

PE1635/P

Petitioner submission of 13 November 2017

In response to the submission by the Scottish Government, I note all of the attached reports and letters. Given the quantity of information contained within and given that most is at best the very beginnings of consultation I will keep my comments as brief as possible as they relate to the petition. The [letter from the Scottish Government](#) (17 June 2017) to stakeholders itself is not only about a review of the 1995 Act but is being run in tandem with a Business and Regulatory Impact Assessment (BRIA) which is usually about costs and savings. This in and of itself raises concerns that this may be a money saving exercise under the guise of review.

Firstly, in its [written response](#) (August 2017) the Law Society of Scotland make a no comment response in relation to nearly a quarter of the questions posed in the Scottish Government's letter to stakeholders.

One of the most concerning of these no comment responses occurs in relation to the issue of regulation of Child Contact Centres. The Scottish Government asked—

“Should regulation of child contact centres be introduced to lay down standards centres would have to meet in areas such as accommodation and training of staff?”

Given that Sheriffs frequently require children and parents to use such centres, it is incredulous that the Law Society makes no response in relation to what should be a matter of concern for all parties who use or instruct that such premises will be used.

How can children be kept safe if the Law Society of Scotland have no comment to make about unregulated contact centres? How can they question a system that they already use extensively given that there is no apparent alternative? I would also note that the board of Relationships Scotland includes some practising lawyers within its membership.

In response to that same question, [Elaine Sutherland](#), Professor at Stirling University replied—

“This would seem sensible. There is a certain irony in the fact that day care for children is regulated and child contact centres are not. Account should be taken of the challenging issues that are particularly likely to arise at contact centres. Again, a crucial consideration is the provision of adequate funding of contact centres.”

Already the question of funding for the provision of contact centres is raised. This is a secondary issue, albeit an important one, but one that should not detract from ensuring the safety of children.

In its submission of 24 October to the Committee the Scottish Government said that it “chaired a Working Group on Child Welfare Reporters, who provide advice to the sheriff or judge in section 11 cases”.

From experience this would seem to merely represent what has been the status quo as to Child Welfare Reporting, as explained in the Scottish Government’s [Guide to the Child Welfare Report \(March 2016: First edition\)](#).

I believe there are a few things to consider in relation to this guide.

For example, a Child Welfare Reporter is essentially a stranger to a child, and is paid a significant amount of money to carry out the role. The said welfare reporter, despite their training, may not have any experience of dealing with children except within this role. A child is unlikely to speak to a complete stranger about the perhaps complex and potentially frightening relationship they may face in respect of a parent without having built up some trust. The “[power up power down](#)” initiative touches on such issues.

So too does the Law Society in its written response to the Scottish Government, which states—

“There may be a benefit to more frequent use of Children’s Rights Officers (where available) or children’s advocacy workers to bridge the gap between the extremes of a child’s views only being taken once by a court appointee/sheriff and the child having to instruct a solicitor. Children’s rights officers or children’s advocacy workers would allow a child to feel that their view is being represented at every stage, but without being required to take steps in the (often contentious) litigation beyond that. We reference Children’s Rights Officers, but we understand that these are a limited resource, and their primary role is not in private, civil cases.”

However from the Scottish Government’s own guidelines it is also entirely possible that a child’s views may not be recorded (as I have highlighted below). The guide says that “the report will include—

- The reporter’s remit
- A summary of the report’s recommendations
- The information which the reporter has gathered. **This could include your child’s views** [emphasis added]
- Information about any allegations of abuse raised with the reporter.”

This appears to contradict the statement in the Scottish Government’s letter of 17 June, which says—

“The Scottish Government is also preparing a Family Justice Modernisation Strategy (FJMS). This is designed to ensure the voice of the child is fully heard

in family actions in the courts and that family actions are not subject to unnecessary delays.”

The Guide to the Child Welfare Report has a section on what qualifications and experience a reporter will have. It states what their profession may be, but not their qualifications for the role of Child Welfare Reporter—

“Most reporters are practising solicitors. Many are family lawyers.”

The law is a broad subject and many solicitors and sheriffs may have a specialism outwith the field of family law. Other professionals trained in the law, such as the police, although working in a criminal context recognise the need for specially trained staff when it comes to dealing with children despite all officers having similar broad training.

Solicitors are professional law practitioners and this should not be taken as read that they are the best option to fulfil the role of a Child Welfare Reporter. However, given that a solicitor is significantly paid for a child welfare report, it may be unlikely that solicitors would be happy to change current practices.

Also the improvement of a form cannot be equated with the appropriate use of it or the purposes it was intended for. The views of the child are vitally important as Professor Elaine Sutherland states in her response to the Scottish Government letter—

“However, sight should not be lost of the rights of the child concerned, something reflected in the 1995 Act which makes clear that parental rights are conferred to enable parents (and others who may acquire them) to fulfil their responsibilities and responsibilities apply only so far as they are in the interests of the child. This child-centred approach is wholly consistent with the CRC and any changes should be focussed on reinforcing that emphasis. To put it more colloquially, a child is a person with rights, not a pie to be fought over or portioned out.”

In its submission to the Committee, the Scottish Government refers to correspondence it had with the Lord President, noting that “the Lord President has reservations about “regulating” Child Welfare Reporters in the absence of any clear powers to do so”. This would suggest that the Scottish Government should make powers to regulate Child Welfare Reports available.

Another suggestion from the Law Society of Scotland was to have a case management review prior to the start of any proceedings. This approach would be welcome and would potentially highlight major issues early on in proceedings.

I have noted the comments about Relationships Scotland and its policy and have already in previous submissions detailed why these are woefully inadequate and yet

questions surely have to be raised why the Scottish Government funds such centres that are run in such a manner.

I have also noted that the Scottish Government has also noted that Relationships Scotland would welcome external regulation for its centres. I have also noted that the Scottish Government would welcome recommendations from the Petitions Committee with regards to the petition.

Although the proposed review will cover the 1995 Act, it will not cover child contact centres. My petition highlights the regulation of such centres as necessary and urgent. Any review is likely to take time and this should surely raise concerns, especially when Relationships Scotland have already stated that they would welcome external regulation.

I am encouraged by the responses from the Law Society on the questions which point to potential changes that could be considered to protect individuals and children from further abuse whilst engaged with contact cases at court as detailed below.

Should any further steps be taken to protect domestic abuse victims and other vulnerable parties when a case under part 1 of the 1995 Act is being dealt with by the courts?

“We broadly support the work being done to improve protection of children and other vulnerable witnesses in High Court cases involving domestic abuse and more broadly in the criminal justice system. We suggest that it may be helpful to consider whether any of these measures would be appropriate in cases under part 1 of the 1995 Act.”

Are any changes needed to section 11(7A) to (7E) of the 1995 Act on protection from abuse?

“These sections are wide in scope. Read together, they cover more than just domestic abuse. Consideration should be given to their purpose, and whether their scope should be broad or narrow. The principle of requiring specific consideration to be given to both the effect on the child and the effect on the victim/primary carer of a decision which allows a domestic abuser to be involved in a child’s life or which requires the victim to engage with them (e.g. shared parental rights) is a legitimate and important one, albeit one that may be considered to be implied by the welfare principle without further elaboration. The Scottish Government will should consider the recent research into these provisions conducted by Dr Richard Whitecross.”

What other steps could be taken to support domestic abuse victims and other vulnerable parties in cases under part 1 of the 1995 Act?

“As mentioned above, we suggest consideration of whether measures being developed in the criminal justice system would be suitable for use in cases under part 1 of the 1995 Act.”

The Scottish Government's submission to the Committee states that there will be a public consultation next year on various issues relating to the 1995 Act.

In relation to this consultation is there clarification as to how it will be publicised? In the mean time where does this leave the issue of child contact centres? Is this a way of pushing the issue of centres further into the future and putting off taking any action?

What will be the intention after the public consultation? How long will this process take?