

# **Consultation on registers of child welfare reporters, curators ad litem and solicitors appointed when a person is prohibited from conducting their own case**

**An Analysis of Responses**

January 2022



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

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## Glossary of terms

1995 Act	The Children (Scotland) Act 1995
2020 Act	The Children (Scotland) Act 2020
Child welfare reporter	Formerly called "bar reporters". They are court appointed individuals who prepare reports on the best interests of the child.
Children (Scotland) Bill	The Children (Scotland) Act 2020 was called the Children (Scotland) Bill when it was being considered by the Scottish Parliament.
CPD	Continuing professional development
Curator ad litem	An officer of the court who is appointed to represent and protect the interests of an individual lacking full capacity, including a child.
Family law	Covers a wide range of areas including divorce and dissolution, parental responsibilities and rights, contact and residence, and permanence and adoption cases.
GIRFEC	Getting It Right For Every Child
HMRC	Her Majesty's Revenue and Customs
Legal Aid	Publicly funded legal assistance allowing individuals to pursue or defend their rights, or pay for their defence, when they could not otherwise afford to do so. When someone applies for legal aid, their application is subject to statutory tests which cover the merits of the case and the means available to the applicant.
Lord President	The most senior judge in Scotland and the head of the judiciary.
PVG	Protecting Vulnerable Groups scheme
Safeguarder	Safeguarders are individuals who may be appointed in Children's Hearings or by sheriffs to safeguard the interests of the child in the proceedings.
SCTS	Scottish Courts and Tribunals Service. An independent body providing administrative support to Scottish courts and tribunals and to the judiciary.
Sheriff	A judge in the Sheriff Court. Sheriffs deal with the majority of civil (including family) and criminal cases in Scotland.

Sheriff Principal	The Sheriffs Principal head each of Scotland's six Sheriffdoms. They have responsibility for ensuring the efficient disposal of sheriff court business.
Sheriffdom	The geographic areas into which Scotland is divided for the administration of sheriff court business.
SLAB	Scottish Legal Aid Board. SLAB manages the legal aid system in Scotland.
SLCC	Scottish Legal Complaints Commission. An independent body who are the first point of contact for all complaints about lawyers in Scotland.
SSSC	Scottish Social Services Council. The regulator for the social service workforce in Scotland.
UNCRC	United Nations Convention on the Rights of the Child

# Executive Summary

## Background

The Children (Scotland) Act 2020 (the 2020 Act) gained Royal Assent on 1 October 2020 and builds upon the Children (Scotland) Act 1995 (the 1995 Act). A key aim of the 2020 Act is to place children at the heart of proceedings that relate to them. This includes more closely aligning Scots law with the UNCRC, ensuring children's views are heard in family court cases and children's hearings, and ensuring the best interests of the child is at the centre of each case.

There are a number of different ways in which children's views can be considered, including through child welfare reporters who can be appointed by the court in cases under section 11 of the 1995 Act. Curators ad litem may be appointed to represent and protect the interests of an individual lacking full capacity, including a child, in cases under section 11 of the 1995 Act.

The 2020 Act also aims to ensure that victims of domestic abuse and their children are further protected in family cases. The 2020 Act provides for solicitors to be appointed when a person is prohibited from conducting their own case in certain circumstances.

The 2020 Act provides for the creation of new registers for child welfare reporters, curators ad litem and solicitors appointed where a person is prohibited from conducting their own case, which will ensure eligibility criteria and training standards are met.

## Respondent profile

The consultation closed on 12 July 2021 and received a total of 84 responses.

**Table 1: Respondent profile**

	Number	%
Legal	11	13
Local Authorities	3	4
NHS	2	2
Public body	4	5
Representative body	5	6
Third sector / advocacy	14	17
Other	1	1
<b>Total organisations</b>	<b>40</b>	<b>48</b>
Individuals	44	52
<b>Total respondents</b>	<b>84</b>	<b>100</b>

(Percentages might not add to 100% due to rounding)

## Key Themes

A number of key themes were evident across questions as well as across respondent groups. These are summarised below.

- Of key importance across all registers, there is a need to ensure there are no conflicts of interest and that the best interests of the child are considered at all times.
- Also of importance across all registers are the processes for appointment, reappointment, fees and expenses paid and the complaints procedure; with respondents identifying a need to ensure an approach that offers accountability, scrutiny and transparency; with an independent review and appeals process and procedural safeguards.
- While opinions were mixed over the amount of days of training that would be required for child welfare reporters, curators ad litem or solicitors, importance was placed on the experience, skills and expertise of these individuals and the need for all to have training to ensure they have the required skills and expertise. As such, there may need to be flexibility in the training offered to complement the skills and experience already held by child welfare reporters, curators ad litem or solicitors.
- While it is important for child welfare reporters, curators ad litem and solicitors to have a consistent baseline of skills and expertise, it is acknowledged that some individuals will have more experience in certain types of cases. As such, choice of an individual needs to be matched to knowledge and experience on a case by case basis, so as to ensure the most suitable individual is appointed.
- Respondents also identify a need for ongoing appraisal and training, to ensure skills are kept up-to-date and relevant. As such, some respondents feel there should be no automatic reappointment to the registers and that there is a need to demonstrate eligibility for inclusion.
- While there is a need to demonstrate a wide range of skills, key ones appear to be an ability to engage with children, have an understanding of family dynamics, have an understanding of domestic abuse, and a basic understanding of court procedures.
- In regard to the payment of fees, there is a perception that the payment method needs to reflect the amount of work undertaken, given the varying complexity across different cases.
- There were some requests for further detail and clarity, for example, in relation to the complaints procedure, the reappointment process or the content and format of training.
- Whichever body is appointed to manage the registers, this will need to be independent, impartial, consistent, accountable and objective.

## Summary findings: Register of Child Welfare Reporters

### Operating and managing the register of child welfare reporters

- There was no consensus as to which approach to adopt in terms of the operation and management of the register of child welfare reporters. The option with the highest level of support was to contract out, with some respondents noting this approach has worked well with safeguarders and would offer consistency in standards, access to training and help keep the costs of administration and management of the register at a reduced level (Q1).

### The process for including an individual on the register of child welfare reporters

- A majority of respondents agreed with the proposed process for including an individual on the register of child welfare reporters. Key reasons were that there is a need for annual performance appraisal and that ongoing training is imperative (Q2).
- A majority of respondents also agreed that child welfare reporters should be included on the register for a three year period (Q3).
- A majority of respondents were supportive of the proposed reappointment process (Q4).

### Individuals who are not eligible to be included on the register of child welfare reporters

- Across the types of people who it was suggested should be ineligible for inclusion on the register, a large number of respondents agreed rather than disagreed (Q5).
- A wide range of suggestions emerged for additional types of individual who should be ineligible for inclusion on the register (Q6).

### Removal of individuals from the register of child welfare reporters

- A majority of respondents agreed with the proposed approach for removing an individual from the register (Q7).

### What requirements should an individual satisfy to be eligible to be included in the register?

- A large majority of respondents agreed with the proposed requirements (Q8).
- A range of additional requirements that a person must satisfy in order to be included on the register were suggested (Q9).

### Existing child welfare reporters

- A large majority of respondents agreed that existing child welfare reporters have to apply to be on the new register (Q10).

### **Ongoing training requirements for child welfare reporters**

- A large number of respondents agreed with the proposed training requirements for child welfare reporters (Q11).
- A significant minority of respondents felt that four days of paid training per year is appropriate, although slightly more wanted to see more days of training per year (Q12).

### **Fee rates and expenses for child welfare reporters**

- A majority of respondents supported an hourly rate, although a significant minority felt that another option would be preferable (Q13).
- There was general agreement with the proposed policy for the payment of expenses (Q14).

### **Appointing a child welfare reporter to undertake a report**

- More respondents supported the appointment of a child welfare reporter based on specific expertise, than supported appointment being based on the next child welfare reporter on the register (Q15).

### **Child welfare reporters being asked to provide a recommendation in reports on what is in the best interests of the child**

- A majority of respondents felt that a child welfare reporter should provide recommendations on what is in the best interests of the child, in their report (Q16).

### **The proposed procedure for complaints**

- There was general support for the proposed procedure for complaints from individuals who are unsuccessful when applying to be on the register of child welfare reporters, or are removed from the register (Q17).

### **Grievance procedure**

- A majority of respondents agreed that a grievance about fees or expenses or comments on a child welfare reporter's appraisal should be dealt with by the body appointed to operate and manage the register (Q18).

### **Complaints about a child welfare reporter**

- Respondents felt that any complaints procedure needs to be straightforward, simple, accessible, clear, transparent and accountable, with short and speedy timescales. There were also references to the need for the procedure to be child-friendly and comply with UNCRC (Q19).

## **Summary findings: Register of Curators ad litem**

### **Requirements for curators ad litem to be on the register**

- A large majority of respondents agreed with the proposed requirements that a person must satisfy to be included on the register of curators ad litem (Q20).
- A significant number felt there should also be other requirements a person must satisfy in order to be included on the register (Q21).

### **Ongoing training requirements for curators ad litem**

- Respondents were generally positive about the training requirements (Q22).
- Opinions were mixed as to whether four days of paid training per year for curators ad litem is appropriate (Q23).

### **How a court would appoint a curator ad litem**

- A majority of those who commented were in favour of basing curator appointments on a case by case basis rather than by calling up the next person on the register (Q24).

### **Fee rates and expenses for curators ad litem**

- A large majority of respondents supported an hourly rate (Q25).
- Most respondents who commented were favourable to the proposed approach (Q26).

### **Complaints procedures**

- Respondents noted a complaints system should be clear, transparent, accessible and open to scrutiny, with clear reasons given for decisions and without conflicts of interest (Q27).

## Summary Findings: Register of Solicitors

### Requirements for solicitors to be included on the register

- A large majority agreed with the proposed requirements that a person must satisfy in order to be included on the register of solicitors (Q28).
- Some additional requirements were outlined that should be satisfied in order to be included on the register of solicitors (Q29).

### Ongoing training requirements for solicitors on the register

- Fewer respondents supported the proposal that solicitors on this register require less days training each year than child welfare officers or curators ad litem, on the basis that they are likely to receive less appointments (Q30).
- Some additional training requirements were outlined for inclusion (Q31).

### How a court would appoint a solicitor from the register

- There was general agreement with the appointment process for solicitors, although there were some suggestions that appointment should be based on expertise and experience rather than by calling up the next person on the register (Q32).

### Expenses for solicitors

- A large majority agreed with the proposed procedure for expenses (Q33).

### Complaints procedures

- Respondents commented that the complaints system should be clear, transparent, accessible, accountable and easy to understand (Q34).

## Summary Findings: Draft Impact assessments

- A small number of respondents commented on the draft impact assessments, with general comments that these were generally well considered and welcomed (Q35).

# Introduction

## Background

1. The Children (Scotland) Act 2020 (the 2020 Act) received Royal Assent on 1 October 2020 and this builds upon the Children (Scotland) Act 1995 (the 1995 Act). A key aim of the 2020 Act is to place children at the heart of proceedings that relate to them. This includes more closely aligning Scots law with the UNCRC, ensuring children's views are heard in family court cases and Children's Hearings, and ensuring the best interests of the child is at the centre of each case. Additionally, this 2020 Act aims to provide more protection to victims of domestic abuse and their children.
2. Under the 1995 Act there is a presumption that children aged 12 or older are of sufficient age and maturity to give a view about court proceedings which relate to them. The 2020 Act removes any age presumption in relation to a child's ability to give a view. The 2020 Act also requires the court to give the child an opportunity to express a view in a manner which that child prefers. This could be through drawings, videos, letters, play therapy, or speaking directly to the decision maker, ensuring children's views are considered on an impartial basis and in a way that is best for the child.
3. One approach is through child welfare reporters who can be appointed by the court in cases under section 11 of the 1995 Act either to seek the views of the child and report any views expressed by the child back to the court, or to undertake enquiries and report to the court. Where the court asks a reporter to undertake enquiries, this can include seeking the views of the child and producing recommendations on their best interests.
4. Curators ad litem may also be appointed by the court in cases under section 11 of the 1995 Act to represent and protect the interests of an individual lacking full capacity, including a child. Their role is separate and distinct from the role of a child welfare reporter.
5. Sections 11A, 11B and 22B of the Vulnerable Witnesses (Scotland) Act 2004 as inserted in the 2020 Act introduce a new special measure prohibiting a party from personally conducting the remainder of their case in certain circumstances. This is available in proceedings where the court is considering making an order under section 11 of the 1995 Act and in Children's Hearings court proceedings. In these instances, and to ensure the right to a fair trial, legal representation must be available for an individual who has been prohibited from personally conducting the remainder of their case.
6. The 2020 Act provides for the creation of new registers for child welfare reporters, curators ad litem and solicitors appointed where a person is prohibited from conducting their own case, which will ensure eligibility criteria and training standards are met.

7. Once the 2020 Act is fully in force, the Scottish Government intends that the fees, outlays and expenses of child welfare reporters, curators ad litem appointed in section 11 cases and of solicitors appointed when an individual has been prohibited from personally conducting a case themselves will be met by the Scottish Government, either through an in-house unit or through any external contractor appointed by the Scottish Government.

## **Background to the consultation**

8. During the passage of the 2020 Act through the Scottish Parliament, the Scottish Government committed to a full and public consultation on the establishment of the registers of child welfare reporters, curators ad litem appointed in cases under section 11 of the 1995 Act and solicitors who can be appointed when an individual has been prohibited from personally conducting a case themselves.
9. The Scottish Government launched a consultation which closed on 12 July 2021, seeking the views from a range of stakeholders including children and young people and people who have had direct experience of family court proceedings. Findings from this consultation will be used to inform the next steps in implementing the register of child welfare reporters, register of curators ad litem appointed in cases under section 11 of the 1995 Act and register of solicitors who can be appointed when an individual has been prohibited from personally conducting a case themselves.
10. The 2020 Act also requires the Scottish Ministers before making, revising or revoking regulations in relation to the register of child welfare reporters to consult people with lived experience of domestic abuse and court ordered contact.

## **Consultation responses**

11. In total, there were 84 responses to the consultation, of which 40 were from organisations and 44 from individuals.
12. Respondents were assigned to respondent groupings in order to enable analysis of any differences or commonalities across or within the various different types of organisations and individuals that responded. Table 2 shows the number of respondents in each organisational category.

**Table 2: Respondent profile**

	Number	%
Legal	11	13
Local Authorities	3	4
NHS	2	2
Public body	4	5
Representative body	5	6
Third sector / advocacy	14	17
Other	1	1
<b>Total organisations</b>	<b>40</b>	<b>48</b>
Individuals	44	52
<b>Total respondents</b>	<b>84</b>	<b>100</b>

(Percentages might not add to 100% due to rounding)

13. A list of all those organisations that submitted a response to the consultation is included in Appendix 1.

## Methodology

14. Responses to the consultation were submitted using the Scottish Government consultation platform Citizen Space or by post, although most respondents submitted their views via Citizen Space. Where responses were submitted in hard copy, these were entered manually onto the Citizen Space system to create a complete database of responses.
15. It should be borne in mind that the number responding at each question is not always the same as the number presented in the respondent group table. This is because not all respondents addressed all questions. This report indicates the number of respondents who commented at each question.
16. Some of the consultation questions were closed with specific options to choose from. Where respondents did not follow the questions but mentioned clearly within their text that they supported one of the options, these have been included in the relevant counts.

17. The researchers examined all comments made by respondents and noted the range of issues mentioned in responses, including reasons for opinions, specific examples or explanations, alternative suggestions or other comments. Grouping these issues together into similar themes allowed the researchers to identify whether any particular theme was specific to any particular respondent group or groups.
18. When considering group differences however, it must also be recognised that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups did not share this opinion, but rather that they simply did not comment on that particular point.

## **Analysis of responses**

19. The analysis of responses is presented in the following chapters which follow the order of the questions raised in the consultation paper. While the consultation gave all who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to a wider population outwith the respondent sample.
20. The Citizen Space database was exported to an Excel working database for detailed analysis. Where respondents requested anonymity and / or confidentiality, their views have been taken into account in the analysis but quotations have not been taken from their responses. Quotations have been included where they illustrate a point of view clearly and have been selected across the range of respondent sub-groups.

## Register of Child Welfare Reporters

21. This section of the consultation focused on child welfare reporters and sought views on:

- Who should operate and manage the register of child welfare reporters.
- The process for including someone on the register of child welfare reporters.
- The reappointment process for child welfare reporters to the register.
- Who would not be eligible to be included on the register of child welfare reporters.
- How a child welfare reporter could be removed from the register.
- The remuneration (fee rates) and expenses to be paid to child welfare reporters.
- The requirements that a person must satisfy in order to be included on the register.
- What ongoing training requirements there should be for child welfare reporters.
- How a child welfare reporter would be selected from the register.
- What a child friendly complaints mechanism should look like.

### Operation and management of the register

22. The consultation paper explained that currently, child welfare reporters are appointed from lists held by each Sheriff Principal for cases heard in the sheriff court and by the Lord President for child welfare reporters appointed in cases in the Court of Session. The 2020 Act gives the Scottish Ministers the power to make provision in regulations for, or in connection with, the operation and management of the register.

23. The Scottish Government considers that a centralised (i.e. national) register of child welfare reporters is the best way to ensure that there is consistency across Scotland in terms of the appointment process, complaints procedure and training requirements. Question 1 of the consultation asked:

Q1: 'Who should provide the operation and management of the register of child welfare reporters?

- (a) The Scottish Government
- (b) The Scottish Government should contract this out to a third party
- (c) This should be run by the SCTS on a national level
- (d) Another option
- (e) Don't know

24. As illustrated in table 3, there was no consensus as to which approach to adopt in terms of the operation and management of the register of child welfare reporters. The option with the highest level of support was to contract out (23 respondents across all sub-groups); followed by SCTS (19 respondents, mostly those in the legal sector and individuals); the Scottish Government (14 respondents, almost all individuals); finally, another option (15 respondents, mostly those in the legal and third sectors, and individuals).

**Table 3: Q1: Who should provide the operation and management of the register of child welfare reporters?**

	Number				
	SG	Contract out	SCTS	Another	Don't know
Legal (11)	-	1	6	4	-
Local authority (3)	-	2	1	-	-
NHS (2)	-	2	-	-	-
Public body (4)	-	1	-	1	2
Representative body (5)	-	4	-	1	-
Third sector / advocacy (14)	1	5	-	3	5
Other (1)	-	-	-	-	1
<b>Total organisations (40)</b>	<b>1 (3%)</b>	<b>15 (38%)</b>	<b>7 (18%)</b>	<b>9 (23%)</b>	<b>8 (20%)</b>
Individuals (44)	<b>13 (30%)</b>	<b>8 (18%)</b>	<b>12 (27%)</b>	<b>6 (14%)</b>	<b>5 (11%)</b>
<b>Total respondents (84)</b>	<b>14 (17%)</b>	<b>23 (27%)</b>	<b>19 (23%)</b>	<b>15 (18%)</b>	<b>13 (15%)</b>

(Percentages might not add to 100% due to rounding)

25. Respondents were then asked to explain why they selected their answer; the following paragraphs outline reasons given for each of the options.

## **The Scottish Government**

26. A total of nine respondents provided reasons as to why they would like the Scottish Government to operate and manage the register of child welfare reporters; these were mostly individuals. The only reason given by more than one respondent focused on a need for an organisation that is independent of the legal sector and can offer impartiality and consistency.
27. Other reasons, cited by only single respondents, included that the Scottish Government would be bound by strict rules and governance, that it is the most appropriate body to carry out these duties, that it should be directly accountable and that responsibility for monitoring would be with the Scottish Government, so it would simplify the process if they also managed the register. Finally, that this should be kept in-house to ensure the register is effective and aligns with the intentions and purpose of the “Children’s Act”.

## **The Scottish Government should contract this out to a third party**

28. A total of 23 respondents opted to provide additional commentary providing reasons on their support for this option. The key theme, albeit only from a minority of respondents, was that this approach has worked well with the safeguarders register. Utilising the same approach for a child welfare reporters’ register would offer consistency in standards, access to training and help keep the costs of administration and management of the register at a reduced level.
29. A significant minority of respondents made suggestions as to which organisation(s) should manage this contract; suggestions were varied and included:
- Children 1st (who currently manage the safeguarders register).
  - SSSC.
  - SLAB.
  - Care Inspectorate.
  - Law Society of Scotland.
  - The Scottish Children’s Reporters Administration.
  - One of the larger voluntary agencies operating in the children and families area or an organisation that has expertise in children’s rights, children’s participation and family conflict or organisations that are child friendly and have experience of child trauma.
30. A small number of respondents noted that contracting this out to a third party would ensure consistency across Scotland in terms of the appointment process, training requirements and a complaints procedure.
31. A small number of individuals felt this should be contracted out so that it is totally independent of government.

32. A small number of respondents noted further advantages to contracting this out; these included:

- Bringing specialist expertise and independence to the management and oversight of the register.
- Delivering best value for money.

33. A few respondents raised issues or concerns about this approach, including:

- Any organisation appointed would have to demonstrate knowledge and expertise of child welfare, social work and the law; and would need to be transparent and accountable.
- It would be essential that anyone appointed would have professional qualifications, experience and the appropriate level of seniority in child welfare.
- The proposed timescale of 2022 is too optimistic.
- The organisation appointed might lack understanding of the workings of Scottish courts.
- The current localised approach avoids delays to reports.
- There could be considerable costs in setting up a new body; or that there would be a need to ensure that contracting out to the third party is not too costly or bureaucratic.
- Concerns over how effective Children 1st has been in operating and managing the safeguarders' register.

### **The SCTS on a national level**

34. A total of 20 respondents provided commentary as to their preference for SCTS to manage and operate the register of child welfare reporters. The key reason was that they have experience of doing this, already carry this out on a satisfactory basis, and already have working knowledge of what is required and of the framework within which reporters act. Conversely, a small number of respondents commented that they did not support this option as it would place too much additional pressure on SCTS.

35. A small number of respondents also commented that local sheriff clerks have an in-depth knowledge of suitable appointees and could report to the SCTS and that sheriffs appointing child welfare reporters have knowledge of the individuals on their register and this approach would offer them the discretion to identify and appoint the reporter best suited to a specific case.

## Another option

36. To an extent, other options suggested by respondents tended to be a hybrid of the previous three options. For example, to be managed by SCTS but with input from local sheriffdoms; or SCTS managing the register and providing oversight and assurances with local lists to ensure flexibility and access to the most appropriate court welfare reporter; or central management of the register by the court service but with each sheriffdom having its own lists of approved child welfare reporters.
37. Again, there were some comments on the need for the register to be managed by an independent body at arms-length from the government, and offering consistency of service and accountability with robust reporting mechanisms.
38. A very small number of respondents supported a continuation of the current situation with the Sheriff Principal discharging this function.

## Process for including an individual on the register

39. The consultation paper explained that the Scottish Government would anticipate that advertisement for the role of child welfare reporter would take place in 2022 and would be subject to any regulations setting out eligibility requirements being made and coming into force. Individuals would complete an application form which would be sifted on an anonymous basis and those who pass may then be interviewed to assess their suitability for inclusion on the register.
40. The length of appointment varies in other areas. Safeguarders are appointed for three years and the Scottish Government considers a three year appointment period to be appropriate for child welfare reporters. Child welfare reporters would have to demonstrate that they continue to have the relevant skills and experience and reappointment would not be automatic; the expectation is that they would be subject to an annual appraisal which would be taken into account when considering whether an individual should be reappointed.
41. Question 2 of the consultation asked:

Q2: 'Do you agree / disagree with the proposed process for including an individual on the register of child welfare reporters?'

42. As table 4 shows, a majority of respondents, across all sub-groups, agreed with the proposed process for including an individual on the register of child welfare reporters. The only disagreement from organisations came from third sector / advocacy organisations.

**Table 4: Q2: Do you agree / disagree with the proposed process for including an individual on the register of child welfare reporters?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	8	-	3
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	-	-	4
Representative body (5)	5	-	-
Third sector / advocacy (14)	7	4	3
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>26 (65%)</b>	<b>4 (10%)</b>	<b>10 (25%)</b>
<b>Individuals (44)</b>	<b>35 (80%)</b>	<b>5 (11%)</b>	<b>4 (9%)</b>
<b>Total respondents (84)</b>	<b>61 (73%)</b>	<b>9 (11%)</b>	<b>14 (17%)</b>

(Percentages might not add to 100% due to rounding)

43. Respondents were then asked to give reasons for this answer, and 62 did so, a few of whom simply noted that this seems reasonable and proportionate.
44. Of those who agreed with this proposal, the two key reasons given were that there is a **need for annual performance appraisal** as these can help to support practice development and consistent high standards and shows evidence of a commitment to CPD; and that **ongoing training is imperative**.
45. A few respondents also noted a need for **consistency and transparency** to ensure the process is open and that criteria for appointment are clearly set out.
46. A small number of respondents felt that the appointment of child welfare reporters should be by Scottish Ministers to ensure independence of operation. A similar number also commented that child welfare reporters should be allowed to report outwith their own area, with an NHS organisation giving the example of care experienced children and young people for whom specialist expertise and experience will be required.

47. A few respondents felt that **current safeguarders should be given opportunities for appointment** to the child welfare reporters list, with one suggestion that these individuals could be fast tracked, and another that they are already subject to monitoring and review and could be considered for automatic inclusion on the register.
48. The proposed three year appointment system was supported by a small number of respondents.
49. A few respondents commented on the criteria and / or required experience to be appointed as a child welfare reporter, with comment of a **need for agreed criteria for all appointments**. There were a few suggestions for specific qualifications and / or experience that would be needed, including family work experience, to have been qualified for a minimum of 10 years, or to have training in trauma informed practice as well as experience of working with children. There were a very small number of suggestions that there may need to be training provided on abuse and trauma.
50. There were also a very small number of suggestions that regulation of the register provides a good opportunity to diversify the skillset and professional background of those applying to the role.
51. **A minority of respondents noted concerns**. These included queries as to how the transition between the current system and the new register will be set up and managed; and who would be responsible for undertaking appraisals. There was disagreement over whether existing child welfare reporters should be automatically included in the register, and a local authority noted that a lot of solicitors currently practising as child welfare reporters will no longer meet required standards.
52. Only seven respondents who disagreed with this proposed process for including an individual on the register of child welfare reporters commented; and most comments were only made by one respondent.
53. The next question asked:

Q3: 'Do you agree / disagree that child welfare reporters should be included on the register for a three year period?'

54. As table 5 demonstrates, of those answering this question, a majority of respondents agreed that child welfare reporters should be included on the register for a three year period. Disagreement from organisations came primarily from those in the legal and third sector / advocacy organisations.

**Table 5: Q3: Do you agree / disagree that child welfare reporters should be included on the register for a three year period?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	6	4	1
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	5	-	-
Third sector / advocacy (14)	5	5	4
Other (1)	-	1	-
<b>Total organisations (40)</b>	<b>22 (55%)</b>	<b>10 (25%)</b>	<b>8 (20%)</b>
<b>Individuals (44)</b>	<b>30 (68%)</b>	<b>8 (18%)</b>	<b>6 (14%)</b>
<b>Total respondents (84)</b>	<b>52 (62%)</b>	<b>18 (21%)</b>	<b>14 (17%)</b>

(Percentages might not add to 100% due to rounding)

55. A total of 59 respondents opted to provide additional commentary in support of their initial response. A key theme from those who agreed with this was that **a three year period seems reasonable, appropriate and suitable**; that it **allows for consistency, knowledge and competence to be maintained and supports transparency and scrutiny**. Some respondents also commented that this works for safeguarders and / or that the register for child welfare reporters should be in line with that for safeguarders. A small number of respondents also noted this is in line with reaccreditation in other professions.

56. Some of those who agreed with this proposal raised issues such as how **annual training would be monitored**, whether there would be a **capacity to remove an individual from the register** if their performance is not to an acceptable level, and that the **quality of their outputs and outcomes of cases also needs to be monitored**. There were a small number of comments relating to the need for ongoing training and CPD and the importance of having annual appraisals.

57. Of the respondents who disagreed with this proposal, the key theme (primarily from legal organisations) was that three years is too short a time period, with a suggestion that five years is more appropriate and in line with the Law Society of Scotland's accredited specialist review period.

58. The other two key themes, albeit only mentioned by a few respondents, was that reviews should be annual (mostly cited by individuals), and that a child welfare reporter should be removed from the register if they are not maintaining high professional standards (again, mostly from individuals).

59. Other comments, each made by two or less respondents included the need for a commitment to a minimum number of CPD hours each year, to be in line with other registered professions, as well as continuous support and monitoring on a regular basis. There was also a suggestion that employment contracts for child welfare reporters should be considered and that this approach does not offer the consistency and clarity that would be offered by a longer term employment contract.

60. Question 4 then went onto ask:

Q4: 'Do you agree / disagree with the proposed reappointment process for child welfare reporters?'

61. As shown in table 6, a majority of respondents were supportive of the proposed reappointment process.

**Table 6: Q4: Do you agree / disagree with the proposed reappointment process for child welfare reporters?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	5	3	3
Local authority (3)	2	-	1
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	5	-	-
Third sector / advocacy (14)	6	4	4
Other (1)	-	-	1
<b>Total organisations (40)</b>	<b>21 (53%)</b>	<b>7 (18%)</b>	<b>12 (30%)</b>
<b>Individuals (44)</b>	<b>31 (70%)</b>	<b>6 (14%)</b>	<b>7 (16%)</b>
<b>Total respondents (84)</b>	<b>52 (62%)</b>	<b>13 (15%)</b>	<b>19 (23%)</b>

(Percentages might not add to 100% due to rounding)

62. A total of 53 respondents made additional comments in support of their initial response to this question.
63. Of those who agreed with the proposed reappointment process for child welfare reporters, the key themes were that **there should be no automatic reappointment** and that child welfare reporters need to **demonstrate they are eligible** for inclusion in the register; or that this allows for **security and governance** in relation to the appointment process. Once again, there were references by a few respondents that this should use the same approach as the safeguarding register.
64. A small number of respondents noted that this proposed approach is suitable provided the requirements of annual CPD are robust and outcomes are monitored, and that annual appraisals count towards reappointment, although there were a couple of suggestions for a mechanism to assess ongoing suitability rather than annual appraisals.
65. Of those who **disagreed** with the proposed reappointment process, the key theme was of a need for **more detail and clarity on various elements of the process**, including the complaints procedure, the proposed reappointment process, the production of reports and what else, other than the annual appraisal, should be considered during the reappointment process.
66. A few respondents noted provisos to this approach. Comments included the need to **ensure the process is rigorous and robust**, that there is a **need for ongoing training**, and any complaints that have been made against a child welfare reporter should be considered as part of the process.
67. References were also made to annual appraisals, with comments that these are too burdensome and that a detailed appraisal every five years would be more appropriate. One organisation in the legal sector suggested there should not be a full reappointment process every three years; rather there should be a three yearly scheme of revalidation, based on annual appraisals.
68. A small number of individuals commented that those involved in reappointing child welfare reporters should not be solicitors but others who have more child-related experience, expertise and qualifications.

## Individuals not eligible to be included on the register

69. The consultation paper noted that certain individuals should not be eligible to be included on the register of child welfare reporters, to help ensure the safety of a child and to ensure all child welfare reporters are impartial and have no conflict of interest. Suggested exclusions included anyone who has been barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007 and anyone with a conflict of interest, for example, an individual employed by the SCTS or a member of the judiciary.

70. Question 5 then went onto ask:

Q5: 'For each of the following categories of people, should they be ineligible for inclusion on the register of child welfare reporters?'

- An individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters
- An individual employed by the SCTS
- A member of the judiciary
- A member of the Scottish Government or a junior Scottish Minister
- An individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007

71. As shown in table 7, for each category they were asked to consider, a large number of respondents agreed rather than disagreed that those listed should be ineligible for inclusion on the register of child welfare reporters. Across each of these categories, it was mostly individuals who disagreed.

**Table 7: Q5: For each of the following categories of people, should they be ineligible for inclusion on the register of child welfare reporters?**

	Yes	No	Don't know
An individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters	64 (76%)	11 (13%)	9 (11%)
An individual employed by the SCTS	58 (69%)	15 (18%)	11 (13%)
A member of the judiciary	60 (71%)	16 (19%)	8 (10%)
A member of the Scottish Government or junior Scottish Minister	61 (73%)	13 (15%)	10 (12%)
An individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007	65 (77%)	12 (14%)	7 (8%)

(Percentages might not add to 100% due to rounding)

72. A total of 52 respondents provided commentary in support of their initial answer, many of which echoed points made in the consultation paper. A few of these respondents simply noted that the suggested exclusion categories are self-evident.

73. Three key themes emerged in responses. A significant minority noted the need to ensure there are **no conflicts of interest**. A similar number pointed out the need to **consider the best interests of the child**, the safety of the child and to consider protection issues and any risk or potential risk to children and young people. Linked to these two themes, the third key point related to the **importance of independence, impartiality and objectiveness** so that there can be trust in the process.

74. However, there were a few comments that individuals in some categories – primarily the judiciary – might be eligible depending on their role and responsibilities and that, providing all relevant criteria are met, their other work may be irrelevant to the role of a child welfare reporter. One public body respondent gave the example of an individual who is employed by SCTS,

“... there are a number of solicitors who at various times in their career may also act as Temporary or Summary Sheriffs. Whilst this work could represent a conflict of interest for them it should be possible for them to distinguish when a conflict of interest exists and still be able to work as a child welfare reporter when it does not. It may be that an additional risk assessment of potential conflict of interest would need to be completed but we are not convinced that this group of people should be ineligible.”

75. No respondents felt that anyone barred under the PVG scheme should be allowed to work with children.

76. Comments echoing those made at previous questions were made by a few respondents. These included the need to ensure all child welfare reporters are legally qualified, that they should be practitioners in family law work, that they need to be educated and trained in all relevant areas and that there should be a national body for oversight.

77. Question 6 then asked:

Q6: 'Is there anyone else who should be ineligible for inclusion on the register of child welfare reporters?'

78. A total of 44 respondents made additional comments and a wide range of suggestions emerged for additional individuals who should be ineligible for inclusion on the register of child welfare reporters. These included:

- A social worker living in the area where the child lives; or who is employed by the local authority in which the child resides.
- Any social worker or individual who is a serving social worker.
- Any solicitor who practices family law and represents pursuers or defendants, as they will be used to viewing the process as confrontational.
- Those who are not legally qualified or without a legal background.
- Reporters to Children's Hearings or Children's Panel members, where there is a conflict of interest.
- Serving police officers, where there is a conflict of interest.
- Anyone subjected to a claim with their regulatory body, who has been sanctioned for misconduct or who has been removed from the register of their professional regulator.
- Anyone barred from working with protected adults under PVG legislation.
- Anyone without formally recognised qualifications, without relevant experience or without an understanding of domestic abuse.
- Anyone within a political party or who has campaigned on family law related matters.
- Anyone employed in the civil service or local government.
- Anyone known to the family.

## Removal of individuals from the register

79. The consultation paper noted that the 2020 Act gives the Scottish Ministers the power to lay down in regulations the process for removing someone from the register of child welfare reporters. The body appointed to operate and manage the register would have the power to remove someone from the register or suspend them while investigations are pending. If there were serious concerns about the conduct of a child welfare reporter, the Scottish Ministers may need to refer the matter to the reporter's professional regulatory body and this may result in removal from the register, with an immediate end to their position as a child welfare reporter. A new reporter would be appointed to take over any cases and any of their reports being undertaken.

80. Question 7 asked:

Q7: 'Do you agree / disagree with the approach proposed when an individual is removed from the register of child welfare reporters?'

81. As shown in table 8, a large majority of respondents, across all sub-groups, agreed with the proposed approach when an individual is removed from the register of child welfare reporters.

**Table 8: Q7: Do you agree / disagree with the proposed reappointment process for child welfare reporters?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	9	1	1
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	-	-	4
Representative body (5)	3	1	1
Third sector / advocacy (14)	7	3	4
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>25 (63%)</b>	<b>5 (13%)</b>	<b>10 (25%)</b>
<b>Individuals (44)</b>	<b>33 (75%)</b>	<b>5 (11%)</b>	<b>6 (14%)</b>
<b>Total respondents (84)</b>	<b>58 (69%)</b>	<b>10 (12%)</b>	<b>16 (19%)</b>

(Percentages might not add to 100% due to rounding)

82. A total of 52 respondents, across all sub-groups, provided additional commentary in support of their initial response. A number of these noted their agreement with some or all aspects of the approach proposed when an individual is removed from the register of child welfare reporters.

83. A key theme emerging from a significant minority of respondents was of the need for an approach that offers **accountability, scrutiny and transparency**; with a **complaints process that is fair and transparent, an independent review and appeal process** and a **careful and robust process that has the appropriate procedural safeguards**.

84. The issue of whether removal from this register should trigger removal from other registers was also noted by a number of respondents. Some commented that this **should lead to automatic removal from other registers**, while other respondents supported alerting other registers to the failings of a specific child welfare reporter to then take any action they deem important. Only one respondent (a representative body) felt that misconduct of a child welfare reporter should not lead to automatic removal from other registers. As noted by a respondent in the legal sector:

“The lack of cross-over between the three registers is of concern. It seems a curious position that a CWR could be removed from the register of CWR for “incompetence”, but that person may remain on the list of curators ad litem and / or solicitors available for appointment. It is unclear what the situation would be if a CWR was removed for conduct reasons.”

85. A few respondents noted concerns over the **potential for vexatious complaints** to be made, for example, that this could offer a route to aggrieved parties who do not like the report that has been produced. One of these respondents within the legal sector pointed to the need for checks and balances within the process to ascertain the basis of complaints. Allied to this point, a very small number of respondents within the legal sector noted that a child welfare reporter needs to have a right of reply.

86. There were a few calls for **speedy investigations**, with some concerns over the potential for delays in the light of removing a child welfare reporter from the register. There were comments that reports should be quickly reallocated to minimise the impact on children and their families. As noted by a respondent within the third sector / advocacy sub-group:

“[We] agree that it is important there are robust and swift methods in place to suspend or remove individuals from the CWR register where they do not meet the required standards. The proposed approach appears appropriate. We note the point that where a CWR is removed from the register while in the middle of a case this could cause disruption to a child’s timescales. While we understand that this is an unfortunate consequence of a necessary step to safeguard the best interests of the child involved, we would urge consideration of processes to expedite cases where this happens as much as possible to minimise delay and disruption for children and their families.”

87. Other issues raised by small numbers of respondents included a comment that if a new child welfare reporter needs to be appointed, the decision should be made by the judiciary who will know all local child welfare reporters in their area. A respondent noted that the register should be operated by the SCTS rather than the Scottish Government as they are better placed to determine if an individual should be removed from the register. There was comment on a lack of clarity over what is meant by a 'reporter's professional body', particularly as not all appointees will be members of a professional body. There was also a query on information sharing between the body appointed to operate and manage the register, the SLCC and relevant professional bodies; and how the register would link into registers held by other professional bodies.
88. Finally, at this question, there were a very small number of comments as to when a child welfare reporter decides to be removed from the register, with suggestions that they should be able to rejoin at a later date or that they should not be removed immediately but have a period of notice where they can see out their cases.

## **Requirements an individual must satisfy to be included on the register**

89. The consultation paper noted that one of the key aims of establishing a register of child welfare reporters is to ensure that all individuals on the register meet minimum standards; and that all those working as child welfare reporters have the specific skills needed to carry out the role. During the passage of the Bill, a number of suggestions for eligibility requirements were put forward, in terms of training, qualifications and experience across a number of different areas. These included:
- Communicating with children including obtaining the views of children
  - Understanding domestic abuse, particularly the dynamic of coercive control
  - Report writing
  - Understanding the ways adults can influence a child
  - Understanding family conflict
  - Child development including learning disabilities
  - Understanding of child protection issues and the child protection system.

90. Question 8 asked:

Q8: 'Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters?'

91. As shown in table 9, a large majority of respondents agreed with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters.

**Table 9: Q8: Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	8	1	2
Local authority (3)	2	-	1
NHS (2)	1	-	1
Public body (4)	1	-	3
Representative body (5)	4	1	-
Third sector / advocacy (14)	10	2	2
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>27 (68%)</b>	<b>4 (10%)</b>	<b>9 (23%)</b>
<b>Individuals (44)</b>	<b>31 (70%)</b>	<b>7 (16%)</b>	<b>6 (14%)</b>
<b>Total respondents (84)</b>	<b>58 (69%)</b>	<b>11 (13%)</b>	<b>15 (18%)</b>

(Percentages might not add to 100% due to rounding)

92. A total of 58 respondents, across all sub-groups, provided commentary in support of their initial answer; a significant number of whom noted that **these are essential skills and experience to ensure the highest standards of reporting**. That said, a few respondents qualified their response with some suggesting **more information is needed on what is required by 'relevant skills and experience'**, and some suggesting that skills and expertise cannot be assumed or querying how levels of skills, experience and understanding will be assessed. One respondent from the third sector / advocacy sub-group commented that there will be a need to demonstrate skills through professional qualifications and courses attended, rather than via anecdotal evidence.
93. Another respondent in this sector noted that there is a need to seek more than just minimum standards, and to ensure that child welfare reporters have a high level of understanding, particularly in relation to the dynamics, causes and specific impact of domestic abuse on women, children and young people.
94. Some respondents made **suggestions for the types of individual or profession that could be child welfare reporters, although there was little consistency** on this issue. Small numbers of respondents suggested that child psychologists would be suitable and possess the necessary skills, although a respondent in the legal sector noted there are too few child psychologists available and that it would be useful to have a separate register for these when needed. There were a small number of references to the benefits of having a wide range of professions represented among child welfare reporters.
95. There was a single suggestion for a competently trained medical professional who understands about coercive control. A respondent in the legal sector noted that all child welfare reporters should be solicitors or advocates who have the requisite skills and that social workers should not be child welfare reporters.

96. To a large extent, a significant number of respondents pre-empted the subsequent question and identified a range of other skills that child welfare reporters should exhibit. These included:

- An understanding of the court system and knowledge of court processes and the procedural aspects of child welfare court proceedings.
- An understanding of parental alienation and to ensure the voice of the child is heard.
- Ensure a lack of bias and a commitment to non-discriminatory practices and the promotion of equality of process.
- An understanding of children's rights, with a number of references to the UNCRC, GIRFEC, the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and the Common Core launched by the Scottish Government in 2021. As noted by a third sector / advocacy organisation:

“ .... it is not so much a matter of simply obtaining the views of children but ensuring children and young people are able to meaningfully exercise their right to participate and share their views (UNCRC Article 12).”

- An understanding of childhood trauma and its presentations; and links to domestic abuse and coercive control and related attachment issues.
- An understanding of intersectionality relating to gender, disability, sexuality, race / ethnicity and so on.
- A capacity to write clear reports with recommendations supported by factual findings and demonstrating an understanding of the legal framework, although there were a couple of comments that the ability to write reports could be covered in training.

97. The next question asked:

Q9: 'Are there any other requirements that a person must satisfy in order to be included on the register of child welfare reporters?'

98. 52 respondents provided comments in response to this question, many of which echoed points made at the previous question.

99. **Knowledge and experience of the court procedure** was outlined by a number of respondents, across all sub-groups, along with **an understanding of family law**.

100. A number of respondents – primarily individuals – made reference to training and qualifications they felt should be required. These included degree level qualifications and / or unspecified but ongoing annual training, or a minimum of five years PQE (Post Qualified Experience) before a solicitor can be appointed to a register, or a minimum of three to five years PQE for anyone from another profession. There were also a small number of specific references to qualifications in social work, psychology and child development.
101. A number of respondents – all organisations – referred to an **understanding of the rights of the child in the context of UNCRC and GIRFEC**. There were also some references to the need to demonstrate a good understanding on the ways in which a child can be influenced or coerced, and to have an understanding of the ways in which children can express their views as well as good communication skills with children and adults.
102. Other references were made to intersectionality and the need for knowledge on different cultural systems, diversity, faith, gender, sexuality and so on; an understanding of risk issues such as mental health, substance misuse, addictions and emotional wellbeing; and of parental alienation. There was also reference to trauma informed practice, as distinct from domestic abuse. There was also reference to the need for an ability to analyse information, form conclusions and make evidence-based recommendations, as well as a capacity to produce well written and informed reports and being able to offer empathy, impartiality, integrity and sound judgement. A small number of respondents also referred to a variety of other skills including record keeping, IT skills and a knowledge of data protection.

## Existing child welfare reporters

103. There are understood to be approximately 400 child welfare reporters in Scotland appointed across the six sheriffdoms and the Court of Session. Currently, existing child welfare reporters are on lists held by each Sheriff Principal and the Court of Session; each using different criteria. The Scottish Government considers that existing child welfare reporters would have to apply to be on the new register so that everyone meets the same minimum standards. Question 10 asked:

Q10: 'Do you agree / disagree that existing child welfare reporters have to apply to be on the new register?'

104. As shown in table 10, a large majority of those answering this question agreed that existing child welfare reporters have to apply to be on the new register. Most of those who disagreed were individuals.

**Table 10: Q10: Do you agree / disagree that existing child welfare reporters have to apply to be on the new register?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	8	1	2
Local authority (3)	3	-	-
NHS (2)	1	-	1
Public body (4)	-	-	4
Representative body (5)	5	-	-
Third sector / advocacy (14)	13	-	1
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>31 (78%)</b>	<b>1 (3%)</b>	<b>8 (20%)</b>
<b>Individuals (44)</b>	<b>32 (73%)</b>	<b>9 (20%)</b>	<b>3 (7%)</b>
<b>Total respondents (84)</b>	<b>63 (75%)</b>	<b>10 (12%)</b>	<b>11 (13%)</b>

(Percentages might not add to 100% due to rounding)

105. A total of 62 respondents then provided commentary in support of their initial response.

106. A key theme to emerge, cited by a significant minority of respondents across all sub-groups, was of a **need for all child welfare reporters to be subject to the same criteria**, regardless of previous appointments or experience. As noted by a representative body:

“In principle it would be better if all members of an organisation were subject to the same appointment requirements and had an understanding of and an agreement to the same obligations and responsibilities. This would provide a common platform of appointment and expectation.”

107. The need for **all child welfare reporters to be of the same high standard and working to the same principles and requirements** was another common theme across respondents. Allied to this, there were a few comments of the need for consistency in child welfare reporters across Scotland.

108. There were a few comments that the **calibre of existing child welfare reporters varies considerably across Scotland** and having to apply for re-appointment would ensure all work to the same minimum standards. As commented on by a respondent in the other sub-group:

“... whilst many reporters work well, there are those who are either unwilling or indeed hostile to making any statements in their reports to the court of domestic abuse. This undermines confidence in the civil process and has longer term implications for the child(ren) who are required to attend contact with an abusive parent. To simply roll forward current reporters would be to undermine credibility of the proposed reform and changes set out.”

109. A few respondents outlined advantages that the proposed application scheme would introduce. These included:

- Will mean transparency and accountability.
- This will ensure a more diverse range of individuals can be included on the register.
- This offers a rights-based approach.

110. Suggestions for an alternative application process were made by a few respondents, with comments that existing child welfare reporters should be ‘fast-tracked’ or prioritised and / or exempted from pre-appointment training where they can demonstrate they meet the required standards; for example, by looking at a sample of recent reports. This approach was also felt to enable any additional training needs to be identified.

111. Given similarities between child welfare reporters and safeguarders, there were also a small number of suggestions that existing safeguarders applying to be child welfare reporters should also be fast-tracked and prioritised.
112. There were also small number of comments that existing child welfare reporters should undergo some minimum training requirements prior to being included on the register, or that there might be a need for a CPD programme to bring them up to standard within the necessary timeframe.
113. Of those respondents who **disagreed with the proposed approach**, the key reasons, albeit each was cited by a small number of respondents, were that this **process could alienate some existing child welfare reporters** and this could **lose relevant experience**; that all existing child welfare reporters are highly experienced and have already demonstrated they have the required skills and experience; or simply that previous experience should be sufficient.
114. Furthermore, a small number of respondents noted that current child welfare reporters are appointed by sheriffs who would not appoint these individuals if they did not exhibit the necessary skills and experience.
115. Other comments, each made by only one or two respondents, included that child welfare reporters and safeguarders should come under the same administration. It was also felt there may need to be a focused recruitment drive to recruit new child welfare reporters if many existing child welfare reporters do not reapply to be appointed to the register. One respondent noted that:

“Consideration should be given to transitional / savings provisions as appointments under the existing system will be in place when the 2020 Act provisions are commenced.”

## Ongoing training requirements for child welfare reporters

116. The consultation paper noted that the Scottish Government would expect anyone who is included on the register of child welfare reporters to undergo regular training to ensure they are aware of the latest understanding in key areas. Training would be commissioned by the body appointed to operate and manage the register. A number of specific training areas were outlined. These were:

- The role of the child welfare reporter
- Communicating with children, including obtaining the views of the child and providing explanations of decisions to a child
- Understanding domestic abuse, particularly the dynamic of coercive control
- Report writing
- Understanding the ways adults can influence a child
- Child development including learning disabilities
- Child protection issues

117. Attending a certain number of training days would be mandatory and this has been estimated at four days paid training a year. If a child welfare reporter does not attend the required number of training days, they could be in breach of their terms and conditions and could be recommended for removal from the register.

118. Question 11 asked:

Q11: 'Do you agree / disagree with the proposed training requirements for child welfare reporters?'

119. As shown in table 11, a large number of those responding, across all sub-groups, agreed with the proposed training requirements for child welfare reporters.

**Table 11: Q11: Do you agree / disagree with the proposed training requirements for child welfare reporters?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	9	1	1
Local authority (3)	3	-	-
NHS (2)	1	-	1
Public body (4)	1	-	3
Representative body (5)	5	-	-
Third sector / advocacy (14)	9	3	2
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>29 (73%)</b>	<b>4 (10%)</b>	<b>7 (18%)</b>
<b>Individuals (44)</b>	<b>31 (70%)</b>	<b>9 (20%)</b>	<b>4 (9%)</b>
<b>Total respondents (84)</b>	<b>60 (71%)</b>	<b>13 (15%)</b>	<b>11 (13%)</b>

(Percentages might not add to 100% due to rounding)

120. A total of 63 respondents provided commentary supporting their initial response, a number of whom noted the importance of training for consistency of approach across Scotland and to ensure standards are met by all child welfare reporters. A few of these respondents referred specifically to the importance of ongoing training so as to ensure skills, expertise and knowledge can be kept up-to-date and ensure that all child welfare reporters have the required skillset. There were also a small number of references to the need for training to be of high quality.

121. A few respondents pre-empted the following question by commenting on the proposed number of training days per year, with most commenting that 4 days per annum is excessive. There were a small number of suggestions that where individuals currently have to undertake a specified number of CPD hours per year, that these should contribute to the required annual training for child welfare reporters.

122. There were a small number of comments that more detail and clarity is required, in terms of content and format.

123. Many of the respondents answering this question focused on areas of training they felt were necessary for child welfare reporters, often echoing points made in earlier questions. These areas included:

- Communication, not just with children and young people, but also adults, including those who may be vulnerable, disabled, dysfunctional and so on.
- An understanding of court procedures and basic law governing the types of work undertaken by child welfare reporters; and an understanding of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) .
- An understanding of the importance of relationships with other family members such as siblings or grandparents, and friends.
- Data protection / data security.
- Addictions / substance use and recovery.
- Mental health training and emotional wellbeing.
- Children’s rights, again with reference to UNCRC.
- Understanding conflict.
- Child psychology and development; and attachment theory.
- Interviewing skills; ensuring that child welfare reporters know how to encourage children to express their views in a variety of different ways.
- Trauma and its impact.
- Domestic abuse and coercive control.
- Parental alienation.

124. Some respondents – all organisations across different sub-groups – made suggestions for the delivery and structure of training, with suggestions that **training and support needs to be flexible and tailored to meet the range of skills and expertise already held by a child welfare reporter**. There were some comments of the need to adopt a modular approach and to use a range of different delivery channels including online sessions and interactive sessions. That said, a small number of respondents noted that there should be exemptions to avoid duplication of delivery; the example given was for a child welfare reporter who is also a safeguarder or curator ad litem.

125. The phrase ‘understanding the ways adults can influence a child’ was commented on by a few respondents, with a request for clarity on what this means and one respondent asked for this to be removed.

126. Question 12 then asked:

Q12: ‘Is four days of paid training per year for child welfare reporters appropriate?’

127. As shown in table 12, a significant minority of respondents (25) felt that four days of paid training per year is appropriate. However, slightly more (29) wanted to see more days of training per year, compared to 13 who felt fewer days would suffice.

**Table 12: Q12: Is four days of paid training per year for child welfare reporters appropriate?**

	Number			
	Yes	No, few days	No, more days	Don't know
Legal (11)	4	4	1	2
Local authority (3)	3	-	-	-
NHS (2)	1	-	1	-
Public body (4)	-	-	-	4
Representative body (5)	-	2	2	1
Third sector / advocacy (14)	3	-	8	3
Other (1)	1	-	-	-
<b>Total organisations (40)</b>	<b>12 (30%)</b>	<b>6 (15%)</b>	<b>12 (30%)</b>	<b>10 (25%)</b>
<b>Individuals (44)</b>	<b>13 (30%)</b>	<b>7 (16%)</b>	<b>17 (39%)</b>	<b>7 (16%)</b>
<b>Total respondents (84)</b>	<b>25 (30%)</b>	<b>13 (15%)</b>	<b>29 (35%)</b>	<b>17 (20%)</b>

(Percentages might not add to 100% due to rounding)

128. Of those respondents who felt that **four days of paid training per year for child welfare reporters was appropriate**, the key themes – although each was only mentioned by a small number of respondents – were that four days is reasonable or sufficient, although two respondents in the legal sector noted the proviso that CPD from other recognised organisations should be accepted within the requirements of training for child welfare reporters. Another proviso noted was that the training needs to be of high quality and effective and cover all requirements.

129. Of the respondents who felt that **more days of paid training per year** would be needed, the key theme – and mentioned by a significant number of these respondents – was simply that four days will not be enough to cover the required levels and amounts of training. There were also a small number of references to the need for ongoing training; and some references to different formats the training could take such as online and face-to-face.

130. Of the respondents who felt that **four days is too long a period of time**, comments tended to focus on the existing experience and expertise of child welfare reporters and that while four days of training may be needed for new child welfare reporters, that it would be excessive for those who are already child welfare reporters. There were a few suggestions for how much training would be required, although there was no agreement as to what this should be; it ranged from one day to three days.
131. Of those who answered '**don't know**' to this question, the key comments were of a need for more detail or that it would depend on what training a child welfare reporter already has.
132. Across all respondents there were a few suggestions that relevant professional CPD should count towards the training for child welfare reporters. There were also a couple of references to safeguarding and that it is relatively common for safeguarders not to turn up to training sessions.

## Fee rates for child welfare reporters

133. The consultation paper noted that currently child welfare reporter fees are paid by either the parties in a case themselves or by SLAB if the parties are eligible for legal aid. Once the register of child welfare reporters is operational, this cost would be met through the body appointed to operate and manage the register. Table 6 of the Financial Memorandum which was published when the Children (Scotland) Bill was introduced into the Scottish Parliament provided some estimated costs, and the Scottish Government would expect to set fee rates to ensure consistency of remuneration. The consultation paper set out a range of options for consideration, namely either an hourly rate, a per page rate for the report, or another way.

134. Question 13 asked:

Q13: 'How should fee rates for child welfare reporters be applied?'

135. As shown in table 13, a majority of respondents who answered this question supported an hourly rate, although a significant minority felt that another option would be preferable.

**Table 13: Q13: How should fee rates for child welfare reporters be applied?**

	Number			
	Hourly Rate	Per page Rate	Another Way	Don't know
Legal (11)	5	1	3	2
Local authority (3)	3	-	-	-
NHS (2)	1	-	1	-
Public body (4)	-	-	-	4
Representative body (5)	1	-	3	1
Third sector / advocacy (14)	8	-	2	4
Other (1)	1	-	-	-
<b>Total organisations (40)</b>	<b>19 (48%)</b>	<b>1 (3%)</b>	<b>9 (23%)</b>	<b>11 (28%)</b>
<b>Individuals (44)</b>	<b>22 (50%)</b>	<b>1 (2%)</b>	<b>13 (30%)</b>	<b>8 (18%)</b>
<b>Total respondents (84)</b>	<b>41 (49%)</b>	<b>2 (2%)</b>	<b>22 (26%)</b>	<b>19 (23%)</b>

(Percentages might not add to 100% due to rounding)

## Preferences for an hourly rate

136. The key comment made by a significant number of respondents was that the work involved can **vary from case to case** and can be of **varying complexity**, with different inputs in terms of **time and resources**, so an **hourly rate best reflects the work that has to be undertaken**. As an organisation in the third sector / advocacy sub-group noted:

“[We] believes strongly that listening to children properly is a process not an event. Child Welfare Reporters should be prepared to take time to get to know children when listening to their views; and to see children in environments they feel comfortable and confident in. This takes time. Staff in organisations who do see children over a period of time in the specific context of family life and parent conflict (such as contact centre staff) are important facilitators of this process. To achieve all of this takes time (input) and the output (number of pages) is a poor measure.”

137. Other comments relating to the payment of an hourly rate, each made by a small number of respondents, included:

- This the most appropriate / viable option.
- It will ensure there is no incentive to write excessively long reports.
- Applying a flat rate would encourage a ‘one size fits all’ approach.
- The current rate paid by SLAB of £130 per hour is acceptable and works well.
- Provides a clear fee mechanism which is flexible.
- The total amount paid should be capped or graded, with a minimum and maximum fee which can be negotiated in particularly complex cases.

138. A few respondents made comments not directly related to the payment of an hourly rate. There were a small number of suggestions for internal reviewing of the quality of reports and oversight of reports to ensure consistency in quality and to ensure that claims made are not excessive. A small number of respondents also referred to the current disparity in pay between child welfare reporters and safeguarders, and noted both should be paid at the same rate.

## Preferences for a per page rate

139. Only a very small number of respondents supported this approach. A respondent in the legal sector felt that what is useful to the court is the report, although there could be an increase in the rate in complex cases; an individual suggested that a reporting template should be used which would ensure reports contain only relevant and required information.

## Suggestions for another approach

140. The key suggestion, albeit only made by a minority of respondents, was for a combination of an hourly rate and page rates for reports, which would be similar to the current system operated by SLAB, where there is the potential to apply for further sanction from SLAB to exceed the £3,000 fee limit in complex cases. A small number of respondents also noted that the current SLAB fee of £3,000 is reasonable and appropriate and easy to understand. A few individuals commented that payment on a per case basis would be preferred, although it was felt there could be exceptions depending on the complexity of a specific case. There were a small number of suggestions for child welfare reporters to be salaried staff, which would negate the need to have any form of rate. Once again, there were also a small number of comments that the pay of safeguarders should be in line with that of child welfare reporters. Other options outlined included:

- A basic cost ceiling.
- A day rate, based on an eight hour day.
- A stepped payment scale to reflect the complexity of needs.
- An agreement on hours at the outset, based on an estimation, and then reviewed on completion of the report.

## Expenses for child welfare reporters

141. The Scottish Government expects that child welfare reporters would only be able to claim actual expenses and allowances incurred while carrying out child welfare reporter work. There is an expectation that child welfare reporters will seek value for money in terms of travel expenses. Question 14 asked:

Q14: 'Do you have any comments on the proposed policy in relation to expenses for child welfare reporters?'

142. 37 respondents opted to answer this question and the key theme was agreement with the proposed policy. This **approach was described in various ways including being reasonable, acceptable, appropriate for this role and in line with other working practices**. There were also a few comments on the **need for oversight** so as to ensure transparency and accountability, that all claims should be checked and that child welfare reporters should provide receipts or evidence for all expenses claimed.

143. A small number of respondents noted a preference for the current approach and wanted to see a continuation of this approach.

144. Other points raised by respondents included that some allowances outlined in the consultation paper are not enough – for example, hotel overnight rates - and there should be provision for exceptional expenses to be paid. There was also comment that the approach should follow HMRC rules on claiming expenses or expenses should be offered at the same rate as the Scottish Government or the civil service. There was reference to child welfare reporters being expected to use public transport for travel where possible.

### How a court would appoint a child welfare reporter

145. The Scottish Government's preferred approach is that when a court orders a child welfare reporter to be appointed, the clerk of the court will contact the body appointed to operate and manage the register. The body would then select the next child welfare reporter from the register who is willing to work in the specific geographic location. Child welfare reporters should have enough training in all relevant areas to not require a specialist in a particular area to be appointed. This may be a more transparent approach.

146. An alternative could be that the court could also, if it wished, specify areas it would expect the child welfare reporter to have expertise in.

147. Question 15 asked:

Q15: 'When a child welfare reporter is selected, should this be:

- The next person on the register
- A person with specific areas of expertise requested by the court
- Through another system

148. As shown in table 14, more respondents (38) supported the selection of a child welfare reporter based on specific expertise than supported the child welfare reporter next on the register (16). That said, a significant minority suggested another system should be adopted.

**Table 14: Q15: How should a child welfare reporter be selected?**

	Number			
	Next on register	Person with specific expertise	Another system	Don't know
Legal (11)	2	4	5	-
Local authority (3)	1	1	1	-
NHS (2)	1	-	1	-
Public body (4)	1	-	1	2
Representative body (5)	2	1	1	1
Third sector / advocacy (14)	-	6	6	2
Other (1)	-	1	-	-
<b>Total organisations (40)</b>	<b>7 (18%)</b>	<b>13 (33%)</b>	<b>15 (38%)</b>	<b>5 (13%)</b>
<b>Individuals (44)</b>	<b>9 (20%)</b>	<b>25 (57%)</b>	<b>9 (20%)</b>	<b>1 (2%)</b>
<b>Total respondents (84)</b>	<b>16 (19%)</b>	<b>38 (45%)</b>	<b>24 (29%)</b>	<b>6 (7%)</b>

(Percentages might not add to 100% due to rounding)

149. While most respondents noted a preference for a specific approach to be adopted, many referred to the need for any **system to focus on the needs of children and young people**, as well as **offering a degree of flexibility**. Furthermore, there were also comments that it is **not realistic to expect or assume that all child welfare reporters will have uniform knowledge and expertise**.

### Preferences for the next person on the register

150. Of the respondents citing this option as their preference, a key reason was that **this would be equitable and fair and that all child welfare reporters should have a minimum level of competence and be guided by approved procedures**. Another key reason was that **the current system is unfair and well-known reporters are more likely to be appointed as they are known by other solicitors or sheriffs**. That said, there were a small number of comments that this approach still needs to offer a degree of flexibility, for example, when a child welfare reporter needs to be of a specific gender. A very small number of respondents also felt this approach would make the selection process more transparent.

151. However, some provisos were outlined by respondents, with some suggestions that there may be cases where it will be necessary for sheriffs to request a specific individual because of their specific expertise or that there will be some cases where the local knowledge of a sheriff means that they are best placed to appoint an alternative child welfare reporter, rather than the next person on the register.

152. Very small numbers of respondents also commented that child welfare reporters should be able to specify geographic areas where they are prepared to work and that there is a need to consider location and likely travel time and that non-productive travel time should be restricted. Finally, very small numbers of respondents also noted that all child welfare reporters will have the same training and all should be able to carry out the necessary work on any specific case.

### **Preferences for a person with specific expertise requested by the court**

153. The key reason – and cited by a majority of those with a preference for this option – was that **choice of child welfare reporter needs to be matched with knowledge and expertise**. Linked to this, a few respondents noted that courts should have absolute discretion to choose a reporter, as they know the reporters in their area.

154. Although a few respondents – mostly third sector / advocacy organisations – noted that all child welfare reporters should have the same knowledge, they still noted that there will be some cases where there will be a need for specialist expertise or that a court may need to call upon a child psychologist, for example.

### **Preferences for through another system**

155. The highest number of respondents noting a preference for this approach commented that a **combination of the next on the register** (referred to as the traffic light system by some) and a **person with specific expertise requested by the court would be most appropriate**. Again, there were some comments that sheriffs are best placed to decide who to appoint to a specific case; or that there will be occasions when matching the most appropriate expertise to a specific case will be the most important factor in the decision-making process. As noted by an organisation in the legal sector:

“It is the obligation of the judiciary to act in the best interests of a child in every case and to that end, they must retain discretion to appoint the CWR who is most appropriate for the case.”

## Child welfare reporter providing recommendations in reports

156. The instructions to child welfare reporters which were published as a result of the working group on child welfare reporters suggested that the report should include recommendations. One option is for the court to ask the child welfare reporter to provide recommendations on what is in the best interests of the child, although this could be seen as influencing the court when the child welfare reporter might not have access to all the information held by the court. Question 16 asked:

Q16: 'Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?'

157. As shown in table 16, a majority of respondents answering this question felt a child welfare reporter should provide recommendations on what is in the best interests of the child in their report.

**Table 15: Q16: Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?**

	Number		
	Yes	No	Don't know
Legal (11)	6	3	2
Local authority (3)	1	2	-
NHS (2)	1	1	-
Public body (4)	1	-	3
Representative body (5)	5	-	-
Third sector / advocacy (14)	6	6	2
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>21 (53%)</b>	<b>12 (30%)</b>	<b>7 (18%)</b>
<b>Individuals (44)</b>	<b>31 (70%)</b>	<b>6 (14%)</b>	<b>7 (16%)</b>
<b>Total respondents (84)</b>	<b>52 (62%)</b>	<b>18 (21%)</b>	<b>14 (17%)</b>

(Percentages might not add to 100% due to rounding)

158. A total of 67 respondents answered this question. Many of those who agreed that a child welfare reporter should provide recommendations on what is in the best interests of the child in their report, felt that **recommendations are an important part of the report** and that child welfare reporters should be providing them, albeit that a sheriff can disregard these if they so choose. Allied to this, a small number of respondents felt that the limitations of the reporter's remit should be made clear in the report.

159. There were also a few comments that the whole system needs to operate in the best interests of the child and that this fits with the UNCRC Article 3 – the best interest principle.

160. However, while there was a degree of support for recommendations to be provided, a number of respondents noted that there will be times where a child welfare reporter has a restricted remit in which recommendations are not required. As noted by a respondent in the legal sector:

“The function of a child welfare reporter is to assist the decision maker. The decision maker sets out in the form what the child welfare reporter is asked to do to assist the court and that should be complied with. Sometimes recommendations will be called for by the decision maker, sometimes they will not be. Where recommendations are called for, these are not determinative but to assist the court. We suggest that where recommendations are asked for, it should be made clear that these are not decisions but recommendations to assist the court.”

161. A few of those in support of the provision of recommendations commented that these need to be robust and evidence-based.

162. Of the respondents who disagreed that a child welfare reporter should provide recommendations, the key reason was that this is the role of the sheriff with the child welfare reporter playing a complementary role in providing the information upon which the sheriff can make their recommendations, and that child welfare reporters should simply collect and report their evidence. A few respondents also commented that it is not possible for a child welfare reporter to provide recommendations as they do not have access to all the information held by the court. As noted by a respondent in the third sector / advocacy sub-group:

“The purpose of the appointment of the reporter should be to assist the Court and ensure that sufficient evidence of the child's views and individual circumstances, including their living conditions, relationships, health, wellbeing and needs is available for the Court to take into account in the judicial decision-making. It is the role of the Court to assess the evidence, including any recommendations, and make a determination on best interests.”

## Complaints procedure

### Complaints by a person about not being included on the register of child welfare reporters and about being removed from the register

163. An individual may wish to complain about being unsuccessful in their application to be on the register of child welfare reporters or about being removed from the register. The Scottish Government envisages that any such complaint would initially be handled by the team which led on the appointments. If the individual remains dissatisfied, then the complaint would be dealt with by another team who had no role in the original decision-making process. Question 17 asked:

Q17: 'Do you have any comments on the proposed procedure for complaints from individuals who are unsuccessful when applying to be on the register of child welfare reporters or are removed from the register?'

164. A total of 31 responded to this question. The key theme which emerged was that the **proposed procedure for complaints was reasonable, fair, proportionate or appropriate**. There were a few comments that there should always be a right of appeal to a team that is independent of the initial selection panel. However, a small number of respondents felt that complaints about unsuccessful applications should be made to the body which made the original decision not to appoint a child welfare reporter or to remove them from the register, with subsequent right of appeal to the Scottish Government.

165. A small number of respondents wanted more information or clarity on how a second team would be identified and selected.

166. There were also a few comments on the need to ensure that the process is transparent and accountable, with clearly set out timescales.

### Grievance procedure

167. The consultation paper noted that a person on the child welfare reporter register may have a grievance about fees or expenses; or comments on their appraisal; or on the quality of the training provided and the subjects covered; or on other points about the way in which the register is run. Any such grievances would be handled by the body appointed to operate and manage the register. Question 18 asked:

Q18: 'Where a child welfare reporter has a grievance about fees or expenses or comments on their appraisal, should this be dealt with by the body appointed to operate and manage the register?'

168. As shown in table 16, a large majority of respondents agreed that a grievance about fees or expenses or comments on their appraisal should be dealt with by the body appointed to operate and manage the register. Most opposition came from individuals.

**Table 16: Q18: Where a child welfare reporter has a grievance about fees or expenses or comments on their appraisal, should this be dealt with by the body appointed to operate and manage the register?**

	Number		
	Yes	No	Don't know
Legal (11)	4	-	7
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	4	-	1
Third sector / advocacy (14)	8	1	5
Other (1)	-	-	1
<b>Total organisations (40)</b>	<b>22 (55%)</b>	<b>1 (3%)</b>	<b>17 (43%)</b>
<b>Individuals (44)</b>	<b>28 (64%)</b>	<b>6 (14%)</b>	<b>10 (23%)</b>
<b>Total respondents (84)</b>	<b>50 (60%)</b>	<b>7 (8%)</b>	<b>27 (32%)</b>

(Percentages might not add to 100% due to rounding)

169. 37 respondents opted to provide further commentary in support of their initial response to this question. Two key themes emerged from those respondents who felt a grievance should be dealt with by the body appointed to operate and manage the register. First, and noted by respondents across all sub-groups, was that this body is best placed to deal with any grievances. The second key theme was that in the first instance, a grievance should be dealt with by this body but that thereafter there is a need for access to an alternative and independent organisation for any appeal to be made. A small number of respondents noted this is an issue with safeguarders, who do not currently have a right to appeal.

170. A small number of third sector / advocacy organisations, who supported child welfare reporters being employees, felt that this status would mean that any grievance would be dealt with under their conditions of employment.

171. The small number of respondents – mostly individuals – who disagreed with a grievance being dealt with by the body appointed to operate and manage the register, felt this should be dealt with by a body independent of the register.

## Complaints about a child welfare reporter

172. The consultation paper noted that one of the key aims of establishing the register of child welfare reporters is to ensure there is a child-friendly complaints process available. If a child or adult wishes to complain about the conduct of a child welfare reporter, they should contact the body appointed to operate and manage the register. If there is evidence of failings, a decision would be taken on the outcome and this could lead to suspension or removal from the register.

173. The final question in this part of the consultation asked:

Q19: 'Do you have any comments on the proposed procedure for complaints about child welfare reporters?'

174. 45 respondents provided comments on the proposed procedure for complaints about child welfare reporters. There were references to the need for the **procedure to be straightforward, simple, accessible, clear, transparent, accountable and with short and speedy timescales**. There were also a small number of references to the need for regular independent reviews of the complaints procedure and its effectiveness. There were a small number of calls for any party whose views are included in the report to be provided with a copy of the report, redacted where necessary.

175. In relation to children specifically, there were some calls for the **procedure to be child-friendly and comply with the UNCRC**, with some suggestions – mostly from third sector / advocacy organisations – that children should be involved in designing and shaping the complaints process to ensure that it meets their requirements. A small number of respondents suggested that a child-friendly version of each report should be produced alongside the standard report, particularly as the views of children will be represented in any reports produced. The need for access to a support or advocacy worker was also noted by a few respondents.

176. The need to ensure that any complaint should be limited to the conduct of the child welfare reporter or the standard of their report, rather than related to any of the outcomes arising from the report, was acknowledged by a few respondents. Linked to this, there were some concerns that the nature of the adversarial system in which these reports are presented could lead to some complaints being unmeritorious; and there were suggestions from a few respondents that there should be an initial filtering process to sift out any complaints without merit. A small number of representative bodies also suggested there should be a right of appeal from the child welfare reporter to an organisation unconnected to the enquiry.

177. A number of respondents – mostly those in the legal and public body sectors – raised the issue that there are **already processes for complaints to be made and that an additional procedure could lead to duplication and confusion**. One example provided was that a complaint could also be made to the SLCC about a child welfare reporter who is also a solicitor. This could lead to the same individual facing two separate complaint investigations, carried out under different statutory schemes, with different standards of conduct and potentially with different standards of proof being applied. Each procedure could lead to different decisions, outcomes and sanctions being made. There was also a query as to which organisation would be the final arbiter in this situation. So, there were some requests for the existing regulation and complaints schemes to be taken into account when a procedure for complaints is being developed. A few organisations in the legal sector suggested that all complaints should only be made to the relevant sheriff.
178. There were a small number of comments on the need to consider how a child welfare reporter can raise concerns or make a complaint, or that there needs to be structures in place for child welfare reporters who wish to make a complaint.

## Register of Curators ad litem

179. This section of the consultation focused on curators ad litem and sought views on:

- The process for including a person on, and removing a person from the register, ineligibility requirements and the complaints mechanism.
- The fee rates and expenses to be paid to curators ad litem.
- The requirements for curators ad litem to be on the register.
- What ongoing training requirements there should be for curators ad litem.
- How the court would appoint a curator ad litem from the register.

180. The consultation paper noted that curators ad litem are appointed to represent and protect the interests of an individual lacking full capacity, including a child. Their role is entirely separate and distinct from that of a child welfare reporter. It is envisaged that the registers of child welfare reporters and curators ad litem will be separate, although the body appointed would be likely to undertake the operation and management of both registers as both would operate along similar lines.

181. Currently, practice in relation to the appointment of curators ad litem varies across Scotland, and in some instances curators are appointed from the list of child welfare reporters held by the Sheriffs Principal. In other cases a curator may be appointed from a panel of curators held by each local authority. The 2020 Act places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as curators ad litem. The 2020 Act only covers a register of curators for the purposes of orders made under section 11 of the 1995 Act.

## Requirements for curators ad litem to be on the register

182. The Scottish Government expects that curators ad litem would need to be either solicitors or advocates as their role is to represent the interests of a child who is involved in a family court case by attending court and participating in proceedings. It is expected that a curator would hold a practising certificate from the Law Society of Scotland or be a member of the Faculty of Advocates. It is also expected that certain categories of people would not be eligible to be on the register or curators ad litem. These include:

- An individual directly involved in the establishment, maintenance operation or management of the register of curators ad litem.
- An individual employed by the SCTS.
- A member of the judiciary.
- A member of the Scottish Government or a junior Scottish Minister.

183. It is also expected that an individual would need to demonstrate specific skills and experience, including:

- The law in relation to children.
- An understanding of family conflict.
- Child development including learning disabilities.

184. Question 20 asked:

Q20: 'Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of curators ad litem?'

185. As shown in table 17, an overwhelming majority of those who gave an opinion agreed with the proposed requirements.

**Table 17: Q20: Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of curators ad litem?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	10	-	1
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	-	-	5
Third sector / advocacy (14)	6	2	6
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>23 (58%)</b>	<b>2 (5%)</b>	<b>15 (38%)</b>
Individuals (44)	<b>29 (66%)</b>	<b>3 (7%)</b>	<b>12 (27%)</b>
<b>Total respondents (84)</b>	<b>52 (62%)</b>	<b>5 (6%)</b>	<b>27 (32%)</b>

(Percentages might not add to 100% due to rounding)

186. 42 respondents chose to give reasons for their answer at Q20a. Many of those who agreed with the proposed requirements mentioned caveats in common with the few who disagreed and these are therefore all analysed together.

187. A significant minority of respondents thought the requirements to be satisfied in order to be included on the register of curators ad litem should be **the same or as close as possible to the requirements for child welfare reporters**. Reasons given included that most individuals act in both capacities and this would ensure consistency. A few respondents noted that these requirements should be a bare minimum.

188. Similar numbers noted that the **proposed requirements seem sensible**, agreeing that the areas mentioned are those which are needed to fulfil the role or the essentials for any curator.

189. However, the greatest numbers of respondents - a large minority - either **reinforced the importance of various specified requirements** on the list or **suggested additions to the list**. Of particular note were a number of mentions about **demonstrating experience and / or knowledge and understanding of domestic abuse situations**, as represented by a third sector / advocacy respondent as follows:

“Given their role in representing children in section 11 cases, particularly those where domestic abuse may be an issue, it is absolutely vital that curators must be able to demonstrate current skills, experience and relevant training in domestic abuse, particularly the dynamic of coercive control.” (Third Sector / Advocacy)

190. Small numbers of respondents recommended further areas in which experience, skills and/or knowledge should be requirements, including the following:

- Domestic violence.
- Meeting PVG requirements.
- Knowledge of / experience with mental health conditions (e.g. trauma, adverse childhood experiences).
- Knowledge of family contact.
- Experience working with children and families.
- Awareness of discrimination and anti-discriminatory practices.
- Knowledge of data handling (e.g. unlawful data sharing.)
- Knowledge of processes used by Police Scotland.
- Knowledge of how to communicate with children.
- The need to be a solicitor or advocate as attending court is a likely necessity.

191. A significant minority of respondents stated more generally that the role needs appropriate skills, knowledge, experience and / or qualifications (for instance in communicating with mentally disabled persons). A few comments were received about the need to ensure the requirements are clear, specific and transparent to avoid confusion.

192. Finally, a few respondents accepted the suggested requirements while highlighting a few caveats as follows:

- A need for supporting certification.
- A necessity to act independently (so as to ensure no conflicts of interest arise).
- A need for consistent application nationwide.

193. Question 21 then went onto ask:

Q21: ‘Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem?’

194. As shown in table 18, a majority of respondents thought there should be additional requirements, except for local authorities and legal organisations.

**Table 18: Q21: Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem?**

	Number		
	Yes	No	Don't know
Legal (11)	5	5	1
Local authority (3)	1	2	-
NHS (2)	2	-	-
Public body (4)	-	-	4
Representative body (5)	-	-	5
Third sector / advocacy (14)	10	-	4
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>19 (48%)</b>	<b>7 (18%)</b>	<b>14 (35%)</b>
Individuals (44)	<b>18 (41%)</b>	<b>7 (16%)</b>	<b>19 (43%)</b>
<b>Total respondents (84)</b>	<b>37 (44%)</b>	<b>14 (17%)</b>	<b>33 (39%)</b>

(Percentages might not add to 100% due to rounding)

195. 41 respondents made comments about additional requirements they felt should be satisfied in order to be included on the register of curators ad litem. However, a majority of the answers reinforced or expanded upon the requirements already stated within the consultation document, as opposed to stating additional requirements.

196. A significant minority of respondents reinforced the requirement to be **independent**. Conflicts of interest were regarded as a reason for preventing people from acting as curators ad litem, particularly regarding connections to interested parties such as councils' social services departments or education departments.

197. Similar numbers of respondents highlighted the perceived **importance of PVG or Disclosure and Barring Service (DBS) disclosures or checks in ensuring potential curators were not barred from working with children or vulnerable individuals**. A couple of respondents wanted curators to have a clean track record with no claims and no pending investigations.

198. The largest numbers of respondents chose to comment about knowledge, experience, skills and training relating to the involvement of children. Knowledge and training regarding **child behaviour and psychology** was regarded as a necessity, with suitable qualifications such as a university level qualification suggested in order to comply with this requirement. **Child development knowledge and training** was also raised, with suggestions that this was needed to understand the capabilities of young people. One third sector / advocacy respondent recommended a suitable qualification to comply with the minimum level required for SSSC registration.
199. Further related experience and knowledge was also recommended regarding **communicating with children**. Examples of situations in which this requirement would be needed were given, including:
- Interviewing children to get their views without inadvertently using leading questioning.
  - How to listen and speak to children.
  - Discerning whether or not children may be responding under undue parental influence.
  - Dealing with language disabilities or inability to speak.
200. Several respondents also mentioned **knowledge of the child protection system** (e.g. with regard to safeguarding) as being a requirement.
201. **Experience** in a number of areas was considered by a significant number of respondents not to be given a high enough profile as a requirement. Legal experience was most frequently suggested as a prerequisite, with requests from a couple of respondents for there to be a minimum required period post qualification. One legal organisation suggested that 5 years post qualification experience would be appropriate. **Family law experience** in particular was singled out by a few respondents, in terms of court procedures, practice, and specialisms in child and family law and in terms of accreditations from the Law Society of Scotland.
202. A few respondents focused on a requirement for skills, knowledge and training concerning domestic abuse, given curators' roles in representing children in section 11 cases. Similar comments were made in relation to trauma and its impacts, coercive control and understanding family conflict (e.g. parental alienation).
203. Finally a few mentions were made about a requirement for unbiased reporting skills. Comments suggested reporting should be factual, succinct and analytical in nature, albeit with an emphasis on the child and their welfare.

## Ongoing training requirements for curators ad litem

204. The consultation paper referred to the expectation that anyone included on the register of curators ad litem would undergo regular training to ensure they were aware of the latest understanding across a number of key areas. These were:

- The role of the curator ad litem.
- Family Law.
- Family conflict.
- Understanding domestic abuse, particularly the dynamic of coercive control.
- Engaging with children.
- Child development including learning disabilities.

205. The recruitment process will also ensure that all curators ad litem have experience in a variety of areas. Attending a certain number of training days would be mandatory and the estimation is that they may receive four days paid training a year. Training would be provided by experts in the relevant areas and would be provided by the body appointed to operate and manage the register or by individuals and organisations appointed by the body.

206. A number of curators ad litem are also child welfare reporters. In instances where training requirements overlap, this would be delivered once only. If a curator ad litem does not attend the required number of training days without a reasonable excuse, they would be in breach of their terms and conditions and could be recommended for removal from the register.  
Question 22 asked:

Q22: 'Do you have any comments on the proposed training requirements for curators ad litem?'

207. 38 respondents chose to make comments at this question. Around one in four of these made **general positive comments about the training requirements**, saying they were needed and that it was important to maintain standards. Other respondents qualified this, saying the training must be meaningful, recognised or certified. A few respondents agreed that the training requirements should at least match those of child welfare reporters.

208. Other general comments about training aspects were each made by small numbers of respondents as follows:

- Agreement that ongoing training for a number of days per year was needed in order to keep knowledge up to date.
- Agreement that there should be credit for training overlap with child welfare reporters' requirements for those performing both roles.
- Training should be targeted based on the individual's experience or skills sets.
- Monitoring should be carried out to establish training take up and provide evidence of attendance.

209. Two respondents felt that the training hours mentioned were insufficient and that longer was needed. However a legal respondent thought the requirement was excessive and suggested that two days training would be sufficient.

210. A majority of respondents discussed the various areas of training they would like to see. A priority for the largest number of these respondents, a significant minority consisting of third sector / advocacy organisations and individuals, was **training in communication with children**. It was felt that understanding and engagement with the young people they represent, thus enabling them to obtain children's views was vital to the curators' tasks. As one respondent in the third sector / advocacy sub-group noted:

"As curators ad litem are unlikely to act in this capacity in more than 1 or 2 cases per year, it may be difficult to sustain and practice skills in engaging with the children and young people they represent. As such... it is essential that there is training provided about how curators can access support from expert professionals in understanding the views and best interests of the children whose best interests they represent."

211. Slightly smaller numbers of respondents recommended **training in child development**, particularly to gain knowledge of what children are capable of understanding at certain ages. Similarly, a few respondents suggested child psychology training.

212. In depth **domestic abuse training** was agreed to be a priority. Respondents cited the importance of the dynamics of coercive control and an understanding of its many impacts. Two respondents said the training should be carried under the Safe and Together Model.

213. A variety of other very specific child and childcare-related training areas were recommended, each by small numbers of respondents. These included childcare protection systems and associated issues, trauma or trauma informed practice (needed where dealing with a child who has experienced or witnessed domestic abuse, according to a third sector / advocacy organisation), mental health and substance use / abuse training / awareness. Additionally, there was some reference to parental alienation / absence / neglect (e.g. the long terms effects of living without one parent), Adverse Childhood Experiences (ACEs), children’s human rights and gender issues.

214. A few respondents suggested training in reporting in order to ensure this was in the child’s best interests; concision and clarity were features cited as needed to achieve this. Time management training was also suggested by two respondents.

215. A few respondents said demonstration of an understanding of court processes and the judicial system was required (e.g. the obligations of an officer of court acting independently).

216. Finally a few respondents recommended diversity or inclusivity training, or training in non-discriminatory practices (e.g. taking into account language barriers or additional support needs).

217. Question 23 then went onto ask:

Q23: ‘Do you agree that four days of paid training per year for curators ad litem is appropriate?’
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218. As shown in table 19, opinions were very mixed; slightly larger numbers of respondents were in favour of four days of training overall, but a majority of third sector / advocacy organisations preferred a greater number of days training, whilst a majority of legal organisations preferred fewer days training.

**Table 19: Q23: Do you agree that four days of paid training per year for curators ad litem is appropriate?**

	Number			
	Four Days	More	Fewer	Don't know
Legal (11)	3	-	4	4
Local authority (3)	1	-	-	2
NHS (2)	2	-	-	-
Public body (4)	-	-	-	4
Representative body (5)	-	-	-	5
Third sector / advocacy (14)	2	7	-	5
Other (1)	1	-	-	-
<b>Total organisations (40)</b>	<b>9 (23%)</b>	<b>7 (18%)</b>	<b>4 (10%)</b>	<b>20 (50%)</b>
Individuals (44)	<b>12 (27%)</b>	<b>12 (27%)</b>	<b>7 (16%)</b>	<b>13 (30%)</b>
<b>Total respondents (84)</b>	<b>21 (25%)</b>	<b>19 (23%)</b>	<b>11 (13%)</b>	<b>33 (39%)</b>

(Percentages might not add to 100% due to rounding)

219. 42 respondents in total gave reasons for their answer, in fairly equal numbers from those who answered 'yes', 'more', 'fewer' and 'don't know'; thus representing a large diversity of views.

220. Amongst those who agreed that **four days training per year was appropriate**, several caveats were expressed. Respondents said four days was appropriate assuming the training was of high quality or that there was a good, intensive induction programme, or assuming there was annualised learning or CPD to keep curators up to date. Other provisos mentioned by single respondents included the following:

- On the basis that relevant training through other recognised organisations in satisfaction of other CPD requirements would be recognised.
- Difficulties accessing training in term of cost and availability are overcome.
- More sensitive areas such as domestic abuse and trauma are prioritised.

221. Amongst those who thought **more than four days training** was necessary, the greatest number referred to a need to cover all areas. A similarly large minority cited that the complexity of the area may require expertise in many issues such as trauma and report writing. Other smaller numbers of respondents also brought up the following issues:

- Training needs to be ongoing and up to date so may require more days.
- There are similar issues that need to be covered to those of child welfare reporters.

222. A couple of respondents suggested either 10 days or '*at least a week*' as appropriate yearly training amounts. Two other respondents said the amount of training should depend on the curator's qualifications, skills and experience, with an individual suggesting that four days may be sufficient to learn the legal framework if the curator had a relevant university qualification such as child psychology.

223. Amongst those who wished to see **fewer than four days annual training**, the largest numbers suggested less top-up training per year would be required if the induction training was longer. A few respondents regarded four days as being too onerous for practitioners with other commitments, or regarded the role as being less onerous than that of child welfare reporters. There was also a suggestion that targeted training was required only in certain areas specific to the role.

224. Several respondents cited the provisos that fewer than four days training should depend on experience and / or whether there is training overlap due to the practitioner also being a child welfare reporter. It was also suggested that the number of days should be proportionate to the work envisaged.

225. Amongst respondents who gave a 'don't know' answer, there were again comments that training days would depend on whether the person was also a child welfare reporter, with queries as to whether the training in such cases would be separate or fall under the same single annual requirement. Further equivocations included whether there would be exemptions for background or experience, what the training content would be, whether the initial training would be longer and more detailed, and whether there would be required elements. A public body foresaw that training needs would need to be discussed individually. Other comments indicated that training was difficult to assess yet as comprehensive standards were still to be agreed. A perception that fewer training days would make the curator role more attractive to solicitors or practitioners was also voiced by a couple of respondents.

## How a court would appoint a curator ad litem

226. Currently there is no procedure laid down in court rules for how a curator is appointed in a case under section 11 of the 1995 Act. The 2020 Act requires the court to specify in the interlocutor the reasons for appointing a curator ad litem and to review the appointment every six months.

227. It is proposed that when a court orders a curator ad litem to be appointed in a section 11 case the clerk of the court will contact the body appointed to operate and manage the register. The body would then consult the register and where possible select the next curator ad litem on the register who is willing to take on the role and work in a specific location. The body would then inform the court who would send this person the interlocutor stating the reason for their appointment. If a curator ad litem is appointed for a period of more than six months, the court will be required to consider whether their appointment is still necessary. Question 24 of the consultation asked:

Q24: 'Do you have any comments on the proposed process for appointing a curator ad litem in a case under section 11 of the 1995 Act?'

228. Although only 23 respondents chose to make comments about the appointment process, a majority of these were **in favour of basing curator appointments on a case by case basis rather than by calling up the next person on the register**. These respondents thought that the most appropriately trained curator should be the one appointed for a particular case, based on qualifications, training and experience in similar cases, hence the best curator to look after the child's best interests. Several respondents noted types of specialism that might be required in section 11 cases including domestic abuse, trauma, autism, knowledge of sign language, coercive control and behaviours used by perpetrators.

229. Significant numbers of respondents were in **favour of courts having at least a say in the appointment process**, with further comments that the appointment should be by the presiding sheriff or judge. Advantages of this method were purported to be local knowledge, including knowledge of the lawyers practising, ability to choose the specialisms required, and ease of clarifying procedural points.

230. A small number of respondents commented favourably in general terms about the proposed process (i.e. appointing via a register), saying the process was transparent or appropriate; however a legal respondent said the proposal was:

“...reasonable subject to the body which is appointed to operate and manage the register. If the body appointed is the SCTS, this would be more beneficial as the sheriffs/clerks know the lawyers better practicing within the area of a particular court to determine who is best suited to be appointed as curator ad litem. If the register is operated in a more centralised way, that negates the benefit of the local courts knowing the best solicitor to appoint in a particular case.”

231. Other points made by one or two respondents included that the appointment process should be consistent across sheriffdoms and that documentation stating why the curator has been appointed should be made available (e.g. to parents). It was also suggested that curators should always meet the children they represent. There was also comment that there is only a limited pool of solicitors who have capacity to take up the role because of existing workloads.

232. A respondent in the legal sector noted the 6-monthly review serves no practical purpose as “curators ad litem are either appointed to undertake specific enquiries by the court or enter the process in which case, their appointment is for the duration of the litigation.”

## Fee rates for curators ad litem

233. Currently where the sheriff appoints a curator ad litem to a child, at the first instance, unless the court directs otherwise, the pursuer is responsible for the curator’s fees and outlays. In future, all curator ad litem fees and expenses would be paid by the body appointed to operate and manage the register. It is expected that a per hour fee rate will be set to reflect the fact that each case is different and would require a different degree of work and preparation. It is also expected that the same hourly fee rate would apply to curators as is set for child welfare reporters. Question 25 asked:

Q25: ‘How should fee rates for curators ad litem be paid?’

234. As demonstrated in table 20, a large majority of these respondents supported an hourly rate.

**Table 20: Q25: How should fee rates for curators ad litem be paid?**

	Number		
	Hourly rate	Another way	Don't know
Legal (11)	7	-	4
Local authority (3)	3	-	-
NHS (2)	1	1	-
Public body (4)	-	-	4
Representative body (5)	-	-	5
Third sector / advocacy (14)	6	-	8
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>18 (45%)</b>	<b>1 (3%)</b>	<b>21 (53%)</b>
Individuals (44)	<b>21 (48%)</b>	<b>8 (18%)</b>	<b>15 (34%)</b>
<b>Total respondents (84)</b>	<b>39 (46%)</b>	<b>9 (11%)</b>	<b>36 (43%)</b>

(Percentages might not add to 100% due to rounding)

235. In all, 29 respondents made comments; most of these were from the large majority of respondents in favour of hourly fee rates.

236. Many of those in favour of **hourly fee rates** thought this method represented the **best way of paying curators appropriately according to the workload being undertaken**. It was pointed out that the length and complexity of workload per case varies greatly and thus it was important to reflect pay based on hours worked. Several of these respondents indicated that they were against a fixed fee or fee per case being levied for these reasons. There were also a few comments about hourly rates being common practice amongst professional services.

237. A small number of respondents (mostly legal organisations) focused on the need for appropriately high remuneration for the importance of the task and expertise required in order to attract people capable of doing the work. One respondent said hourly rates were the best way to reflect report writing by way of preventing excessively long reports and ensuring young people can meaningfully give their views.

238. A small number of respondents were in favour of hourly rates as long as there is oversight to prevent overcharging or an appropriate cap on charges. Other single respondents thought costs would be reduced and transparency provided by hourly rates. A public body advised monitoring of the work and outputs from the Scottish Government's Legal Aid Payment Panel.

239. Amongst the small number of comments made by respondents in favour of another way of classifying fee rates were a variety of suggested options as follows:

- A block fee or per case fee (to give more transparency).
- An hourly rate for work done and per page for documentation (so travel expenses, etc. and the size of the report can be taken into account).
- By deliverable output (stopping less scrupulous individuals from clocking up high bills).
- Sending the curator's file to law accountants who can prepare a fully itemised account.

## Expenses for curators ad litem

240. The Scottish Government expects that curators ad litem would only be able to claim expenses and allowances if the additional expense is actually incurred to carrying out official curator ad litem work. It is expected that curators ad litem will seek value for money in terms of travel expenses. Question 26 asked:

Q26: 'Do you have any comments on the proposed approach in relation to expenses for curators ad litem?'

241. Only 14 respondents provided comments at this question, almost all of which were favourable to the proposed approach, albeit with occasional caveats. Respondents said the proposed approach was standard procedure as well as proportionate and transparent. There was also broad agreement that curators should seek value for money regarding expenses incurred.

242. In very small numbers, respondents raised the following provisos:

- Only expenses with a receipt should be claimable (for parking expenses, it was intimated that receipts can be requested or photographic evidence could be provided).
- The approach should be consistent with that for child welfare reporters.
- Expenses should follow HMRC guidelines (e.g. 45p / mile vehicle expenses).
- Expenses should be set at a reasonable rate to reflect the cost of living.
- There should be provisions made for exceptional expenses (e.g. in cases where cheap accommodation is not possible).

243. One respondent complained about a lack of enforcement in relation to seeking value for money regarding expenses.

## Complaints procedures

244. The Scottish Government considers that the complaints process in relation to curators ad litem would be similar to that outlined for child welfare reporters. This would include complaints by an individual about not being on the register or being removed from the register, grievances held by curators on the register, and complaints about a curator on the register. Question 27 asked:

Q27: 'Do you have any comments on the proposed procedure for complaints by or about curators ad litem?'

245. 31 respondents gave responses to this question; general remarks were that the **complaints system should be clear, transparent, accessible and open to scrutiny** (to the general public), with clear reasons given for decisions and without conflicts of interest. Most comments referred to complaints about curators rather than those made by them.

246. A variety of comments were made referring to **confusion as to which body complaints about curators should be made to**. In particular, an issue was raised by several respondents that in cases where the curator is a lawyer or solicitor, they are subject to the pre-existing statutory complaint schemes of their professional bodies, thereby potentially causing duplication. It would be unclear whether the complainant should state their case through the registration body or through a professional body. A third sector / advocacy respondent noted:

"For complaints about curators, it is very important that people wishing to make a complaint are provided with clear information about which bodies can handle complaints. Although the registration body would be the first point of complaint, the complaint could also be made to the SLCC on service issues or the Law Society of Scotland on behaviour. We presume that even if the curator is working for a law firm the complaint would not have to go through that firm's complaints process first."

247. However, a couple of respondents agreed that complaints by curators could be handled by the body managing the register.

248. Several respondents noted various characteristics the overseeing body should possess, which included impartiality, independence, knowledge of the curator role, and knowledge of domestic abuse and trauma situations. The overseeing body should also be given automatic access to reports.

249. A few recommendations were made about an appeals process, saying there was a need for this to be independent from the complaints process, particularly in cases where the complainant is unhappy with the response from the body appointed to deal with a complaint. Queries were also made about how decision-making would be carried out as to whether or not a complaint has any merit. A few respondents had concerns about vexatious or frivolous complaints about curators (e.g. when decisions haven't gone a particular party's way). Clarity was also desired as to which body (e.g. Scottish Public Service Ombudsman, Scottish Government or Scottish Ministers) should act as the final arbiter after the registration body.
250. Several other comments about the complaints process were each made by a few respondents and these included that the system must be child-friendly (e.g. children should be involved in its design), that it should be the same as that for child welfare reporters and that complaints should be dealt with timeously.
251. A few respondents held negative general perceptions of the current complaints procedure, commenting that it was cumbersome and not fit for purpose.

## Register of solicitors

252. This section of the consultation focused on the register of solicitors who can be appointed where an individual is prohibited from personally conducting the remainder of their case themselves under sections 4-5 of the 2020 Act. It sought views on:

- The fee rates and expenses to be paid.
- The requirements that an individual must satisfy in order to be included on the register.
- What ongoing training requirements there should be for the individuals.
- How the court would appoint a solicitor from the register.
- The complaints process about individuals included on the register.

253. This register will be separate to the registers for child welfare reporters and curators ad litem.

254. The 2020 Act places a duty on the Scottish Ministers to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves, where the prohibition applies either in a case under section 11 of the 1995 Act or a Children's Hearing court proceeding. The Scottish Government expects the register will be managed and operated in the same way as the registers for child welfare reporters and for curators ad litem. Therefore the duty to maintain the register would remain with the Scottish Ministers, but the day to day management and operation would be contracted out. Fees and expenses to these solicitors would be paid by the Scottish Ministers.

## Requirements for solicitors to be included on the register

255. It was proposed that an individual would need to hold a practising certificate from the Law Society of Scotland. As with child welfare reporters and curators ad litem, certain categories of people would not be eligible to be on this register. These would be:

- An individual directly involved in the establishment, maintenance, operation or management of the register of curators ad litem.
- An individual employed by the SCTS.
- A member of the judiciary.
- A member of the Scottish Government or a junior Scottish Minister.

256. It was also suggested that there are certain skills an individual on the register would need to demonstrate. These skills are:

- Family law.
- Domestic abuse, particularly the dynamic of coercive control.
- Family conflict.
- Proofs.

257. Question 28 asked:

Q28: 'Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors?'

258. As shown in table 21, an overwhelming majority of those who gave an opinion agreed with the proposed requirements.

**Table 21: Q28: Do you agree / disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	7	2	2
Local authority (3)	2	1	-
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	-	-	5
Third sector / advocacy (14)	8	1	5
Other (1)	1	-	-
<b>Total organisations (40)</b>	<b>21 (53%)</b>	<b>4 (10%)</b>	<b>15 (38%)</b>
Individuals (44)	24 (55%)	4 (9%)	16 (36%)
<b>Total respondents (84)</b>	<b>45 (54%)</b>	<b>8 (10%)</b>	<b>31 (37%)</b>

(Percentages might not add to 100% due to rounding)

259. 25 respondents chose to give reasons for their answer at Q28a. Many of those who agreed with the proposed requirements mentioned caveats in common with those who disagreed or didn't know and these are therefore all analysed together.
260. A large minority noted that the **proposed requirements seem sensible**, agreeing that the areas mentioned are the essential ones for any solicitor or court reporter to fulfil.
261. Similar numbers agreed that **individuals on the register need to have the appropriate skills, experience and knowledge for the areas mentioned**, with several respondents citing a need for experience to be demonstrated by relevant evidence (e.g. paperwork). Two respondents specified that significant experience should be required of conducting proofs, with one individual highlighting a concern that many reporters are retired from private practice and hence would not be conducting proofs. A third sector / advocacy respondent urged:

“...careful distinction of ‘family conflict’ from domestic abuse in areas that skills and expertise are required in, in order to keep survivors of domestic abuse safe... Domestic abuse is often wrongly identified and described as ‘family conflict’. This description and understanding does not reflect the power imbalance, the elements of fear and control, and the direct and indirect impacts on survivors that characterise domestic abuse, and could thus create an unsafe situation and response to many women, children and young people.”

262. A few respondents agreed that solicitors with conflicts of interests should be excluded from the register. However, a local authority thought that registered individuals in this position should only have to decline from nomination to a particular case rather than from the register entirely, stating that legal professionals were best placed to decide on whether or not they have a conflict.
263. A few legal respondents wished to take a slightly less prescriptive approach to inclusion on the register, citing the small number of cases involved and the need to ensure solicitors participate. Specifically, there were calls not to exclude part-time judicial office holders (e.g. part-time sheriffs or tribunal chairs) as measures are already in place to prevent conflicts of interest in these situations, and one request was not to exclude newly qualified solicitors in the requirement for experience. A third sector / advocacy respondent thought there was a need to include advocates on the list, for cases where the other party in the case is represented by an advocate.

264. A few respondents argued for other areas of specialist knowledge and insight to be considered, which they regarded as necessary for people to have to be included on the register. These are as follows:

- The dynamics and trauma of family separation.
- Undue influence of the child by either parent.
- Prevalence of false allegations.
- Awareness that domestic abuse can be committed by either men or women.
- The attachment processes of children.

265. Finally, two legal respondents who both disagreed with the proposed requirements detailed a variety of opinions as follows:

- The register needs to be subdivided as family law is not homogenous. This legal organisation went on to say: “Persons who regularly practise in child law with reference to children’s hearings may not have skills to equip them to appear in a divorce action where issues arising under section 11 of the Children (Scotland) Act 1995 may be litigated in a proof which also concerns financial provision under the Family Law (Scotland) Act 1985. Our members regularly appear in cases concerning both children and money, including those where there are allegations of domestic abuse.”
- A request to omit the requirement to be able to demonstrate skills and experience in relation to “family conflict”, as in one view, every litigated family law case is an example of family conflict.
- An annual appraisal is impractical as work is confidential and therefore the solicitor cannot disclose it for the purposes of appraisal.
- Solicitors are unlikely to seek appointments to the register if inclusion requires training by an organisation separate to their own professional body (the Law Society of Scotland).
- Solicitors’ professional obligations require that he/she has necessary competence in areas of law and therefore there should not be a government function to have responsibility for standards / training.
- Solicitors employed by public authorities engaged in child and family protection work should be excluded.
- The funding of legal representation should remain with the Scottish Legal Aid Board.

266. Question 29 then went onto ask:

Q29: 'Are there any other requirements that a person must satisfy in order to be included on the register of solicitors?'

267. As the following table 22 shows, views were split as to whether there are any other requirements that a person must satisfy in order to be included on the register of solicitors. However, almost half did not know or did not answer the question. Within organisation subgroups, there were differences. Most local authorities and legal organisations saw no further requirements, whilst most NHS and third sector / advocacy organisations thought there should be other requirements.

**Table 22: Q29: Are there any other requirements that a person must satisfy in order to be included on the register of solicitors?**

	Number		
	Yes	No	Don't know
Legal (11)	3	7	1
Local authority (3)	-	3	-
NHS (2)	2	-	-
Public body (4)	-	-	4
Representative body (5)	-	-	5
Third sector / advocacy (14)	7	2	5
Other (1)	-	1	-
<b>Total organisations (40)</b>	<b>12 (30%)</b>	<b>13 (33%)</b>	<b>15 (38%)</b>
Individuals (44)	<b>9 (20%)</b>	<b>10 (23%)</b>	<b>25 (57%)</b>
<b>Total respondents (84)</b>	<b>21 (25%)</b>	<b>23 (27%)</b>	<b>40 (48%)</b>

(Percentages might not add to 100% due to rounding)

268. 19 respondents made comments about additional requirements they felt should be satisfied in order to be included on the register of solicitors. However, many of the answers reinforced points made at the previous question.

269. Knowledge of family law was the most often quoted requirement, albeit by only a few respondents, and children's rights and associated financial issues were specified in this context. A few respondents touched upon legal experience more generally, citing a minimum post-qualification period as being necessary for inclusion on the register: 3-5 years, 5 years and 10 years were all suggested as necessary time periods.
270. A few respondents reinforced the requirement to have no conflicts of interest or bias, unconscious or otherwise, and equalities in terms of gender, diversity and inclusiveness knowledge were specifically mentioned.
271. Small numbers of respondents chose to comment about knowledge, experience, skills and training in areas relating to the involvement of children. These included child behaviour, child development, child communication (e.g. skills in communicating complex issues and questioning to take evidence) and experience in representing children generally.
272. A few respondents also mentioned knowledge of the child protection system as being a requirement.
273. A few respondents reinforced a requirement for skills, knowledge and training concerning domestic abuse. Similar comments were made in relation to trauma-informed care and practice and its impacts, coercive control, and understanding family conflict.
274. Single respondents made mention of the need for PVG disclosure, a requirement for ongoing training, for solicitors on the register to be qualified and to have knowledge / experience of substance abuse and mental health and their effects on individuals and families.

## **Ongoing training requirements for solicitors on the register**

275. The consultation paper explained that the Scottish Government would expect that anyone included on the register would undergo regular training to ensure they are au fait with the latest developments in family law, whilst acknowledging that solicitors already undergo CPD. It is envisaged that the number of days training required would be less than for child welfare reporters or curators ad litem since solicitors on the register are unlikely to be appointed to represent a party as frequently as child welfare reporters and curators ad litem are appointed. Also, solicitors on the register will not be engaging with the child at the centre of a case, so detailed knowledge of how to engage with children is less relevant.
276. If a solicitor does not attend the required number of training days without a reasonable excuse then they could be in breach of their terms and conditions and could be recommended for removal from the register.

277. Question 30 asked:

Q30: 'Do solicitors on this register require fewer days training each year than child welfare officers and curators ad litem, on the basis that they are likely to receive fewer appointments?'

278. As shown in table 23, a majority of those who gave a response thought solicitors should not receive fewer days training each year than child welfare reporters and curators ad litem. Again there were differences amongst organisation sub groups, with legal and local authority bodies generally in favour of fewer days training, and third sector / advocacy organisations against this.

**Table 23: Q30: Do solicitors on this register require fewer days training each year than child welfare officers and curators ad litem, on the basis that they are likely to receive fewer appointments?**

	Number		
	Yes (fewer)	No	Don't know
Legal (11)	7	3	1
Local authority (3)	3	-	-
NHS (2)	1	1	-
Public body (4)	-	-	4
Representative body (5)	-	-	5
Third sector / advocacy (14)	-	8	6
Other (1)	-	1	-
<b>Total organisations (40)</b>	<b>11 (28%)</b>	<b>13 (33%)</b>	<b>16 (40%)</b>
Individuals (44)	<b>8 (18%)</b>	<b>21 (48%)</b>	<b>15 (34%)</b>
<b>Total respondents (84)</b>	<b>19 (23%)</b>	<b>34 (40%)</b>	<b>31 (37%)</b>

(Percentages might not add to 100% due to rounding)

279. 39 respondents in total gave reasons for their answer. Amongst those who thought that **solicitors require fewer days training** than child welfare reporters and curators ad litem, the greatest numbers of respondents (mostly comprised of legal organisations) cited that **they were already subject to training and annual CPD requirements from their governing body**, the Law Society of Scotland. There were also some suggestions that this training could double as training to be on the register if it was in a relevant area.
280. A few respondents pointed out that solicitors who put their names forward to be on the register were already likely to be engaged in similar work and have considerable experience prior to doing so.
281. Several respondents however agreed that some training was still necessary for solicitors, with child protection, training in domestic abuse, coercive control and family law all specified, along with situations in which the person represented gives either no instructions or inadequate instructions.
282. Other single mentions of reasons for solicitors requiring fewer training days included that separate training days would be impractical as skilled practitioners would be too busy, that there needs to be a proportionate approach to ensure there is sufficient coverage by solicitors across Scotland and that the solicitor's job does not necessarily entail the abilities of child welfare reporters and curators as it does not necessarily involve interaction with the child.
283. Among the majority who **did not agree that solicitors should have fewer training days**, almost half referred to a need to be **equally well equipped and qualified for each case as child welfare reporters and curators** would be, in order to support consistency and help standardise practice. Similarly, a large minority stated that it was the **quality of service which counted** irrespective of the number of appointments undertaken.
284. Additionally, significant numbers of respondents also cited the following reasons:
- The complexity of situations and issues arising meant there was a need for full understanding of the processes involved.
  - Training needs to be ongoing in order to keep up-to-date due to the constantly evolving legal landscape and advancing knowledge about trauma and violence.
  - Training is part of the process for ensuring the wellbeing of domestic abuse survivors and ensuring children and young peoples' rights are respected.

285. A third sector / advocacy respondent summed up these views as follows:

“We would submit that the number of appointments that they may require to undertake is irrespective of the training required. The training is required to ensure that each case is handled appropriately and sensitively. There should be consistency across the board and no one case should be left behind.”

286. Question 31 then went onto ask:

Q31: 'Are there any other training requirements that you think should be included?'

287. 24 respondents chose to give additional requirements at this question, some of which reiterated and reinforced training requirements stated in the consultation document. A couple of respondents thought that the training requirements should align with those of child welfare reporters and curators ad litem.

288. The most frequently mentioned additional requirement that was recommended - largely by third sector / advocacy respondents - was **diversity or inclusivity training**, incorporating areas such as disability, equalities, language and the experiences of and issues faced by BME families.

289. Training in **dynamics with clients** was recommended by a small number of respondents. This was thought necessary because of predicted difficulties with clients as a result of the client having a solicitor appointed for them rather than being able to choose, resulting in possible hostility. Facets of training mentioned included how to avoid complaints and behavioural impacts of solicitors on their clients and others. Two respondents specifically suggested conflict management training and one recommended shadowing an experienced solicitor.

290. Other suggested additional training requirements largely mirrored those suggested for child welfare reporters and curators ad litem. Training in **communication and engagement with children** was mentioned a few times, particularly in respect of obtaining children's views. Other areas of child-related training, put forward by one or two respondents each, included child development, child protection and understanding of children's human rights.

291. In depth **domestic abuse training** was agreed to be a priority. Respondents cited the importance of the dynamics of coercive control and an understanding of its many impacts. Two third sector / advocacy organisations recommended that this training should be performed under the Safe and Together Model.

292. A variety of other very specific additional training areas were recommended by very small numbers of respondents. These included trauma or trauma informed practice, mental health including its impacts, substance use / abuse including its impacts, parental alienation, counselling skills, Data Protection law and reporting.

293. In addition, there was one request to target training based on the individual's expertise and skillsets, perhaps identified through CPD plans or annual appraisals, and a query as to how and who would monitor the training in terms of quality and quantity.

## How a court would appoint a solicitor from the register

294. The consultation paper noted that if the courts consider an appointment is required, the court would make an order accordingly and would then approach the body managing and operating the register. The body would then consult the register and approach the next solicitor who is willing to work in a specific geographic location. Once a solicitor has been selected, the body would then advise the court accordingly. The court would give them sufficient time to engage with the party and to take instructions from them. The next question asked:

Q32: 'Do you have any comments on the proposed process for the court appointing a solicitor from the register?'

295. 19 respondents chose to make comments about the appointment process for solicitors; almost half of these made generally **favourable observations agreeing with the process**. Remarks indicated that the process was straightforward, fair and reasonable, with a few respondents agreeing to appointments being done via the next person on the register on the basis of availability and willingness to act.

296. However, a few respondents were **in favour of basing solicitor appointments on expertise and experience for a particular case** rather than by calling up the next person on the register. These respondents thought that the most appropriately trained solicitor should be the one appointed, and that this would be the optimum method of looking after a child's best interests. A third sector / advocacy respondent thought this should be the way forward, especially in cases involving domestic abuse, violence and coercive control.

297. Two respondents were in favour of courts having at least a say in the appointment process, further commenting that the appointment should be at the discretion of the presiding sheriff or judge. It was surmised that this would make it easier to choose an individual well suited to a particular case. Two other respondents thought the appointments system should be controlled locally. A legal organisation voiced the following issue about the proposed selection process:

“... (we have) serious concerns about selection of a solicitor by a third sector organisation who has limited direct contact with courts. The only organisation that could realistically deal with this choice would be the Law Society of Scotland. Failing that, the choice should be a matter for the sheriff or Lord Ordinary.”

298. Further opinions, stated by one or two respondents each, included documentation stating the procedures and court rules for appointing a solicitor should be available (e.g. for accountability purposes) and that there is a need to assess and identify conflicts of interest. It was also suggested that the body operating the register does not need to be the same as that for child welfare reporters or curators ad litem, due to the differing circumstances and nature of the appointment.

299. A respondent noted a desire for clarity over what “sufficient time” might be for a solicitor to engage with their party after selection (in particular where there is a lack of client instruction). Another commented that it would be helpful for the solicitor to outline at register application which geographical areas he or she would be prepared to work in. Another said that consideration should be given to using the Duty Solicitor Scheme operated by the SLAB in relation to Children’s Hearing proceedings. The final comment was that the proposed payment for time spent conducting or preparing for the proofs is inadequate.

## Expenses for solicitors

300. The Scottish Government expects that solicitors would only be able to claim expenses and allowances if the additional expense is actually incurred when carrying out official work whilst acting on the register. The Scottish Government would expect that solicitors seek value for money in terms of travel expenses. Question 33 asked:

Q33: ‘Do you agree / disagree with the proposed procedure for expenses for individuals appointed to this register?’

301. As shown in table 24, an overwhelming majority of those voicing an opinion agreed with the proposed procedure for expenses.

**Table 24: Q33: Do you agree / disagree with the proposed procedure for expenses for individuals appointed to this register?**

	Number		
	Agree	Disagree	Don't know
Legal (11)	7	2	2
Local authority (3)	3	-	-
NHS (2)	2	-	-
Public body (4)	1	-	3
Representative body (5)	-	-	5
Third sector / advocacy (14)	6	1	7
Other (1)	-	-	1
<b>Total organisations (40)</b>	<b>19 (48%)</b>	<b>3 (8%)</b>	<b>18 (45%)</b>
Individuals (44)	<b>21 (48%)</b>	<b>2 (5%)</b>	<b>21 (48%)</b>
<b>Total respondents (84)</b>	<b>40 (48%)</b>	<b>5 (6%)</b>	<b>39 (46%)</b>

(Percentages might not add to 100% due to rounding)

302. 21 respondents provided comments at this question, most of which were favourable to the proposed approach, albeit with occasional caveats. However, a large minority (mainly legal organisations) chose to focus their comments on fee rates rather than expenses.

303. A large minority of respondents who agreed with the proposed approach stated that it was **reasonable, fair and represented the standard procedure** by which legal professionals **currently charge expenses**. A few commented that the procedure was clear, transparent and accountable.

304. In small numbers, respondents reiterated or raised the following provisos:

- Only justifiable expenses with a receipt should be claimable (for parking expenses, it was intimated that receipts can be requested or photographic evidence could be provided. For fuel receipts, journeys should be recorded).
- Expenses should follow HMRC guidelines (e.g. 45p / mile vehicle expenses).
- Expenses should represent best value for the public purse.

305. A very few comments were made by those disagreeing with the procedure, as follows:

- There is nothing legally being put in place to stop solicitors from exploiting the system.
- Solicitors' expenses should be met either by SLAB where their client is eligible, or privately by the individual concerned.
- Expenses in conducting a proof could be calculated on the same basis as for solicitors working directly for parties, possibly with reference to the amounts that SLAB would allow.

306. As previously highlighted, a significant number of comments, mostly from legal organisations, related to fees rather than expenses. The Scottish Government expects that a per hour fee rate would be set, although it recognises this may be a challenging role so it is proposed that fee rates would be pitched accordingly. Comments from respondents included the following:

- Fees are insufficient for complex family cases and need to be reviewed. Further remarks indicated that solicitors would not come forward to be included on the register if not properly paid, and the job may be rushed if insufficient compensation was available.
- A list of time spent should be available for checking should a fee be questioned.
- Individuals should not be forced to pay for a solicitor where they are not permitted to self-represent in cases.
- Queries over how counsel's or expert's fees would be determined in cases where a counsel or expert is instructed.

## Complaints procedures

307. The Scottish Government considers that the complaints process in relation to solicitors on the register would be similar to what was outlined for curators ad litem. This would include complaints by an individual about not being on the register or being removed from the register, grievances held by solicitors on the register, and complaints about a solicitor on the register. The final question in this section asked:

Q34: 'Do you have any comments on the proposed procedure for complaints by or about solicitors on this register?'

308. 26 respondents gave responses to this question; all comments referred to complaints about solicitors rather than those made by them.

309. Nearly half of those responding remarked that the **complaints system should be clear, transparent, accessible, accountable and easy to understand**, with one suggestion to have a lay person involved in the process.

310. A large minority of respondents, almost all of which were legal organisations or public bodies, foresaw **problems caused by the existence of at least two competing complaints systems**. It was foreseen that the legal profession's own systems (SLCC's in particular) could feature, causing duplication and confusion about which route complainants should go down. Points were made that solicitors should not have to deal with two separate complaints processes regarding the same complaint. A public body noted this issue as well as a lack of detail concerning remedies following a complaint if this is made to the body operating the register:

"...solicitors on this register could be open to complaints about the service provided, as well as their conduct. These complaints could be made to the body operating the register, and/or to the SLCC. They could be made by the person being represented, by another party to the case, by the child or by any other person. In the case of a complaint being made about the service provided, it is not clear from the consultation paper what remedy would be available to the body operating the register."

311. Furthermore, several respondents – almost all of them legal organisations – said that complaints (if relating to a solicitor's conduct or service) should be made to the Law Society of Scotland or the SLCC, rather than a body operating the register, and that existing regulatory frameworks should be used with no need for a separate complaints system. A third sector / advocacy organisation however hypothesised that given the complaining party would not have a conventional relationship with the solicitor, there may need to be changes made to the complaints processes operated by the professional bodies.

312. A few respondents (mainly third sector / advocacy bodies) insisted that the complaints system needs to be child-friendly, citing the requirements of the UNCRC Incorporation (Scotland) Bill and the Council of Europe's Guidelines on Child-Friendly Justice.
313. A small number of requests were made for more information about an appeals process, citing this needed to be delineated from the complaints process within the complaints procedure. Similar numbers had concerns about vexatious or frivolous complaints or higher numbers of complaints than normal, due to the increased likelihood of blaming the lawyer if a client's case is lost, given the lawyer wasn't chosen by the client. Several other comments about the complaints process were each made by a very small number of respondents and these included that complaints should undergo the same considerations as those for child welfare reporters and curators ad litem, that they should be dealt with timeously and that a request to know what the decision-making process will be for whether a complaint has 'any merit'.
314. A few respondents held negative general perceptions of current complaints procedures. One individual specified the SLCC system, commenting that it was not fit for purpose. Other general concerns about current procedures were that there is a need for a clear guide on complaints to be made available for lay persons, and that the process to complain and for handling complaints needs to be clear, simple and transparent.

## Conclusion

315. The Scottish Government has prepared a number of draft impact assessments in relation to the development of policy in this area. Question 35 asked:

Q35: 'Do you have any comments about, or evidence related to:

- a) The draft Business and Regulatory Impact Assessment
- b) The draft Child Rights and Wellbeing Impact Assessment
- c) The draft Data Protection Impact Assessment
- d) The draft Equality Impact Assessment
- e) The draft Fairer Scotland Impact Assessment
- f) The draft Islands Communities Impact Assessment

316. 18 respondents responded to this question. Several of the comments were favourable about the draft impact assessments as a whole, saying they were generally well considered and to be welcomed. However, two individuals considered them meaningless and did not reflect their experience of the court process.

317. Only one comment referred to the draft **Business and Regulatory Impact Assessment**: a public body requested that the recruitment processes for all the roles under discussion maximise retention from those currently employed in the role or similar roles.

318. The draft **Child Rights and Wellbeing Impact Assessment** attracted the most discussion, albeit from only six respondents. A majority reinforced the importance of children having a voice and being listened to, with recommendations for child welfare reporters and curators ad litem to engage with them to a greater degree. There were also requests to specify ways in which this could occur.

319. Similarly, there were demands for children's rights to be the priority, rather than parents. One suggestion cited that parental alienation allegations can serve to silence young children and therefore impact on their rights. Following on from this, respondents requested more consideration of the role of the courts and judiciary in helping to uphold children's rights and ensure their voices are properly heard. Other comments from single respondents were as follows:

- The CRWIA should document tactics used by perpetrators of abuse.
- A doubt that the statistics on children's hearings are the most accurate statistics to illustrate this CRWIA, with a suggestion that "*...it might be pertinent to include figures on the number of proof applications held and the numbers of section 67 grounds for referral established*" (Public Body).
- A lack of acknowledgement of the gendered nature of domestic abuse (mostly female victims / male perpetrators).

320. Remarks on the draft **Data Protection Impact Assessment** cited concerns about unlawful data sharing and the importance of information governance to the success of the regulatory body. A public body wished for clarity in cases where the complaints process might potentially involve information sharing between the register and the Scottish Legal Complaints Commission's complaints handling process.

321. On the draft **Equality Impact Assessment**, there was a concern about equality within the family law legal system (within which it is assumed the victim is a woman), and a comment that the proposals will impact disproportionately on females because most family lawyers are female. It was also noted that victims may wish child welfare reporters to be a different gender to the abuser. Other remarks surmised positive impacts if equality and diversity was incorporated into the full span of the registration process.

322. Comments on the draft **Fairer Scotland Impact Assessment** focused on hopes that the registers will reduce local variations in service provision and costs. It was noted that getting the right people can help steer cases in the right direction and in so doing can make cost savings from unnecessary court processes.

323. With respect to the draft **Island Communities Impact Assessment**, a small number of respondents agreed that it was important to ensure national coverage in rural and island communities to obtain effective access to justice and reduce costs of travel from other parts of Scotland. The continued use of 'remote or virtual courts' and training by video conferencing for those in remote areas (subsequent to the Covid pandemic) was predicted to be helpful in increasing individuals' availability for work on the islands. However, a lack of data about child welfare reporters and curators ad litem working in the islands was highlighted within the draft ICIA. It was also recommended that individuals on the register be briefed on some elements of domestic abuse that tend to be specific to island communities.
324. At the end of the consultation, respondents were given an opportunity to provide any further comments in relation to any element of this consultation.
325. 31 respondents provided further comments. A significant minority were generally welcoming to the registration system for child welfare reporters, curators ad litem and solicitors, commenting that it was more efficient, fair and safe. Many responses reiterated themes already mentioned during the consultation.
326. The most discussed theme, by a large minority of respondents, alluded to the **success of the proposed system depending to a large degree on the skills, abilities and experience** of the individuals appointed to the registers; sufficient training was urged and a qualification in family law desired. Smaller numbers of respondents highlighted the importance of sufficient regulation, oversight, appraisal, disciplinary and independent appeals processes in making the system work.
327. A number of individual respondents cited **adverse court or child welfare reporting experiences**, implying the system needs overhauled. Accusations were made that it was a blunt instrument for dealing with traumatic issues and caused harm to children and families. Further mentions were made of the system being unsafe, inefficient, complex, lacking cohesion and failing to give a voice to the child. A concern was raised that parents had not been involved when considering the Children (Scotland) Bill. A few respondents raised an issue of perceived family court bias against fathers and a bias in reports towards mothers. A couple of respondents thought more assessment would be needed about the impact on children of forced separation from a parent or parents. A third sector / advocacy respondent wished to promote the 'Safe and Together Model', which aims to keep children together with a non-offending parent.

328. Several respondents reinforced the goal that children and young people's rights must be respected, protected and fulfilled, and that they must be able to contribute to proceedings in a meaningful way.

329. The other key theme discussed **was decision-making in cases within the system**. Several respondents were in favour of judicial discretion and decision-making by the courts rather than by the body in charge of the register, in regards to case appointments. The main advantage was cited to be local knowledge as sheriffs would be familiar with local candidates and could therefore pick the one best suited to the case. Local knowledge generally was thought to be undervalued by a few respondents, as knowing the local schools environment and local social work department philosophy helps the chosen individual from the register know how to proceed. There were also several mentions of open, unbiased and readily available information being vital to decision-making in court processes, with a couple of provisos that this could be anonymised if necessary to comply with data protection standards.

330. A few respondents raised concerns about fees and costs and queried funding availability; for instance, it was perceived that fees were unrealistically low for child welfare reporters with the result that there may be difficulties retaining people on the register.

331. A very small number of suggestions were made about registration as follows:

- One body should oversee all the registers to help facilitate consistency and standardise procedures.
- There should be automatic registration for existing child welfare reporters, curators and solicitors.
- Equalities assessment should take place regarding the gender balance of the people appointed as child welfare reporters or curators.

332. Finally, there was a point raised by a public body about how it would be helpful to address whether a curator ad litem might be entitled to appoint their own solicitor and how that might operate with civil legal aid. There was also a concern from a legal respondent about possible vexatious complaints or litigation arising through a defendant not being required to meet legal costs if they have a register-appointed solicitor.

# Appendix 1: Respondent Organisations

Aberdeen City Council  
Brodies LLP  
Children 1st  
Children and Young People's Commissioner Scotland  
Collective of Scottish Independent Social Workers  
deafscotland (Scottish Council on Deafness)  
Dumfries and Galloway Council  
Edinburgh Napier University, Centre for Child and Family Law and Policy  
Faculty of Advocates  
Family Journeys  
Family Law Association  
Grandparents Apart Scotland  
Grandparents Apart UK  
Harper MacLeod  
Law Society of Scotland  
Macleod & MacCallum Solicitors  
NHS Orkney  
NSPCC Scotland  
Promoting Positive Contact  
Relationships Scotland  
Scottish Children's Reporter Administration  
Scotland's Executive Nurse Directors  
Scottish Association of Social Work (part of British Association of Social Workers UK)  
Scottish Courts and Tribunals Service  
Scottish Law Agents' Society  
Scottish Legal Aid Board  
Scottish Legal Complaints Commission  
Scottish Safeguarders Association  
Scottish Women's Aid  
Scottish Women's Rights Centre  
Senators of the College of Justice  
Shared Parenting Scotland  
Sheriffs Principal  
Social Work Scotland  
Stirling Council  
The Faculty of Solicitors of Paisley  
The Safe & Together Institute  
The Scottish Social Services Council  
The Sheriffs' Association  
Together (Scottish Alliance for Children's Rights)



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Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-80201-900-1 (web only)

Published by The Scottish Government, January 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1002359 (01/22)

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