



Child Welfare Reporters in Scotland

Prepared by:



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Date:

16th February 2020

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I am [REDACTED] Chartered Psychologist, Associate Fellow of the British Psychological Society (BPS) and Health and Care Professions Council (HCPC) registered Counselling Psychologist. I sit on the BPS Expert Witness Advisory Group and the BPS Training Committee for Counselling Psychology.

My current area of work is around families who are, or have been, impacted by family breakdown. Most usually I work with complex family breakdown including individuals, families and cases where there are allegations of domestic violence or child abuse, inter-parental conflict, mental health difficulties, alienation and estrangement. I provide supervision, training and consultancy to legal, mental health and social work professionals. I contributed to the development of the Cafcass Child Impact Assessment Framework in 2017/2018.

I am regularly instructed as a Part 25 Expert in family proceedings in England and Wales, predominantly in private law. I have similarly been instructed as an Expert in Scottish family proceedings.

Background to concerns

I have particular concerns about the practice of Child Welfare Reporters in Scotland, where many appear to be acting outside of their area of competence. In my opinion, this places children at a risk of harm, has likely caused harm and will continue to cause harm to children in Scotland if current proposals in the Children (Scotland) Bill are endorsed.

Underlying my concerns is the notion that **“we do not know, what we do not know.”** It is evident from the written submissions in relation to the Children (Scotland) Bill by legal practitioners and organisations, and oral evidence to the Justice Committee, that solicitors believe themselves to be competent in the role of Child Welfare Reporter. I do not share this belief. My belief is shaped by my core training as a psychologist and the access afforded to me in this role to reports written by Family Court Advisors (all social workers) in England and Wales and Child Welfare Reporters (majority solicitors) in Scotland.

There are undoubtedly many solicitors who feel that they have the necessary skills and knowledge, that they are sensitive to the situations of parties in proceedings, feel they are child friendly and act diligently. Undoubtedly, these solicitors will produce some satisfactory child welfare reports.

However, we cannot leave the welfare and safety of children to chance. Every child deserves to be assured of a competent report into their welfare when the Court deems it appropriate to order one. This can only be effected by professionals with the core knowledge and experience to identify and evaluate the complex range of factors which impact on a child’s welfare and positive relationship with their parents.

I responded to the initial consultation on the review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy in 2018. My response, number [REDACTED], is here [REDACTED]

I submitted additional evidence here [REDACTED]

and gave oral evidence before the Justice Committee on [REDACTED].

Principle concerns

1. My major concern is that there appears to have been no acknowledgment or recognition of the gravity of the actions of private practice solicitors whilst carrying out the role of Child Welfare Reporter (formerly Bar Reporter).
2. The gathering of facts, their synthesis, interpretation and resulting recommendations in relation to the care of a child and their most important relationships should be undertaken by competent, skilled, knowledgeable professionals. **The risk of harm to children during this process and the impact of inappropriate recommendations on their future psychological functioning and well-being cannot be under estimated.**
3. As with most professionals, solicitors are subject to a formal code of conduct which regulates their professional practice. The Law Society of Scotland **Standards of Conduct Rule B1.10 (Competence, diligence and appropriate skills)** clearly states they must only act in those matters where they are competent to do so.
4. For many years, solicitors have been drawing conclusions and making recommendations on matters of child welfare when they do not have the appropriate professional skills, nor the competence, to do so. Furthermore, the ***Instructions to Child Welfare Reporters*** introduced by the Scottish Government in 2016 seem to require them to do this - in breach of their code of conduct.
5. Under the current Act, and the proposals in this Bill, the court must regard the welfare of the child as its paramount consideration. A child's welfare includes, amongst other elements, their physical and emotional needs, any harm the child has suffered or maybe at risk of suffering, and the capability of parents in meeting the child's needs.
6. The professionals who work in the fields of psychological and mental health, social care and physical health are regulated in order to protect the public from harm. **It is no less dangerous for a child to receive inappropriate interventions for their safety, welfare and psychological needs, than it is for them to receive inappropriate medical care for their physical health needs.**
7. If the measures proposed in this Bill sought to license private practice solicitors to carry out life changing medical procedures, there would likely be outcry and uproar.
8. I am further concerned that the recommendations in this Bill have come about through a failure to examine available evidence. To my knowledge, Child Welfare Reports (and formerly Bar Reports) have rarely, if ever, been objectively reviewed by those who have any competence in child welfare matters. The Whitecross *Scoping study of the commissioning, preparation and use of Bar Reports* (2011) only explored the views of legal practitioners – sheriffs, sheriff clerks and solicitors.

Child Welfare Reporters

My concerns arise from the child welfare reports I have had sight of and have discussed with colleagues during supervision. All of these reports, with one exception, have been written by CWRs or Curators ad litem who are solicitors.

My understanding of the role of CWRs is as outlined in *Instructions to Child Welfare Reporters: Edition 1 (March 2016)*. (Scottish Government, 2016)

Child Welfare Reporters are not simply required to report on facts – they are required to draw conclusions and make recommendations on matters of child welfare (*Instructions to Child Welfare Reporters*.) In my opinion, this is clearly outwith the competence of solicitors and sits firmly within the professional remit and statutory duty of the social work profession.

Solicitors do not have the appropriate skills, knowledge or training to investigate, report and make recommendations on child welfare. Further, I do not believe that the required competence and skill can be acquired with the minimal training being proposed.

Further, solicitors do not have the professional framework, including supervision, which is a key component in managing risk, identifying gaps in knowledge, associated training needs and fitness to practice issues.

Specifically, in relation to *Instructions to Child Welfare Reporters*, solicitors:

- do not have the appropriate competence, knowledge and experience to identify, note and evaluate the impact of the range and complexity of challenge to a child having a positive relationship with both parents. These include mental health, complex family dynamics, domestic violence and abuse, substance misuse, support structures, housing issues, parenting capacity, physical health, disability, cognitive functioning, new relationships and much more.
- do not have sufficient core knowledge or understanding of child development, family functioning and dynamics to determine whether a child's view is "genuine."
- cannot undertake an adequate, let alone robust, assessment of parenting capacity or the relationship between a parent and child. Parenting capacity assessments are undertaken by suitably qualified professionals often over an extended period of time. They consider strengths and weaknesses in basic care, safety, emotional warmth, guidance, boundaries and stability. In addition they explore family history and functioning, the extended family and social and environmental factors (NSPCC, 2014; Thomas, 2011).

My opinion is that solicitors do not have a sufficient understanding of what poses a risk of harm to a child, causes actual harm to a child or how to identify any likely harm.

Concerns around the skills and knowledge of solicitor CWRs have previously been identified. Notably "the lack of understanding of child development and family dynamics can result in an adult view rather than a child-centred one." Such concerns, in addition to others around the interviewing of children, determining "genuine" views, manipulation, children's lying and potential "severe consequences on the child's psychological state and social environment" led to recommendations which do not appear to have been implemented (Whitecross, 2011, p. 19 paras 4.8, 4.9; p. 37; Dick (2008) in Whitecross, 2011, p. 21 para 4.13).

Child Welfare Reports

Child Welfare Reports are considered an important part in the Child Welfare Hearing process. Not only are they the means of providing the sheriff with timely key information, their recommendations on child arrangements are implemented in the vast majority of cases.

Table 5: Recommendations and correlation to Court order

Recommendations made by bar reporter	Number	Followed by court
Specific contact arrangements set out	42	38
Referral to mediation	11	8
Referral to other family organisation	1	1
Referral to Children's Bar Reporter	1	1
No order be made	5	5
No contact be granted	20	17
Contact should be granted	21	17
Indirect contact be granted	3	2
Non-residential contact order be granted	5	4
Supervised contact	8	6
Supervised contact at contact centre	8	8
Indirect contact be granted through contact centre	2	2
No residence be granted	2	2
Residence be granted	12	9
Prevailing contact / residence arrangements continue	15	15
PRRs should be granted	8	8
PRRs should not be granted	7	7
Court should observe contact and assign a monitor	16	15
Court should assign proof	1	1

(Whitecross, 2011, p. 36 Table 5)

“The report functions as an important diagnostic tool for the sheriff in determining ‘all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.’” (Whitecross, 2011, p. 10 para 3.3)

The impact of inappropriate recommendations for their care and upbringing on children’s lifelong psychological functioning, mental health, well-being and ability to form and maintain healthy relationships cannot be under estimated.

References

- NSPCC. (2014). *Assessing parenting capacity*.
- Scottish Government. (2016). *Instructions to Child Welfare Reporters*.
- Thomas, C. (2011). *Childhood Neglect: Focus on Parenting Capacity*.
- Whitecross, R. W. (2011). *Crime and Justice. Child Welfare Hearings: A Scoping Study of the Commissioning, Preparation and Use of Bar Reports*.
<https://doi.org/10.4159/harvard.9780674599017>