

SCOTTISH CIVIL JUSTICE COUNCIL: FAMILY LAW COMMITTEE

REPORT BY SCOTTISH LEGAL AID BOARD: CHILD WELFARE REPORTERS

1. PURPOSE

This paper provides information about the use made of Child Welfare Reporters and the costs incurred by SLAB for this work. The Family Law Committee asked for information held by SLAB in this connection at its meeting in May 2017.

2. BACKGROUND

In October 2015 changes were made to the Rules for family cases in the sheriff court in relation to the appointment of child welfare reporters. The new Rules introduced the Form 44 to be attached to an interlocutor ordering a child welfare report and while its use is not mandatory the requirement to provide more detailed direction to a child welfare reporter was a significant shift from the previous position where many reports were ordered with a general directive to look into all the circumstances concerning the child.

In addition to this change, the Rules were also amended to create a presumption that, so far as meeting the costs of a child welfare report were concerned, parties would share in this equally unless cause could be shown to do otherwise.

SLAB welcomed the changes to the Rules as the lack of specific directions to the reporter meant that the issues considered were left to the discretion of the reporter themselves and this resulted in reports which varied considerably in both length and cost. In addition, before 2015 the cost of a report was usually allocated to a legally aided party in a dispute.

3. POTENTIAL IMPACT OF THE CHANGES

Civil Legal Aid Payments				
Emillion (inc. VAT)	TOTAL Paid	Total Outlays	Total Reporters	Total Expert
2007/08	33.0	9.4	n/a	1.3
2008/09	31.7	9.4	0.5	1.3
2009/10	35.0	10.3	2.2	2.2
2010/11	38.8	10.2	4.1	1.9
2011/12	45.6	10.2	4.2	1.9
2012/13	38.9	9.8	4.6	2.1
2013/14	37.5	9.7	4.4	2.0
2014/15	34.2	8.8	4.4	1.7
2015/16	34.1	8.8	4.1	1.7
2016/17	30.7	7.5	3.0	1.9

This table details civil legal aid payments from 2007/08 to 2016/17 including costs incurred for reports. The information about reporter costs prior to 2010/11 is not complete as, at that time, there was no specific code for this work.

The overall cost of reports remained relatively consistent from 2010/11 until 2015/16. Costs reached a peak in 2012/13 at £4.6 million. In 2016/17 costs dropped to £3 million which represents a 27% reduction on the previous year. It is the first major shift in reporters' costs since 2010.

4. APPLICATIONS FOR FUNDING

4.1 Applications for Civil Legal Aid

In examining why costs may have dropped we looked at reductions in the number of applications for civil legal aid and/or the grant rate which could ultimately impact on the costs incurred for child welfare reports. The shifts are not of sufficient size to be the cause of the 27% reduction of over £1 million in a year.

4.2 Sanctions for Unusually Large Expenditure

If a child welfare report is to cost in excess of £3,000 the solicitors acting for an assisted person need to have our prior sanction to meet the cost. We looked at both the numbers of sanction requests made and our approach to them to see if this was a factor in the drop in costs. As with applications for legal aid this aspect does not seem to be a factor in the reduced costs. The number of sanction requests made and the grant rate has held steady over the past four years

5. PAYMENTS TO CHILD WELFARE REPORTERS

Appendix A details reporters' costs for the years 2010 to 2017 broken down into payment bands ranging from costs up to £500 to costs in excess of £3,000. The total number of reporter payments made in 2016/17 was down from the previous year at 1,711.

The number of payments made is not synonymous with the number of reports ordered. We can make more than one payment for a report in an account. In addition where parties are found jointly liable for the costs of a child welfare report this will result in a share of the fee being paid against more than one grant of legal aid where both parties are legally aided.

There has been a reduction in both the number and the overall value of reports in the most expensive band of over £3,000. The number of such payments has fallen from 511 in 2015/16 to 273 in 2016/17 with costs over the same period down £1 million. There has been a broadly similar reduction in the cost of payments in the £2,000 to £3,000 band while there has been an increase in the number of payments made in the lower bands, most significantly in the £500 to £1,000 and £1,000 to £2,000 bands. This could be because reports being ordered are now more focused resulting in reduced overall cost. It could also be driven by the courts ordering fewer child welfare reports than was previously the case.

We have used the information about costs of reports to determine broadly the number of individual reports paid for over the past year. Table C details reporter payments made for 2016.

Payment band	Number of section 11 reporter payments	Number of non additional section 11 reporter payments	Liability for cost		Type of report	
			Single party	Shared cost	Initial	Supplementary
£0-£100	58	0	0	0	0	0
£101-£500	116	58	29 (50%)	29 (50%)	29 (50%)	29 (50%)
£501-£1,000	288	288	107 (37%)	181 (63%)	107 (37%)	181 (63%)
£1,001-£2,000	638	638	236 (37%)	402 (63%)	453(71%)	185 (29%)
£2,001-£3,000	240	240	151 (63%)	89 (37%)	185 (77%)	55 (23%)
>£3,000	256	256	220 (86%)	36 (14%)	230 (90%)	26 (10%)
Total	1,596	1,480	743 (50.2%)	737 (49.8%)	1004 (68%)	476 (32%)
Number of individual reports (using half of the numbers for reports where costs were shared)			743 + 369 (half) = 1,112 reports		1,112 x 68% = 743 (initial)	1,112 x 32% = 366 (supplementary)

To calculate the likely number of actual reports covered by the payments made SLAB sampled payments across each payment band and looked at the nature of the work undertaken and the liability for payment. Taking this information and extrapolating it for all payments made reduces the section 11 reporter payments to 1,480 once additional or top up payments are removed.

The number of reports where costs were shared was also examined. Of the 1,480 main payments 743 had costs attached to one party with 737 sharing costs meaning those payments related to roughly 369 reports. This shows, broadly, that 1,112 individual reports were involved in the payments made.

Finally, not all reports ordered are first reports. Some cases have supplementary reports ordered. Using our data around 68% of payments made were for first reports while 32% were for supplementary reports. Supplementary reports are likely to cost less than initial reports so if the numbers of these reports rise then this might impact on overall expenditure. At present no conclusions can be drawn about this but it will be examined in the future now that there is base data to use for comparisons.

6. REPORTS BY COURT LOCATION

The use made of child welfare reporters across Scotland varies considerably. There is no consistent pattern to their use. Appendix B details the number of

grants of legal aid for section 11 orders by court location together with the number of child welfare reporter payments made by location. This information has been used to provide an assessment of the percentage of cases with a legal aid element where a child welfare reporter is involved. This varies from 4% in Aberdeen to 39% in Livingstone. Given SLAB's role in meeting such costs we have long been aware of the disparity in use made of reports across the country but this is the first time we have been able to identify the extent of the differences there can be.

7. LIABILITY FOR PAYMENT

The changed Rules now have a presumption of shared liability for the cost of any child welfare report ordered. This shift to shared liability was intended not only to relieve pressure on the Fund but to ensure that where the court felt a report was necessary then all parties should be equally responsible for bearing the costs.

When the new Rules came into effect we could see an immediate shift to most orders being made for shared costs. However within a fairly short period of time this changed and SLAB is once again seeing more interlocutors ordering one party to meet the cost.

In the payment band £500 to £1,000 over 50% of reports had shared liability. Where costs were up to £2,000 liability was shared in 63% of payments. By the time payment band £2,000 to £3,000 is reached the percentage share has switched with 63% of costs attaching to one party only. In the most expensive band where costs were over £3,000, full liability attached to one individual in 86% of cases.

While there could be good reasons for costs attaching to one party only the reasons for this are not clear. SLAB's concern is that this might mean there is a shift back to attaching costs to a legally aided person. This is not only about SLAB's costs but also because of the potential for impact on the person meeting the costs in full. Making one party only liable for costs can impact on those in receipt of legal aid. If a contribution towards the grant is being paid then the ordering of full costs will make it far less likely that any refund of contribution will be possible.

8. AVERAGE PAYMENT AND DURATION OF CASE

Using information about final accounts paid in 2015/16 and 2016/17 lets SLAB calculate average costs for a family case. We do not have any means of identifying the precise length of any court case but taking the time from the date of the grant of legal aid to the date of the submission of a solicitor's final account gives a reasonable proxy for case duration.

		2015/16	2016/17
No reporter costs	Average payment by grant	£1,701	£1,753
	Average duration in calendar days	476	475
With reporter costs	Average payment by grant	£6,792	£6,535
	Average duration in calendar days	791	771

Overall average payment by grant	£2,407	£2,448
Overall average duration in calendar days	520	518

This table details the average cost and duration where reporter payments are made and where they are not. Costs are greater where there is a reporter payment which is to be expected given the work involved in this but the longer duration is also worth considering. These could be difficult cases which would always take longer to resolve but the argument often advanced is that using a child welfare reporter truncates litigation and brings matters to a conclusion more swiftly than where a reporter is not used. A first blush examination of durations does not appear to support this but more detailed analysis of the factors involved and the outcomes achieved in cases following the completion of a child welfare report would be needed to be definitive about this. We intend to undertake this work.

9. FINDINGS

It is likely that the significant reduction in costs for reporters is the result of fewer reports being ordered coupled with a reduction in the amount of work being undertaken to produce a report. The introduction of the form F44 has brought a greater focus to the work undertaken. This tightening up of the scale and nature of work done will result in lower costs overall.

It seems likely that the reduction in SLAB's costs is principally driven by the changes in the Rules but we need to see this year's pattern of expenditure replicated in future years to be certain of this and to identify the full scale of the impact of Rule changes.

Appendix A - Reporters Accounts
Appendix B - Reporters Cost Review

Appendix A

Reporters Accounts (Banded)

FYR	Total Reporters (positive pymnts).				0.01 - 500.00				500.01 - 1000.00			
	Count	Mean	Sum	Row Sum %	Count	Mean	Sum	Row Sum %	Count	Mean	Sum	Row Sum %
2008/09	197	£2,520	£496,486	100%	19	£334	£6,340	1%	17	£866	£14,722	3%
2009/10	880	£2,667	£2,346,829	100%	44	£262	£11,542	1%	99	£745	£73,718	3%
2010/11	1643	£2,608	£4,285,104	100%	99	£270	£26,744	1%	201	£747	£150,088	4%
2011/12	1598	£2,712	£4,334,561	100%	86	£256	£22,016	1%	157	£767	£120,417	3%
2012/13	1711	£2,764	£4,729,552	100%	108	£256	£27,696	1%	170	£763	£129,683	3%
2013/14	1847	£2,484	£4,588,499	100%	128	£243	£31,122	1%	176	£772	£135,847	3%
2014/15	2035	£2,236	£4,550,690	100%	198	£210	£41,522	1%	208	£751	£156,240	3%
2015/16	1916	£2,204	£4,222,143	100%	173	£249	£43,030	1%	239	£743	£177,690	4%
2016/17	1711	£1,798	£3,076,994	100%	180	£231	£41,531	1%	311	£774	£240,712	8%
Chng on 15/16	-11%	-18%	-27%		4%	-7%	-3%		30%	4%	35%	
15/16 count %	100%				9%				12%			
16/17 count %	100%				11%				18%			

FYR	1000.01 - 2000.00				2000.01 - 3000.00				3000.01+			
	Count	Mean	Sum	Row Sum %	Count	Mean	Sum	Row Sum %	Count	Mean	Sum	Row Sum %
2008/09	60	£1,526	£91,585	18%	38	£2,478	£94,172	19%	63	£4,598	£289,666	58%
2009/10	242	£1,500	£362,957	16%	181	£2,486	£449,876	19%	314	£4,614	£1,448,736	62%
2010/11	421	£1,523	£641,030	15%	370	£2,460	£910,249	21%	552	£4,632	£2,556,994	60%
2011/12	410	£1,505	£617,133	14%	387	£2,486	£962,040	22%	558	£4,683	£2,612,955	60%
2012/13	390	£1,499	£584,490	12%	406	£2,504	£1,016,679	22%	637	£4,664	£2,971,004	63%
2013/14	491	£1,489	£731,080	16%	448	£2,526	£1,131,804	25%	604	£4,236	£2,558,645	56%
2014/15	572	£1,495	£855,003	19%	473	£2,549	£1,205,623	27%	584	£3,925	£2,292,301	50%
2015/16	537	£1,534	£823,790	20%	456	£2,542	£1,159,318	28%	511	£3,950	£2,018,315	48%
2016/17	681	£1,502	£1,023,082	33%	266	£2,516	£669,148	22%	273	£4,039	£1,102,522	36%
Chng on 15/16	27%	-2%	24%		-42%	-1%	-42%		-47%	2%	-45%	
15/16 count %	28%				24%				27%			
16/17 count %	40%				16%				16%			

Appendix B

	number of section 11 la certs	number of section 11 reporter payments	payments as % of la certs	total cost of reporter payments	average cost of reporter payments
2016-17 Court Location	2016-17	2016-17			
Aberdeen	208	8	4%	£18,177	£2,272
Airdrie	289	65	22%	£110,257	£1,696
Alloa	75	24	32%	£40,271	£1,678
Ayr	187	36	19%	63,781	£1,772
Banff	39	2	5%	6,413	£3,206
Campbeltown	6	1	17%	£873	£873
Dingwall	0	1	0%	£3,600	£3,600
Dumbarton	196	50	26%	£81,236	£1,625
Dumfries	147	21	14%	£21,199	£1,009
Dundee	396	69	17%	<u>76,858</u>	£1,114
Dunfermline	167	35	21%	47,421	£1,355
Dunoon	24	2	8%	£3,886	£1,943
Duns	0	0	0%	£0	£0
East Kilbride	1	0	0%	£0	£0
Edinburgh	727	221	30%	£459,177.00	£2,078
Elgin	80	14	18%	£28,989	£2,071
Falkirk	197	53	27%	£93,060	£1,756
Forfar	145	28	19%	£43,606	£1,557
Fort William	17	1	6%	£1,759	£1,759
Glasgow	1070	397	37%	£703,145	£1,771
Greenock	155	36	23%	£66,519	£1,848
Haddington	0	13	0%	£18,067	£1,506
Hamilton	493	84	17%	£162,901	£1,939
Helensburgh	0	0	0%	£0	0
Inverness	157	14	9%	£36,085	£2,255
Jedburgh	90	3	3%	£6,900	£2,300
Kilmarnock	278	53	19%	140,130	£2,644
Kirkcaldy	325	79	24%	£108,497	£1,373
Kirkwall	17	3	18%	£9,095.00	£3,032
Lanark (Clydesdale)	75	12	16%	£35,003	£2,917
Lerwick	10	3	30%	£24,198	£8,066
Linlithgow	0	0	0%	£0	£0
Livingston	222	86	39%	£122,197	£1,421
Lochmaddy	3	0	0%	£0	£0
Motherwell	0	0	0%	£0	£0
Oban	16	0	0%	£0	£0
Paisley	296	93	31%	£168,498	£1,812
Perth	178	41	23%	£54,651	£1,333
Peterhead	41	4	10%	£9,888	£2,472
Portree	8	1	13%	5,000	£5,000
Renfrew	0	0	0%	£0	£0
Selkirk	49	3	6%	£14,165	£4,722
Stirling	83	19	23%	£26,849	£1,413
Stornoway	17	2	12%	£9,559	£4,780
Stranraer	39	2	5%	£1,939	969
Tain	28	3	11%	£2,897	£966
Wick	23	7	30%	£10,341	£1,477
Grand Total	6574				