

**SCOTTISH CIVIL JUSTICE COUNCIL  
FAMILY LAW COMMITTEE: 19 OCTOBER 2015**

**THE WORKING GROUP ON CHILD WELFARE REPORTERS**

1. This is an open paper by the Scottish Government. The Government promised to provide it during the discussion on Reporters at the meeting on 22 June 2015 (paragraph 17 of the draft minutes of the 22 June 2015 meeting refer)<sup>1</sup>.
2. The attached appendix summarises the work carried out by the Working Group on Child Welfare Reporters.
3. The Family Law Committee is invited to:
  - Note this paper.
  - Make any comments on it.

**Family and Property Law  
Scottish Government  
October 2015**

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<sup>1</sup> The draft minutes of the meeting on 22 June 2015 are at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-22-june-2015-meeting-papers/minutes-22-june-2015---awaiting-approval.pdf?sfvrsn=2>

## APPENDIX

### Paper on the work carried out by the Working Group on Child Welfare Reporters

1. This paper provides a summary of the work undertaken by the Working Group on Child Welfare (“bar”) reporters, chaired by the Scottish Government.
2. More details about this work can be found on the Government’s website<sup>2</sup>.

### The work of the Working Group – general

3. The Working Group:
  - Agreed that the term “bar” reporters was confusing, in that it did not convey what the reporters actually did. Accordingly, the Group adopted the term “child welfare” reporters instead.
  - Noted that whilst most reports related to the child’s welfare generally, some were specifically aimed at obtaining the voice of the child.
  - Considered the possibility of centralising the service provided by child welfare reporters. Most of the Group were opposed to centralisation.
  - Noted the need to ensure that reporters had appropriate qualifications and training; that reports needed a clear remit, were focussed and had clear recommendations; that litigants involved in cases needed more information on the role of reporters; and that reports should be made available in good time before the relevant hearing, to give parties to the case sufficient time to read and digest them.
  - Set up a sub-group to take the key issues forward.
4. The work was carried out in line with the need to ensure that in cases of this nature the welfare of the child is paramount.

### Disclosure check

5. The work of the Working Group was informed by research which had been carried out previously. In particular, the Government published in 2011 a “Scoping study to provide information on the commissioning, preparation and use of court reports in the Child Welfare Hearing System in the Sheriff Courts”<sup>3</sup>.
6. Paragraphs 5.11 to 5.13 of this study noted that reporters did not necessarily have Disclosure Scotland certificates.
7. The Government discussed this point with the Scottish Courts Service (now the Scottish Courts and Tribunals Service or SCTS). The SCTS have taken steps to ensure that both new and current child welfare reporters are members of the Protecting Vulnerable Groups (PVG) scheme. All current reporters are required to register by 30 October 2015. Those reporters who do not have PVG accreditation by

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<sup>2</sup> <http://www.gov.scot/Topics/Justice/law/17867/reporters>

<sup>3</sup> <http://www.gov.scot/Publications/2011/01/07142042/0>

that time will be advised that they will not be able to perform the reporting function for the court.

### Rules

8. The sub-group considered issues in relation to court rules. This led to a Scottish Government policy paper, considered by the Family Law Committee (FLC) of the Scottish Civil Justice Council (SCJC), and to rules, considered by the FLC and by the full SCJC. Rules in this area have now been made and will come into force on 26 October 2015<sup>4</sup>. The Rules:

- Make provision for the court to appoint a reporter to obtain the views of the child or to undertake inquiries.
- Provide that a reporter should only be appointed to undertake inquiries where this is in the best interests of the child and will promote the effective and expeditious determination of the issue.
- Make provision on what interlocutors appointing a reporter should contain.
- Provide that reports should generally be sent to the court and, unless otherwise directed, to the parties at least three clear working days before the relevant hearing.
- Contain a general presumption that liability for payment of the reporter should be shared equally by the parties.
- Provide that the clerk to the court should give the reporter a certified copy of the interlocutor and contact details for the parties' solicitors (or contact details of party litigants, where the party is not legally represented).
- Make provision on the reporter applying to the clerk of the court if the reporter wishes to seek further directions from the judge or the sheriff.
- Make separate provision about the appointment of local authorities to investigate and report, given the terms of section 11 of the Matrimonial Proceedings (Children) Act 1958. Relatively few child welfare reporters are local authority staff now, but some still are. The Government will consider further if section 11 of the 1958 Act needs to be amended, when a suitable primary legislation vehicle is available.

9. The relevant Rules of Court will be updated and published on the SCTS website and guidance issued to clerks of court for commencement on 26 October 2015.

10. SCTS colleagues have noted that similar amendments to rules may be needed in relation to civil partnership actions under chapter 33A of the Ordinary Cause rules

### Guide for litigants

11. The Group has prepared a guide for litigants. The draft is attached at Annex A. The Scottish Government intends to publish this guide on its website, and the SCTS have indicated that they will web-link to it.

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<sup>4</sup> The rules are at <http://www.legislation.gov.uk/ssi/2015/312/contents/made>

### Instructions for reporters

12. The Group has prepared instructions for reporters. The draft is attached at Annex B. The Scottish Government will publish these instructions on its website shortly, and the SCTS have indicated that they will web-link to it. The SCTS will also issue the instructions to all reporters currently on the lists held by the Lord President and the Sheriffs Principal. The SCTS will also send a copy to new appointments to the lists.

### Appointments to the lists

13. The Group has prepared a draft scheme for membership of the lists of persons who can be appointed as child welfare reporters (and of persons who can be appointed as curator *ad litem* to a child). This draft scheme is attached at Annex C.

14. Appointment to these lists is a matter for the Lord President (in relation to the Court of Session) and for the Sheriffs Principal (in relation to the sheriff courts in each Sheriffdom). Therefore, the Scottish Government intends to write to the Lord President and to the Sheriffs Principal and seek their views on the draft scheme.

### Sections 105 and 106 of the Courts Reform (Scotland) Act 2014

15. Section 105(1)(f) of the 2014 Act provides that “the Court of Session may ...by act of sederunt make provision for or about the fees of....such other persons, or persons of such descriptions, as the Scottish Ministers may by order specify”. Section 106(1)(f) of the 2014 Act makes similar provision in respect of the sheriff court and the Court of Session.

16. The Scottish Ministers are considering if Orders should be made under sections 105(1)(f) and 106(1)(f). Before making any such Orders, the Scottish Ministers must consult the Lord President.

### The future of the Working Group on Child Welfare Reporters

17. The Government is seeking views from the members of the Group on its future. The Government’s preliminary view is that one further face to face meeting may be needed and after that it would be helpful to keep the Group as a “virtual” Group, which could meet again as required.

18. In coming to this preliminary view, the Government:

- Has noted the need to avoid unnecessary meetings.
- Considers that there is an on-going need to monitor issues arising in relation to Child Welfare Reporters, to ensure the system works as effectively as possible. The Group could be a useful forum to highlight any concerns that may arise in future.

- Is aware of the need to consider further issues in relation to the appointment of curators *ad litem*. The Government, with others, will need to consider how best to take this work forward. A number of the members of the Working Group would have an interest in any work on curators *ad litem* (equally, though, others who are not members of the Working Group may have an interest too).

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## **ANNEX A: GUIDE TO THE CHILD WELFARE REPORT**

### **Guide to the Child Welfare Report**

This guide was prepared by the Scottish Government. It outlines the role of child welfare reporters, who may be appointed by the court when the court has been asked to resolve a dispute between parents. Where the guide says “parent”, it also includes others who may be involved in a child’s upbringing. And where the guide says “your child”, this means the child at the centre of the court case – whether you are a parent, grandparent, sibling, or another person with a close connection to the child.

If you do not have a solicitor, where the guide refers to your solicitor, this means you.

#### **What is a child welfare report?**

Where parents cannot agree about their child’s upbringing, they can ask the court to decide matters.

The Children (Scotland) Act 1995 gives the court power to make orders about a child. For example, the court could make a “residence order” saying who a child should live with, or a “contact order”, saying who a child should spend time with.

The court’s paramount consideration is what is best for the child.

Sometimes the court needs more information to help it make a decision. The court may ask for a “child welfare report”. This is prepared by a “child welfare reporter” appointed by the court.

#### **What is the reporter’s role?**

The court which appointed the reporter will have set out what the court wants the reporter to do and who the reporter should interview. Your solicitor should receive a copy of this information from the court. The reporter may ask your solicitor for other information which has been given to the court.

In some cases, the court will ask the reporter to speak to a third party such as your child’s GP, health visitor, or school. The reporter may also wish to speak to your GP or another professional who has information which will help the court to make a decision. The reporter should only ask for information relevant to the remit.

You may be asked to sign a mandate authorising the release of information about you or your child. You should co-operate with any request to sign a mandate. If you decline to do so, the court may make an order to obtain the information.

*[DRAFTING NOTE. Say something on a child and mandates?].*

The report will often include recommendations. It is the sheriff or judge who will decide whether to make an order and if so what order to make.

### *Speaking to the parents*

Family disputes can be very emotional. It can be tempting to tell the reporter everything about your case.

[DRAFTING NOTE – CHECK THIS PARAGRAPH. A friend, relative or support worker may accompany you when you are interviewed by the reporter. Any friend, relative or support worker should not be involved in the case and should not attempt to answer any of the reporter’s questions].

Try to focus on the questions the reporter asks you. The reporter will only be able to discuss matters which fall within the terms of the appointment.

Remember that the reporter is appointed by the court and their job is to help the court make a decision about what is best for your child. It is important that you tell the reporter the truth. The reporter will reflect accurately what you say.

### *Speaking to your child*

Your child’s views are important. The court may ask the reporter to speak to your child. Remember that although the court will carefully consider any views your child expresses, its decision is based on what it thinks is best for your child. This will not necessarily be the same as what your child says.

The reporter might ask to meet your child in a neutral venue. The reporter may also want to see your child spending time with the other parent.

It is important that you do not try to influence what your child will say or how your child will behave in front of the reporter.

### **What qualifications and experience will the reporter have?**

Most reporters are practising solicitors. Many are family lawyers. Some reporters have other backgrounds, such as in social work or in teaching.

[DRAFTING NOTE – CHECK THIS PARAGRAPH. The court will select the reporter from a list of those approved by the court as competent in interviewing children and in writing reports for the court. The reporter will be aware of and have training in issues affecting child welfare including:

- domestic abuse;
- mental health;
- addiction;
- cases where a parent has undue influence over a child (sometimes known as parental alienation).

The report will outline the reporter's qualifications.]

The reporter has a certificate of membership of the Protecting Vulnerable Groups (PVG) scheme and is subject to on-going monitoring.

A child welfare reporter's normal duties can include being in sole charge of children. Membership of the PVG scheme helps to ensure that a reporter does not have a known history of harmful or inappropriate behaviour towards children.

### **What will be in the report?**

The report will include:

- The reporter's remit
- A summary of the report's recommendations
- The information which the reporter has gathered. This could include your child's views.
- Information about any allegations of abuse raised with the reporter.

### **When will I see the report?**

The reporter should normally give your solicitor a copy of the report three working days before the court hearing where the report is to be considered. You should read the report as soon as possible.

### **What if I disagree with the report?**

If you disagree with something in the report, your solicitor should raise this with the court.

### **What if I want to complain about the reporter?**

If you wish to complain about the manner in which a reporter has performed this function and the reporter is a solicitor, solicitor advocate, or advocate, the Scottish Legal Complaints Commission (SLCC) can consider a "conduct complaint" about the reporter: <http://www.scottishlegalcomplaints.org.uk/making-a-complaint.aspx> This is about a legal professional's behaviour and fitness to carry out work. Because the reporter is acting for the court, the SLCC cannot consider a "service complaint" in relation to a reporter.

If the reporter is not a legal professional, it may be possible to make a complaint to their organisation/professional body, in line with their complaints procedures. For Social Workers, this is the Scottish Social Services Council <http://www.sssc.uk.com/fitness-to-practise>

[DRAFTING NOTE. CHECK POSITION RE OTHER PROFESSIONALS]



### **Sharing the report**

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 fine 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 in the case, that may affect the court's consideration of that person's evidence.

[DRAFTING NOTE. CHECK THIS PARAGRAPH. In some cases, a child who is old and mature enough may ask to see the report].

### **Who will pay for the report?**

The court rules say that normally you and the other parent should split the costs of the report equally. The court may decide that the costs should be split unequally and that one parent should pay more than the other.

The production of a guide to the child welfare report was one of the recommendations of a group chaired by the Scottish Government. You can find more information about the group's work on the Government's website <http://www.gov.scot/Topics/Justice/law/17867/reporters>

Family and Property Law Team  
Scottish Government  
October 2015

## **ANNEX B: INSTRUCTIONS FOR REPORTERS**

### **INSTRUCTIONS TO CHILD WELFARE REPORTERS**

- **Terms of Appointment**

On appointment you will receive a letter from the sheriff clerk, enclosing a copy of the interlocutor (in some cases attaching a checklist) appointing you as reporter, ordering the report, setting out the terms of your remit and the steps which you are required to undertake. It is crucial that you adhere strictly to the terms of the remit and the steps required by the presiding sheriff as funding for your report in terms of the relevant interlocutor will be confined to the prescribed steps. Should you face difficulties in undertaking the remit or completing the report within the confines of the remit (e.g. if additional or unforeseen issues arise) you should write to the presiding sheriff c/o the sheriff clerk outlining the issue so that a decision can be taken as to appropriate next steps. You should not use your own initiative in undertaking further enquiries that are outwith your remit.

Court Rules contain a presumption that the liability for paying the reporter's fees should be borne equally by the parties to the case. This can be varied by the court on cause shown.

In relation to legally aided cases, if you consider the cost of the report will exceed £3,000, then you should contact the solicitors for the parties as prior sanction will be needed from the Scottish Legal Aid Board for this.

- **First Steps**

On receipt of the sheriff clerk's letter, interlocutor and checklist, you must undertake a conflict of interest check to ensure that you have no conflict of interest in undertaking the report. You should then e-mail the sheriff clerk confirming that you are happy to accept the appointment. A template is attached, along with a template declining the appointment.

You should then contact the agents for each party who will provide you with the "information required for the child welfare reporter" forms which provide you with the contact details and other pertinent information in relation to the parties. If appropriate, agents may also provide copies of other relevant documentation and contact details for third parties who you are directed to contact in terms of the remit. You should take care not to disclose information to agents or in the report that could identify the whereabouts or school attended or similar information about a victim of domestic abuse and the children of the victim. This includes not disclosing the address of any refuge and not disclosing home and mobile telephone numbers and e-mail addresses.

Agents should also provide you with signed mandates from their clients, where relevant, consenting to the release of relevant information required by the court from the GP, health visitor, teacher or other professional as appropriate.

Remember that in some cases parties may be representing themselves.

As the timeframe for undertaking your report is restricted, it is prudent to take initial steps in relation to the areas of your report most likely to result in a delay in its completion. In particular, if you are directed to obtain a police/criminal records check or to contact the social work department

(and if applicable to speak to the relevant social worker) this should be actioned immediately as there may be delays in obtaining the relevant information and appointments being set up. If you are directed to contact a GP or health visitor for either of the parties then a mandate should be obtained (an example of a mandate is attached). If you are directed to contact the GP or health visitor for the child then a mandate should be provided along with the “information required for the child welfare reporter” sheet. If this has been omitted then it should be obtained as quickly as possible so that a letter can be sent to the relevant GP practice to ensure timeous release of the relevant information. In the absence of a signed mandate you should write to the relevant GP or health visitor with a copy of the interlocutor appointing you in order to obtain the relevant information required by the court.

The same may apply to any other relevant professional identified (e.g. a child psychologist working with the child, any counsellor, specialist support service or other professional working with any of the parties) who you have been directed to contact.

You should arrange interviews only with the parties and other witnesses on the relevant checklist or interlocutor. When making appointments, you may wish to provide a copy of the Guide to the Child Welfare Report prepared by the Scottish Government. Make appointments in good time. [Remember that the persons you are interviewing may be accompanied by a friend, relative or support worker]. You may be told by the parties that there are other crucial friends or family members you should speak with and you may be placed under some pressure to obtain additional information from further witnesses. You should resist that pressure. If parties’ agents consider that third party witnesses are relevant to your enquiry then this should have been canvassed with the sheriff at the time the report was ordered. If you are sufficiently concerned about such enquiries being crucial to you being able to form conclusions and recommendations in your report then you should write to the sheriff clerk as directed above before undertaking any further enquiry.

- **Observing Contact**

If it appears that the child/children is/are distressed or reluctant to attend contact then it may be appropriate for you to attend the resident parent’s home either immediately before or immediately after contact. Where contact is at a contact centre it may be appropriate for you to speak with the centre staff, to obtain factual and objective information in line with the professional standards they follow, and to obtain records from the contact centre as to past attendance in accordance with the terms of your remit.

- **Ascertaining the Child’s Views**

If you are directed to ascertain the child’s views you must first consider whether in your view the child is of sufficient age and maturity to express a view including information obtained from other sources when undertaking your enquiry. You should then spend sufficient time with the child in order to ascertain whether they wish to express a view and also to consider carefully how you wish to go about doing this depending on the circumstances of the particular case. 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. In other cases the child’s view will be readily ascertainable and this will not be necessary. In some situations you should consider seeing the child at a neutral setting. You should also consider if it would be appropriate to see the child

outwith the presence of the parent(s). You may also wish to have the opportunity to observe the child with each parent and to discuss their views in both home environments. It is important to explain to a child that any view expressed to you cannot be held in confidence.

- **Format of Report**

Your report should set out clearly and concisely the facts which you have found established and which lead you to the conclusions and recommendations which you are making to the court. Your report has been ordered by the court in order to ascertain matters of fact and in order to enable the presiding sheriff to better regulate interim matters at a child welfare hearing. It is not appropriate for you to indicate that you have been unable to formulate a clear view as to appropriate next steps in the case and that the matter should simply proceed to proof.

In a very small number of cases issues of concern may arise during the course of your enquiries which were not foreseen by the presiding sheriff when your report was ordered. This may lead you to consider providing information confidentially to the sheriff. That temptation should be resisted. Instead you should contact the sheriff via the relevant sheriff clerk setting out the nature of the difficulty so that a view may be taken on appropriate next steps either from a child protection perspective or for consideration a request for further enquiries to be undertaken.

In general terms your report should start with a note of the relevant interlocutor (in terms of which you were appointed), a summary of your remit, a brief note (no more than a paragraph) of your qualifications and training, and confirmation that your Protection of Vulnerable Groups (PVG) check remains current. You should record the information which you have had access to and the witnesses you have interviewed. You should set out all relevant factual information under appropriate headings and then make conclusions directly based on and related to the information you have recorded in your report. One of the biggest challenges facing child welfare reporters is to remain focused on your remit and on your role as an officer of the court in recording information in a child centred way restricted to the issues relevant to the sheriff's determination of the case at a child welfare hearing.

Parties will frequently have a very different view as to the relevant factual information and the enquiries which you ought to undertake. The background of disputed issues between the parties and tensions in their relationship can be peripherally relevant to a determination of issues concerning the welfare of their child or children at this stage. However, issues of safety, such as domestic abuse, are always relevant.

Place the child at the centre of your fact finding. In cases involving disputed arrangements for the residence it is helpful to have practical information regarding both parents' home environments, their proximity to the school, the parents' involvement in their children's education and extra-curricular activities, child care arrangements when parents are working and each parent's parenting capacity both in practical terms and in terms of their relationship with their children. [Take note of the challenges that are presented in a particular case to the child or children having a positive relationship with both parents and whether and how these issues may be best addressed]. It is also very useful to have information in all cases in relation to the child's age and maturity, educational attainment, health, race and religion, needs and emotional development, interests, their

relationship with each of their parents (and if relevant siblings) and if appropriate their wishes and views.

- **Timings of report**

You should aim to send your report to the Sheriff Clerk, and to the parties, at least three clear working days before the hearing. If this is not going to be possible, you should advise the Sheriff Clerk accordingly and explain why it is not going to be possible.

**TEMPLATE LETTER ACCEPTING APPOINTMENT**

To Sheriff Clerk at \_\_\_\_\_ Sheriff Court

Dear Sheriff Clerk

Thank you for your letter of \_\_\_\_\_ enclosing the interlocutor by Sheriff \_\_\_\_\_ appointing me as a Child Welfare Reporter in the case of \_\_\_\_\_.

I can confirm that I am unaware of any conflicts of interest and I am able to accept the appointment.

Yours faithfully

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**TEMPLATE LETTER DECLINING APPOINTMENT**

To Sheriff Clerk at \_\_\_\_\_ Sheriff Court

Dear Sheriff Clerk

Thank you for your letter of \_\_\_\_\_ enclosing the interlocutor by Sheriff \_\_\_\_\_ appointing me as a Child Welfare Reporter in the case of \_\_\_\_\_.

I regret I am unable to accept the appointment as \_\_\_\_\_.

Yours faithfully

\_\_\_\_\_

**INFORMATION REQUIRED FOR THE CHILD WELFARE REPORTER**

**Note: Do not disclose information to agents that could identify the whereabouts or school attended or similar information about a victim of domestic abuse and the children of the victim. This includes not disclosing the address of any refuge and not disclosing home and mobile telephone numbers and e-mail addresses.**

Contact details for Party to family action -

Case Ref No: F

(1) Name of Party: \_\_\_\_\_

(2) Date of birth of Party: \_\_\_\_\_

(3) Home address\* of Party: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*(Please ensure that you give the current home address of the Party)

(4) Landline telephone number(s)  
for Party: \_\_\_\_\_

(5) Mobile telephone number(s)  
for Party: \_\_\_\_\_

(6) Email address for Party: \_\_\_\_\_

(7) Party's solicitor's name and  
Contact details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(8) Legal Aid Reference Number \_\_\_\_\_  
(if appropriate)



- (9) **ATTACH MANDATES IN FAVOUR OF GP, HEALTH VISITOR, OTHER PROFESSIONAL/  
SCHOOL IF REQUIRED IN TERMS OF THE REMIT OF THE REPORTER**

**DRAFT MANDATE**

(1) NAME : \_\_\_\_\_

(2) HOME ADDRESS; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) telephone number(s)

\_\_\_\_\_

I consent to release of information about [*insert name of child/me*]  
to.....Child Welfare Reporter

For the purposes of and confined to the matters directly relevant to the report ordered by the  
court in terms of the attached interlocutor of.....

SIGNED.....

Date.....

**ANNEX C: PAPER ON DRAFT SCHEME FOR MEMBERSHIP OF THE LISTS OF PERSONS WHO CAN BE APPOINTED****PAPER FOR CONSIDERATION BY LORD PRESIDENT AND SHERIFFS PRINCIPAL****SCOTTISH GOVERNMENT WORKING GROUP ON CHILD WELFARE REPORTERS**

The Scottish Government has been chairing a working group on bar reporters and a sub-group of that working group.<sup>5</sup> On implementation of amendments to the court rules<sup>6</sup>, such persons will be known as child welfare reporters. The Group was established with three main purposes:

1. To identify solutions to the lack of commonality of approach of bar reporters across Scotland;
2. To develop solutions to ensure consistent and high quality reports from child welfare reporters in the future to assist decision making in respect of children;
3. To reduce the expense of reports, particularly to reduce the exposure of the Scottish Legal Aid Board to liability for the costs of reports.

The subgroup made recommendations to the Family Law Committee of the Scottish Civil Justice Council in connection with both the Ordinary Cause rules (chapter 33) and the Rules of the Court of Session (chapter 49). Those amendments focus on the role of the child welfare reporter and the purposes of their appointment with a view to better directing the investigations undertaken by a child welfare reporter and better directing the contents of reports to the court.

The sub-group has also considered a draft “Guide to the Child Welfare Report”, aimed at litigants, and draft instructions to child welfare reporters.

To dovetail with the amendments to court rules, the group has also been considering the induction, training and continuing professional development which child welfare reporters need.

Presently lists of bar reporters are maintained by the Lord President and the Sheriffs Principal and administered by the Scottish Courts and Tribunals Service. There is, as the group understand it, no consistency of approach across Scotland in terms of entry and exit to the lists. The Scottish Courts and Tribunals Service has been working to ensure that every person on the existing lists and every new person appointed to the lists is a member of the PVG (Protecting Vulnerable Groups) scheme. The group understands from the Scottish Courts and Tribunals Service that such work is almost complete. Membership of the PVG scheme requires to be renewed every three years.

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<sup>5</sup> Further papers available at <http://www.gov.scot/Topics/Justice/law/17867/reporters>

<sup>6</sup> Amendments to court rules have now been made and are at <http://www.legislation.gov.uk/ssi/2015/312/contents/made> They come into force on 26 October 2015.

The group has formed the view that consistent rules for membership of the lists of (what will be) child welfare reporters will contribute to the improvement of the quality of reporting and give confidence to parties engaging with reporters. The group is also of the view that training of child welfare reporters with continuing professional development is a requirement and ought to be a pre-requisite of being admitted to the lists and maintenance on the lists.

The group has identified the following elements of training courses for child welfare reporters which it considers to be required:

- a. Overview of child development
- b. Talking to children including, for example, input from a child psychologist and/or others experienced in this area.
- c. Issues affecting child welfare including:
  - a. Domestic abuse;
  - b. Mental health;
  - c. Addiction;
  - d. Cases where a parent has undue influence over a child (sometimes known as parental alienation).
- d. Report writing.

The group does not consider that it would be possible or appropriate for the Lord President, Sheriffs Principal or the Scottish Courts and Tribunals Service to approve specific training courses or providers. Rather, the group considers it would be more helpful for elements of training to be prescribed. It would be for an individual child welfare reporter to produce vouching of having undertaken a training course including the prescribed elements. Continuing professional development is also essential to ensure that child welfare reporters remain appropriately qualified and trained. The group consider that a child welfare reporter should undertake training including the prescribed elements every [three] years.

The group does not consider that it is either appropriate or necessary to make recommendations about the manner in which specific child welfare reporters are selected from the list for appointment. For example, the sub-group considered and rejected a proposal that the lists should operate on a “cab-rank” basis. Such a method of selection would fetter the discretion of the judge or sheriff to make the appointment that is in the best interests of the child or children subject to the report. Membership of the list is not an offer of employment or a guarantee of appointment. The Lord President, the Sheriffs Principal and the Scottish Courts and Tribunals Service are not responsible for payment of the child welfare reporter. The amended rules, if approved, will provide for a presumption that the cost of a child welfare report will be met equally between the parties to the action. In any other circumstance, the party responsible for

payment will be identified in the interlocutor in terms of which the child welfare reporter is appointed.

Consistent schemes for membership of lists of child welfare reporters will render the system of reporting more transparent. To that end, the group recommends that schemes for membership and the names of child welfare reporters included on the lists are published and available on the Scottish Courts and Tribunals Service website.

The group has drafted a proposed scheme for membership of lists of child welfare reporters and seeks the Lord President's and the Sheriffs Principal agreement and approval of same. The group welcomes any comments thereon. The proposed draft scheme is attached at Appendix 1 to this paper.

It is anticipated that the schemes would come into operation to coincide with the introduction of the amendments to the court rules by which time it is hoped that the PVG scheme membership programme for bar reporters will be complete. The scheme is drafted on the basis that the PVG scheme membership for reporters is complete.

Having regard to the comments of the Supreme Court in the case of *B v G 2012 SC (UKSC) 293*<sup>7</sup>, it may be possible for the lists maintained for child welfare reporters to also be lists maintained for curators ad litem. The effect would be to limit appointment of curators ad litem to children to persons on the list. This would have the benefit of ensuring that persons appointed as curators ad litem to children would have undergone the training required of a child welfare reporter and would be subject to the same continuing requirements. The group understands that, as a matter of practice, persons appointed as curators ad litem are drawn from the lists currently maintained although this may not be universal. It would appear that the extension of the lists to curators ad litem would be appropriate and reasonable. Comments are welcome. The scheme for membership is drafted on the basis that the list will be for persons to be appointed as child welfare reporter or curator ad litem to a child.

The scheme requires the identification of an administrator of the scheme. It is anticipated that this will be an officer of the Scottish Courts and Tribunals Service with responsibility for the maintenance of the list in the Court of Session and in each Sheriffdom.

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<sup>7</sup> [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2011\\_0173\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2011_0173_Judgment.pdf)

**Appendix 1 to Annex C****SCHEME FOR MEMBERSHIP OF LIST OF CHILD WELFARE REPORTERS AND PERSONS WHO MAY BE APPOINTED AS CURATOR AD LITEM TO A CHILD**

1. This Scheme will come into force on [insert date], which date is the appointed day.
2. This Scheme provides the requirements for membership of the list of child welfare reporters and persons who may be appointed as curator ad litem to a child maintained for the [insert Court of Session or Sheriffdom].
3. The requirements for membership of the list of child welfare reporters and persons who may be appointed as curator ad litem to a child maintained for the [insert Court of Session or Sheriffdom] are:
  - a. PVG scheme membership; and
  - b. Vouched attendance at a training course or courses including the required elements for training at least once every [three] years.
4. The required elements for training are:
  - a. Overview of child development
  - b. Talking to children including input for example, from a child psychologist and/or others experienced in this area.
  - c. Issues affecting child welfare including:
    - i. Domestic abuse;
    - ii. Mental health;
    - iii. Addiction;
    - iv. Cases where a parent has undue influence over a child (sometimes known as parental alienation).
  - d. Report writing.
5. Failure to meet the requirements for membership of the list of child welfare reporters and persons who may be appointed as curator ad litem to a child maintained for the [insert Court of Session or Sheriffdom] will result in removal from the list.
6. A person may apply to be included on the list of child welfare reporters and persons who may be appointed as curator ad litem to a child maintained for the [insert Court of Session or Sheriffdom] on production of vouching of the requirements for membership provided in terms of paragraph 3.
7. It shall be the responsibility of the individual on the list to maintain their PVG scheme membership. Failure to do so will result in removal from the list.
8. It shall be the responsibility of the individual on the list to ensure they have completed a training course or courses including the required elements for training at least once every [three] years and the responsibility of the individual to obtain vouching of that attendance and produce it to the administrator of the list.

9. The presence of any individual's name on the list of child welfare reporters and persons who may be appointed as curator ad litem to a child maintained for the [insert Court of Session or Sheriffdom] is not a guarantee of appointment as a child welfare reporter or as curator ad litem to a child.

#### **TRANSITIONAL ARRANGEMENTS**

10. A person who was on the list previously maintained for the [insert Court of Session or Sheriffdom] on the day immediately preceding the appointed day and who is a member of the PVG scheme shall become a person on the list of child welfare reporters and persons who may be appointed as curator ad litem to a child on the appointed day.
11. Within 2 years of the appointed day, every person on the list shall produce vouching to the administrator of the list of the completion by them since the appointed day of a training course or courses including the required elements for training. Failure to produce such vouching shall result in removal from the list on the second anniversary of the appointed day.