

Bar Reports

**A guide for parents
in Scottish family court hearings**



September 2012

INTRODUCTION – why we have produced this guide

Through our members we have learned that the role of the Bar Reporter is not always clear to parents attending a Child Welfare Hearing.

During our research I met with one Bar Reporter who told me of her surprise when she visited the home of a non-resident parent and found that he had redecorated his entire home in anticipation of the interview. Bar Reporters should be aware that the non-resident parent - usually the father - is likely to be tense, anxious or even afraid of the Bar Reporter. They perceive the Bar Reporter as the person who can determine whether they will see their children again. The stakes are high.

For the majority of people involved in a family action this will be their first experience of any court process. At present there is not much published information on Bar Reports. The system is currently under review, following the research published by the Scottish Government, Justice Analytical Services in January 2011, *Child Welfare Hearings: A Scoping Study of the Commissioning, Preparation and Use of Bar Reports*.

We hope that in due course official guidance will be issued to parents when a Bar Report is commissioned to explain the duties and authority of the Bar Reporter. We see a clear need for transparent, Scotland-wide standards for the qualifications, training, appointment and best practice procedures of Bar Reporters. At present it is not clear even whether a Bar Reporter has to have recognised training in interviewing children. We urge systematic oversight of the standard of reporting within the Scottish courts. Performance appraisal is normal in most other areas of work undertaken by legal professionals but we are unaware of it in among Bar Reporters.

These comments are not intended to criticize or undermine the Scottish system of Bar Reporting. Through our relationship with the UK charity, Families Need Fathers, we have knowledge of the CAFCASS system operating in England and Wales. We do not think that the structure used in England and Wales would be appropriate in the Scottish Courts.

We have no doubt that most Bar Reporters are diligent and professional and do their best to produce accurate and astute observations for the benefit of the court that focus on the welfare and interests of the children involved.

However, FNF Scotland is aware of a range of practice across Scottish courts, and we are concerned that some Bar Reporting falls well below the standard that should be expected in such an important matter. We have seen too many reports that contain basic errors of fact, that make unsubstantiated value judgments of the parties and that reveal leading questions put to children of a kind that would not be admitted in any other court proceedings.

We do not consider that asking a five-year old child “does your daddy say nasty things about your mum?” meets any standard for interviewing of children.

We have too many examples of reports being delivered on the steps of the court. This is not acceptable practice and presents the parties with an invidious choice of asking for yet another delay in proceedings - and risk irritating the sheriff - or carry on at the risk of assertions made in the report passing through unchallenged and effectively becoming fact.

We are not seeking to alter the way Bar Reports are carried out to favour fathers, although non resident parents (fathers or mothers) do feel they are at a disadvantage in the process.

We wish to make the court system more transparent to all court users and to focus both parties in a contact or residence dispute on the best interests of their children.

Catherine MacPherson

June 2012

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What is this guide for?

This guide is designed to inform those involved in a family action what a Bar Report is, what it may cost and how the procedure works.

It is not a guide to coach you through how to get a favourable Bar Report but it may help you represent your interests and the realities of the relationship with your children more effectively.

Child Welfare Hearings are traditionally very short. Many non-resident parents feel that they have not been able to tell their side of the story. They may feel their character is essentially on trial as the reason for refusing or restricting contact with their children after separation.

Having not been able to tell their side in court some people use the Bar Report interview to criticise the other party. Indeed, they are likely to be asked specifically by the Bar Reporter for their views about their former partner. This is not an invitation to pursue old grievances or correct the record on what you believe are unfounded criticisms of you. The Bar Reporter is trying to test your willingness to avoid continuing conflict that could adversely affect your child or children.

The Bar Reporter is most concerned about your 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 you may feel the comments about you have been.

It can be difficult to separate what you want, what your former partner wants and what is objectively best for your child. You must remember to focus on your child's welfare.

As always, FNF Scotland advises, where it is possible, that separated parents avoid going to court. It is inevitably a blunt instrument. Where separated parents cannot come to an agreement about how to share their time with their children and contribute together to their welfare, emotional security and development 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 conflict.

Unfortunately, many of the telephone calls for advice we receive at the Edinburgh office or approaches that are made to our local groups are from individuals who are far down the path of litigation. This guide is for them.

We are not alone in commenting on Bar Reports – see the Scottish Government research report published in January 2010: “Scoping study to provide information on the commissioning, preparation and use of court reports in the Child Welfare Hearing System in the Sheriff Courts.” <http://www.scotland.gov.uk/Publications/2011/01/07142042/0>

Families Need Fathers Scotland is very grateful to Catherine MacPherson, who researched and wrote this report, and to the Adopt An Intern Scheme for supporting Catherine's work with FNF Scotland. Thanks are due to the members, solicitors, sheriffs and others who have contributed experience and ideas.

Mistakes and omissions are the responsibility of FNF Scotland staff and they will be rectified in future editions – see www.fnfscotland.org.uk for the most recent version.

The Who and What of Bar Reports

In Scots law the welfare of the child is paramount when making decisions about residence or contact. The court shall not make an order unless it considers that it would be better for the child that the order be made than that none should be made at all.

Where an application for contact or residence cannot be agreed between former partners (or others applying for contact such as grandparents or wider family members) a sheriff or Court of Session judge may order a Bar Report to help him or her get a better sense of how to identify the best arrangements for the welfare of the child.

The Bar Report provides further information about the circumstances of a child and the proposed contact or residence arrangements that have been requested.

What is a Bar Reporter?

The essential role of the Bar 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 Bar Reporter does all the exploration with the parties and others who know the child and whose insight may be useful that the sheriff is unable to do in court.

The Bar Reporter is intended to have a neutral and independent role and 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.

How will the Bar Reporter be appointed in my case?

There are procedural rules regarding the appointment of a Bar Reporter but there is also a more practical side to the appointment.

The sheriff clerk will consult the court's list or panel and then phone the Bar Reporters on it to check availability.

If the Bar Reporter is available then the sheriff-clerk will then check to see if there are any conflicts of interest.

If the Bar Reporter is available and there are no conflicts of interest then the Bar Reporter will await papers from the court or the solicitors involved in the case. Most often the Bar Reporter will contact the solicitors of each party to obtain the parties' contact details.

Who gets on the list?

The appointment process seems to vary across the Sheriffdoms and is not transparent.

In some Sheriffdoms individuals – often a solicitor - will be approached by a sheriff to see if they are interested in becoming a Bar Reporter. In other cases individuals who wish to be appointed apply to be put on the list or panel.

If an individual is invited or applies to become a Bar Reporter then, we are told, his or her name will be circulated for scrutiny by all the sheriffs in that particular court.

If enough sheriffs are in agreement then the individual will be invited for interview though, again, it is not clear how formal the interview is or what ground is covered or how competencies are evaluated or tested. We understand that not all courts conduct such interviews.

Following a successful interview the individual will have his or her name added to the list or panel. It is possible for Bar Reporters to have their name on the list or panel of more than one sheriff court.

What qualifications and experience will a Bar Reporter have?

Most often a Bar Reporter will be or have been an experienced family lawyer. Social Workers can also be appointed as Bar Reporters. This is more common in more rural areas such as Na h-Eileanan an Iar (the Western Isles). There are no set qualifications or experience required of Bar Reporters.

We suggest that it would be good practice for every Bar Report to include a note of the qualifications of the Reporter as is usually done in expert witness reports.

Does a Bar Reporter need a Disclosure Scotland certificate?

Previously Bar Reporters were not required to have a Disclosure Scotland certificate. Social Workers are required to have a Disclosure Scotland certificate in order to work with vulnerable groups. New solicitors are subject to Disclosure before being admitted to the Law Society of Scotland.

Some active Bar Reporters will not have been subject to disclosure requirements at any time prior to or during their appointment. The Scottish Court Service has now stepped in to ensure that all Bar Reporters have a Disclosure Scotland certificate.

Procedure

Who can request a Bar Report?

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

Who will the Bar Reporter meet with first?

The Bar Reporter will meet with each parent separately. There are no set rules on who the Bar Reporter will meet with first. It is most likely to be who is available first. It does not matter who the Bar Reporter meets with first. There is nothing to be gained or lost from meeting with the Reporter first or second.

Some Bar Reporter will write to you. Many will telephone. Remember, that first phone contact is effectively the beginning of your interview. We have seen several Bar Reports where the “difficulty” of 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.

It is reasonable – and we recommend – that you ask for time, perhaps overnight, to think about arrangements that would best suit you and your children if you have contact time with them.

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. The standard practice is for the Bar Reporter to interview each parent once on their own and once in the presence of the child or children. It can be more than that if the Reporter feels there are unresolved issues that have emerged during other interviews.

Where will the interview happen?

There are a number of places that the interview may take place. The location can depend 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 which are already in place.

This can be a Catch 22 and extremely upsetting for a non-resident parent who is applying for contact because of the refusal of the former partner to allow it and which is the reason for the court application in the first place.

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

If these are factors we recommend drawing them to the attention of the sheriff or judge at the time of ordering the Bar Report so that she or he can consider interim arrangements or refer to them in the instructions to the Bar Reporter.

The parents

Most often the Bar Reporter will interview each parent individually before seeing the child in the care of each parent. It is most common for the Bar Reporter to interview each parent in their own home.

Parents and children

Where both parents have contact the Bar Reporter is likely to wish to see the children in the care of each.

Where the non-resident parent has supervised contact the Bar Reporter will observe the children in the non-resident parent's care at a contact centre.

If the children have no contact with one parent the Bar Reporter can arrange to interview them at school, for example, or some other place where they feel confident and comfortable.

We have seen reports where the Bar Reporter deemed it sufficient to see the children only in the home where they are predominantly resident. That does not seem acceptable and we recommend writing to the Reporter that it is important for the completeness of the eventual Bar Report that she or he sees you and the children together too.

When there are several children it is important to remind the Reporter that it is important to see you with the children individually as well as together.

The Child's point of view

If you are feeling stressed or worried about your Bar Report interview remember that your child may be feeling the same way. The Bar Reporter does not want to induce any stress.

Depending on the age of your children and the contact arrangements in place the Bar Reporter may wish to interview them at school. You should not take this as a sign of distrust. The Bar 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 Bar 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 Bar Reporter to contact the school and send the school a copy of the interlocutor appointing them. The Bar Reporter may show the school other documents such as the initial writ.

The Bar Reporter is not trying to tell on you or get the school involved in the dispute. The Bar Reporter will only show the school court documents in order to prove to the school that the court has asked them to carry out this role. The Bar Reporter will not usually interview your child alone. For younger children there will be a teacher present during the interview. If your child is at primary school then it is likely that the head teacher would attend. 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 school cannot insist though having someone familiar there with them can put the child at ease. The teacher should not interject or interrupt the interview.

It is always good practice to have more than one person there in case a child makes an allegation which needs to be followed up.

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 – Bar Reporter's styles will vary, and those with a legal background may ask questions in a different way from social workers.

The Bar 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 nearby or regularly involved with your children.

The Bar Reporter will have a copy of the writ in which you list your proposed contact arrangements and therefore will ask questions about how practicable and sustainable they are. In this respect he or she will 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 Bar Reporter will ask you about your health and any use of drink or drugs. The Bar 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.

You will be asked about your employment, work pattern and your current income.

The Bar 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 Bar Reporter will be looking to see how capable 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 Bar Reporter will want to clarify what happened after separation.

It is important to focus on your relationship with your child. The Bar Reporter is more interested in how your relationship with your children has altered since separation rather than how the other party may have done you wrong. The Bar 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 Bar Reporter will ask you what your hopes are for the future are and how any arrangements would work 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 be honest with the Bar Reporter. Rather than guess and possibly be suspected of misleading the court or the Bar Reporter offer to find out and forward the correct information in writing.

Is the interview recorded?

The Bar Reporter will take notes during the interview. It is possible but still unlikely that the interview will be recorded by Dictaphone or other digital equipment.

You could make a request in advance to say that you would like to record the interview. We do not see any problem with this as you may wish to correct or challenge something in the Bar Report that is ultimately submitted to the court. Bar Reporters are only human and transcribing from hand written notes in any other walk of life is seen as prone to the occasional inaccuracy.

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.

One of FNF Scotland's representations to the Scottish Government is that recording should be permitted as a normal aide to accuracy and that no adverse inference should be made from a request to record.

In the meantime, we recommend against 'secret' recording on the basis that if it is discovered it may seriously damage your application for contact.

Who else will be interviewed?

This will depend upon the circumstances of your case. The Bar Reporter may wish to speak to professionals who are involved in your life or that of your children. This may include but is not limited to: doctors, nurses, health visitors, social workers, teachers and police officers.

The Bar Reporter may not meet all of these individuals in person but may talk to them over the phone. Meetings with professionals may take a few weeks to arrange and could hold up delivery of the report and recommendations that everyone is waiting for.

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

The decision as to who is interviewed rests with the Bar Reporter unless there has been a specific instruction given in the interlocutor. If you feel there are people whose input would assist the Bar Reporter you should suggest them as potential interviewees. Bear in mind that the Reporter's priority will be to speak to people who are engaged with the children and have significant first hand knowledge of them. They will not be particularly interested in people whose knowledge of the children is indirect and through you.

Costs

Who pays for the Bar Report?

In a case where one party is legally aided it is likely that the cost of the Bar Report will be charged to the legally aided party.

Otherwise it is most likely that the pursuer, most often the non-resident parent, will bear the cost.

This can put non-resident parents in a horrendous position, watching the costs mount up that they would much rather see being invested in their relationship with their children.

Where neither party is legally aided and especially if it is the sheriff who has ordered the Bar Report, the non-resident parent should ask the court that the cost should be shared.

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?

In the financial year 2010-11 the Scottish Legal Aid Board (SLAB) figures show that it funded 1,521 child welfare reports at a total cost (including VAT) of £4,157,883 in fees to Bar Reporters.

SLAB calculates that the 'mean' figure for a Bar Report in a residence and/or contact case paid for through legal aid was £3,104. We have seen evidence of Bar Reports costing up to £10,000. The price of your Bar Report will depend on the individual facts of your case and how many people are interviewed by the Bar Reporter.

However, there is also a remarkable variation in Bar Report costs in different courts across Scotland. The most expensive 'average' costs were in Livingston at £5,073 and Haddington at £4,002. The lowest were in Arbroath at £1,189 and Falkirk at £1,205.

How is this worked out?

There is a general table of fees that solicitors use¹. The solicitor will send a record of the hours worked to a law accountant who will prepare an invoice.

¹

Act of Sederunt (Fees of Solicitors in the Sheriff Court) 1989,

<http://www.legislation.gov.uk/uksi/1989/434/schedule/5/made>

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

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

If the Bar Report is written by a solicitor then SLAB will cover the fee charged. If the Bar Report costs in excess of £2,000 it will require specific authorisation from SLAB.

Will an unsupportive Bar Report affect legal aid funding?

The “prospects of success” are a deciding factor in granting any civil legal aid².

Your solicitor must tell the board where there is an unsupportive Bar Report.

Receiving an unsupportive Bar Report will not automatically stop your civil legal aid funding. However, an unsupportive Bar Report will affect your prospects of success and you or your solicitor will have to demonstrate to SLAB that you have strong grounds for challenging recommendations set out in the Bar Report. The board may reassess your case and find that you no longer meet the reasonableness test.

² Assessing Probable Cause and Reasonableness,
<http://www.slab.org.uk/profession/mailshots/documents/reasonablenessguidanceMarch10.pdf>

The Report

The Bar Reporter will compile a report to the court. This will identify the documents appointing them i.e. the interlocutor; list any witnesses they have spoken to, stating who they are, their relationship to the children and whether they were interviewed in person or spoke with them over the phone. The Bar Report should detail where and when the interview took place and ought to include the duration of the interviews.

The main body of the Bar Report will contain the Bar Reporter's account of the interviews with each party and the children and ought to list the times, places, circumstances and duration of interviews and identify anyone else who was present.

How long will the Bar Report be?

There is no standard length or template for a Bar Report. They can be quite lengthy.

The Bar Reporter's recommendation on the extent and kind of contact will be set out in the summary or conclusions.

Try to focus on the Reporter's recommendations rather than worrying about any minor inaccuracies in the body of the Bar Report. It can be extremely distressing to see minor inaccuracies when the wait for the Bar Report may have been dominating your thoughts for weeks or months.

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 did not materially affect the conclusions and recommendations may rebound on you.

How long will the Reporter take to complete my Bar Report?

The Bar Report should take no more than 6-8 weeks. We know of too many occasions where repeated extensions have been requested and granted without any obvious explanations given in terms of complexity of the task or unavailability of witnesses.

Reporters should not be taking on too many cases at one time. We believe there should be a system of performance appraisal bringing to the attention of sheriffs principal Bar Reporters who repeatedly request extensions or hand out reports on the day of the court.

Will I get to see the Bar Report?

Yes, under OCR 33.21

(4) *on completion of a report ... the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.*

(5) *On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.*

When do I get to see it?

There is no prescribed time that you must have the Bar Report by though by inference from the procedure set out in the Ordinary Cause Rules if the sheriff clerk is to have time to send it to the parties it ought to be delivered to him or her in good time.

What happens if I don't get a chance to see the Bar Report before the child welfare hearing?

If you don't get a chance to see **and consider** the Bar Report then sheriff can be asked for a continuation of the Child Welfare Hearing.

If contact has stopped during the proceedings then it is likely that you will want to resolve things as soon as possible so you can resume your relationship with your child. There is a temptation to carry on for fear of irritating the sheriff and/or prolonging the disruption of contact with your children.

However, if you receive the Bar Report on the morning of the Child Welfare Hearing or it is, as happens, handed to you outside the court do not be afraid to ask for a continuance. It is reasonable to need time to read and digest a Bar Report which could potentially run to 40 pages.

The fact that you are attending court for a Child Welfare Hearing when you don't know what has been recommended is likely to induce stress and anxiety. It is unlikely that you will be in a position to objectively read such a report when emotions are already heightened by the venue and circumstances. Having time to read the report also allows you raise any concerns you have over the content of the report.

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

You or your representative should bring the circumstances of the late delivery of the Bar Report to the sheriff.

Should the sheriff continue the case in these circumstances that may give 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 Bar Report be challenged?

It is often said that Bar Reporters are exempt from examination on their Bar Report as officers of the court. It is certainly unusual that they go into the witness box and give evidence under oath. In the current climate in which sheriffs are being encouraged to ensure child contact cases don't 'sprawl' unnecessarily it would be important to have a very clear reason for putting a Bar Reporter into the box to explain the basis of their conclusions and recommendations.

A balanced Bar Report is likely to contain material that is disputed by one or both parties but which is not primarily about the interests and welfare of the children.

It is also our experience that solicitors are not enthusiastic about challenging the findings of Bar Reporters for a variety of reasons. They often say it is their judgment that it could be a counter productive exercise, particularly for a non-resident parent because it could make them appear to be "difficult" or "challenging" and thus undermine the imperative to be the reasonable party.

Solicitors have also acknowledged to us they may not feel comfortable questioning a Bar Reporter who they may want to write a supportive Bar Report in another case next week.

However, section 11(4) of the Matrimonial Proceedings (Children) Act 1958 allows for "the person who furnished the Bar Report to appear and to be examined on oath regarding any matter dealt with in the report, such person may be examined or cross-examined accordingly."

This means that the court can decide on the application of any person concerned to require the Bar Reporter to appear and be examined, if it thinks it expedient to do so.

You are within your rights to ask your solicitor to raise your concerns. The court has discretion as to whether to allow this. You must make your instructions clear to your solicitor. Remember that you do not have an ongoing relationship with the officers of the court and the welfare of your children should be the paramount concern of the court and your solicitor.

Can a Bar Report be used at proof?

If the case goes to proof³ then the Bar Report can be mentioned. The Bar Reporter cannot be called to give evidence.

³ A proof is the final hearing in a case where evidence is heard and the judge decides on matters of fact and law.

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 Bar 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 party will read what you have said

APPENDIX ONE

Obtaining the views of the child

The court has discretion as to how the views of the child will be obtained. When there is a dispute over residence or contact there are a number of routes the sheriff can take to obtain the views of the child:

- a) The sheriff may speak to the child on his or her own in chambers;
- b) The child may be asked to complete a Form 9⁴;
- c) The court proceeding may be intimated to the child. This means that court papers are sent to the child to inform them of the proceedings;
- d) The child may have legal representation appointed for them;
- e) The child may be invited to the Child Welfare Hearing;
- f) The court may appoint a curator ad litem to protect the interests of the child where it becomes apparent that there is a conflict of interest between one or both parents and the child;
- g) The court may appoint a safeguarder to safeguard the best interests of the child;
- h) The court may appoint a Bar Reporter to provide further information about the circumstances of a child and the proposed contact or residence arrangements that have been requested.

Curator ad litem

Under the common law the court has the power to appoint a *curator ad litem* in any case where one of the people involved in that legal process does not have legal capacity.

There may be a number of reasons why a person may not have legal capacity. In family law cases it will most often because of their age. The age of legal capacity in Scotland is 16⁵.

The sheriff can appoint a *curator ad litem* where it becomes apparent that the child's interests are not being protected. The parent's interests may conflict with that of the child. Most often the *curator ad litem* will be asked to prepare a report for the court. The *curator ad litem* can also become a party to the action. The *curator ad litem*'s primary concern is protecting the best interests of the child and is there to represent the child's interests in court. The *curator ad litem* can take account of the child's wishes and assess whether the child's wishes are in fact in its best interests.

Safeguarder

A safeguarder independently assesses what is in the best interests of the child. A safeguarder can be appointed by a children's hearing or a sheriff. Safeguarders are appointed where it becomes apparent that the interests of the child are not being safeguarded in that particular process. A safeguarder must prepare a short report setting out anything that, in the opinion of the safeguarder, is relevant to the consideration of the matter before the children's hearing.

⁴ The Scottish Child Law Centre produces a far friendlier form for obtaining the views of a child – see <http://www.fnfscotland.org.uk/news/2011/6/26/helping-children-comment-on-contact.html>

⁵ Age of Legal Capacity (Scotland) Act 1991 s.1

APPENDIX TWO

The authority for the appointment of a Bar Reporter is to be found in the Ordinary Cause Rule 33.21:

33.21. (1) *This rule applies where, at any stage of a family action, the sheriff appoints-*

- (a) *a local authority, whether under section 11(1) of the Matrimonial Proceedings (Children) Act 1958 (reports as to arrangements for future care and upbringing of children) or otherwise, or*
- (b) *another person (referred to in this rule as a "reporter"), whether under a provision mentioned in sub-paragraph (a) or otherwise,*

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.

(2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall-

- (a) *instruct the local authority or reporter; and*
- (b) *be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.*

(3) Where a local authority or reporter is appointed-

- (a) *the party who sought the appointment, or*
- (b) *where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,*

shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

(4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.

(5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.

(6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for a section 11 order in respect of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

FAMILIES NEED FATHERS SCOTLAND

FNF Scotland was established in June 2010 as a result of funding from the Equalities and Human Rights Commission. It now has an office in Edinburgh and local group meetings in Glasgow, Edinburgh, Aberdeen and Stirling. We are grateful for ongoing support from the Scottish Government Equalities Fund and the Robertson Trust.

We work to keep children and parents in contact after separation, with a particular focus on supporting non-resident parents. FNF Scotland provides 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

The four local support groups are organised on a voluntary basis by members, with support provided by the Edinburgh office. The 150 Scottish members are also involved in activities such as support to parents attending court hearings (lay assistance), publicity and fundraising.

In June 2011 we published "Representing Yourself in a Scottish Family Court, a guide for party litigants in child contact cases" to help applicants for contact or residence understand the relevant law and court procedure. This Guide should also be of assistance to fathers who do have legal representation to understand the procedures and be better equipped to draw up a constructive strategy with their solicitor.

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