

SCRA Consultation Response FULL VERSION 2021

REGISTERS OF CHILD WELFARE REPORTERS, CURATORS AD LITEM AND SOLICITORS APPOINTED WHEN A PERSON IS PROHIBITED FROM CONDUCTING THEIR OWN CASE - CONSULTATION



The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.

The Children's Hearing is Scotland's distinct statutory approach, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.

In the Children's Hearings System:

- the needs of children or young people are addressed through one holistic and integrated approach which considers all the circumstances of the child and the child's welfare
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making
- the rights of children and families are respected

The role and purpose of SCRA is:

1. Receiving referrals for children/young people who may be at risk.
2. Ensuring that other public agencies carry out enquiries and assessments into children/ young people's circumstances so we can make informed decisions about children/young people referred to us.
3. Making decisions on whether to refer a child/young person to a Children's Hearing if they need compulsory measures of supervision.
4. Drafting the grounds for the Hearing.
5. Arranging for Children's Hearings to take place when we decide that compulsory measures of supervision are warranted and where there is sufficient evidence to prove the grounds.
6. Ensuring fair process takes place within the Hearing, including the rights of those in attendance being met.
7. Having a key role in establishing grounds of referral in court, where these are contested, and in defending decisions of Children's Hearings which are subject to appeal.

Our Vision: Children and young people will be listened to, protected and supported to realise a positive future where they are safe, valued and respected.

Our Mission: We protect and support Scotland's children and young people, by making high quality decisions, upholding their rights and working collaboratively as compassionate, inclusive corporate parents to enable the most positive and personalised experience of the Children's Hearing.

Our Values: Our values are the shared motivations, beliefs and behaviours that underpin all that we do.



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Supportive	We work with kindness to support children, young people and families, our Partners and each other.
Child Centred	Children and young people are at the heart of everything we do.
Respectful	Everyone is respected and treated fairly, inclusively and lawfully.
Accountable	We are responsible for our decisions, our ethics and our learning.

Question 1):

Who should provide the operation and management of the register of child welfare reporters? (please select one answer).

- (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

Why did you select your answer?

(b) The Scottish Government should contract out to a 3rd party.

We are convinced by the arguments that a 3rd party is likely to be able to manage the register efficiently and appropriately and is also likely to be able to develop training which will ensure consistency across the country. We think that this task would be an overly onerous burden for SCTS to administer centrally and could fall to each Sheriffdom. This could result in increased localised consistency but perhaps not the desired national consistency. In terms of the list being administered centrally by Scottish Government - there are benefits to this in terms of the national picture, but the reality of training provision and on-going support to child welfare reporters is that we think a 3rd party could best deliver value for money with this service.

Question 2): Do you agree/disagree with the proposed process for including an individual on the register of child welfare reporters?

Agree

Disagree

Don't Know

Why did you select your answer?

Don't know.

SCRA are of the view that existing child welfare reporters should all be moved into the new scheme unless they decline to continue with their work. We are not sure why an application process at the initiation of the scheme is required when it could be unnecessary.

Question 3): Do you agree/disagree that child welfare reporters should be included on the register for a three year period?

Agree

Disagree

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Don't know

Why did you select your answer?

Agree.

We are in agreement with aligning appointment with the 3yr appointment cycle for safeguarders – as a result of the cross-over between the roles but also because a 3yr period is long enough for people to develop expertise in the work and receive training. We would want to see more about the proposed 'appraisal' scheme –we are not clear at this stage if appraisal is the best approach to take or whether regular supervision or mentoring conversations about the work being done may be more supportive / effective.

Question 4): Do you agree/disagree with the proposed reappointment process for child welfare reporters?

Agree

Disagree

Don't Know

Why did you select your answer?

Agree.

This is in the context of our answer to Q3. We agree that re-appointment should not be automatic and think that there needs to be a mechanism for assessing ongoing suitability for the work. We are not sure whether this should be annual appraisal or another mechanism. Some method of 360 degree feedback could be more meaningful for the purposes of re-appointment than an appraisal document. We are not sure about how useful appraisal would be in identifying and then developing areas of work which were 'weaker' if it was then to be used to make decisions about continuing suitability for the work.

Question 5):

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

Please select yes/no/don't know for each option

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 junior Scottish Minister

an individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007

Why did you select your answers?

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- a) yes – those managing the scheme should not work as child welfare reporters.
- b) yes – those employed by SCTS should not work as child welfare reporters.
- c) don't know – 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.
- d) don't know – it may be that there are people employed part time by the Scottish Government or a Scottish Minister who could also be very good child welfare reporters. Their work for SG or the Minister may have nothing to do with the work of a child welfare reporter. In the same way as a member of the judiciary could be asked to complete a risk assessment perhaps this could be open to this group of people as well? As an example, there are many children's panel members in the children's hearing who work for Scottish Government.
- e) yes – absolutely – no-one who is barred from regulated work with children by virtue of the PVG scheme should work as a child welfare reporter.

Question 6) Is there anyone else who should be ineligible for inclusion on the register of child welfare reporters?

Yes

No

Don't Know

If you answered yes please provide details.

SCRA thinks that perhaps children's reporters, panel members, people employed by the Crown Office and Procurator Fiscal Service, local authority social workers in employment and local authority or other teachers in employment should be risk assessed if they wanted to act as child welfare reporters.

Question 7) Do you agree/disagree with the approach proposed when an individual is removed from the register of child welfare reporters?

Agree

Disagree

Don't know

Why did you select your answer?

Don't know.

We are not sure who the regulatory body for child welfare reporters would be – as that is dependent on the choices made about how the scheme is run. We do agree that there should be a clear mechanism for removal from the register and that removal from the register would impact an individual's ability to complete a child welfare report if one was in flight.

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Question 8): 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?

Agree

Disagree

Don't know

Why did you select your answer?

Agree.

SCRA agrees that the areas covered are crucial for a child welfare reporter to be able to demonstrate knowledge and understanding and we also agree with the lack of specificity around the currency of knowledge.

Question 9): Are there any other requirements that a person must satisfy in order to be included on the register of child welfare reporters?

Yes

No

Please give the additional requirements you feel are necessary and why you feel they are important.

Yes.

We think that additional consideration should be given to knowledge of mediation and conciliation approaches / techniques and to an understanding of counselling approaches. An understanding of mental health would also be really beneficial – both of adults and of children.

Question 10): Do you agree/disagree that existing child welfare reporters having to apply to be on the new register?

Agree

Disagree

Don't know

Why did you select your answer?

Don't know.

We have already covered this question in our response to Q2. We think that the additional monitoring and training of child welfare reporters under the new scheme would very quickly identify any people who should not continue in the role and we would worry that the approach as outlined would alienate people who would be positive assets to the scheme.

Question 11): Do you agree/disagree with the proposed training requirements for child welfare reporters?

Agree

Disagree

Don't know

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Why did you select your answer?

Agree.

Although we think the additional areas of knowledge as outlined in our response to Q9 should also be considered for training.

Question 12): Is four days of paid training per year for child welfare reporters appropriate?

Yes

No, I believe it should be fewer days

No, I believe it should be more days

Don't know

Why did you select your answer?

Don't know.

Whilst the financial memorandum has costed four days of training it may be that this is too much / too little – and a detailed training schedule perhaps needs to be developed once the operations of the scheme have been determined – and developed in conjunction with child welfare reporters – who are best placed to identify their own training needs. We are pleased to see that relevant training from other areas will also be recognised and that there is a commitment to CPD.

Question 13): How should fee rates for child welfare reporters be applied?

Hourly rate

Per page rate

Another way

Don't know

Why did you select your answer?

Don't know.

We do not wish to comment on the fees for the child welfare reporter. This is not an area of expertise for us. We think the fee needs to be commensurate with the work required.

Question 14): Do you have any comments on the proposed policy in relation to expenses for child welfare reporters?

Yes

No

Please provide your comments

No. We have no comment in relation to expenses.

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Question 15): 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
 Why did you select your answer?

The next person on the register. We think that with the approach to recruitment, training and retention that has been described already in this consultation there should be no clear 'experts' in various areas of work for the Court to depend on. All child welfare reporters should be able to work with all circumstances. We can't think of an alternative system which would work in a better way – the list with geographic availability makes sense. This is the approach taken for safeguarder appointments – and it might help to get some current information from the organisation who manages that list / approach.

Question 16) Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?

Yes

No

Don't Know

Why did you select your answer?

Yes.

We are unclear what the purpose of the child welfare reporter would be if they were not empowered to make recommendations. A factual account of the circumstances of a child could be made by a social work department or 3rd sector agency. The recommendations of the child welfare reporter would be weighed against the other evidence in front of the Court and should not be seen as intrinsically having more weight.

Question 17): 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?

Yes

No

Please provide your comments.

No.

There needs to be complaints procedure in relation to the decision to be placed or not on the approved list.

Question 18): 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?

Yes

No

Don't Know

Why did you select your answer?

Yes. Grievances should be dealt with by the body appointing and managing the register.

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Question 19): Do you have any comments on the proposed procedure for complaints about child welfare reporters?

Yes

No

Please provide your comments

Yes.

We think it will be really important to have a clear delineation between the complaints and the appeals process and that this needs to be factored in. We agree that complaints about a child welfare reporter should be directed to the body appointing and managing the register, and thereafter it needs to be clear whether it would be the SPSO who would be the final arbiter – or Scottish Government / Scottish Ministers. At the moment this aspect of the process is unclear. We agree that complaints with professional bodies could also feature, however, there has been (so far) no stipulation that a child welfare reporter would need to be a member of a professional body – and we think that might need to be made if this were to be enforced. We also question whether the professional body is the right place for recourse – the work of the child welfare reporter is focused, specific and specialised and may be out with the body of knowledge of some professional bodies. We think this element of the proposed approach requires more thought.

Question 20): 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?

Agree

Disagree

Don't know

Why did you select your answer?

Agree.

With the caveat that the additional areas of work we mentioned in our response to Q5 & Q6 should also be considered here.

Question 21): Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem?

Yes

No

Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Don't know.

See answer to Q20 above.

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Question 22): Do you have any comments on the proposed training requirements for curators ad litem?

Yes

No

Please provide your comments

No.

Our response to previous Q12 is relevant here. We are also unsure of the current breakdown of curator appointments – and would, we think, want to know the percentage of appointments for adults and for children across all appointments made. We think that the work for these very different groups requires different knowledge and a potentially different skill set and that does not seem to be recognised here.

Question 23): Do you agree that four days of paid training per year for curators ad litem is appropriate?

Yes

No, I believe it should be fewer days

No, I believe it should be more days

Don't know

Why did you select your answer?

Don't know.

We think the training needs of curators should be discussed and developed fully with them.

Question 24) 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?

Yes

No

Please provide your comments.

Yes.

We agree with the process for appointment under section 11 of the 1995 Act. It makes sense in the context of all these changes. We are however very disappointed that a concurrent process for appointment in children's hearing court proceedings under the Children's Hearings (Scotland) Act 2011 has not been laid out. The appointment and payment of a curator in children's hearing proceedings is sometimes essential – particularly when a parent or relevant person is incapable (for any reason) but there is no recognised route for such an appointment to be made. We think there should be.

Question 25): How should fee rates for curators ad litem be paid?

Hourly rate

Another way

Don't know

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Why did you select your answer?

Don't know. We have no comment to make on fees or payment.

Question 26): Do you have any comments on the proposed approach in relation to expenses for curators ad litem?

Yes

No

Please provide your comments

No.

Question 27): Do you have any comments on the proposed procedure for complaints by or about curators ad litem?

Yes

No

Please provide your comments

No. Our previous response (Q19) remains relevant here.

Question 28): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors?

Agree

Disagree

Don't know

Why did you select your answer?

Agree.

Question 29): Are there any other requirements that a person must satisfy in order to be included on the register of solicitors?

Yes

No

Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Don't Know. With the caveats already mentioned above (Q12 and Q22).

Question 30) Do solicitors on this register require fewer days training each year than child welfare reporters and curators ad litem, on the basis that they are likely to receive fewer appointments?

Yes

No

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Don't know

Why did you select your answer?

Don't know.

This would need to be based on evidence in relation to the number of appointments made once the system becomes operational.

Question 31): Are there any other training requirements that you think should be included?

Yes

No

Please give the additional requirements you feel are necessary and why you feel they are important.

No.

Question 32): Do you have any comments on the proposed process for the court appointing a solicitor from the register?

Yes

No

Why did you select your answer?

Yes.

We think a list, indicating geographic availability and requiring a professional assessment of conflict of duty is fair and workable. We think consideration could be given to how existing provisions could be expanded to encompass the provisions of section 7 of the 2020 Act.

The duty solicitor scheme currently operated by SLAB in relation to children's hearing proceedings currently operates in 2 circumstances:

1. Where a child is entitled to automatic legal aid as a result of one of the conditions set out in section 28C of the Legal Aid (Scotland) Act 1986 applying; and
2. Where a children's hearing uses its powers under rules 61(d) or (g) of the Children's Hearings Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 to make a determination that a child or a relevant person requires legal representation and is unlikely to make arrangements to obtain a solicitor.

This existing scheme could be extended to include relevant persons who are prevented from carrying out their own cross examination as a result of the new provisions.



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If an appointed solicitor should then find themselves in a position where the appointment of Counsel becomes necessary then this should be done through the appropriate body regulating the register if solicitors.

Question 33): Do you agree/disagree with the proposed procedure for expenses for individuals appointed to this register?

Agree

Disagree

Don't know

Why did you select your answer?

Agree.

Question 34): Do you have any comments on the proposed procedure for complaints by or about solicitors on this register?

Yes

No

Please provide your comments.

Yes.

See our response to Q19, which is also relevant here. This needs to be a clear route and needs to differentiate between complaint and appeals processes.

Question 35) :

Do you have any comments about, or evidence relevant to:

- a) the draft Business And Regulatory Impact Assessment Yes/No
 - b) the draft Child Rights and Wellbeing Impact Assessment; Yes/No
 - c) the draft Data Protection Impact Assessment; Yes/No
 - d) the draft Equality Impact Assessment; Yes/No
 - e) the draft Fairer Scotland Impact Assessment Yes/No or
 - f) the draft Islands Communities Impact Assessment Yes/No
- Please provide your comments.

a) BRIA. Yes. In line with comments made during the body of the consultation we would ask that the recruitment processes for all these roles maximise retention from those currently employed in the role / similar roles. There also needs to be clear communication to the court and to all parties about the roles and the expectations of the role going forward.

b) CRWIA. Yes. We think more consideration could be given in the CRWIA to the child as an active agent in the process, not just as someone receiving the service / support of an adult. At all stages of the child's

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involvement in any related court proceeding the child should be enabled to engage / understand / communicate – regardless of whether additional adults are involved to fulfil certain functions. The ways in which this should occur perhaps need to be more fully specified for the impact of the proposals to be fully realised.

There is also something in the received understanding of adults about the role of the child in the process which needs to be informed, so that all adults are viewing the child as an independent participator with agency. It is not just about being able to communicate with a child – it is about what you fundamentally think about a child and what that child's role in the proceeding is.

There could be a potential negative impact in relation to the number of adults who could become involved in a child's particular circumstances and this should be explored.

There should be a clear explanation (somewhere, perhaps in the guidance?) about the involvement of these adult roles with sibling groups and children over and under 12. This is not spelt out in the consultation and we are left with questions about this.

We think the wellbeing indicators could be assessed using more than domestic abuse as an example. These family court cases (in particular) will be cases where the children are affected emotionally and where family relationships may have become very difficult. It is very easy in these situations for the voice of the child to be drowned out by adults who are themselves also hurt / hurting and we need to design approaches which include children by design throughout.

We are not sure that the statistics on children's hearings are the most accurate statistics to illustrate this CRWIA – it might be pertinent to include figures on the number of proof applications held and the numbers of section 67 grounds for referral established. Whilst we cannot give a figure for the number of unrepresented parties in these proceedings it would give an accurate picture of the landscape.

As mentioned previously we think the mental health of adults and children in these proceedings needs more consideration. The figure for disabled children is not enough, there needs to be some capture of adults with a disability including a mental health condition.

c) DPIA. Yes. Information governance for the regulatory body will be crucial to their success and IG approaches should, we think, form part of the tender / procurement process (along with training & retention and support - appraisal / supervision etc).

d) EqIA. Yes. We agree the Government assessment that there is likely to be high impact across protected characteristics. We would want to check that the data referred to from SLAB in relation to age is in fact data that relates to section 11 family court proceedings (and not other civil or other court matters where legal aid is available). We also think that the intention of the registers is perhaps misleading when considering the Public Sector Equality Duties – there should be an impact across the country in respect of access to

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quality and robust support as a result of all three registers and any 'postcode lottery' effect that may have been in operation will be reduced – and perhaps will disappear. This has to be a positive impact across all the Public Sector Equality Duties.

e) Fairer Scotland. Yes. The registers should reduce local variation in service provision and costs.

f) Island Communities. Yes. The registers should increase the pool of available people across all the registers to work on the Islands. An unintended consequence of the Covid19 pandemic may be that SCTS continue to use 'remote or virtual courts' via WebEx (or other platforms) and this could increase the availability for work on the Islands even further. The Scottish Government may want to have some separate discussion about this with SCTS – as it could affect the way in which people recruited to each register indicate their geographic availability.

Question 36): Do you have any further comments?

Yes

No

Please provide your comments.

No further comments.

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