

For info

From: [REDACTED]
Sent: 24 February 2020 07:55
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Children (Scotland) Bill

[REDACTED]

Many thanks for your email and attachments. I will consider the points you raise. On a general point, the Scottish Government is committed to the regulation of child welfare reporters. We will consider what qualifications, experience and training should be required and will consult on what these should be.

[REDACTED]
Family Law Policy
Scottish Government
[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: 24 February 2020 07:31
To: [REDACTED]
Cc: [REDACTED]
Subject: Children (Scotland) Bill

Dear [REDACTED]

Further to our meeting last August where I raised concerns, along with [REDACTED], about the qualifications and competence of Child Welfare Reporters. As a matter of courtesy, I would like to outline my continued concerns and the evidence I have provided to the Justice Committee.

Following our meeting I provided written evidence in regards to the Children (Scotland) Bill and was asked to give oral evidence on [REDACTED] [REDACTED]. I provided supplementary evidence of my concerns to the Justice Committee [REDACTED] (at their invitation), containing evidence from child welfare reports, for them to consider in private. The non-confidential information is summarised in the attached brief document (*Child Welfare Reporters – Concerns*).

My concerns are based on the child welfare reports prepared by solicitors. (I have only ever seen one report not prepared by a solicitor.) Family Court Advisors in England and Wales are social workers – there are minimum training levels, regulation and disciplinary processes. Having worked in both England and Wales, and Scotland – my concerns regarding Child Welfare Reporters are significant.

My concerns, as raised in the [REDACTED] [REDACTED] evidence session, were reported in The National here:

The proposals in the Bill are to upskill solicitors with a few days training. I do not believe that this is appropriate. In my opinion core competence is needed.

The issue was raised in a public evidence session on 20th February – clip here:

https://www.scottishparliament.tv/meeting/justice-committee-february-20-2020?clip_start=09:38:47&clip_end=09:41:43 (I hasten to add that my evidence did not come through the BPS, and I contacted the Justice Clerk immediately to correct their misunderstanding)

My concerns are now heightened.

- Both [REDACTED] and [REDACTED] stated that Child Welfare Reporters are gatherers of fact, they do not make recommendations.
- This seems to contradict the *Instructions to Child Welfare Reporters* (attached) which indicate they are clearly asked to draw conclusions and make recommendations
- This is clearly your understanding too, as during 26th November evidence session you stated :
We will need to recognise that being a child welfare reporter is undeniably a difficult and skilled job. It involves making a recommendation to the sheriff on something that matters deeply to the child and the parents. It is not a straightforward matter by any stretch of the imagination. The sheriff courts rely on child welfare reporters and usually follow their recommendations.
- My experience, having viewed many child welfare reports, is that conclusions are drawn and recommendations are made. Indeed many of the reports have a section entitled “Conclusions and Recommendations”
- [REDACTED] stated that:
in more complex cases, for instance involving issues of attachment or psychological issues, child welfare reporters do not seek to reach a conclusion that is outwith their competence but signpost to further investigation.[...] If a reporter were to seek to reach a conclusion that was outwith their competence, the court would be aware of that and concerned about it.
- The Committee has already heard evidence that there are allegations of domestic abuse in 50% of cases. In my written evidence I stated:
- *Cases which present in private family proceedings are rarely simple cases of arrangements for parenting time. They are often complex, with many challenging factors which inevitably means there are welfare concerns for a child. This complexity was highlighted in a 2017 report, in which allegations of domestic abuse featured in 62% of cases in private proceedings, with allegations of parental substance misuse, parental mental health, and emotional abuse of the child recorded in 73% of the cases. Multiple types of allegation were present in 55% of the cases (Womens Aid & Cafcass, 2017).*
- In my opinion – every case where a child has been exposed to domestic abuse, is not seeing a parent or there is acrimony between their parents IS a case where there are attachment issues or psychological issues.
- In the reports I have viewed, conclusions were drawn and recommendations were made which were likely to have caused harm due to the lack of knowledge and understanding of the Child Welfare Reporter around the complex issues in the cases. Further – I have seen serious safeguarding concerns go unreported. I cannot recall seeing any recommendations for the involvement of an expert or professional.

My concerns are many – highlighted in the attached paper. But the most fundamental concern is that recommendations are being made on child arrangements which have, and do, impact on

Family law has, over decades, incompetently taken on and mistakenly acted as if it is and can operate like a frontline agency does, too readily taking responsibilities off the parents. We propose that family law is re-formed so that these front line responsibilities are kept in the hands of the parents who legally have the role and responsibilities, and to other established competent agencies where they're needed.

We tried to persuade you of the merits of a family law system with no 'in-house' need or place for Bar or Child Welfare Reports. No one needs to do it - whether properly qualified or not. So why spend even more years - as the Draft Bill you told us will propose - developing qualifications for this job when there already are qualified established resourced experienced agencies who can already do the complex job and functions competently? Anyway, even the matter of proper qualification is a small part of the overall system and supported practice required for this purpose - an overall system which I guess has not been thought about in the draft Bill, an overall system that already exists elsewhere.

Since our meeting, I've been thinking that we shouldn't talk (as we did) as if it's necessary for the child's voice to be made such a big issue inside family law. As for Bar CW Reports, there may be no need or competent place for in-house family law services focusing on hearing the child's voice, whether for purposes of participation or for investigation.

A moment's reflection helps illustrate this. Take how the child's voice - their meaningful participation, wishes, feelings and needs are daily handled, in relation to other matters that affect them, for example, in their schooling. Parents, teachers and others daily observe and enquire about the child's experience, wishes and feelings, picking up on, and taking appropriate action over, minor and major issues for the child's benefit and welfare. But never ever do adults make those enquiries (even with more grown up teenagers) while entertaining or promoting the idea that the first or even the last option is to break the law and just stop the child's schooling as the solution to what they're voicing.

This moment's reflection shows how inept this all becomes in the hands of family law and its clunky construction of a one-off tool (like F9 was) to hit what is far too delicate to be any kind of nail. The matters of participation, welfare and child protection are of utmost importance - but it's again far too important, I'm thinking, to be done inside family law where it will inevitably be done in clunky ineffective ways.

Therefore, we thank you for your interest and invitation to further contact and discussions in the service of children's welfare in family law. That is best served, as you said, by keeping as many parents and children away from the door of the family law system.

My view is that the best and probably only effective way to keep problematic separated family cases away from family law is to re-form family law so it stops offering such an open door as it does. You say the Draft Bill is heading to build up the role of Bar CW Reports, rather than get rid of them; that the focus on the child's voice is not lessening. This is not what we think is the best direction for Scotland to be heading in.

While family law continues to try (and fail) to do what established competent agencies are already there to do if required, those families who most need to be kept away from the door of family law will be the ones most likely to want and to choose this option that will most harm them and their children.

I very much look forward, therefore, to further discussions to help us all get more of a grip and to find a way to achieve what we all want to achieve - to get it right for every child, not wrong.

I hope that is all clear, summarises what we discussed, and adds a couple of points as well. Please tell me if it's not clear.

Meanwhile, as promised, here's my secure Dropbox link to the audio recording of our discussion - only a person with this link can access it.

[REDACTED]

I confirm that this audio recording is for our and your own private use - including to share securely with those of your close colleagues who would have been interested to be there or share in this discussion. We will make no other use or sharing of this recording without consulting you for your approval. We trust you will do the same if you have other purposes for it.

Thanks again.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]