfare of the child is the most important issue in your mind. You should be polite at all times. Do not tut, roll your eyes or make any indication in reaction to what is said by the other side - the Sheriff may tell you off if you are seen expressing yourself in this way.

When the Sheriff has finished dealing with your case you should say, "Thank you My Lord/Lady" to the Sheriff for hearing your case, even if it hasn't gone your way.

The Child Welfare Hearing is usually quite short, anything from 10 minutes to an hour.

A Child Welfare Hearing is not an evidential hearing like a Proof - no witnesses are led and evidence is not tested before the court. It is a chance for the Sheriff to hear from both parties with a view to gathering enough information to consider the best way forward to resolve the case.

It is not meant to be a confrontational hearing though you may feel unkind and inaccurate things are said about you and your relationship with your children. Make clear to the Sheriff the assertions you don't agree with but don't get angry or get bogged down in detail. How you conduct yourself in court will influence how your application is viewed.

Some courts now hold "evidential child welfare hearings" to try and reach a finding on a particular aspect of a case although they are not common. This can be quicker than waiting for a proof hearing, but it has some drawbacks. Shorthand notes or recordings are not taken at these hearings, and therefore it may not be possible to appeal based on what was said at an evidential child welfare hearing. This type of hearing is not covered by specific court rules, although it is lawful for a Sheriff to order such a hearing if both sides agree.

ADDRESSING OTHERS IN COURT

You can refer to your former partner either formally as Ms, Mrs or Miss or by her first name if it is easier.

Children should be called by their first names when talking about them in court.

Learn the name of the solicitor on the other side and always refer to him/her formally as Mr, Ms etc. They will refer to you as either Mr/Mrs/Miss/Ms or as The Pursuer/Defender/Petitioner/Respondent depending upon your position.

Remember it might be a different solicitor appearing in court than the one you have been in correspondence with.

Male Sheriff: ***My Lord or Your Lordship***

Female Sheriff: ***My Lady or Your Ladyship***

You should try to not address the Sheriff as "*you*." So instead of saying "***As you will see...***" you should try to say "***As Your Lordship will see...***"

Addressing the Sheriff like this shows you are respectful of his/her authority. If you get it wrong don't worry but if the Sheriff corrects you, try not to make the same mistake again. If you are representing yourself resist the temptation to try and sound like a lawyer. You aren't. However, be courteous and clear.

For example, when you begin use a phrase like:

"I would like to begin by addressing the matter/issue of..."

Asking the Sheriff to do something:

"I would be obliged/grateful if Your Lordship would..."

If the Sheriff does something for you:

"I am grateful/obliged to Your Lordship for..."

If the Sheriff disagrees with you on something don't badger them on it. Write down what it is and why, then move on.

Remember you do not need to use long words or fancy expressions. The Sheriff will be more impressed by a well thought out and well organised discussion in simple English.

Avoid trying to use legal jargon. It is far safer for you to stick mainly to everyday terms, and it avoids the risk that you are using the legal term wrongly. We have provided some examples of the phrases that the court uses, but don't worry if you can't remember them - you can be just as polite and respectful to the court in everyday language.

If you don't understand what has been said, try asking the Sheriff for some help, saying something like "I would be grateful to the court for some assistance with ..." - then say what it is you are asking. The Sheriff won't tell you how to conduct your case, but should be willing to help with terminology or procedural issues.

GOLDEN RULE - PUTTING YOUR CASE

The Child Welfare Hearing is not about YOU and what YOU want; it is about the best interests of the children. If you want contact, why is that in their best interests? Think about everything from their point of view, not your own.

You might want contact all weekend because it suits you. Is that the best thing for the child? If you have more than one child, think about the kind of contact that is appropriate to their age. Though you may want to have them all together each time, might it be better for them to spend time with you as a family sometimes but on their own with you at other times?

Show that you have thought about your proposals from your former partner's point of view. Don't make assumptions about what "is good for her/him". That won't go down well. But it will help your credibility if you can show how much effort you have made to look at your proposals through the eyes of all those affected by them.

If you want the children to spend equal amounts of time with you and with their other parent, you need to consider that the court may be unwilling to order this unless you can give reasons, such as that it was the normal pattern before you separated. It will help if the children want this to happen, and if the distance between their homes is not too great. Sheriffs are sometimes not keen to make court orders for shared care - don't show frustration in court if this happens, just make calm arguments why it would be a good outcome for the children.

COURT DECISIONS

"Orders" are instructions made by the court to the parties about the issues in dispute. Orders can take the form of "interim orders" (temporary) and "final orders" (permanent).

Final orders are usually only made after a Proof or following a "Joint Minute". If you find that the arrangements set out in an interim order work well or you have agreed a set of arrangements with your former partner both parties could draw up a Joint Minute. This would allow a final order to be granted to replace the interim order. Final orders are also called "decree" (pronounced DEE-cree)

At the Child Welfare Hearing, the Sheriff might make an order for contact or residence. It is likely to be an interim order. The case could be sisted (in other words, paused) while the interim order is in place to allow the parties time to see if it works. In many cases, an interim order is as effective as a final order. Final orders are rare at Child Welfare Hearings.

A Sheriff's decision will be set out in an "interlocutor". There may be many interlocutors throughout a case. The Sheriff will usually write out the terms of the interlocutor in front of the parties. It is extremely important that you are clear what s/he is writing down and that it is accurate if, for example, it is setting out dates and times for contact. It is difficult to correct an interlocutor later if you discover it is incorrect in some way. If there is an error in the interlocutor you should contact the Sheriff Clerk immediately.

If you disagree with the Sheriff's decision you can ask for a written Note of his/her reasons for making it. This request must be in writing and it must be done within seven days. The Sheriff is obliged to supply it within a reasonable time.

Generally, a final interlocutor can be appealed if you have grounds in law. However, if you wish to appeal an interim order, you will require leave of the Sheriff. There is a strict time limit of seven days involved and you should carefully read OCR Chapter 31 to ensure you comply. After reading the OCR, if you are unsure about the time limits involved, remember you can ask the Sheriff Clerk for guidance. You should carefully read the Note of the Sheriff in order to make your decision on whether to appeal the interlocutor.

The Sheriff might decide not to make an order. The Child Welfare Hearing may be continued to another date to allow something to happen in the meantime, for example, negotiations between the parties, the preparation of a report, or for the parties to take part in mediation.

If you are not happy with the outcome of the Child Welfare Hearing, you may wish to enroll a motion asking for another Child Welfare Hearing or a Proof to be fixed. This might be opposed by the other side. See the section on Motions for information on this.

OTHER COURT PROCEDURES

REPORTS

Sometimes one party to the case or the Sheriff will ask for a "Child Welfare Report" (formerly called a bar report) into the circumstances of the children and the arrangements for their care and upbringing. The Child Welfare Reporter is usually an experienced family lawyer, but might also be a social worker, child psychologist or family therapist. The proportion of reports from non-lawyers is expected to increase following the changes made in the Children (Scotland) Act 2020 but these will not start happening until 2022 or later. This report will be very persuasive to the Sheriff. For further information see the SPS Guide to Child Welfare Reports at https://www.sharedparenting.scot/help-advice/guides-publications/

The Reporter covers some of the activities of CAFCASS in England and Wales. CAFCASS does not exist in Scotland.

The Reporter will investigate the circumstances of the children and will be given a remit which is likely to involve seeing where the children live, finding out about their daily life and speaking with people who may be closely involved in the children's life such as the parents, extended family, step family, teacher, child-minder, religious leader, doctor or social worker. A common part of a Child Welfare Reporter's remit is to ascertain the views of the children in relation to the orders sought.

Reports can be very expensive. If one party has asked for a report s/he may be required to pay for it. Usually the cost is split equally between the parties. Where a Sheriff orders a report, the case cannot proceed until the report has been written and submitted to the court. When it has been submitted to court the Sheriff Clerk will send a copy to both parties.

The Reporters are drawn from a list held by each Sheriff Court. A good Reporter will take the time to explain his/her powers, instructions from the court and his/her rules of engagement with all the parties to build confidence that each is getting a fair hearing.

The parent who doesn't have the majority of care tends to feel at something of a disadvantage in this process as he/she is often asked personal questions that a parent with residence isn't. It can be very stressful. It is important to try and keep in mind all the time that the Reporter will make recommendations to the court on what s/he thinks will be best for the child so focus on that rather than past disagreements with your former partner. Remember everything you say may turn up in the report.

The report should be sent to the parties or their lawyers at least three days before the hearing. The conclusion and recommendations are the most important part of the report. If you are reasonably satisfied with them then it may not be useful to challenge every point in the report that you disagree with. If a minor inaccuracy would not have led to a different outcome or conclusion it is likely not sensible to challenge it. You must use your judgment. You have to be very disciplined to challenge inaccuracies calmly so as not to undermine your own case.

Submission of a report less than three days before the hearing could be challenged, particularly if you need time to consider the findings. Think carefully before doing this, as an adjournment will delay the case further. Let the Sheriff know what has happened so he/she can ask the Child Welfare Reporter for an explanation.

Some Sheriffs will order a report from a local family mediation organisation that also does consultation with children.

Recent changes to the process for appointing Child Welfare Reporters include a requirement for Sheriffs to give a more specific remit to the Reporter, and briefing information to be provided to parents and children about the reporting process. Shared Parenting Scotland are interested to hear about your experience of how this works in practice. Further changes are being introduced as the Children (Scotland) Act 2020 is implemented, including a central register of Child Welfare Reporters.

OPTIONS HEARINGS

An Options Hearing is a hearing for the court to decide the next (sometimes final) stage of the proceedings. OCR 9.11 and 9.12 give the procedural rules. At the end of the adjustment period (14 days before the Options Hearing) the Pursuer should use the adjusted Initial Writ and Defences to form the Record. A Certified Copy of the Record must be lodged by the Pursuer no later than 2 days before the Options Hearing.

At the Options Hearing, the Sheriff is seeking to "secure the expeditious progress" of the case.

The Sheriff will consider any note lodged under Rule 22 procedure. This is called a "preliminary plea." You should read OCR Chapter 22 if this applies to your case.

At the Options Hearing, the Sheriff will "close" the Record, meaning the adjustments are all concluded. That is the Record that the case will proceed on.

There are several options available to the Sheriff at the Options Hearing:

1. A Proof may be assigned. This is an evidential hearing. If a Proof is assigned, it is also likely that the Sheriff will assign a Pre-Proof Hearing. This gives the Sheriff an opportunity to be informed of the state of the preparation of the parties for Proof.
2. If there is a disputed point of law, the Sheriff may appoint the case to a hearing called a Debate (very rare in family cases).
3. If there is a disputed point of fact, the Sheriff may appoint the case to a Proof Before Answer (again, not common in family cases).
4. If necessary, a continuation of the Options Hearing may be ordered but only for a maximum of 28 days. There are various reasons why a continuation may be necessary. A common example is that one party intimated material adjustments close to the date of the Hearing and the other party requires an opportunity to respond. In this case, the Record will not be closed to allow further adjustments to be made. It is important to bear in mind that the Options Hearing can only be continued once.
5. If your case is going to an Options Hearing, read Chapters 9 and 10 of the OCR so you are prepared for the various possibilities.

If your court action is seeking to have a section 11 order granted, and a Proof or a Proof Before Answer is assigned, Chapter 33AA of the OCR applies. This means the Sheriff will assign a Case Management Hearing and a Case Management Conference will need to be organised. You should read the rules on this carefully. Please see the Case Management Hearing section below for further information.

MOTIONS

A motion is a way of asking the court for something, usually a procedural matter but also an interim order required before your case is next back in court, for example an order regulating holiday contact. Another example is where a case has been sisted (paused) and one of the parties is asking for the sist to be recalled so that the case can continue through the court procedure. Another common example is asking the court to allow amendments to pleadings. Motions can be enrolled at any point in the case. See the sample motion in APPENDIX ONE

Have a look at the Ordinary Cause Rules Form G6 which is the form of motion. A motion MUST be intimated to the other side. The form of intimation is Form G7. You will also require to complete Form G8 and lodge it in Court together with a copy of your motion. If the motion is unopposed, it may be granted by the Sheriff without Parties having to make arguments. If the other side opposes the motion (Form G9), the motion will call in court and both parties will have to appear before the Sheriff to make their arguments.

Be careful when considering enrolling a motion that is likely to be opposed. If your motion is unsuccessful, you may end up liable for not only your own expenses associated with the motion, but also the expenses of the other party of that motion. On the other hand, if you are successful and your motion is granted after the other side opposed it then you could seek expenses be awarded in your favour. It is rare for expenses to be awarded in family actions.

JOINT MINUTE

A Joint Minute is an agreement between the parties, and it is put before the court to be given effect in a court order. Joint Minutes can be a useful way of getting a final order in place when parties are in agreement. It may be useful where there has been an interim agreement that is working well for both parties. The court will still want to know that the terms of the Joint Minute are in the best interests of the child. The rule relating to Joint Minutes is OCR 33.26.

MINUTE OF VARIATION

A Minute to Vary is a way to seek a change to a court order by varying or appealing against it (recall). See Ordinary Cause Rule 33.65. This can be submitted even if the court refused to make an order in a previous hearing - see a recent Sheriff Appeal Court decision which states that the Minute to Vary procedure enables actions which have at their heart the welfare of a child to be dealt with in one court process. It allow the sheriff to consider what previous decisions have been made by the court in relation to the child and the family, why such decisions have been made and what, if anything, has changed in the child's or the parties' circumstances which might warrant further involvement of the court.

DRAFTING ADJUSTMENTS

As the case proceeds, the pleadings (Initial Motion and the responses to it plus affidavits) need to be managed by the Pursuer to form a Record of what has been said by both sides. Many cases can be settled after a single Child Welfare Hearing or a series of hearings, but if this is not possible and the court requires to hear evidence, then the pleadings need to be adjusted.

As previously mentioned, adjustment of the pleadings is allowed up to 14 days before the Options Hearing (or the continued Options Hearing). Adjustments do not need to be sent to the court, they are exchanged between the parties. It is the Record that is required to be lodged in Court. You should also intimate a copy of the Record on the other party.

Adjustment is designed for the Condescendence and Answers. If you require to adjust the Instance or the Craves you should enrol a motion to allow a Minute of Amendment in order to make the changes.

You must answer every statement of fact made by the other party. If you do not answer it in your pleadings, you are deemed to have admitted it. The best way to ensure you do not erroneously admit something is to

include a catch-all denial along the lines of:

"The pursuer's [defender's] averments [in answer] are denied except insofar as coinciding herewith."

You should try to be very clear about the instructions for amendment which shows exactly where the adjustments are to go. The idea is that when the Pursuer comes to make up the Open Record s/he follows the instructions of the Note of Adjustments. See the sample Notes of Adjustments in APPENDIX ONE.

CASE MANAGEMENT HEARINGS

Before a proof hearing, a case management hearing will take place in order to consider the issues. Before that hearing parties will have to meet to discuss possible settlement, agree matters not in dispute and discuss what should be presented to the Sheriff.

This meeting is called a Pre-hearing Conference. A note of this meeting requires to be lodged with the court in advance of the Case Management Hearing. This is normally done by the Pursuer or if they are represented, their solicitor.

This procedure is intended to help streamline the proof hearing, as well as exploring any possible resolution beforehand. It was introduced for cases begun on or after 3rd June 2013, and is covered in OCR Chapter 33AA: Expeditious resolution of certain cases.

The rules specify what should be considered during the Pre-Hearing Conference:

At the case management hearing the parties must provide the Sheriff with sufficient information to enable the Sheriff to ascertain-

(a) the nature of the issues in dispute, including any questions of admissibility of evidence or any other legal issues;

(b) the state of the pleadings and whether amendment will be required;

(c) the state of preparation of the parties;

(d) the scope for agreement of facts, questions of law and matters of evidence;

(e) the scope for use of affidavits and other documents in place of oral evidence;

(f) the scope for joint instruction of a single expert;

(g) the number and availability of witnesses;

(h) the nature of productions;

(i) whether sanction is sought for the employment of counsel;

(j) the reasonable estimate of time needed by each party for examination-in-chief, cross-examination and submissions.

Although this rule has been in place for some time, some lawyers seem to treat this process as a formality rather than an opportunity to actually settle some or all of the issues, particularly if there is a party litigant on the other side.

If you feel that the process has not been taken seriously, consider putting a reference to this in the minute - it will probably be opposed by the other side but you could then submit a note of what was not agreed in the conference. Only do this if you feel there is a serious point to be made, as there is a risk otherwise that the court will think you are simply being petty.

PROOFS

A Proof is a hearing of the evidence. Proofs are relatively rare in Family Law cases because Sheriffs are very keen for parties to come to an agreement between themselves. A Proof date will be assigned to you, and it is likely that it will be a number of months away. You are expected to try to sort things out in the meantime so that the Proof is not necessary.

Many courts do not have the capacity to lay aside a block of consecutive days for a proof, and some will only offer one day of hearing at the start of a proof with further days to be arranged. This means that the hearings can spread across weeks or months.

The evidence led at Proof is based on what is written in the Pleadings and, with the exception of particular matters that may be agreed with the other side, will have to be spoken to by witnesses under oath or supported by productions. The evidence is led by the Pursuer and Defender.

After all the witnesses have been heard the parties will have to pull the threads of their case together, taking into account the evidence that has been heard, in "final submissions". The Sheriff will take some time

to prepare a decision. Usually the Sheriff will not give a decision on the day and will go away to think carefully about the evidence he or she has heard. A written judgement will then be issued in due course. This process is called Avizandum.

The Children (Scotland) Act 2020 introduces protection for people who are deemed to be vulnerable witnesses. This includes stopping a party litigant from taking evidence from a vulnerable witness such as an ex-partner who alleges domestic abuse. A lawyer will be appointed by the court to conduct such cases. This measure is not likely to be introduced until 2022 at the earliest.

BEFORE THE PROOF

There are various rules stipulated in the OCR that you must follow when preparing for a Proof. You should read the rules thoroughly to ensure you have done everything required. It is a good idea to prepare a table with a note of all the tasks you have to complete, the deadline for each task and a further column so that you can tick off when each task has been completed.

The list of documents should be lodged and intimated within 14 days of the interlocutor allowing Proof (OCR 9A.2). A witness list should be lodged within 28 days of the interlocutor allowing Proof (OCR 9A.3(1)). Your productions must be lodged and intimated no later than 28 days before the diet of proof and you should lodge a copy of your productions for the Sheriff no later than 48 hours before the diet of proof. Make sure to check your court timetable for lodging dates. You must also carefully read the OCR to ensure you have a note of all the applicable deadlines. Check with the Sheriff Clerk if you are unsure.

If you are the Pursuer, you are responsible for booking a shorthand writer. This is expensive especially in the more remote courts and there are only a few services available. Most courts can now record the proceedings and this will not cost you anything unless you have to pay for the recordings to be transcribed as evidence for an appeal. Check whether the court that is being used for the proof can record the proceedings.

Make sure anyone that you need to give evidence to assist you is on your witness list. You don't have to call everyone on your list but by the same token don't get wrong-footed because someone you believe will give evidence that is likely to support you appears on the defender's witness list. They don't have to call everyone either.

When deciding whether to call a witness, consider what they can tell the court from their direct experience. A witness who has been present when you have been looking after your children or who has seen what happens when the children are handed over for contact can give useful evidence. Someone who can only repeat what you have told them about an incident (hearsay) is not useful as a witness.

Don't call more witnesses than you need. Several people saying the same thing doesn't help much, and you might be better picking the person who will appear to be the most credible or who has relevant qualifications such as a teacher or a nursery worker. If you wish to call a witness, they must be served with a citation. There are time limits involved and forms you must use. Please refer to the OCR Form G13 and ensure you are aware of the requirements.

It is increasingly common for Sheriffs to order that Affidavit evidence is to be used for a witness's evidence in chief. This is because it usually reduces the length of the Proof. This is a matter which should be discussed at the Pre-Proof Hearing or the Case Management Hearing. Unless the other side agree the evidence of your witness and do not wish to challenge the content of the Affidavit, the witness will still be required to attend court and be prepared to give oral evidence.

If you have not been able to get the statements from your witnesses turned into affidavits by swearing them to a notary public, you can ask the Sheriff if the witness can swear to them when actually giving evidence in court. This is not standard practice, but has been allowed in some cases.

AT THE PROOF

Unlike in English court cases, a Proof does not start with opening statements. There may be some preliminary discussion about any issues that have arisen, but then the Pursuer opens by examining the first witness.

Remember that if a witness is not considered to be credible or believable by the Sheriff this will mean that their evidence is unlikely to count for much. This applies to your witnesses and those on the other side. The person conducting the proof has to try and

ensure that their witnesses stick to matters of which they have direct knowledge, and can try to lead opposing witnesses into making statements that are contradictory or don't match other evidence.

EVIDENCE-IN-CHIEF

The Pursuer usually presents their case to the Sheriff first. All of the Pursuer's witnesses are called and led through their evidence before the Defender then presents their case in the same way. Witness evidence will be taken under oath or affirmation. Start by asking your witness their name, age and occupation. If you have lodged an Affidavit on behalf of your witness, you should put it before them and ask that they confirm it remains their evidence.

When you are questioning your own witness, their evidence must be led by way of open, non-leading questions. That is, the questions should not contain any part of the answer. If they do it is likely the other side will object on the grounds that you are leading the witness. The witness is allowed to refer to their affidavit while giving evidence.

In general, the golden rule is that you shouldn't ask a witness a question unless you already know what the answer is going to be, especially if it is a witness from the other side. TV and film court dramas give the impression that examination is used to reveal dramatic information that has not been known before - the reality is much less spectacular.

If a witness from the other side is not saying much, don't rush in with the next question. Pausing may lead them to say more than they planned.

Keep an eye on the clock when examining your witness. It's often useful to reach a break or the end of the day having a few more questions to ask as you then have time to think about whether anything else should be covered. But be aware that this also gives the witness time to think about how to explain their position further.

Write out all the questions you think you will have to ask beforehand, and order them so that you are telling a story, with the strongest point you want to make in the final questions.

See the examples below for more explanation of open and closed questions.

CROSS-EXAMINATION

When the Pursuer has finished with each witness the Defender has a turn to ask questions that will test their evidence. The questions in cross-examination do not need to be open. They are more likely be closed, or leading questions which suggest the answer within them. Asking an open question when you don't know what is going to be in the answer is very dangerous See the examples below.

Don't be aggressive, the most effective tactic is to be firm and courteous to the witness. Stick to points from their evidence which cause damage to the case you are trying to make. You can try to challenge their evidence as being inconsistent, improbable, unrealistic or mistaken - look also for any discrepancies between what is in their affidavit and what they said in evidence. It might also be possible to challenge how they saw something - ask how far away they were, how long did they see it etc.

If you are a party litigant you may have to cross-examine your former partner, although this is due to change in future. That is not easy. You must stick to the disciplines of cross-examination and avoid at all costs getting drawn into an argument in front of the Sheriff. Be calm and polite at all times.

The amendments introduced by the Children (Scotland) Act 2020 mean that in certain circumstances, you may be prevented from conducting your own case if your ex-partner is deemed a vulnerable witness. Details of this change are still being consulted on and it is unlikely to come into force before 2022 at the earliest. Section 4 to 8 of the 2020 Act describe what is intended to happen.

RE-EXAMINATION

The Pursuer may re-examine the witness on anything that has come up during cross-examination. You can't bring up new evidence at this time. The purpose of re-examination is to clear up anything that may be unclear after the cross-examination. You may also have to use this re-examination to limit any damage to your case that has occurred earlier.

DEFENCE

It is then the Defender's turn to lead evidence, following the same pattern of Evidence-in-chief, Cross-examination and Re-examination.

OTHER PARTIES

If a curator has been appointed for the children, or a child has instructed his or her own lawyer, the cross-examination and re-examination will also be carried out by these parties. This adds considerably to the time taken for the hearing.

SUBMISSIONS

When all of the evidence has been led both parties make final "submissions" to the court. This is a speech which sums up all the evidence which has been put to the court during the case, and the legal basis for what you are asking. At this point you are inviting the Sheriff to prefer your evidence.

If you are the pursuer you will be expected to make a final submission very soon after the defender finishes their case. Don't be caught by surprise if you are asked to get straight onto your feet and begin speaking after a short adjournment or a lunch break. You should have most of your submission prepared in advance, but you will have to take into account anything that has come up in the defender's case.

Part of your preparation before the proof is to work out what you are trying to establish, so you need to think carefully at this stage what you want to be decided and how you are going to persuade the court that this is the best outcome for the children. Obviously, you have to modify your final submission to counter any evidence that you feel the other side has succeeded in establishing, but it is best to try and write out the main structure before the court case starts.

Your submission has to relate to evidence that you have already produced or to previous court case decisions that are relevant. Don't assume that a statement that you are making in the final submission can stand on its own. Some standard case decisions, such as White v White are often referred to in contact cases. You can get some insight into how submissions are prepared by reading published judgments from court cases, available on the Scotcourts web site at http://www.scotcourts.gov.uk/search-judgments/about-judgments Cases with initials rather than full names are often about contact and residence of children.

Unfortunately, it is not possible at present to refer to research evidence in a final submission, such as research on parental alienation or the benefits of shared parenting for children. The only exception is if you can actually produce the researcher to give evidence or can refer to court judgements in which this research has been considered.

When referring to past judgements remember that every case has different circumstances, although you can suggest that a past judgement is sufficiently similar to your case to be used. Appeal judgements in the Sheriff Appeal Court, Inner House, Supreme Court or European Court are more powerful than sheriff court judgements, although all judgements can be mentioned.

If your case concerns matters which are rarely considered by the court and do not appear in any Scottish judgements, try using appeal judgements from England and Wales courts.

OPEN AND CLOSED QUESTIONS

Open questions are those used for the evidence-in-chief. They tend to begin with either Who, What, Where, When or How. They allow the witness to tell their own story. They can be useful to set the scene. Other useful phrases are "Describe" or "Explain" followed by who, what etc.

Make sure you do not introduce any evidence in your next question that the witness hasn't mentioned already. If you are "leading" the witness (i.e. suggesting things to them) the other side will object. You should also watch for the other side leading their witnesses and object if necessary.

Examples of open questions:

- "Describe what you saw"
- "Who was there?"
- "Was anyone else there?"
- "What were they doing?"
- "How did they behave?"
- "Explain what you mean by 'angry'"

Closed questions limit the information you can get back. They suggest the answer or at least part of it in the question. They are used to lead the witness in the direction you want. They are useful in cross-examination.

Examples (compare to open questions above):

- "Did you see a red Ford Fiesta?"
- "Was Susan in the car?"
- "Was Angela with Susan in the car?"
- "You saw them shouting at each other didn't you?"
- "Were they arguing?"
- "They were angry at each other, weren't they?"

DEFENDING A CASE

Most of the information in this Guide is for those who are pursuing a case through the Sheriff Court. But for every Pursuer there is at least one Defender. It could be you.

When a party receives an Initial Writ, they should consider whether or not they wish to defend the action. Seek the advice of a solicitor. Look at OCR Chapter 9 and also 33.34 for information. If the Defender wishes to defend the action, they must lodge a Notice of Intention to Defend (NID) in Form F26 before the end of the notice period - usually 21 days from the date of service of the Initial Writ.

As well as a NID, the defender should lodge Defences no later than 14 days after the expiry of the notice period, setting out:

- Craves
- Averments which answer the condescendence in the Initial Writ and support the craves, and;
- Pleas-in-law

DRAFTING DEFENCES

If you are a Defender it is very important that the Defences are drafted correctly. OCR 9.7 states: "Implied admissions - Every statement of fact made by a party shall be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party shall be deemed to have admitted that statement of fact."

This means that every statement made in the Condescendence should be answered by Defences. Each Article of Condescendence should have a Defence that mirrors it.

ADMITTED

You start by going through each averment, and if you accept it, write "admitted that..." and put the averment there.

Example: *"Admitted that the parties entered into a relationship around February 2006."*

If you agree with everything in the condescendence, just write "Admitted." This can often be the case for the first few articles of condescendence that narrate non-controversial facts such as the dates of the parties' relationship and the names and dates of birth of the children of the party.

DENIED

You do not need to deny every averment in the Condescendence that you disagree with. You can simply write:

"The Pursuer's averments are denied except as coinciding herewith..."

This can also be written as

"Quoad ultra denied"

These statements mean that everything is denied other than what has been covered by *"admitted"*, *"believed to be true"* or *"not known and not admitted."* It should be included at the end of every Answer as a *"catch all"* unless you have admitted the entire Article of Condescendence.

NOT KNOWN AND NOT ADMITTED

This is where a fact is outwith your knowledge, but you are not admitting it.

Example:

"Not known and not admitted that on the evening of 2 September 2009 the Pursuer was in the vicinity of Sainsbury's, Blackhall, Edinburgh"

What you are saying is that you weren't there so you can't be sure, and that you are expecting the Pursuer to lead evidence to prove they were at Sainsbury's.

BELIEVED TO BE TRUE

This statement can be used where the fact is outwith your knowledge.

Example:

"Believed to be true that on the evening of 2 September 2009 the Pursuer was in the vicinity of Sainsbury's, Blackhall, Edinburgh"

What you are saying is that you weren't there so you can't be sure, but you are not denying that it happened. It is essentially an admission of that fact - the Pursuer will not need to lead evidence to try to prove they were at Sainsbury's, as you are not trying to challenge it.

EXPLAINED THAT and
UNDER EXPLANATION THAT

This is how to start the descriptive bit of your defences.

Example

"Admitted that the Defender works until 10pm, under explanation that he begins work at 11am. Explained that the Defender applied to his manager for a change in working hours and the request was refused. The Defender cares for the children in the morning. The Defender walks with the children to school each day."

As with drafting the Initial Writ, the Defences should be drafted in plain language. They should consist of precise statements that offer one fact per sentence. You can amend them during the adjustment period. The Pursuer will in turn be answering the facts you have put in the defences so you may want to adjust them further to answer their averments.

SAMPLE INITIAL WRIT

THIS IS INDICATIVE OF LAYOUT AND STYLE ONLY - **DO NOT COPY**

Heading: COURT REFERENCE then SHERIFFDOM and COURT

Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

Description "Initial Writ"

INITIAL WRIT

In the cause

Instance Names and addresses of parties

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

If the party has legal aid

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

(Assisted Person)

Defender

Craves
What you are asking the court for

The Pursuer craves the Court:-

Ad Interim - on a temporary basis until a final order is made

1. To make an order providing that the child Jimmy John Black born [date of birth] reside with the Pursuer; and to make the said order ad interim, failing which;
2. To make an order providing that the child Jimmy John Black born [date of birth] have direct contact with the Pursuer each week from 9.30am on Sunday until 7.30pm on Monday or such times as the Court seems just; and to make such order ad interim
3. To grant warrant to intimate Form F9 and seek the views of the child [name] born [date] OR To dispense with intimation of Form F9 upon the child [name] born [date] due to his young age

Ask for authority to intimate the action on relevant people who aren't parties - but if child is too young, ask to dispense with this requirement

4. To find the defender liable in expenses

CONDESCENDENCE

Averments to explain why this court is appropriate, and that no other court proceedings are ongoing

Refer to the birth certificate(s)

Averments to back up crave 3

Use headings if it makes it clearer

1. The Pursuer resides at 123 Hilltown Street, Edinburgh, EH1 ABC. The Defender resides at 456 Townhill Street, Edinburgh EH2 DEF. The parties met in February 2003 and entered into a relationship. There is one child of the relationship namely Jimmy John Black born on 1st September 2016. An extract Birth Certificate is produced herewith. The child is habitually resident in Scotland, within the Sheriffdom of Lothian and Borders at Edinburgh. To the knowledge of the Pursuer there are no other proceedings in Scotland or elsewhere which relate to the child in respect of whom the foregoing orders are sought. No permanence order is in force in respect of the child [name]. This Court has jurisdiction.

2. The child Jimmy John Black was born on 1st September 2016. He is old enough and mature enough to express a view on these proceedings/He is too young to understand this action and the orders sought.

3. The parties met in February 2013. They moved into the property at 456 Townhill Street, Edinburgh in May 2014. In February 2006, the parties discovered the Defender was pregnant. The child of the parties, Jimmy John Black was born on 1st September 2016. The Pursuer has played an active role in Jimmy's life since his birth. The Defender returned to full-time work 6 months after Jimmy was born. Jimmy was placed in nursery care from 9am - 4pm Tuesday to Friday. The Defender left for work at 6am. She did not provide Jimmy with care in the mornings. The Pursuer had responsibility for getting Jimmy ready for nursery, dressing him, feeding him breakfast and ensuring his bag was packed. The Pursuer took him to nursery every day. The Pursuer had sole care of Jimmy on Mondays.

4. The parties separated in July 20109. On or around the 20th July 2009, the parties engaged in an argument. The Defender had returned home from a work party late at night. She was under the influence of alcohol. She was argumentative and began an argument with the Pursuer. She accused him of not having emptied the washing machine as she had requested. The Pursuer was non-confrontational in response. The Defender shouted at the Pursuer causing Jimmy to wake up. The Pursuer felt afraid. The Pursuer decided he could no longer live with the Defender. The Pursuer moved to his parent's house. In around September 2019 the Pursuer moved to 123 Hilltown Street, Edinburgh. He chose the property because of its proximity to the child. The Pursuer collected Jimmy on Sunday mornings. Jimmy stayed overnight at the Pursuer's home on Sunday nights. The Pursuer returned Jimmy to the Defender's address at around 7.30pm on Mondays.

5. In May 2020, the Defender telephoned the Pursuer to say that Jimmy was unable to stay with him anymore. The Pursuer was concerned and attended at the Defender's address to see him. The Defender refused to allow him to enter the house. The parties engaged in a loud argument on the Defender's doorstep. The Pursuer left the property. The Defender did not allow contact with the child except by telephone. The Defender made threats towards the Pursuer. The following

Sunday, the Pursuer attended the Defender's house and found it to be locked up. The Pursuer attended the Defender's house approximately ten times in the following weeks and was refused entry each time.

How are day-to-day needs of the child met?

6. The Pursuer works as a hairdresser at a salon on Princes Street, Edinburgh. He begins work at 9.30am. He does not work on Sundays or Mondays. He works predictable hours. He earns approximately £26,000 per year. The Pursuer's home is a 2 bedroom main-door flat in a residential area. He has direct access to a garden. The flat is approximately a quarter of a mile from the Defender's address. The Pursuer's flat is closer to Jimmy's school than the Defender's home. The Pursuer's home is comfortable and appropriate for Jimmy's needs. Jimmy has his own bedroom at the Pursuer's flat. He has a number of clothes and toys at the Pursuer's flat. The Defender is a self-employed sales representative. The Defender leaves home at 6am each morning. She works very long hours. She works unpredictable hours according to client's needs. Even when the Defender is at home, she is often on the telephone or working on the computer. She is unable to give her full attention to Jimmy during this time. The Defender is originally from London and her family live in that area. None of the Defender's relatives live in Scotland. Jimmy is not close to his maternal grandparents. They have only seen him twice a year since he was born. The Defender is unable to provide Jimmy with adequate parental supervision. She is absent from the home for long working hours. She has no family support. It is not in the best interests of the child for him to continue living with the Defender. It would be better for him to live with the Pursuer. It is not in the best interests of the child that no order is made. In all the circumstances it would be better for the child if a residence order was granted as first craved.

Be very careful what you say about the other party - can you PROVE these averments if you need to, or they just unfounded allegations?

Explain why it is better that an order is made, than no order is made

7. The Defender has refused to allow the Pursuer to contact the child since May 2010, except by telephone. In the event that the child is not residing with the Pursuer it is in their best interests that they maintain personal relations and direct contact with the Pursuer. In these circumstances it would be in the child's best interests that contact be granted as second craved.

Include averments to back up all craves - this one is to back up Crave 2

PLEAS-IN-LAW

1. It being in the best interests of the child that they reside with the Pursuer and it being better for the child that an order is made than no order is made, decree should be granted as first craved.

2. Failing a residence order, it being in the best interests of the child that they have regular and direct contact with the Pursuer, decree should be granted as second craved.

Pleas-in-law reflect the Craves. Include statutory provisions here if appropriate

IN RESPECT WHEREOF
James Michael Black
123 Hilltown Street, Edinburgh
Signed J Black

SAMPLE DEFENCES

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Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

DEFENCES

In the cause

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

Defender

The Defender craves the Court:-

1. To make an order requiring that Jimmy John Black born on 1 September 2016 reside with the Defender; and to make such an order at interim.

2. Failing a residence order, to make an order requiring that the said Jimmy John Black have contact with the Defender each week from 6.30pm on Saturday until 9am on Friday, or other such times and dates as the Court deems appropriate, and to make such an order ad interim.

3. To grant warrant to intimate Form F9 and seek the views of the child [name] born [date] OR To dispense with intimation of Form F9 upon the child [name] born [date] due to his young age

4. To find the Pursuer liable in expenses

ANSWERS TO CONDESCENDENCE

1. Admitted

2. Admitted

3. Admitted that the parties met in February 2013. Admitted that they moved into the property at 456 Townhill Street, Edinburgh in May 2013. Admitted that in June 2003, the parties discovered the Defender was pregnant. Admitted that the child of the parties, Jimmy John Black was born on 1st September 2016. Admitted that the Defender returned to full-time work 6 months after Jimmy was born under explanation that the parties could not afford to live on the salary of the Pursuer alone. Admitted that Jimmy was placed in nursery care from 9am - 4pm Tuesday to Friday. Believed to be true

that the Pursuer had responsibility for getting Jimmy ready for nursery, dressing him, feeding him breakfast and ensuring that his bag was packed. Admitted that the defender took him to nursery every day. Admitted that the Pursuer had sole care of Jimmy all day on Mondays under explanation that the Defender worked from home on Mondays whenever possible. The Pursuer's averments are denied except as coinciding herewith. Explained that the Pursuer and Defender discussed the Defender's return to work after maternity leave at great length. At the time the child was six months old, the Pursuer earned £18,000. The Pursuer could not support the family on his income alone. The Pursuer was keen for the Defender to return to work. The Defender returned to work but worked from home on Mondays when possible. The Defender assisted the Pursuer with the care of the child on those days she was able to work from home. The Defender returned home from work at 4pm each day. The Defender cared for the child from 4pm each day until his bedtime between 7pm and 8pm. The Pursuer returned from work at approximately 8.30pm Tuesday to Saturday. He attended after-work drinks most Fridays and returned home after midnight. The Pursuer rarely saw Jimmy in the evening. Jimmy was in bed by the time the Pursuer returned home. It is not in the best interests of the child to reside with the Pursuer. The Pursuer is unable to provide evening care for the child. It would be better for the child to reside with the Defender. In all the circumstances if would be better for the child if a residence order was granted as first craved for the Defender. *Quoad ultra denied*.

4. Admitted that the parties separated in July 2019. Admitted that the Pursuer moved to his parent's house. Believed to be true that in around September 2019 the Pursuer moved to 123 Hilltown Street, Edinburgh. Not known and not admitted that he chose the property because of its proximity to the child. Admitted that the Pursuer collected Jimmy on Sunday mornings. Believed to be true that Jimmy stayed overnight at the Pursuer's home on Sunday nights. Admitted that the Pursuer returned Jimmy to the Defender's address at around 7.30pm on Mondays. The Pursuers averments are denied except as coinciding herewith. Explained that on the 20th July 2019 the Defender returned home after a conference. The Defender had anticipated the conference finishing late. She had left a note asking the Pursuer to empty the washing machine. The Pursuer had not done this. Jimmy's school uniform was in the machine and was required for the following day. The Defender began to empty the machine. She did not raise her voice. Jimmy entered the kitchen. He was fully dressed and was not ready for bed. It was approximately 10.30pm. The Defender put Jimmy to bed. She asked the Pursuer to leave the property for the night. *Quoad ultra denied.*

5. Admitted that in May 2020, the Defender telephoned the Pursuer to say that Jimmy was unable to stay with him anymore. Not known and not admitted that the Pursuer was concerned and attended at the Defender's address to see him. The Pursuers averments are denied except as coinciding herewith. Explained that the Defender took the child to a friend's house for lunch. The Defender and the child returned in the early afternoon. The Pursuer was sitting in his car

outside the Defender's house. The Pursuer began shouting at the Defender from his car. The Defender and Jimmy entered the house and locked the door. The Pursuer shouted through the closed door for a time. The child does not wish to see the Pursuer. The child is afraid of the Pursuer. The Pursuer is easily angered. He frequently shouted at the child. *Quoad ultra denied*.

6. Admitted that the Defender is a self-employed sales representative. Admitted that the Defender is originally from London and her family live in that area. Admitted that none of the Defender's relatives live in Scotland under explanation that the Defender has lived in Scotland for 15 years and has network of close friends in Edinburgh. Believed to be true that the Pursuer works as a hairdresser at a salon on Princes Street, Edinburgh. Not known and not admitted that he begins work at 9.30am. Not known and not admitted that he does not work on Sundays or Mondays. Not known and not admitted that he earns approximately £26,000 per year. Not known and not admitted that the Pursuer's home is a 2 bedroom main-door flat in a residential area. Not known and not admitted that he has direct access to a garden. Not known and not admitted that the flat is approximately a quarter of a mile from the Defender's address. Not known and not admitted that the Pursuer's flat is closer to Jimmy's school than the Defender's home. Not known and not admitted that Jimmy has his own bedroom at the Pursuer's flat. Not known and not admitted that he has a number of clothes and toys at the Pursuer's flat. The Pursuers averments are denied except as coinciding herewith. Explained that the Defender's home is a two bedroom semi-detached house. The child has lived there since he was born. The child regards the property as his home. The child has a large bedroom at the property. He has clothes and toys there. Jimmy has regular contact with his maternal grandparents by means of an internet video call. This takes place approximately once per week. Jimmy has a close bond with his maternal grandparents. The Defender changed her work pattern since the Pursuer left. She leaves the house at 8am. She takes the child to nursery. The Defender finishes work at 4pm. The Defender collects the child at 4pm and they return home together. The Defender is self-employed and has reduced the number of clients she has in order to cater for the needs of the child. The defender earns approximately £34,000 per annum. The child is thriving under these arrangements. His welfare is best served by the care of his mother. It being in the best interests of the child for the arrangements to remain in place, residence should be granted as first craved for the Defender. *Quoad ultra denied*.

7. The pursuer's averments are denied. In the event that the child is not residing with the Defender, it is in the best interest of the child to maintain personal relations and direct contact with the Defender. The Pursuer is unable to provide evening care for the child. In these circumstances it would be in the child's best interests that contact be granted as second craved.

PLEAS-IN-LAW

1. It not being the best interests of the child that they reside with the Pursuer, and it not being better for the child that a residence order be granted in favour of the Pursuer than none be granted at all, decree as first and second craved for the pursuer should be refused.
2. It being in the best in best interests of the child that they reside with the Defender and it being better for that child that a residence order be granted in favour of the Defender than none be granted at all, decree as first craved by the Defender should be granted as craved.
3. Failing a residence order, it being in the best interests of the child that they have contact with the Defender and it being better for the child that a contact order be granted in favour of the Defender than none be granted at all, decree as second craved by the Defender should be granted.

IN RESPECT WHEREOF

[name]

[address]

Signed

SAMPLE INVENTORY

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Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

FIRST INVENTORY OF PRODUCTIONS FOR PURSUER/DEFENDER

In the cause

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

Defender

1. Extract birth certificate of Jimmy John Black born 1 September 2016.

SAMPLE ADJUSTMENTS FOR THE DEFENDER

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Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

FIRST NOTE OF ADJUSTMENTS FOR THE DEFENDER

In the cause

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

Defender

1. At Article 3 of the Defences, in the 17th line after the words "the Defender" delete the words "was keen for" and replace with the word "encouraged"

2. At Article 4 of the Defences, after the sentence ending "conference" insert the following sentences:

"She drove home. She was not under the influence of alcohol."

3. At Article 4 of the Defences, in the 11th line, after the words "uniform was" and before the word "machine" insert the word "washing"

4. At Article 4 of the Defences, in the 12th line, after the words "empty the" and before the word "machine" insert the word "washing"

5. At Article 5 of Defences, delete the final sentence beginning "The Pursuer frequently" and insert the following sentences:

"The Pursuer raised his voice towards the Defender during their relationship. He has a previous conviction for breach of the peace. He finds it difficult to control his temper. The Pursuer's constant bad temper resulted in the breakdown of the parties' relationship. It is not suitable for the child to be exposed to the Pursuer's behaviour."

IN RESPECT WHEREOF

[name]

[address]

Signed

SAMPLE ADJUSTMENTS FOR THE PURSUER

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Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

FIRST NOTE OF ADJUSTMENTS FOR THE PURSUER

In the cause

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

Defender

Use the same heading/instance as the initial writ but a different description

Adjustments may be used to make something clearer or rectify a mistake

1. In Article of Condescendence 3, in the tenth sentence, at the end of the sentence after the words "bag was packed" insert the words "for nursery"

2. At the end of the same Article of Condescendence, insert the following:

"Under his current terms of employment, the Pursuer is required to stay at work until the salon closes at 8pm. The Pursuer and his manager have discussed changing his shift pattern to finish earlier. The Pursuer would be able to care for the child in the evenings. The Pursuer has a network of close family nearby. The Pursuer's family could easily assist the Pursuer with the care of the child in the evenings. The Pursuer attends drinks at his work approximately once per month. If the Pursuer was caring for Jimmy he would not attend the drinks nights. The Defender's averments in answer are denied."

They may also be used to answer the other side's averments or adjustments

3. In Article of Condescendence 4, at the end insert the following:

"The Defender's averments in answer are denied."

4. In Article of Condescendence 5, in the fourth sentence, delete the words "loud argument" and replace with the word "disagreement." At the end of the same Article, insert the following:

"The Pursuer is not easily angered. He does not regularly raise his voice. He chastises the child only when necessary and does so in an appropriate manner for a parent. The Pursuer and the child have a close bond. The child is not afraid of his father. The Pursuer's previous conviction for Breach of the Peace dates back to when he was 17 years old. This was before he met the Defender. It was before Jimmy was born. The Defender's averments in answer are denied. "

Adjust to deny the defender's averments

5. In Article of Condescendence 6, at the end insert the following:

"The Defender's Averments in answer are denied"

IN RESPECT WHEREOF

[name]

[address]

Signed

SAMPLE MOTION

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Court ref. no. F123/20

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

MOTION FOR THE PURSUER

In the cause

James Michael Black, residing at 123 Hilltown Street, Edinburgh, EH1 ABC

Pursuer

Against

Jennifer Louise White, residing at 456 Townhill Street, Edinburgh EH2 DEF

Defender

The Pursuer moves the Court:-

1. To allow the Initial Writ to be amended in terms of the Minute of Amendment forming No 4 of process
2. To allow the Defender 14 days for Answers, if so advised
3. To find the Defender liable in the expenses of this Motion

Lodged docs become part of "Process" The Clerk can tell you the number

List the documents of parts of process lodged with the Motion:-

Draft your M of A and enrol your motion to allow it

Minute of Amendment

Remember to intimate your motion and relevant docs to the other side to allow them the opportunity to oppose it

Date: 10 March 2011

James Black

123 Hilltown Street

Edinburgh

Pursuer

FORM F9

[Insert court] Sheriff Court | Ref: [insert case reference] | Form F9

Name

Address Line 1

Address Line 2

City

Postcode

Dear *[insert child's first name]*

You have been sent this letter because the sheriff will need to make a decision about you. The sheriff (sometimes called a judge) is a person who makes important decisions for children and families. *[Insert short summary of the section 11 order(s) sought, using child-friendly language.]* The sheriff has to decide about that.

The sheriff wants to know what you think about that. You have a right to tell the sheriff what you think, but you do not have to tell the sheriff what you think if you do not want to. What you think is very important, and it will help the sheriff to make a decision about what is best for you. Sometimes this might be different from what you would like to happen.

If you want to tell the sheriff what you think, you can use the **What I Think** form sent with this letter. You can write or draw anything you like. There is no right or wrong answer. Please send the form back to the sheriff when you have filled it in. We have sent you an envelope, which should already have a stamp on it. Just put the form in the envelope and put the envelope in a post box **within 2 weeks, or as soon as you can**.

The sheriff might not tell anyone exactly what you have written or said, but the sheriff has to think about this and say in court what you would like to happen.

If you are not sure what to do, you can show this letter to someone you trust. If you want to know more about what will happen next, you might get free help from a lawyer or from these places that can help children:

The Scottish Child Law Centre - the free phone number is 0800 328 8970 or 0300 3301421 (from a mobile) and the website is www.sclc.org.uk

Clan Childlaw - the free phone number is 0808 129 0522 and the website is www.clanchildlaw.org

If there's anything you are worried or upset about and you don't know what to do, you can speak to someone at ChildLine who will listen and help you. You can phone ChildLine free on 0800 1111.

If what you think changes, you can contact a lawyer or call the phone numbers for the Scottish Child Law Centre or Clan Childlaw.

From

the Sheriff Clerk, (the person who helps the sheriff)

What I Think Form

Name:

How do you feel just now about [insert short summary of the section 11 order(s) sought, using child-friendly language]?

☐ Good

☐ In the Middle

☐ Not Good

If you would like to tell the Sheriff why you feel like this, use the space below or another piece of paper.

Use another piece of paper if you need more space.

Is there anything else you would like to happen ?

Would you like to say what you think in a different way ?

☐ Yes ☐ No

What different way would you like to say what you think ?

In the letter with this form, there are Freephone numbers for the Scottish Child Law Centre and Clan Childlaw, if you want some other ideas. If someone has helped you with this **What I Think** form, please write there name and how you know them here.

What different way would you like to say what you think ?

The sheriff will think about what you have said, it will help the sheriff to decide what happens next. You can put this **What I Think** form in the envelope and send it back to the sheriff **within 2 weeks, or as soon as you can**. The envelope should have a stamp on it.

Thank You.

JARGON BUSTER

Abduction - Removing a child without the permission of a parent or parents or others having parental rights and responsibilities

Action - A case in a civil court

Adjustment - Correcting, changing or expanding on the written arguments to the court in court proceedings

Adoption - The process whereby a person legally assumes parenting of another a child. Legal adoptions transfer all parental rights and responsibilities from the biological parent(s).

Affidavit - A signed statement made on oath in the presence of a Notary Public. It forms the witness's evidence in chief. If the evidence contained in an Affidavit is accepted by the other party, the witness will not need to attend court to give oral evidence. However, if the evidence is disputed, the witness will need to attend court in order that they can be cross-examined. The use of Affidavits can save on court time. They are also used in undefended cases.

Agreement - a voluntary contract confirming what has been agreed voluntarily between the parties. Can be called a "minute of agreement" or a "separation agreement"

Aliment - Money payable for a spouse or a child, enforceable by law. Put in place by way of a court order, a voluntary agreement or, in the case of child aliment, under a decision made by the Child Maintenance Service.

Appeal - Asking the court to change or cancel an order it has made. This can be on the grounds that the court made a mistake in applying the law or because the factual information given it was not correct when the order was made or, sometimes, because the relevant facts have changed.

Arrest (Power Of) - Entitles the police to arrest a person without a "warrant to arrest", usually where a person has threatened or committed a violent act

Averments - statements or allegations

Balance of Probabilities - The standard of proof in civil cases. It means that something is more likely than it is unlikely. It is not as high a standard as the criminal standard of proof, where the court must be persuaded beyond all reasonable doubt.

Welfare/Best Interests of the Child - this is the most important (often called "paramount") factor which a court will take into consideration when making a decision to do with children.

CALM - CALM stands for Comprehensive Accredited Lawyer Mediators. Members of CALM are family law solicitors who have had specialised training in mediation. If a couple agree to go to mediation to discuss matters they can elect to instruct a CALM mediator.

Capacity - Is whether or not any person (including a "child") has sufficient understanding to give a view which will be taken account of by the court in making decisions

Child Maintenance Service - Part of the Department for Work and Pensions. CMS are responsible for child maintenance in the UK. If you cannot agree on child maintenance they can be asked to carry out a maintenance assessment and calculation. They are also able to take enforcement action if maintenance is not paid.

Child Welfare Hearing - Is a hearing held in private at the court, which may be at any stage of the proceedings, to decide things like the arrangements for where a child lives and the arrangements for "contact" or keeping in touch with the other parent and any other "interested parties"

Collaboration - A type of "alternative dispute resolution" Collaboration is a non-confrontational approach in which a couple attend a series of meetings with their lawyers to try to discuss and resolve as many as possible of the financial, child-related and other issues. . Other professionals such financial advisors and counsellors can be involved in the process. Everyone signs an agreement which includes a specific agreement not to go to court.

Condescendence - The written statement of facts in an action set out in consecutively numbered paragraphs that the Pursuer seeks to rely upon in support of their claim.

Contact - the legal word for the interaction a parent or other individual (usually family member) has with a child. Can take many forms: overnight contact, direct contact, indirect contact (i.e. letters) supervised or unsupervised. It can be a court order or a voluntary agreement.

Corroboration - backing up evidence from another source. The court will not make an order unless all of the important information has been proved, not just by what one person says, but has been backed up by evidence. For example, corroboration could be the evidence of a witness or a document.

Court of Session - Is Scotland's supreme civil court. (i.e. above the Sheriff Courts) The Court of Session consists of the Outer House and the Inner House. The Outer House mostly deals with cases when they first come to court. The Outer House deals with particularly high value or legally complex cases. The Inner House is primarily an appeal court.

Craves - Are what you are asking the court to do. For example, divorce or contact with a child.

CSA - Child Support Agency, established in 1993 to decide who pays money and how much for children up to age 19 in specially defined circumstances. The CSA can get court orders (called "liability orders"), and other orders to enforce payment by those responsible to pay for "children" Now replaced by the Child Maintenance Service.

Curator Ad Litem - Is a person appointed by the court to look after the interests of someone in the court process - sometimes the court will appoint a Curator ad Litem to a child. The Curator ad Litem will then appear on behalf of the child at any hearings.

Debate - A hearing where there is a legal point to be determined. It may be the final hearing - meaning no proof is required and no evidence is to be led

Decree - (pronounced DEE - cree) a court order, usually a final order, but can be appealed

Defences - The answers (and explanations) to the pleadings of the pursuer, explaining why the court orders should be granted as they have asked for rather than as the pursuer has asked for

Defender - A person against whom a court action is raised. A Defender can dispute the claim of the pursuer and lodges defences.

Defended Action - a court case in which a defender has intimated to the court that he or she wishes to defend the action raised against them or wants to ask the court for something other than what the pursuer has asked for

Evidence - Evidence is what is presented in support of a case. Evidence can be oral - spoken in court for the Sheriff to hear, or documentary and be lodged in court as a production (see productions). It must be "corroborated evidence" i.e. not just what is said by one party - it must be backed up by a witness or documentation

Expenses - Of a court case can either be agreed or the court can be asked to decide on who pays whose costs. It is rare for a court to make an award that one person pays the other side's costs in a family case although it can happen, usually when one side has behaved badly in the case.

Extract Decree - Each step of an Ordinary Action is recorded in an interlocutor. It is a short summary of what has happened to the case each time it comes before the Sheriff. A copy of the interlocutor is enough in some instances to carry out the order of the Court (what the Sheriff had decided). An extract decree is required where a copy interlocutor would not do and a more formal document is required. An Extract Decree will be produced by the court at the conclusion of the case containing the final orders granted by the court.

Habitual Residence - Habitual residence is the place where a person has genuine connection on a fixed basis - usually where they live. In family proceedings, it often has to do with which court family proceedings can be raised in. The case will usually be raised in the court nearest to wherever a child lives.

Initial Writ - Is the court document that the Pursuer will draft, and which tells the court the reasons what they want and why they want it.

Interdict - A court order stopping someone from doing something. You must have a good reason to ask the court to make this order. Examples include an interdict against removal of a child or a non-molestation interdict.

Interlocutor - this is a court judgment recording what is ordered by the judge at each step along the way. There may be many interlocutors throughout a case as the Sheriff makes decisions.

Interim - This usually means temporary. An interim order is a court order which is not a final order.

Joint Minute - this is the document lodged with the court when an agreement has been reached between the parties. It will tell the court what the parties have agreed. The court will usually grant it and when lodged with the court is enforceable.

Jurisdiction - This means a particular court has the authority to hear a case. It can sometimes be complex and you may require the advice of a solicitor.

Lay Supporter - A friend or supporter of a Party Litigant who will accompany him/her to court. The Lay Supporter can take notes of proceedings, offer discreet advice to the Party Litigant and provide moral support.

Lay Representative - A friend or support of a Party Litigant who is entitled to conduct the case in court for a party litigant.

Legal Aid "Advice & Assistance" - This is a type of legal aid that covers work done by a solicitor (i.e. letters, negotiations etc) but not representation in court.

Legal Separation - Usually means a separation agreement dealing with issues of money and children etc. There is no status of "legally separated" in Scotland.

Mediation - A facility provided to help couples try to resolve contentious matters without having to go through the court process. The mediator is independent and impartial and will facilitate a discussion between the parties to assist them in communicating and negotiating with a view on reaching an agreement.

Motion - An application to the court - it can be for almost anything but is most commonly used for procedural matters, for example to sist a case or to amend pleadings. There is a specific form of motion with rules about intimating it to the other parties.

Options Hearing - A hearing at court where both parties are usually present. The purpose for the Options Hearing is to tell the court where the case is at and to determine the further procedure in the case.

Parental Rights & Responsibilities - Listed in the Children (Scotland) Act 1995. Automatically acquired by unmarried fathers named on a birth certificate after 1 May 2006.

Party - A person involved in a case, i.e. Pursuer and Defender.

Party Litigant - The term in Scotland for someone representing him/herself in court. Equivalent of Litigant in Person in England and Wales.

Pleas-In-Law - Short statements at the end of your written pleadings explaining the legal basis for the craves.

Precedent - A previously decided case which is used to help decide further similar cases.

Process - The collective word for all the documents and productions that have been lodged with the court.

Productions - The documents given to the court as evidence.

Proof - An evidential hearing in a case where evidence is heard and the judge decides on matters of fact and law.

Pursuer - The person who starts the action and is asking for something from the court.

Record - The document created when both sets of pleadings (Initial Writ, Defences and Adjustments to both) are combined into one document for use in the court.

Residence - The word for what used to be called "custody", generally where the child lives most of the time.

Reporter - A person, usually a lawyer or social worker appointed by the court to investigate the circumstances around the child and his/her care.

Residence Order - A formal order by a court in relation to where/with whom a child should live.

Sheriff Court - The court in which it is likely your case will proceed. You should choose your Sheriff Court based on its jurisdiction.

Sheriff Officers - Officers of the court who will, for a fee, serve court papers

Sist - Where a court action is "paused" while other things are deal with - for example negotiations between the parties.

Undefended Action - When an action is raised and there is no defence submitted in time it will become an undefended action.

Warrant - An order of court so that all the correct people who have a proper interest in the case are aware of the proceedings

Witness - A person who may be asked to go to court to give oral evidence to the court. May also be someone who has given evidence in written form by affidavit.

Writ - The first document sent to the court in the case. Also called the Initial Writ

ORDINARY CAUSE RULES RELATING TO A CHILD WELFARE HEARING

33.22A

(1) Where-

(a) on the lodging of a notice of intention to defend in a family action in which the initial writ seeks or includes a crave for a section 11 order, a defender wishes to oppose any such crave or order, or seeks the same order as that craved by the pursuer,

(b) on the lodging of a notice of intention to defend in a family action, the defender seeks a section 11 order which is not craved by the pursuer, or

(c) in any other circumstances in a family action, the Sheriff considers that a Child Welfare Hearing should be fixed and makes an order (whether at his own instance or on the motion of a party) that such a hearing shall be fixed, the Sheriff clerk shall fix a date and time for a Child Welfare Hearing on the first suitable court date occurring not sooner than 21 days after the lodging of such notice of intention to defend, unless the Sheriff directs the hearing to be held on an earlier date.

(2) On fixing the date for the Child Welfare Hearing, the Sheriff clerk shall intimate the date of the Child Welfare Hearing to the parties in Form F41.

(3) The fixing of the date of the Child Welfare Hearing shall not affect the right of a party to make any other application to the court whether by motion or otherwise.

(4) At the Child Welfare Hearing (which may be held in private), the Sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may-

(a) order such steps to be taken, make such order, if any, or order further procedure, as he thinks fit, and

(b) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.

(5) All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.

(6) It shall be the duty of the parties to provide the Sheriff with sufficient information to enable him to conduct the Child Welfare Hearing.

FURTHER INFORMATION

The following publications and web pages may be useful.

Glasgow and StrathKelvin Practice Note no. 1

This useful note covers topics such as affidavits, bar reports, motions and minutes. Practice notes from all Sheriffdoms are on the Scotcourts web site.

Equal Treatment Bench Book

This is the guide for judges, with a section on party litigants. Useful insight into the judge's perspective. http://www.scotland-judiciary.org.uk/Upload/Documents/EqualTreatmentBenchBook110615.pdf

The Civil Advocacy Skills Book by Ronald Conway and Bridget McCann

If you have to conduct a proof hearing this Scottish guide will help.

SHARED PARENTING SCOTLAND GUIDES

Equal Parents - how to get information from a school about your child

Child Welfare Reports - what happens when a Report is ordered

Download from https://www.sharedparenting.scot/help-advice/guides-publications/

A Parenting Plan is a way to establish the expectations of your role as parents as well as the specific details of arrangements for the children. Try to build sufficient flexibility and mutual good faith into the parenting plan so that it can see you through until the children become adults. The Scottish Government has a guide to drafting a Parenting Plan which is a useful resource for separated parents: https://www.gov.scot/publications/parenting-plan/

SHARED PARENTING SCOTLAND

We work to keep children and parents in contact after separation, with a particular focus on promoting shared parenting. We provide information, training and support to enable parents in conflict to come to child-centred agreements so that children can continue to enjoy a meaningful relationship with both parents after separation.

Much of the important work at Shared Parenting Scotland group meetings comprises parents and other family members listening and sharing their own experiences with the aim of rebuilding self-confidence and finding a path through frustrations and disappointments.

We also run a helpline and publish information on our website. We provide a range of online training and support people through local WhatsApp groups.

Shared Parenting Scotland seeks faster and less adversarial methods to resolve family disputes and for more support to be provided to separating parents.

We also try to make sure both parents get equal access to school and health information relating to their children. Many of the issues that we campaign on are suggested by the people attending local meetings.

The charity was established in December 2010 as Families Need Fathers Scotland and changed its name to Shared Parenting Scotland in February 2020. It now has offices in Edinburgh and Glasgow and holds local support group meetings in Glasgow, Edinburgh, Aberdeen, Dundee and Stirling and online.

We are very grateful for ongoing financial support from the Scottish Government, the Tudor Trust and a range of other funders and for the fundraising and donations provided by many of the people who make use of our services.

CHECK OUR WEBSITE FOR CURRENT DETAILS OF OUR WORK

Representing Yourself in a Scottish Family Court

A guide for Party Litigants in child contact and residence cases

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