

Child Welfare Reports

A guide for parents
in Scottish family court hearings



FAMILIES NEED FATHERS
SCOTLAND

Both parents matter



October 2015

INTRODUCTION TO THE PREVIOUS EDITION

– 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

Families Need Fathers Scotland is very grateful to Catherine MacPherson, who researched and wrote the first edition of 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.

INTRODUCTION

This guide has been produced by Families Need Fathers Scotland to mark the changes introduced on 26th October 2015 and update our guide for parents who have had a Child Welfare Report ordered in their contact or residence court case.

As well as altering the title of the person undertaking these reports from Bar Reporter to Child Welfare Reporter, a variety of other changes have been made to this process. Many of these changes were originally suggested in our 2012 Guide and were then subject to extensive discussion by a Scottish Government working group convened in November 2012 and by other stakeholders within the court system and the recently established Scottish Civil Justice Council.

FNF Scotland has been involved with this process and we welcome the fact that it has brought a range of parent and child support groups into useful discussion with judges, sheriffs, lawyers, SLAB and court service staff.

Our original concern was that a system which worked very well in many court cases should be more transparent and consistent across all Scotland's sheriffdoms, that the incidence of poor and damaging practice by some bar reporters should be minimised and that such failings could be challenged effectively when they did occur.

Almost all of our concerns have been addressed, and we look forward to a significant improvement in the overall standard of reports. The new training programme for Child Welfare Reporters includes coverage of parental alienation and other issues that previously left non-resident parents and their wider family members frustrated that the court had not been given a full picture of their relationship with their children.

This should reassure the fathers and mothers who suffer abrupt and unfounded rejection by a child that the Reporter must now have some understanding of the dynamics that may be at work.

The job of a Child Welfare Reporter is not easy, and we hope that the training programmes and the information provided to the parents will contribute to producing better reports.

We are keen to hear from parents who may still have concerns with Child Welfare Reports in coming years.

We will continue to suggest further changes to the way in which child contact disputes are resolved. FNF Scotland's aim is to promote the benefits of shared parenting to the wellbeing of children whose parents live apart. We believe many of the issues that presently take up court time and which prolong adversarial correspondence between solicitors will be seen to be unproductive and unnecessary when both parents are acknowledged with equal respect and shared parenting becomes the starting point of discussions about the future contact and residence with their children.

Ian Maxwell,
National Manager of Families Need Fathers Scotland
October 2015

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What is this guide for?

This guide is designed to inform those involved in a family action what a Child Welfare Report is, what it may cost and how the procedure works. Before October 2015 these reports were called Bar Reports, and the name may continue to be used for some time. This guide refers mainly to reports ordered in the Sheriff Court which is where the majority of child contact and residence actions are heard, but our comments apply also to reports ordered in the Court of Session.

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

Child Welfare Hearings are usually 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 Child Welfare Report interview to criticise the other party. Indeed, they are likely to be asked specifically by the Child Welfare 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 Child Welfare Reporter is trying to test your willingness to avoid continuing conflict that could adversely affect your child or children.

The Child Welfare 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. Look at your proposed arrangements through your children's eyes.

As always, FNF Scotland advises, where it is possible, that separated parents avoid going to court. Court 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.

The Who and What of Child Welfare 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 Child Welfare Report to help him or her get a better sense of how to identify the best arrangements for the welfare of the child.

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

Who can request a Child Welfare Report?

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

What is a Child Welfare Reporter?

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

The Child Welfare 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. The sheriff or judge will then make the actual decisions once the report is presented. These decisions are very likely to be strongly influenced by the recommendations made by the reporter.

How will the Child Welfare Reporter be appointed in my case?

There are procedural rules regarding the appointment of a Child Welfare 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 Child Welfare Reporters on it to check availability.

If the Child Welfare Reporter is available then the sheriff clerk will then check to see if there are any conflicts of interest such as personal, business or family relationship with any of the parties.

If the Child Welfare Reporter is available and there are no conflicts of interest then papers will be sent out from the court. The Child Welfare Reporter will contact the solicitors of each party to obtain contact details and any relevant documentation.

Who gets on the list?

The appointment process is being reviewed as part of the current changes and time limits for appointment and a regular review of the list is being considered.

It is possible for Child Welfare Reporters to be on the list of more than one sheriffdom.

What qualifications and experience will a Child Welfare Reporter have?

Most often a Child Welfare Reporter will be or have been an experienced family lawyer. Social Workers can also be appointed as Child Welfare Reporters. This is more common in more rural areas such as Na h-Eileanan an Iar (the Western Isles).

The new system guidance states that reporters will be competent in interviewing children and writing reports and that reporters will be aware of and have training in issues affecting child welfare including domestic abuse, mental health, addiction and parental alienation (where one parent has undue influence over a child and a child appears to reject the other parent for no good reason). Training is going to be provided for reporters by various family law bodies on these topics.

Procedure

Instructions to the Child Welfare Reporter

One of the major changes introduced in October 2015 is that the sheriff or judge will now specify in an interlocutor (decision) far more detail about what enquiries the Child Welfare Reporter will undertake as well as indicating whether the views of the child are to be obtained. [See Appendix 2]

Specified enquiries may include visiting the home of the child and that of the other parent, visiting nursery/school/childminder, interviewing mother and father and other specified family members and other people such as childminder/nanny, teacher/head teacher, health visitor/GP/other health professional, social worker and domestic abuse case worker. The sheriff/judge may also specify obtaining criminal conviction certificates, observing contact, seeing the child in the home environment pre/post contact, obtaining records of attendance from contact centre, and any other matter.

The interlocutor will also identify the issues to be addressed in the report. Reports that seek the views of a child should also specify the issues on which these views are to be sought.

If during the course of enquiries the reporter considers that other points should be covered the reporter can't just go ahead but must apply to the sheriff clerk to be given further directions by the sheriff.

This initial interlocutor setting out what the Child Welfare Reporter must (and must not) do is very important so you or your legal representative must be satisfied that all the issues and interviewees included. It will be hard to amend it later.

Who will the Child Welfare Reporter meet with first?

The Child Welfare Reporter will meet with each parent separately. There are no set rules on who the Child Welfare Reporter will meet with first. It is most likely to be who is available first.

Some Child Welfare Reporters will write to you. Many will telephone. Remember, that first phone contact is effectively the beginning of your interview. We have seen several Child Welfare 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.

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 Child Welfare 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.

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 Child Welfare Report so that she or he can order interim contact arrangements or refer to them in the instructions to the Child Welfare Reporter.

Interviewing parents

Most often the Child Welfare Reporter will interview each parent individually before seeing the child in the care of each parent. It is most common for the Child Welfare Reporter to interview each parent in their own home and will look at the child's room and other age appropriate facilities. It is important that you are able to show you have thought about these arrangements.

Meeting the children

Where both parents have contact the Child Welfare Reporter is likely to want to see the children in the care of each parent.

Where the non-resident parent has supervised contact the Child Welfare Reporter will observe the children in the non-resident parent's care at a contact centre or wherever the supervision takes place.

When there are several children you can suggest that it is important to see you with the children individually as well as together. It is also worth suggesting that the children are interviewed more than once, to enable them to build up confidence in the reporter and give their own views. Although it risks extending to time taken to complete the report, in cases where it is likely that they have been unduly influenced by the other parent this can help them feel able to speak freely. The official guidance to reporters states that *"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."*

The child's point of view

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

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

The Child Welfare Reporter is not trying to tell on you or get the school involved in the dispute. The Child Welfare 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 Child Welfare Reporter will not usually interview your child alone.

If your child is at primary school then it is likely that their teacher or 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. Each Child Welfare Reporter's style will vary, and those with a legal background may ask questions in a different way from social workers.

The Child Welfare 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 Child Welfare Reporter will have a copy of the writ in which you list your proposed contact arrangements and therefore will ask questions about how practical 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 Child Welfare Reporter will ask you about your health and any use of drink or drugs. The Child Welfare Reporter will not have the background or expertise to diagnose health problems but may be interested in any conditions diagnosed by your GP or specialist that could affect the care arrangements for your child.

It is extremely common for both separated parents to suggest their ex has mental health issues. It is a temptation to be resisted unless your former partner has had a formal diagnosis that the Child Welfare Reporter can authenticate.

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

The Child Welfare 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 Child Welfare Reporter will be looking to see how capable you are of recognising the positive traits of the other parent. It is not healthy for your children to hear one parent running down the other. Even if the other parent does it, you should not.

The Child Welfare Reporter will want to clarify what happened after separation.

It is important to focus on your relationship with your child. The Child Welfare 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 Child Welfare 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 Child Welfare Reporter may 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 you can offer to find out and forward the correct information in writing afterwards. Don't guess and possibly be suspected of misleading the court or the Child Welfare Reporter

Is the interview recorded?

The Child Welfare Reporter will take notes during the interview and may also use some form of recording to supplement these notes.

You could make a request in advance to say that you would like to record the interview particularly if the reporter isn't doing any recording. 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 or just getting the interview off to a bad start.

Our suggestion that routine recording of interviews would remove these problems was not accepted during consideration of changes to the system.

We strongly recommend against 'secret' recording on the basis that if discovered it may seriously damage your application for contact.

Who else will be interviewed?

This will depend upon the circumstances of your case but the detailed instructions from the sheriff (interlocutor) under the new system should give a clear indication of who should be interviewed. You or your lawyer should be able to give suggestions about who should be interviewed during the Child Welfare Hearing that leads to a reporter being appointed.

There is no particular advantage in suggesting a number of interviewees who all say the same thing, and interviewees should have direct first hand knowledge of your child and relevant issues, rather than just having been told about what has happened by yourself.

The Child Welfare 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, but such delays should be minimised as the reporter should obtain mandates at the outset from you or your lawyer covering the release of information from these agencies.

The Child Welfare 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 Report

The Child Welfare 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 Child Welfare Report should detail where and when the interview took place and ought to include the duration of the interviews.

What will be in the Report?

The main body of the Child Welfare Report should contain an 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.

The report will include a note about the qualifications of the reporter and conform that the reporter has a certificate of membership of the Protecting Vulnerable Groups (PVG) scheme and is subject to on-going monitoring. A reporter's normal duties could 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.

The report will include a note of the reporter's remit, details of the information which the reporter has gathered, and information about any allegations of abuse raised with the reporter. The Child Welfare Reporter's recommendation on the extent and kind of contact will be set out in conclusions of the report, usually at the end, which is the most important part of the report.

New training for reporters is being arranged as part of the new system and will include consideration of standards for report writing. We hope that this increased specification of the content of reports and the training of reporters will lead to more consistent standards with reporters concentrating on relevant factors and refraining from comment on issues beyond their competence.

Try to focus on the Reporter's recommendations rather than worrying about any minor inaccuracies in the body of the Child Welfare Report. It can be extremely distressing to see minor inaccuracies and can feel very undermining but don't let this distract you from what is concluded.

If there are **major** inaccuracies that you feel have led the Reporter to reach incorrect conclusions or make unjustified recommendations 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 Child Welfare Report?

The Child Welfare Report should take no more than 6-8 weeks. If the report takes longer or the reporter asks the court for more time this can be opposed unless there are very good reasons for the delay. The new system should mean that the performance of Child Welfare Reporters is more closely monitored by the relevant Sheriff Principal, with repeated delays leading to removal from the list of reporters.

When do I get to see the Child Welfare Report?

The report should be submitted to court at least three clear days before the hearing. The report should also be sent to each of the parties by this deadline, unless otherwise directed. If represented, you should be provided with the report by your lawyer. FNF Scotland regards that as the minimum that allows you to consider the contents and manage to get time to discuss what to do with it with your legal representative. We would have preferred longer.

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.

What happens if I don't get a chance to see the Child Welfare Report before the Child Welfare Hearing?

The new rules specify that the report should be submitted three clear working days before the court hearing. This tightening of the rules should make it unlikely that reports are submitted so late that you have not had the chance to consider them. The sheriff can be asked for a continuation of the Child Welfare Hearing if this happens, but if you are not getting contact at present you may wish to avoid further delay that would mean.

In such a situation, it might be best to ask for a short time to read the report and consult with your lawyer within your court. Remember that the conclusion section at the end is the most crucial part of the report, so focus on what is said there.

If you do not ask for a continuation and the sheriff makes an order based on a Child Welfare 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 Child Welfare Report to the sheriff.

Should the sheriff continue the case despite a request for a continuation 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 Child Welfare Report be challenged?

It is often said that Child Welfare Reporters are exempt from examination on their Child Welfare Report as officers of the court. It is certainly unusual but not improper to ask 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 Child Welfare Reporter into the box to explain the basis of their conclusions and recommendations. It would need something more serious in the way they have gone about their job than just disagreement with their recommendations.

A balanced Child Welfare 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 Child Welfare Reporters for a variety of reasons. They often say it in their judgment 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 credibility of their claim to be the reasonable party.

However, section 11(4) of the Matrimonial Proceedings (Children) Act 1958 allows for "the person who furnished a report to court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child 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 Child Welfare 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 the welfare of your children should be the paramount concern of the court and your solicitor.

Can a Child Welfare Report be used at proof?

If the case goes to proof¹ - a final hearing of evidence under oath - then the Child Welfare Report can be mentioned. We understand that the Child Welfare Reporter cannot be called to give evidence.

¹ 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 Child Welfare Reporter is most concerned with 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

Costs

Who pays for the Child Welfare Report?

In a case where one party is legally aided it can be requested that the cost of the Child Welfare Report is charged to the legally aided party, but there is now a presumption that costs are shared between parties.

This may cause problems to people who are just above the legal aid threshold, but should make it more difficult for the cost to be allocated just to the person who raised the action (pursuer).

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 Child Welfare Reporters. SLAB calculates that the 'mean' figure for a Child Welfare Report in a residence and/or contact case paid for through legal aid was £3,104.

However, there is also a remarkable variation in Child Welfare 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.

Following this study SLAB introduced a "cap" of £3000 for legally-aided reports.

Privately funded reports could cost more than this, but we hope that this guide level of £3000 will bring most such reports into this area unless they involve significant amounts of additional work such as long-distance travel to interview parties.

How is this worked out?

There is a general table of fees that solicitors use². The solicitor will send a record of the hours worked to a law accountant who will prepare an invoice.

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

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

If the Child Welfare Report is written by a solicitor then SLAB will cover the fee charged. If the Child Welfare Report costs in excess of the £3000 'cap' it will require specific authorisation from SLAB³.

Will an unsupportive Child Welfare Report affect legal aid funding?

The "prospects of success" are a deciding factor in granting any civil legal aid⁴.

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

Receiving an unsupportive Child Welfare Report will not automatically stop your civil legal aid funding. However, an unsupportive Child Welfare 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 Child Welfare Report. The board may reassess your case and find that you no longer meet the reasonableness test.

² <https://www.scotcourts.gov.uk/taking-action/court-fees>

³

http://www.slab.org.uk/news/archive/articles/Update_on_disclosure_in_childrens_cases_1376704800437.html

⁴ See para 7.9 in this guidance:

<http://www.slab.org.uk/handbooks/Civil%20handbook/wwhelp/wwhimpl/js/html/wwhelp.htm#href=Part%20IV%20LA/IV%207%20postgrant.html> f

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 9⁵;
- 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 Child Welfare Reporter to provide further information about the circumstances of a child and the proposed contact or residence arrangements that have been requested.

Discussion about the voice of the child is currently taking place in Scotland, and it is likely that other ways of obtaining and presenting children's views will be explored.

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 be because of their age. The age of legal capacity in Scotland is 16⁶.

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.

⁵ 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>

⁶ Age of Legal Capacity (Scotland) Act 1991 s.1

APPENDIX TWO

Guidance notes relating to the new system for parents and for Child Welfare Reporters will be issued in the near future. The Scottish Government reporting on the Child Welfare Reporters Working Group includes draft text of this guidance⁷.

The rules of the Sheriff Court and Court of Session relating to Child Welfare Reporters were amended on 26th October 2015. The Sheriff Court rules include the following changes.

(1) At any stage of a family action the sheriff may, in relation to any matter affecting a child, appoint a person (referred to in this rule as a “child welfare reporter”) —

(a) to seek the views of the child and to report any views expressed by the child to the court; or (b) to undertake enquiries and to report to the court.

(2) A child welfare reporter may only be appointed under paragraph (1)(b) where the court is satisfied that the appointment—

(a) is in the best interests of the child; and

(b) will promote the effective and expeditious determination of an issue in relation to the child.

(3) An interlocutor appointing a child welfare reporter must—

(a) specify a date by which the report is to be submitted to the court;

(b) include a direction as to the fees and outlays of the child welfare reporter;

(c) where the appointment is under paragraph (1)(a), specify the issues in respect of which the child’s views are to be sought; and

(d) where the appointment is under paragraph (1)(b), specify the enquiries to be undertaken, and the issues requiring to be addressed in the report.

(4) An interlocutor complies with subparagraph (c) or (d) of paragraph (3) if the issues or, as the case may be, the enquiries referred to in that subparagraph are specified in an annex to the interlocutor in Form F44 (see below).

(5) Where the sheriff has appointed a child welfare reporter with a view to the report being considered at an assigned hearing, the date specified in accordance with paragraph (3)(a) must be a date no less than three clear days before that hearing, excluding any day on which the sheriff clerk’s office is not open for civil court business, unless cause is shown for specifying a later date.

(6) On appointing a child welfare reporter, the sheriff may also—

(a) make such further order as may be required to facilitate the discharge of the child welfare reporter’s functions;

(b) direct that a party to the proceedings is to be responsible for providing the child welfare reporter with copies of such documents lodged in the process as may be specified; and

(c) give the child welfare reporter directions.

(7) The direction referred to in paragraph (3)(b) must assign liability for payment of the child welfare reporter’s fees and outlays in the first instance, and require that liability to be borne—

(a) in equal shares by—

(i) the pursuer;

(ii) any defender who has entered appearance; and

(iii) any other person who has been sisted as a party to the proceedings; or

(b) by one or more parties to the proceedings on such other basis as may be justified on cause shown.

(8) On the granting of an interlocutor appointing a child welfare reporter the sheriff clerk must—

(a) give the child welfare reporter—

(i) a certified copy of the interlocutor, and

⁷

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

(ii) sufficient information to enable the child welfare reporter to contact the solicitor for each party to the proceedings, or any party not represented by a solicitor; and
(b) intimate the name and address of the child welfare reporter to any local authority to which intimation of the proceedings has been made.

(9) A child welfare reporter appointed under this rule must—

(a) where the appointment is under paragraph (1)(a)—

- (i) seek the child's views on the specified issues, and*
- (ii) prepare a report for the court reporting any such views;*

(b) where the appointment is under paragraph (1)(b)—

- (i) undertake the specified enquiries, and*
 - (ii) prepare a report for the court having regard to the specified issues;*
- (c) send the report to the sheriff clerk by the date specified;*
(d) unless otherwise directed, send a copy of the report to each party to the proceedings by that date.

(10) A child welfare reporter may—

- (a) apply to the sheriff clerk to be given further directions by the court; and*
- (b) bring to the attention of the sheriff clerk any impediment to the performance of any function arising under this rule.*

(11) Where a child welfare reporter acts as referred to in paragraph (10), the sheriff may, having heard parties, make any order or direction that could competently have been made under paragraph (6).

Rules about the appointment of local authorities to prepare Child Welfare Reports are also included.

Form F44 is used by the Sheriff to specify that certain enquiries are undertaken and states whether the Reporter is to seek the views of the child or children or just carry out enquiries. It also can list the issues on which the views of the child or children are to be sought.

- *Seek views of child*
- *Visit home of [specify]*
- *Visit nursery / school / child minder / other [specify]*
- *Interview mother / father*
- *Interview other family members [specify]*
- *Interview child minder / nanny*
- *Interview teacher / head teacher*
- *Interview child's health visitor / GP / other health professional [specify]*
- *Interview a party's GP / other health professional [specify]*
- *Interview social worker [specify]*
- *Interview domestic abuse case worker [specify]*
- *Interview other persons [specify]*
- *Obtain criminal conviction certificate under section 112 of the Police Act 1997 in respect of [specify party]*
- *Observe contact [specify]*
- *Observe child in home environment pre/post contact [specify]*
- *Obtain record of parties' attendance from contact centre*
- *Other [specify]*

Rules for the Court of Session are broadly similar. For the full text see <http://www.legislation.gov.uk/ssi/2015/312/made>

FAMILIES NEED FATHERS SCOTLAND – BOTH PARENTS MATTER

FNF Scotland was established in June 2010 with funding from the Equalities and Human Rights Commission. It now has offices in Edinburgh and Glasgow and local group meetings in Glasgow, Edinburgh, Aberdeen and Stirling. We are very grateful for ongoing financial support from the Scottish Government and the Tudor Trust and for the fundraising and donations provided by many of the people who make use of our services

We work to keep children and parents in contact after separation, with a particular focus on supporting non-resident parents and promoting shared parenting. 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 staff. The 150 Scottish members are also involved in activities such as support to parents attending court hearings (lay assistance), publicity and fundraising. As well as supporting parents in contact disputes we run parenting self-help groups for separated fathers and are developing other ways to support and encourage shared parenting.

We publish guides to the family court process and on the involvement of non-resident parents in their child's education and also publish a wide range of information on our web site and through social media.

Families Need Fathers Scotland, 10 Palmerston Place, Edinburgh EH12 5AA
Scottish Charitable Incorporated Organisation SC 042817

0131 557 2440 info@fnfscotland.org www.fnfscotland.org.uk