

## JUSTICE COMMITTEE

### CHILDREN (SCOTLAND) BILL

#### SUBMISSION FROM DR SUE WHITCOMBE

Thank you for the opportunity to submit supplementary evidence regarding my concerns about the welfare of the child, hearing the voice of the child and the competence, skills and knowledge of Child Welfare Reporters. I trust that in drawing the Committee's attention to child welfare reports, I have been better able to illustrate my concerns.

I would also like, if I may, to pick up on one particular point, raised by Fulton MacGregor MSP during the evidence session on 14<sup>th</sup> January. Mr MacGregor suggested that the "precautionary principle" should be applied to "avoid children being exposed in domestic violence cases."

Scotland has an admirable policy of "getting it right for every child" the aim of which is to be child-focused, based on an understanding of child well-being and on tackling needs early. Applying a precautionary principle will mean getting it wrong for a significant number of children. A failure to conduct an appropriate analysis of each child's circumstances and experiences at the earliest opportunity by knowledgeable, competent professionals increases the likelihood that a child will experience abuse or harm. Delay, in itself, is often harmful.

Domestic abuse is only one factor that impacts on the welfare of a child. As stated in my evidence, there is an increasing complexity in child cases often involving the mental health of parents, substance misuse, domestic abuse, interparental conflict, complex family make-up, undue influence and manipulation. All of these factors mean that there are psychological issues and attachment issues in cases where these feature. Any case where a child is not seeing a parent is a case where there will be underlying attachment issues or psychological issues. Based on my direct experience, I do not share Sheriff Tait's assertion that in such cases Child Welfare Reporters "do not seek to reach a conclusion that is outwith their competence but signpost to further investigation." (20<sup>th</sup> February 2020)

The knowledge base in child welfare factors, early intervention, appropriate support and therapeutic approaches is rapidly developing. It is essential that those charged with reporting on child welfare synthesise this knowledge to maintain their competence. Failure to correctly understand a child's experience will result in inappropriate, likely harmful, recommendations as I believe is currently happening in a number of cases in Scotland.

Despite the evidence of Lady Wise and Sheriff Tait (20<sup>th</sup> February) that Child Welfare Reporters are gatherers of fact and do not make recommendations, I have put before you evidence to the contrary. *The Instructions to Child Welfare Reporters* indicate clearly that Child Welfare Reporters are asked to draw conclusions and make recommendations. In evidence on 26<sup>th</sup> November, Simon Stockwell 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.*

I would urge the committee in their deliberations to focus on each and every child who is subject to proceedings. Who is best placed to make recommendations about their welfare?

### **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 481282804, is here [https://consult.gov.scot/family-law/children-scotland-act/consultation/view\\_respondent? b\\_index=180&uuld=481282804](https://consult.gov.scot/family-law/children-scotland-act/consultation/view_respondent?b_index=180&uuld=481282804).

I submitted additional evidence here [https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JS19CH49\\_Whitcombe\\_Dr\\_Sue.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS19CH49_Whitcombe_Dr_Sue.pdf) and gave oral evidence before the Justice Committee on 14<sup>th</sup> January 2020.

## 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 underestimated.
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.

(Whitecross, 2011, p.36 Table 5)

**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

“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.**

## Author

I am Dr Sue Whitcombe, 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.

## **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>