



## REPORT

### BACKGROUND

This is a report by The Scottish Courts and Tribunals Service (“SCTS”) about the structure of hearings in family and civil partnership actions at Child Welfare Hearings (“CWH’s”) in the sheriff court, in particular protection of parties when the court is made aware of domestic abuse or violent conduct being alleged or proved in a case. It is a response to questions raised in the report of the Family Law Committee (“the sub-committee”) in October 2017.

### QUESTION RAISED

***Child welfare hearings and domestic abuse:*** The sub-committee sought further information from the Legislation Implementation Team of SCTS as to the steps that courts currently take to protect parties at child welfare hearings where there is a background of alleged or proven domestic abuse in light of the requirement in the Ordinary Cause Rules for parties to attend personally.

*“Rule 33.22A(5) and 33A.23(5) currently state: ‘All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.’*

### METHODOLOGY

Legislation Implementation Team conducted a short survey of 15 courts of various sizes throughout Scotland. The questionnaire consisted of 6 questions which can be seen at Annex A to this report.

\*It should be noted that this was not a formal survey of courts over an extended period but was based on the knowledge of the clerk completing the questionnaire.

## **SUMMARY OF RESPONSES**

A third of courts indicated a separation of parties at all CWH's while the remainder advised suitable arrangements would be made if advised by solicitors or parties' in advance of the hearing.

In the text responses received for Q2 clerks advised they would expect solicitors, or parties' to bring to their attention any possible issue relating to domestic abuse or violent conduct allegations prior to the case calling.

The responses received to Q3 indicate that more than half of courts reported not receiving formal motions to excuse owing to a situation of alleged/proven domestic abuse.

The responses to Q3 may be influenced by Rule 33.22A(5) and 33A.23(5) quoted previously which states parties attendance at hearings is mandatory. These should also be read with the responses to Q4 which indicates that a number of courts deal with excusal on an informal basis.

In relation to Q5 the majority of courts stated they did not receive more motions when bail conditions were in place. A number of other courts were unsure as to receiving a higher number of requests for excusals in this situation. The SCTS does not record statistics of this nature.

Q6. From the 15 courts surveyed only 2 indicated receiving motions to utilise the use of live television link to conduct CWH's.

### **NOTE**

Additional comments within the survey indicate that it is often not clear from processes if a history of domestic abuse is present, and unless it is brought to the attention of a member of SCTS staff this can be difficult to ascertain prior to the hearing.

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### **Annex A**



CWH  
Questionnaire.pdf