

Child Welfare Reports



A guide for parents
in Scottish family court hearings

June 2021

Shared Parenting Scotland is often asked questions by parents when a Child Welfare Report is ordered as part of their court case. We produced the first edition of this 'user guide' in 2012 and updated it in 2015. It has been consulted by many hundreds of parents and we hope that it has helped them understand this process more clearly.

Previous editions noted various aspects of this reporting which this organisation felt could be improved. Some of these changes were made in 2015, such as presuming that parents will share the cost of Child Welfare Reports equally, and requiring sheriffs and judges to specify in more detail the enquiries that the Child Welfare Reporter should make.

The Children (Scotland) Act 2020 made some significant changes in the way this reporting will be conducted in future. This guide includes a note of these changes in APPENDIX ONE. The new processes of appointment, training and oversight of Child Welfare Reporters are currently (midsummer 2021) subject to consultation and they will put in place over the next few years.

We hope that the changes will address many of our concerns about this very important part of the family law court process. We recognise that many current child welfare reports are being done by Reporters who are acting diligently and professionally and that the information in their reports helps the court to make decisions that are in the best interests of children.

Unfortunately not all reports are done to this standard. Some reporting in the most complex cases should be carried out by experienced child psychologists or social workers rather than lawyers. Until the new system of supervision and training is in place we are concerned that a major issue remains about transparency and accountability of the appointment and performance of Child Welfare Reporters.

National standards for training and systematic oversight of the quality of reporting will be a first step towards improving standards across Scotland.

We suggest that both children and parents would benefit from a further shift towards problem solving rather than adversarial court procedures, speedier decisions and early support for separating parents to resolve disputes themselves.

Our thanks are due to Catherine MacPherson who wrote the original guide for us, to the many family lawyers who help this organisation by attending our support meetings and answering our legal questions, and to the Child Welfare Reporters and lawyers who have provided comments on this and other guides we publish. Nothing in this guide should be taken as forming legal advice. Shared Parenting Scotland recommends seeking the help of a qualified solicitor where explicit legal advice is required.

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
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What is this guide for?

This guide is designed to inform people involved in a family court action what a Child Welfare Report¹ is and how the procedure works. This guide refers mainly to the Sheriff Court which is where most reports are ordered, but our comments also apply to reports ordered in the Court of Session.

We use the terms 'resident' and 'non-resident' parent from time to time in this guide. We have to use them because they are in common usage and you will expect to hear them used by your respective solicitors and in court. **We don't think they are helpful.** Words matter and these terms tend to create a distinction in the way parents experience the family law system that doesn't necessarily capture the reality of the relationship each parent has with their children and their children with them. 'Non-resident' parents in particular say they feel they are often perceived as a risk before they are recognised as a resource for their children.

Our comments should help you represent your interests and the realities of the relationship with your children more effectively when talking to the Child Welfare Reporter.

Child Welfare Hearings are usually very short and are often a source of frustration. Many parents who are trying to restart contact or get more time with their children feel that they have not been able to tell their side of the story. They may feel their character is essentially on trial and they are being forced to prove their worth as a parent. This is likely also to apply to a parent who feels for reasons of protection or a wish to relocate has raised an action to reduce their former partner's time with his/her children

This feeling often leads some people to try and use the Child Welfare Report interview to criticise their ex-partner. Indeed, they are likely to be asked specifically by the Child Welfare Reporter for their views about their former partner. That is not an invitation to pursue old grievances or 'correct the record' on what you believe are unfounded criticisms of you. The Child Welfare Reporter is trying to test your willingness to avoid continuing conflict that could adversely affect your child or children.

The Child Welfare Reporter is most concerned about your parenting relationship with your child and how it will develop in the future. She or he will be assessing - and will

report to the court on - your ability to put the children first. Attacking the other parent will do you no favours, no matter how unfair or malicious you may feel the comments about you have been.

You are in court because you and the other parent have not managed to reach an agreement about sharing the parenting of your child or children. By going down the legal route you are now asking for someone who does not know your children to make the decisions you could not. It is difficult for a sheriff to separate what you want, what your former partner wants and what is best for your child. The Child Welfare Reporter has been appointed to assist the sheriff in making those decisions. When you speak to the Child Welfare Reporter you must remember to focus on what will work in terms of the child's welfare.

AVOIDING COURT

As always, Shared Parenting Scotland advises, where it is possible, that separated parents avoid going to court. It is inevitably a blunt instrument. If separated parents cannot agree about arrangements for their children we advise they should at least consider one of the forms of mediation or collaborative law that helps focus on areas of agreement rather than further escalate conflict. Remember, when the case is finished and the sheriff has closed the file the parents are likely to have another 10 or 15 years of responsibility for the welfare of their children and a lifetime after that.

Unfortunately, many of the requests for advice we receive on our helpline or at group meetings or WhatsApp chats are from individuals who are far down the path of litigation. **This guide is for you.**

1. Before October 2015 these reports were called Bar Reports, and the name is still used sometimes.

THE WHO AND WHAT OF CHILD WELFARE REPORTS

In Scots law the welfare of the child is paramount when making decisions about 'residence' - who the child will live with - or 'contact' the arrangements for spending time, including overnights, with the other parent. The court will not make an order unless it considers that it would be better for the child that the order be made.

The initial application to court in a dispute about the arrangements for a child and the response from the other parent² will both include their reasons why a particular decision should be made.

These submissions will be considered at an initial Child Welfare Hearing. At this hearing or any subsequent hearing a sheriff may order a Child Welfare Report to obtain more information and get a better sense of how to identify the best arrangements for the welfare of the child.

What is a Child Welfare Report?

The essential role of the Child Welfare Reporter is to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

The Reporter may also be asked to find out the views of the child and obtain other background information. The interlocutor (note of sheriff's decision) that appoints the Reporter will also specify the issues in respect of which the child's views are to be sought (if required), the enquiries to be undertaken and the issues to be addressed in the report.

The Child Welfare Reporter does all the exploration with the parents and others who know the child and whose insight may be useful.

The Child Welfare Reporter has a neutral and independent role in order to report his or her observations to the court and to make recommendations in terms of the contact or residence application that has been made to the court. The sheriff or judge will then make the actual decisions once the report is presented. These decisions are likely to be strongly influenced by the recommendations made by the Reporter. Often they will be identical.

2. Although we usually only refer to parents, grandparents and other people may also be involved as parties in this type of court case.

How will the Child Welfare Reporter be appointed in my case?

The sheriff clerk will consult the court's list or panel of Child Welfare Reporters and then contact the next one on the list to check availability.

The sheriff clerk will then check to see if there are any conflicts of interest such as a previous involvement with either parent.

If the Child Welfare Reporter is available and there are no conflicts of interest then papers will be sent out from the court. The Child Welfare Reporter will contact the solicitor of each party or a party litigant to obtain contact details and any relevant documentation.

The court rules about the appointment of a Child Welfare Reporter are noted in APPENDIX TWO.

Who gets on the list?

Each of the six sheriffdoms (geographic areas into which Scotland is divided for the administration of sheriff court business) maintains a list of Reporters. It is possible for Child Welfare Reporters to have their name on the list of more than one sheriffdom.

Up to now this process has not been transparent. The Children (Scotland) Act 2020 will bring in changes. The process and criteria for appointment to this new national list is being reviewed along with time limits for appointment. A regular review of the list is being considered.

What qualifications and experience will a Child Welfare Reporter have?

Most often a Child Welfare Reporter will be an experienced family lawyer. Some family lawyers specialise only in acting as Reporters. Social Workers can also be appointed as Child Welfare Reporters. This is more common in more rural areas such as Na h-Eileanan an Iar (the Western Isles).

It has long been a concern of Shared Parenting Scotland that Child Welfare Reporters have not been required to demonstrate any aptitude in interviewing children, avoiding leading questions or tainting evidence that is required, for example, of criminal justice social workers. Some Reporters have all the above competencies, but there is no current requirement for all Reporters to have them.

The proposed new system will require Reporters to be competent in interviewing children and writing reports and aware of and have training in issues affecting child welfare including domestic abuse, mental health, addiction and undue influence over a child including unjustified rejection, often called parental alienation.

See APPENDIX ONE for details of the planned changes to appointment and training procedures.

PROCEDURE

Who can request a Child Welfare Report?

One or both parents may request a Child Welfare Report. The sheriff decides whether a Child Welfare Report is required. The sheriff can deny your request. The sheriff can also appoint a Child Welfare Reporter without either parent asking for one to be appointed.

Who will the Child Welfare Reporter meet with first?

The Child Welfare Reporter will meet with each parent separately. There are no set rules and it should not matter who the Child Welfare Reporter meets with first though this is often a source of anxiety, particularly for the parent who has raised the court action.

Some Child Welfare Reporters will write to you. Many will telephone or email to make contact. Remember that first contact is effectively the beginning of your interview. We have seen several Child Welfare Reports where "difficulty" in agreeing when and where to meet is noted.

It is important to be courteous and helpful from that first contact but at the same time you are entitled not to be hustled into agreeing arrangements there and then.

Although it seems cumbersome in these days of instant communication we also recommend that you make arrangements in writing by letter or by e mail. That way misunderstandings are minimised and there is a record of your dealings with the Reporter. Telephone conversations are often prone to misunderstanding and, of course, there is no record of what is said or how it is said.

How many interviews will there be?

It is likely that you will be interviewed twice. It is usual for the Child Welfare Reporter to interview each parent once on their own and once in the presence of the child or children if possible. It can be more than that if the Reporter feels there are unresolved issues that have emerged during other interviews. As there are no national standards at the moment it is not compulsory for the Reporter to see each parent twice, although the interlocutor (notice of the decision appointing the Reporter) from the sheriff should mention what interviews should take place.

Where will the interview happen?

The location can depend on who is being interviewed i.e. the individual parent or the parent and child. The venue for seeing the child in the non-resident parent's care will depend on the contact arrangements (if any) which are already in place.

This can be a Catch 22 and is extremely upsetting for a parent who is applying for contact because of the refusal of the former partner to allow it.

It is particularly a problem where, as our helpline calls indicate, the separation or breakdown in relationship has happened in the first months or years of a child's life and contact has never been regularly established.

If these are factors we recommend they should be drawn to the attention of the sheriff or judge at the time of ordering the Child Welfare Report so that she or he can order interim contact arrangements or refer to them in the instructions to the Child Welfare Reporter.

Interviewing parents

Most often the Child Welfare Reporter will interview each parent individually before seeing the child in the care of each parent. It is most common for the Child Welfare Reporter to interview each parent in their own home although restrictions during the COVID pandemic have required interviews to take place by phone or video call. If one parent lives a long distance away from the other parent an interview may also be by phone or video call.

Meeting the children

Where both parents have an established pattern of care of the children the Child Welfare Reporter is likely to wish to see the children and parent together in that familiar situation.

Where one of the parents has 'supervised contact' - most often at a Contact Centre - the Child Welfare Reporter will observe the children with that parent there.

When there are several children of different ages the Reporter may suggest - or you can suggest - that it is important to see you with the children individually as well as together. It is also worth suggesting that the children are interviewed more than once, to enable them to build up confidence in the Reporter and give their own views.

Although it risks extending the time taken to complete the report and potentially the cost, more sessions can be useful in cases where children may have been unduly influenced by one of their parents. The current official guidance to Reporters states that, *"It will often be appropriate to see a child more than once in order to build up a rapport with them and to be assured that you are able to understand their genuine views."*

The child's point of view

It is normal to feel stressed or anxious about your Child Welfare Report interview. You will feel the stakes are high. The Child Welfare Reporter does not want to induce any stress.

Depending on the age of your children and the contact arrangements in place the Child Welfare Reporter may wish to interview them at school. You should not take this as a sign of distrust. The Child Welfare Reporter wants to make your children feel as comfortable as possible. School may provide a neutral venue where the child should not feel torn by a sense of loyalty to either parent or fear that they will hurt your feelings if they speak freely to the Child Welfare Reporter.

If your child is to be interviewed at school then one or both of the parents will be asked to sign a mandate authorising this. It is usual practice for the Child Welfare Reporter to contact the school and send the school a copy of the interlocutor appointing them. The Child Welfare Reporter may show the school other documents such as the initial writ.

The Child Welfare Reporter is not trying to get the school involved in the dispute. The Child Welfare Reporter will only show court documents in order to prove to the school that the court has asked them to carry out this role.

If your child is at primary school then it is likely that their teacher or the head teacher would sit in on the interview. If your child is at secondary school then it is likely to be their guidance teacher but they can choose not to have someone present. The teacher should not interject or interrupt the interview.

A Scottish Government guidance note³ for children and young people about speaking to a Child Welfare Reporter was published in December 2020.

What kind of questions will I be asked?

The following types of question would seem to be necessary, but don't worry if you are not asked some of them. Child Welfare Reporter styles vary and those with a legal background may ask questions in a different way from social workers.

The Child Welfare Reporter will ask you about your family background and whether there are wider family members such as aunts, uncles, grandparents or cousins of similar age to your children living nearby or regularly involved with your children.

The Child Welfare Reporter will have seen the submissions that have been made to court and therefore will ask questions about how practicable and sustainable proposed arrangements are. In this respect he or she may ask about your accommodation, whether it is owned or rented; how many rooms are in the property and, if overnight stays are requested, how many bedrooms there are.

The Child Welfare Reporter will ask you about your health and any use of drink or drugs. The Child Welfare Reporter will not have the background or expertise to diagnose health problems but will be interested in any conditions diagnosed by your GP or specialist that could affect the care arrangements for your child and your involvement in continuing care such as administering medication.

You are likely to be asked about your employment, work pattern and your current income.

3. <https://www.mygov.scot/child-welfare-Reporter>

The Child Welfare Reporter will ask about the relationship prior to separation. **This is not an invitation to air grievances or criticise your former partner.** There will have been a time when you were happy together and the Child Welfare Reporter will be looking to see how able you are to recognise the positive traits of the other parent. It is not healthy for children to hear one parent running down the other. Even if the other parent does it, you should not.

The Child Welfare Reporter will want to clarify what happened after separation. It is important to focus on your relationship with your child. **Keep to the facts.** The Child Welfare Reporter is interested in how your relationship with your children has altered since separation rather than how the other parent may have done you wrong or behaved badly in other ways.

The Child Welfare Reporter will seek to clarify what is happening now and how committed you are to making arrangements that help your children grow to be confident and fulfilled individuals.

Finally the Child Welfare Reporter may ask you what your hopes are for the future and how the arrangements proposed in the writ would evolve in practice.

What happens if I don't know the answer?

You can't know everything so don't worry! If you do not know something then you can offer to find out and forward the correct information in writing afterwards. Don't guess and possibly be suspected of misleading the court or the Child Welfare Reporter.

Will I be asked about domestic abuse?

If an allegation of domestic abuse has already been raised in the court case, the Reporter may ask about your view. It is the responsibility of the sheriff to decide how allegations about these issues are taken into account in the final decision, although the Reporter may include information about the views of each parent.

If you are wrongly accused of abusing the other parent, it should be sufficient to state that you deny the allegation and leave further consideration to the sheriff. If domestic abuse experienced by you has already been mentioned, again you should leave it to the sheriff to take this into account.

The Reporter may have been asked to investigate whether domestic abuse has been seen by the children as this is a factor which needs to be taken into account. If asked to comment you should stick to mentioning your own experience and avoid making further comments.

Will I be asked about undue influence of children or Parental Alienation?

The Child Welfare Reporter may have to explore whether the expressed views of the children have been unduly influenced by one of their parents or someone else. If asked about this you can comment on how the children's views seem to have changed since the separation, but stick to factual statements about things that you have noticed. Avoid allegations about your ex-partner's behaviour unless you have clear evidence that the children have been influenced against you.

Parental Alienation is an extreme form of influence in which children completely reject a parent with whom they previously had a good relationship. Use of this term in court cases can be controversial even although there is now well-established evidence about what it is and how it can be addressed - see information on this website⁴.

Given this controversy, we suggest that you restrict your comment to what is happening and avoid making your own diagnosis. If the Child Welfare Reporter doesn't ask you about this aspect, mention your concern that the children's views have been influenced and talk about the differences you can see between their behaviour towards you in the past and how they are now. You can express your concern about how difficult the situation is for your children and your commitment to ensuring that you are positive about the other parent when talking to them

Is the interview recorded?

The Child Welfare Reporter will take notes during the interview and may also use some form of recording to supplement these notes.

You could make a request in advance to say that you would like to record the interview. However, our experience is that even making such a request is frowned on and may lead to you being accused of being hostile or controlling or just get the interview off to a bad start.

4. <https://parentalalienationuk.info/>

Shared Parenting Scotland will continue to press for these interviews to be recorded to protect both the Reporter and the parents, as happens in other countries.

We strongly recommend against 'secret' recording on the basis that if discovered it may seriously damage your application for contact.

Who else will be interviewed?

This will depend upon the circumstances of your case but the detailed instructions from the sheriff (interlocutor) should give a clear indication of who should be interviewed. You or your lawyer should be able to give suggestions about who should be interviewed during the Child Welfare Hearing in which the Child Welfare Reporter is appointed. Suggest people who know you and your children and have first hand knowledge of how you are with them.

There is no particular advantage in suggesting a number of interviewees who all say the same thing. Interviewees should have direct experience of relevant issues rather than just having been told about what has happened by yourself. The Child Welfare Reporter may not meet all of these individuals in person but may talk to them over the phone.

Meetings with professionals such as doctors or psychologists or other agencies may take a few weeks to arrange. The Reporter should obtain mandates at the outset from you or your lawyer covering the release of information from these agencies.

The Child Welfare Reporter may also wish to interview some of your relatives and those of your ex-partner if they have witnessed certain events or who have been heavily involved in your child's life.

If during the course of enquiries the Reporter considers that other points should be covered the Reporter can apply to be given further directions by the sheriff.

If I am legally aided will the Scottish Legal Aid Board (SLAB) pay for the Report?

If the Child Welfare Report is written by a solicitor then SLAB will cover the fee charged.

If the Child Welfare Report is written by a social worker then at present the local authority does not charge SLAB for the cost of compiling the Child Welfare Report.

Will an unsupportive Child Welfare Report affect continued legal aid funding?

The "prospects of success" are a deciding factor in granting any civil legal aid.

Receiving an unsupportive Child Welfare Report will not automatically stop your civil legal aid funding but it will affect your prospects of success and you or your solicitor will have to demonstrate to SLAB that you have strong grounds for challenging the recommendations set out in the Child Welfare Report. The board may reassess your case and decide that you no longer meet the reasonableness test for receiving public funds.

THE REPORT

What will be in the Report?

The report will start by mentioning the sheriff's interlocutor and the sheriff's instructions on what enquiries the Reporter should carry out and the issues the sheriff wants to be addressed in the report. Reports that seek the views of a child should also specify the issues on which these views are to be sought.

It will list any witnesses they have spoken to, stating who they are, their relationship to the children and whether they were interviewed in person or over the phone.

It should detail where and when the interview took place and the duration of interviews and identify anyone else who was present.

It should note the qualifications of the Reporter and confirm that the Reporter has a certificate of membership of the Protecting Vulnerable Groups (PVG) scheme and is subject to ongoing monitoring. A Reporter's duties could include being in sole charge of children.

The main body of the Report will contain an account of the interviews with each party and the children.

The Child Welfare Reporter's recommendation on the extent and kind of contact will be set out in the conclusions of the Report, usually at the end. This is the most important part of the report - turn to it first.

Try to focus on the Reporter's recommendations rather than worrying about any minor inaccuracies in the body of the Child Welfare Report

It can be extremely distressing to see minor inaccuracies but don't let them distract you from what is concluded.

If there are major inaccuracies that you feel have led the Reporter to reach conclusions and make recommendations that he or she is not justified in making then it is important to challenge them (see below) lest they become 'fact' and affect not just your contact but your relationship with your children for years to come.

It is a balance you must decide for yourself. Pursuing minor inaccuracies that probably don't materially affect the conclusions and recommendations may rebound on you.

How long will the Reporter take to complete my Child Welfare Report?

The Child Welfare Report should take no more than 6-8 weeks. If the report takes longer or the Reporter asks the court for more time this can be opposed unless there are very good reasons for the delay.

When do I get to see the Child Welfare Report?

The report should be submitted to court at least three clear days before the hearing. The report should also be sent to each of the parties by this deadline, unless otherwise directed. If you are represented the report will go to your lawyer. Some sheriffs place restrictions on whether parents can be given copies of the report or are simply allowed to read the report in the presence of their lawyer.

The report is owned by the court. Under no circumstances should you publish it. This means you should not put the report or any quotations from it on social media such as Facebook or Twitter.

If you wish to discuss the report with an advisor, friend or family member, that is allowed as long as you make it clear that the information should not be passed on. You should be aware that if you share it with someone who is subsequently called as a witness if the case goes to proof, that may affect the court's consideration of that person's evidence.

What happens if I don't get a chance to see the Child Welfare Report before the Child Welfare Hearing?

The rules specify that the report should be submitted no less than three clear working days before the court hearing. This should make it unlikely that the reports is submitted so late that you don't have a chance to consider it.

If this does happen you can ask the sheriff for a continuation of the Child Welfare Hearing - asking for nothing further to happen today and for another date to be set - but if no contact is taking place at present you may wish to avoid further weeks of delay.

In such a situation, it might be better to ask for a short adjournment to read the report and consult with your lawyer. Remember that the conclusion section at the end is the most crucial part of the report, so focus on what is said there.

If you do not ask for a continuation and the sheriff makes an order based on a Child Welfare Report recommendation you won't be able to challenge the contents later even though you discover it contains significant errors.

You or your representative should bring the circumstances of the late delivery of the Child Welfare Report to the attention of the sheriff.

Should the sheriff proceed with the hearing despite a request for a continuation there may be grounds for appeal in terms of Article 6 of the European Convention on Human Rights which sets out the right to a fair hearing.

CHALLENGING THE REPORT

Can something in the Child Welfare Report be challenged?

It is often said that Child Welfare Reporters are exempt from examination on their Child Welfare Report as officers of the court. That isn't strictly correct but it is certainly unusual for a Reporter to be questioned during a Child Welfare Hearing. We understand that a Child Welfare Reporter cannot be called to give evidence at a proof hearing.

In the current climate in which sheriffs are being encouraged to ensure child contact cases 'don't sprawl' unnecessarily you need to have a very clear reason for asking a Child Welfare Reporter to explain the basis of their conclusions and recommendations.

A balanced Child Welfare Report is likely to contain material that is disputed by one or both parties.

It is also our experience that solicitors are not enthusiastic about challenging the findings of Child Welfare Reporters for a variety of reasons. They often say that it could be a counter-productive exercise. It could make you appear to be "difficult" or "challenging" and thus undermine the imperative for you to be the reasonable party.

You are within your rights to ask your solicitor to raise your concerns but think carefully before taking this step.

Can a Child Welfare Report be used at proof?

A proof is the final hearing in a case where evidence is given under oath and witnesses are able to be cross-examined by the other side. On hearing such testimony and reviewing supporting documents lodged with the court the judge or sheriff makes decisions on matters of fact and law in the case.

Only a few family court cases go to proof. If the case goes to proof then the Child Welfare Report can be mentioned or lodged as a production.

COSTS

Who pays for the Child Welfare Report?

In a case where one person is legally aided it used to be requested that the cost of the Child Welfare Report was charged to the legally aided party. There is now a presumption that costs are shared between parties. This should change once the new arrangements are put in place - see last section.

This may cause problems to people whose earnings are just above the legal aid threshold, but should make it more difficult for the cost to be allocated just to the person who raised the action (pursuer).

You can calculate your own eligibility for legal aid using the Scottish Legal Aid Board's online calculator at www.slab.org.uk.

How much will it cost?

If a Child Welfare Report is being paid for by the Scottish Legal Aid Board they will require justification if the cost is above £3000. Privately funded reports are not subject to this cost limitation.

The Financial Memorandum⁵ published in connection with the 2020 Children (Scotland) Bill notes that a study in 2016 showed costs varying from less than £500 to more than £10,000. Some of this variation may relate to the amount of work required such as travel to interview the parties or an unusual number of people to be interviewed.

The Memorandum uses an estimate of £2,739 for the average cost per report in a calculation of how much it would cost if all the reports are to be paid for by the Scottish Government - one of the proposed changes in the 2020 Children (Scotland) Act.

Key Points

Focus on the best interests of your child

Remember that court is most concerned about the welfare of your child

Keep in mind that the Child Welfare Reporter is most concerned about your relationship with your child

Do not become caught up in the reasons behind your relationship breakdown or the unfairness of allegations that have been made against you

Remember that the other parent will read what you have said to the Reporter

5. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/financial-memorandum-children-scotland-bill.pdf>

Children (Scotland) Act 2020 and Consultation

Various changes to child welfare reporting were included in this legislation. It states that Scottish Ministers must establish and maintain a register of persons who may be appointed to act as a Child Welfare Reporter and that they can make regulations for the following:

- the requirements that a person must satisfy in order to be included, and remain, on the register of Child Welfare Reporters
- the process for including a person on, and removing a person from, the register
- the process for how, and by whom, a registered person is to be selected as the appointed Child Welfare Reporter in a case
- the remuneration of Child Welfare Reporters including expenses and outlays
- the operation and management of the register.

A court may only appoint as a Child Welfare Reporter a person who is included on this register.

As well as specifying the training requirements for Child Welfare Reporters, the intention is to attract a wider range of professionals including child psychologists and family therapists to carry out this work.

Another key change is that Scottish Government will pay the cost of all child welfare reports once the new system is in place.

Two other new possible roles for a Child Welfare Reporter are likely to be implemented. They may also be involved in explaining the court's decisions to a child in some cases and investigating and reporting to the court on failure (or alleged failure) to obey a court order.

The Scottish Government is carrying out a consultation⁶ on the register of Child Welfare Reporters and related matters, which closes on July 12th 2021.

Following the end of the consultation period the Scottish Government will report on the responses and then make decisions about the register and start implementing the changes. The current timescale is for the register to be in operation and other changes made by Spring 2023.

6. <https://www.gov.scot/publications/children-scotland-act-2020-consultation-registers-child-welfare-Reporters-curators-ad-litem-solicitors-appointed-represent-person-prohibited-conducting-case/pages/3/>

Court Rules

The rules of the Sheriff Court and Court of Session relating to Child Welfare Reporters were amended on 26th October 2015. The Sheriff Court rules include the following changes.

(1) At any stage of a family action the sheriff may, in relation to any matter affecting a child, appoint a person (referred to in this rule as a " Child Welfare Reporter") -

(a) to seek the views of the child and to report any views expressed by the child to the court; or (b) to undertake enquiries and to report to the court.

(2) A Child Welfare Reporter may only be appointed under paragraph (1)(b) where the court is satisfied that the appointment-

(a) is in the best interests of the child; and

(b) will promote the effective and expeditious determination of an issue in relation to the child.

(3) An interlocutor appointing a Child Welfare Reporter must-

(a) specify a date by which the report is to be submitted to the court;

(b) include a direction as to the fees and outlays of the Child Welfare Reporter;

(c) where the appointment is under paragraph (1)(a), specify the issues in respect of which the child's views are to be sought; and

(d) where the appointment is under paragraph (1)(b), specify the enquiries to be undertaken, and the issues requiring to be addressed in the report.

(4) An interlocutor complies with subparagraph (c) or (d) of paragraph (3) if the issues or, as the case may be, the enquiries referred to in that subparagraph are specified in an annex to the interlocutor in Form F44 (see below).

(5) Where the sheriff has appointed a Child Welfare Reporter with a view to the report being considered at an assigned hearing, the date specified in accordance

with paragraph (3)(a) must be a date no less than three clear days before that hearing, excluding any day on which the sheriff clerk's office is not open for civil court business, unless cause is shown for specifying a later date.

(6) On appointing a Child Welfare Reporter, the sheriff may also-

(a) make such further order as may be required to facilitate the discharge of the Child Welfare Reporter's functions;

(b) direct that a party to the proceedings is to be responsible for providing the Child Welfare Reporter with copies of such documents lodged in the process as may be specified; and

(c) give the Child Welfare Reporter directions.

(7) The direction referred to in paragraph (3)(b) must assign liability for payment of the Child Welfare Reporter's fees and outlays in the first instance, and require that liability to be borne-

(a) in equal shares by-

(i) the pursuer;

(ii) any defender who has entered appearance; and

(iii) any other person who has been sisted as a party to the proceedings; or

(b) by one or more parties to the proceedings on such other basis as may be justified on cause shown.

(8) On the granting of an interlocutor appointing a Child Welfare Reporter the sheriff clerk must-

(a) give the Child Welfare Reporter-

(i) a certified copy of the interlocutor, and

(ii) sufficient information to enable the Child Welfare Reporter to contact the solicitor for each party to the proceedings, or any party not represented by a solicitor; and

(b) intimate the name and address of the Child Welfare Reporter to any local authority to which intimation of the proceedings has been made.

(9) A Child Welfare Reporter appointed under this rule must-

(a) where the appointment is under paragraph (1)(a)-

(i) seek the child's views on the specified issues, and

(ii) prepare a report for the court reporting any such views;

(b) where the appointment is under paragraph (1)(b)-

(i) undertake the specified enquiries, and

(ii) prepare a report for the court having regard to the specified issues;

(c) send the report to the sheriff clerk by the date specified;

(d) unless otherwise directed, send a copy of the report to each party to the proceedings by that date.

(10) A Child Welfare Reporter may-

(a) apply to the sheriff clerk to be given further directions by the court; and

(b) bring to the attention of the sheriff clerk any impediment to the performance of any function arising under this rule.

(11) Where a Child Welfare Reporter acts as referred to in paragraph (10), the sheriff may, having heard parties, make any order or direction that could competently have been made under paragraph (6).

Rules

Rules about the appointment of local authorities to prepare Child Welfare Reports are also included.

Form F44 is used by the sheriff to specify that certain enquiries are undertaken and states whether the Reporter is to seek the views of the child or children or just carry out enquiries. It also can list the issues on which the views of the child or children are to be sought.

- Seek views of child
- Visit home of [specify]
- Visit nursery / school / child minder / other [specify]
- Interview mother / father
- Interview other family members [specify]
- Interview child minder / nanny
- Interview teacher / head teacher
- Interview child's health visitor / GP / other health professional [specify]
- Interview a party's GP / other health professional [specify]
- Interview social worker [specify]
- Interview domestic abuse case worker [specify]
- Interview other persons [specify]
- Obtain criminal conviction certificate under section 112 of the Police Act 1997 in respect of [specify party]
- Observe contact [specify]
- Observe child in home environment pre/post contact [specify]
- Obtain record of parties' attendance from contact centre
- Other [specify]

Rules for the Court of Session are broadly similar. For the full text see <http://www.legislation.gov.uk/ssi/2015/312/ma> de

SHARED PARENTING SCOTLAND

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 local support group meetings in Glasgow, Edinburgh, Aberdeen, Dundee and Stirling. 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

We work to keep children and parents in contact after separation, with a particular

focus on promoting shared parenting. We provide information 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. Our service users include fathers, mothers, grandparents, extended family members and new partners

We publish 'user guides' to the family court process and on the involvement of both parents in their child's education and also publish a wide range of information on our web site and through social media.

Child Welfare Reports



A guide for parents
in Scottish family court hearings

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