

SCOTTISH CIVIL JUSTICE COUNCIL FAMILY LAW COMMITTEE

CHILD WELFARE REPORTERS: THE SCOTTISH LEGAL AID BOARD RECEIVING REPORTS

Introduction

1. This is an open paper by the Scottish Government and by the Scottish Legal Aid Board (“the Board”)
2. It proposes a change to the rules of court so that when a reporter sends a child welfare report to the court and to the parties, the reporter would also send it to the Board, where at least one of the parties to the action is legally aided.

Discussion

Background

3. The Scottish Government chaired a working group on child welfare reporters¹. A brief note on the outcomes of that working group is attached at Annex A, for information.
4. Following the working group, revised rules of court are in place. Amongst other things, the revised rules require the reporter to send the completed report:
 - to the clerk of the court; and
 - unless otherwise directed, to each party to the proceedings.

The role of the Board

5. Many of the reports are funded through the legal aid budget. The Board would wish to see such reports. The main reason the Board want to see reports is in case the content of the report might impact on whether or not legal aid should continue.
6. Many reports will not raise any issues of concern but where they do the content can be key in deciding if legal aid funding should continue. The Board issues guidance on the stage reports which have to be sent to the Board where there is a material change in circumstances that might impact on the underlying assumptions that led to legal aid being granted. This guidance states that the Board need an unprompted stage report when a child welfare report is not supportive of the assisted person’s position in the case.
7. When the Board receive such a stage report, they often need to see the content of the child welfare report itself to reach their own assessment of whether legal aid should continue. Child welfare reports can also give a very good insight

¹ More details are at <http://www.gov.scot/Topics/Justice/law/17867/reporters>

into the attitude of an assisted person and this too can be important in deciding if legal aid should continue.

8. When the Board ask to see child welfare reports they are usually provided but there are some pockets in the country where the Board is told they cannot see them. This then takes away the Board's ability to ensure public funds are being spent appropriately on cases.

9. In 2014/15, the Board terminated 22 grants of civil legal aid because of unsupportive child welfare reports. Added to this, the scope of the civil legal aid cover was reduced in a number of cases as a result of an unsupportive child welfare report even though the grant was not terminated.

10. The Board place conditions on grants of civil legal aid in terms of section 14(1F) of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") to remove the ability of a solicitor to continue with certain aspects of a case if it does not have good prospects – for example a grant may be made to cover seeking residence or, failing that, contact. If a report suggests there is no prospect for residence then the Board may allow the grant to continue but in relation to the contact issues only.

11. This restriction of a grant reduces the extent of the issues to be argued before the court. This helps not only the legal aid budget but also that of the courts in limiting the scope of issues needing a decision. The same is true where legal aid is terminated (unless of course someone continues as a party litigant).

12. In the 12 month period September 2014 to 2015, the Board spent £4.1 million on child welfare reports. Therefore, the Board has a strong interest in the general quality of the reports.

The Scottish Government's view

13. The Scottish Government will monitor the impact of the changes made in relation to Child Welfare Reports and data from the Board will provide the Scottish Government with some hard evidence.

14. The Scottish Government's view is that the Board should be able to see reports, when at least one of the parties to the case is legally aided. As outlined above, this helps the Board ensure that legal aid, funded through public expenditure, is being spent in an appropriate and effective way.

Confidentiality

15. Clearly, the Board will respect confidentiality and will not publish reports or share them with third parties. Such an item sent to the Board would be subject to the confidentiality requirements of section 34 of the 1986 Act. This makes it a criminal offence for the Board or one of its employees to disclose information provided to it by an applicant or a third party without the consent of the person who supplied it.

Summary

16. This paper proposes an amendment to the Rules so that when at least one party to the case is legally aided, the reporter would send a copy of the report to the Board, as well as sending it to the clerk of the court and, unless otherwise directed, to the parties to the case.

17. This change would apply to the Rules of the Court of Session and to the Ordinary Cause Rules in relation to family actions and civil partnership actions.

Conclusion

18. Members of the Family Law Committee are invited to:

- Note this paper.
- Agree the Rules be amended so that when a reporter sends the report to the court and to the parties, the reporter would also send it to the Board, where at least one of the parties to the action is legally aided.

**Family and Property Law
Scottish Government
April 2016**

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ANNEX A: SUMMARY OF OUTCOMES OF THE WORKING GROUP ON CHILD WELFARE REPORTERS

- Revised rules of court are in place: <http://www.scottishciviljusticecouncil.gov.uk/news/2015/10/21/new-court-rules-for-child-welfare-reporters> (Equivalent amendments were also made to the ordinary cause rules in respect of civil partnership actions: <http://www.legislation.gov.uk/ssi/2016/102/contents/made>)
- The first edition of a guide for litigants to child welfare reports is in place: <http://www.gov.scot/Resource/0049/00498001.pdf>
- The first edition of instructions for reporters is in place: <http://www.gov.scot/Resource/0049/00498005.pdf>
- The Scottish Government will write shortly to the Lord President and the Sheriffs Principal on the qualifications and training needed to be included in the lists of those eligible to be appointed as reporters.
- The Scottish Government will prepare a guide for children on child welfare reports.
- When a suitable legislative vehicle arises, the Scottish Government will consider if any changes are required to section 11 of the Matrimonial Proceedings (Children) Act 1958.

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