



## **Response to the Scottish Government's Consultation on Children (Scotland) Act 2020 - Registers of Child Welfare Reporters, Curators ad litem and Solicitors**

**7 July 2021**

The Scottish Women's Rights Centre (SWRC) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV).

We recognise that people of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that these crimes are more often committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about victims/survivors in this response we will generally refer to women. Despite this, we are aware – and do acknowledge – any person can be subjected to these crimes.

### **Introduction**

We welcome the opportunity to respond to this consultation. In our experience of working with victims/survivors, one of the key concerns raised by mothers dealing with the child contact court process is the Child Welfare Report. Through our outreach work it is clear that the process is widely not understood by women. To this end, we have previously published a blog written by Professor Richard Whitecross aimed at parents with experience of domestic abuse to help them understand Child Welfare Reports<sup>1</sup>.

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<sup>1</sup> Please see: <https://www.scottishwomensrightscentre.org.uk/news/news/child-welfare-reports-what-are-they-and-why-do-they-matter-in-domestic-abuse-cases/>

Child Welfare Reporters play an incredibly important part in the child contact process, with, at the moment, very little clarity over their recruitment, training or quality assurance. Significant weight is generally placed on reports produced by such professionals and their conclusions are rarely looked behind nor challenged. Concerns about Child Welfare Reporters and their reports are frequently reported to us through our legal outreach services. Many women have expressed the view to us that the Child Welfare Reporter dealing with their case has appeared biased and untrained in aspects of domestic abuse and other forms of gender-based violence. Despite belonging to professional fields that presuppose a level of skill and expertise in child welfare matters, Child Welfare Reporters at the moment do not require to demonstrate any particular training or education in this area.

We strongly believes that a new set of arrangements should be put in place to manage the recruitment, appointment, training, administration and regulation of Child Welfare Reporters, as is currently being consulted on. On that basis, we have responded to this consultation and to the questions that we consider we are able to contribute to. We have not answered all questions in the consultation, many falling out with our area of expertise and remit of our project.

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

*Agree, with further comment*

We would strongly support that there should be a clear recruitment process which includes; application process, interview and PVG Check for each member of the register. Each applicant should be interviewed to test their suitability to be a Child Welfare Reporter (the current recommendation is that there **may** be an interview). The appointment criteria should be consistent across all sheriffdoms and should include the requirement of direct experience of working with children and young people, and demonstrable understanding of children's rights. Experience as a family legal practitioner alone should not be sufficient. Accreditation and a body to hold practitioners accountable are necessary. In our opinion, having transparent systems and criteria for appointment and training would be one step in helping victims/survivors to have more confidence in the system.

Eligibility requirements should be clear and transparent, and each member of the register should have a minimum level of post-qualified experience and specialised experience in the area required.

Consideration should be given to having separate lists for Child Welfare Reporters with specialist skills and expertise. For example, when working on a case involving domestic abuse the Child Welfare Reporter should have a background in this area and be able to exhibit a good level of knowledge and understanding of this area. However, it is also our recommendation that all Child Welfare Reporters are required

to undertake extensive training, including training on domestic abuse and trauma informed practice, to ensure that all cases are handled appropriately and sensitively. This is particularly important where a victim/survivor has not disclosed their circumstances at an earlier stage in the court process and may for example disclose abuse during an interview with the Child Welfare Reporter.

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

*Disagree*

Appraisals and monitoring should be introduced to evaluate and review practice. A commitment to equality and diversity and children's rights should be written into job descriptions for these roles to allow these responsibilities to be evaluated through the appraisal process. A robust system for managing conflicts of interest should be introduced (for example, if the Child Welfare Reporter is known to one of the parties).

The legal landscape is ever changing and we would submit that 3 years is a long period in that regard. Legislation can change very quickly and have a significant impact on cases. For example, the Domestic Abuse (Scotland) Bill was first introduced in March 2017 and became law in March 2018. This Act criminalised psychological domestic abuse and coercive control. This illustrates how quickly the law can significantly change, and it is vital that Child Welfare Reporter's remain up to date and access relevant training.

We would recommend consideration of reappointment should happen a maximum of every 2 years. Child Welfare Reporters should be able to demonstrate that they have continued to develop their skills and gain experience in the relevant areas. A shorter period allows consideration to any issues that arise through the life of the appointment.

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

*Don't Know*

We are unable to comment if we agree or disagree with the proposed reappointment process. The proposed reappointment process is not clear enough for us to fully comment. We do however, wish to comment that consideration should be taken of any complaints made against the Child Welfare Reporter and any issues raised in regard to their appointment during the re-appointment process. There should also be a clear criterion for what will be considered during the proposed yearly appraisals. It is vital that the appraisals and reappointment process are clear and transparent so that parents and children can have confidence in the system.

Processes for making complaints about Child Welfare Reporters should be consistent, transparent and accessible. Currently this is complicated by the fact that not all reporters are solicitors, solicitor advocates, or advocates and the onus is on the complainer to find out the reporter's professional background and the appropriate complaints procedure.

Robust and consistent processes must be introduced to remove Child Welfare Reporters if they do not meet the required standard. A centralised system is the best way to do this. Although maintaining a PVG registration is equally important, much more stringent measures of accountability should be introduced to ensure Child Welfare Reporters (and we would propose curators ad litem) have the necessary skills, experience and training to carry out their duties and to monitor the quality of their practice.

**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 - **Yes**
- an individual employed by the SCTS - **Yes**
- a member of the judiciary - **Yes**
- a member of the Scottish Government or junior Scottish Minister – **Yes**
- an individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007 - **Yes**

We consider that those actively and currently involved in the decision-making process should be ineligible. If these restrictions are not in place then it could potentially lead to conflicts and cause issues of loss of trust and confidence in the process by parties. We consider that by allowing the above, it may impact the view of impartiality of the Child Welfare Reporter.

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

*Agree*

It is agreed that where a Child Welfare Reporter is removed from the register they should cease work immediately and any reports being completed should be allocated to a new Child Welfare Reporter. The re-allocation of reports should be given priority and urgently progressed to ensure no further unnecessary delay, prioritising the best interests of the child. The preparation of a child welfare report takes a lengthy time, around 6-8 weeks (or longer if delays or complications in the preparation or case) and so it is important to avoid further delay. Furthermore, in

respect of cases involving victim/survivors and, or child protection concerns unnecessary delay can be re-traumatising and can lead to additional safety and wellbeing concerns. It is proposed that such cases should be prioritised and that re-allocation of the Child Welfare Reporter should be to a suitably experienced and trained professional.

We would submit that where a Child Welfare Reporter is removed from the register due to the quality of their report writing or due to serious concerns about their conduct, they should not be permitted to be appointed to other registers, such as the register of curators ad litem or to the Safeguarder's Panel in Children's Hearing Processes. There should be to an extent linking of these 'lists' to ensure that standards are upheld and consistent across the board.

We note that it is important that there is a clear and transparent process for removing Child Welfare Reporters from the list and an accessible and independent process for appealing such decision by the professional in question. Any appeal process, however, should not impact any current caseload that the reporter has being re-allocated or cause further delay in these delicate and time sensitive cases involving children.

**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, with comment*

We agree that individuals from varied professions and experience have vital skills that would enable them to be skilled Child Welfare Reporters. We also agree that the list of relevant skills and experience as set out in section 2.56 of the Consultation proposals are a good starting point; in particular we are pleased to see that this includes an understanding of domestic abuse.

Children who have experienced a domestic abuse situation, or continue to experience domestic abuse, may be subject to further stresses after entering the child contact legal process, including separation from family, friends, and community, as well as the uncertainty of their future. Repetitive and significant encounters with trauma and stress have real consequences for the physical, social, and emotional wellbeing of children<sup>2</sup>. Furthermore, research in Scotland has identified inadequate understandings of the dynamics and effects of domestic abuse amongst the judiciary<sup>3</sup>. This highlights the importance of professionals involved in making

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<sup>2</sup> Eva J. Klain Amanda R. White 'Implementing Trauma-Informed Practices in Child Welfare' ABA Center on Children and the Law November 2013. < <http://childwelfareparc.org/wp-content/uploads/2013/11/Implementing-Trauma-Informed-Practices.pdf>

<sup>3</sup> Richard Whitecross, 'Section 11 Orders and the "Abuse" Provisions: Family Lawyers' Experience and Understanding of Section 11(7A)-(7E)' *Edinburgh Law Review* 21:2, 269 (2017)

recommendations about the futures of children having this training and experience to ensure that decision making is positively influenced in this area.

We believe it is important to add an understanding of and experience of working with trauma to the list of essential experience and/or skills. In our experience a high number of referrals to Child Welfare Reporters will have some level of trauma involved; the parents and/or children having experienced trauma, and as such professionals must understand the impact of trauma on child development and learn how to effectively investigate the case without causing additional trauma. This would be relevant for example, in interviewing a child and victim/survivor whom have had or are experiencing trauma from domestic violence.

We also believe an understanding of intersectional needs and/or diversity should be included; this could mean for example a Child Welfare Reporter with experience of different cultural backgrounds or experience in working with people with disabilities. Having experience in working with diversity (for e.g. socio-economic factors, sensitivities surrounding race/other cultures, women fleeing gender based violence in other countries, and to address a lack of understanding or prejudice against women with mental ill health) would provide better understanding of the parties involved and produce better outcomes.

**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

Please see our answer to Question 8 of this response (above); we consider that Child Welfare Reporters, in addition to the proposed requirements, require a) trauma informed training and b) understanding of intersectional needs/diversity.

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

Agree

All members of the register should go through the same extensive recruitment process and it should be consistent for all members of the register, regardless of their prior experience. There should be scrutiny of each member on the register to ensure that they meet the standard required.

We also strongly recommend that Child Welfare Reporters should undergo minimum training requirements prior to being included on the register. If those already on the list received preferential treatment, then they potentially would not have undertaken the required training. This would lead to inconsistencies with the level of service that parties receive and may impact the quality of reports/recommendations.

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

*Agree*

In our experience, victims/survivors of coercive control often report that their abuser continues their abuse through the child welfare report process. This is evidenced by Professor Richard Whitecross in his research where he identifies that '*contact proceedings are frequently raised by the perpetrator as a means of seeking to continue to control women and children*'.<sup>4</sup> For example, victim/survivors may be aware of their abusers coercive and manipulative personality and have valid concerns that they will attempt to manipulate the Child Welfare Report process. . Child Welfare Reporters must be trained to identify and prevent this type of behaviour. Recognising the signs of domestic abuse and coercive controlling behaviour is a key skill that any professionals working in family situations should be able to utilise. Having an open and impartial view of the family dynamics is the ideal approach and with appropriate training on child protection and domestic abuse concerns the Child Welfare Reporter can also have an informed view.

We would propose that mandatory training for Child Welfare Reporters should include (although this is not necessarily an exhaustive list):

- Understanding the child's needs and behaviours and the need to prioritise their wellbeing and best interests;
- Understanding domestic abuse, particularly the dynamic of coercive control and the impact of domestic abuse on children;
- Understanding the impact of trauma; particularly how domestic abuse may affect the presentation of and communication from a victim/survivor (for example an abuser is often likely to come across as in control and 'charming' whereas a survivor may present as emotional and protective);
- Communication with children (including young children, children who have experienced trauma and children with additional support or communication needs), including obtaining the views of children;
- Children's rights;
- Attachment theory (particularly for younger children);
- Assessing the capacity of children to freely form and express their views;
- Diversity training (for example, socio-economic factors, sensitivities surrounding race/other cultures, women fleeing gender based violence in other countries, and to address a lack of understanding or prejudice against women with mental ill health);

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<sup>4</sup> Richard Whitecross, 'Section 11 Orders and the "Abuse" Provisions: Family Lawyers' Experience and Understanding of Section 11(7A)-(7E)' *Edinburgh Law Review* 21:2, 269 (2017)

- Understanding the ways adults can influence children;
- Working with families in conflict; and
- Child Protection

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

Yes

We note that this Consultation states that *“attending a certain number of training days would be mandatory as part of a child welfare reporter’s terms and conditions”* (see section 2.62). We would propose that it is essential that the minimum requirement for training be specified. We note that it has been recommended at 4 days per year. We consider that this is adequate to cover the necessary areas of training. We would further propose that the minimum number of hours should also be specified to ensure clarity.

We note that it is stated within this Consultation that *“Four days was considered appropriate as it would strike a balance between ensuring regular training is provided and recognising that a child welfare reporter may only produce a limited number of reports a year meaning training requirements cannot be overly burdensome”* (see section 2.63). Although we agree with the proposed minimum requirement for training being 4 days per year, we disagree with this statement. The importance of training in the areas recommended above (please see our answer to Question 11 of this response) cannot be understated and should not be considered burdensome. It is vital that a Child Welfare Reporter can recognise signs and issues of child protection and domestic abuse in each report that they prepare regardless of how many they prepare each year. This will ensure consistency of reports and engagement with children and victim/survivors.

We would propose that training should require to be undertaken before the Child Welfare Reporter can be included on the register along with minimum requirement each year.

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

Yes

We do not have any comments on the method for payment of Child Welfare Reporters fees, although we would recommend that whatever system is chosen requires to adequately recompense Child Welfare Reporters for the work undertaken. This will enable Child Welfare Reporters to hold face to face meetings when required and to ensure that work is not missed as a result of restricted fees. This is particularly important in domestic abuse cases where more extensive work

may be required to ensure that the Child Welfare Reporter has a full view of the case and parties' positions. Often in cases involving child protection concerns, and or domestic abuse, the Child Welfare Reporter will have a wider remit directed by the Court to meet with relevant persons (such as the child's school and the victim/survivor's advocacy worker etc). Thought requires to be given to ensuring that the proposed fee allows for such work to be undertaken by the Child Welfare Reporter.

**Question 15) When a child welfare reporter is selected should this be:**

*A person with specific areas of expertise requested by the court - Yes*

We appreciate that to appoint the next person on the register may be a more transparent system and that appointment early in a case may not allow for specialist areas to be identified. However, we strongly recommend that there should be an opportunity to appoint a Child Welfare Reporter with specific areas of expertise where the case calls for such expertise. This is particularly important where there has been disclosures of domestic abuse and, or child protection concerns prior to the calling for a report. We would propose that recruitment of Child Welfare Reporter's should include that all members of the register have specialist skills and expertise. Furthermore, all members of the register should be mandated to complete the mandatory training prior to being included in the list. This will allow for all cases to have the same quality of service in terms of reports and provides adequate protection for later disclosure of abuse/child protection concerns. Some reports will however require sensitive skills and specialist knowledge and the court should appoint specialists for these cases where able.

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

Yes

The Child Welfare Reporter is afforded a unique insight into the family dynamics. The decision maker can benefit from the first-hand knowledge of the Child Welfare Reporter, whom in most cases has met face to face with the parties, the child and any other relevant individuals to the case. This is particularly helpful where the decision maker requires to make an interim decision at a Child Welfare Hearing, prior to there being an evidential hearing. We have an adversarial legal system and so our decision makers are unable to take on the more inquisitorial role to investigate the positions of parties. It is therefore helpful that the Child Welfare Reporter can take an inquisitorial role to ingather evidence and formulate recommendations for the decision maker.

If the Child Welfare Reporter was fully trained and qualified with the specialist training recommended, and has the relevant expertise to the case, then it anticipated that their recommendations will be well founded and based on their impartial and informed view. Where parties are faced with such a situation, they may feel more comfortable with the report and recommendations made by the Child Welfare Reporter. Where parties have been afforded the opportunity to express their views to the Child Welfare Reporter in individual interviews and have felt that these have been taken sensitively and in the appropriate context, they will feel that they have been listened to and heard through the process. This provides parties with more autonomy and respect through the decisions being made and will allow greater access to justice.

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

Yes

The processes for making complaints about Child Welfare Reporters should be consistent, transparent and accessible. Currently this is complicated by the fact that not all reporters are solicitors, solicitor advocates, or advocates and the onus is on the complainer to find out the reporter's professional background and the appropriate complaints procedure.

We are aware through our legal outreach and casework experience that victim/survivors are not often aware of the complaints process and, or that they are able to make a complaint against the Child Welfare Reporter. We often hear through our outreach that victim/survivors are told by their solicitor that there is not anything they can do about the conduct/report prepared by the Child Welfare Reporter. It is crucial that the complaints process is made accessible to parties and that instructed solicitors make their clients aware of such processes.

We appreciate that the complaints structure allows for specialist handling of each complaint dependant on the individual professional, however, we suggest that this can lead to complications for the complainer and their understanding of where and who to complain to. We would propose that processes should be made clear for each type of professional. The complaints process should be given to the parties by the Child Welfare Reporter or their instructed solicitor at the start of the engagement with the Child Welfare Reporter. We would also recommend having all complaints processes clearly detailed on one accessible website, to allow complainers to identify to whom and how they should be complaining easily.

Given that no one central authority will be dealing with the complaints against Child Welfare Reporters it is important to ensure consistency amongst the handling of complaints and the outcomes of each. Those handling the complaints should have sufficient knowledge and understanding of domestic abuse and trauma informed

training to ensure that they can sensitively and appropriately handle complaints of this nature.

Complaint by children or young persons should also be considered. The complaints process should be inclusive of children and young persons and should be accessible. We would propose that the following should be considered:

- Children should be made aware of the complaints process from the beginning of the engagement in a child friendly manner (for e.g. a leaflet explaining in child friendly terms);
- Any forms should be child friendly and understandable;
- The authority dealing with the complaint should be trained in appropriately handling complaints by children and young persons;
- Those handling the complaint should be aware of the influence that adults can have on children and that complaints should be handled sensitively in this regard; and
- Thought requires to be given to the process of hearing complaints from children and young persons independently (i.e. without influence of other adults where possible) and in a supportive way.

The United Nations Convention on the Rights of the Child (UNCRC)<sup>5</sup> is the global “gold standard” for children’s rights and sets out the fundamental rights of all children. The Committee on the Rights of the Child has emphasized that States must provide effective and child-sensitive means for children to have their complaints heard before appropriate bodies.<sup>6</sup>

UNICEF have designed a toolkit that presents key concepts guiding a child rights approach to complaints handling, they include; The Convention on the Rights of the Child is to be used as the reference framework, the complaint mechanism needs to ensure that the child’s dignity is respected throughout the process, ensure that the best interests of the child are respected at all stages of the process, child participation is vital and all communication with children needs to be conducted directly in a way that is safe, respectful and non-threatening.<sup>7</sup>

The Scottish Family Law Case, *Patrick v Patrick*<sup>8</sup> provides a template for best practice in the area of communicating with children in a family law context. *Patrick v Patrick* was a contentious contact action in respect of section 11 of the Children (Scotland) Act 1995, heard at Glasgow Sheriff Court. In what has been described as an ‘innovative move’,<sup>9</sup> Sheriff Anwar took the time to write to the children and explain

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<sup>5</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> and as incorporated into Scots Law under The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill found at: [bill-as-passed.pdf \(parliament.scot\)](#)

<sup>6</sup> UNICEF “National human rights institutions (NHRIs) Series: Tools to support child-friendly practices. Child-Friendly Complaints mechanisms,” 2019 [https://www.unicef.org/eca/sites/unicef.org/eca/files/2019-02/NHRI\\_ComplaintMechanisms.pdf](https://www.unicef.org/eca/sites/unicef.org/eca/files/2019-02/NHRI_ComplaintMechanisms.pdf) at p6

<sup>7</sup> Ibid. p10

<sup>8</sup> [2017] SC GLA 46 at <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2017scgla46.pdf?sfvrsn=0>

<sup>9</sup> Ibid.

why the decision was reached (a decision which did not coincide with the views expressed by the children). The sheriff drafted the letter with input from a clinical psychologist to try to ensure the children knew that their opinions had been considered, the language was age appropriate and would not cause the children further distress or alarm. We would propose that elements of this process can be utilised when communicating with children and young persons following the complaints process.

**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*

We agree that curators ad litem need to be solicitors or advocates given the nature of the role and the accompanying responsibilities. As curators ad litem are likely to be required to attend court, it is thus appropriate for them to be required to hold a practising certificate.

There should be specified a minimum requirement of post-qualified experience and specialist skills and knowledge, as such we agree with the suggestions that would require curators ad litem to demonstrate skills and experience in the law in relation to children, an understanding of family conflict and child development including learning disabilities. We also support the proposed steps to increase national consistency and move away from the current situation which sees a lack of uniform approaches across sheriffdoms. Consistent approaches throughout Scotland are vital in order to ensure equal access to justice.

**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*

We agree with the suggestions that individuals would need to demonstrate skills and experience in the law in relation to children, an understanding of family conflict and child development. We would propose that it should be added that knowledge and experience of domestic violence and the importance of a trauma-informed approach to this work is also vital. Police Scotland statistics on reported domestic abuse cases, found that in 62% of the cases it was reported that children were present or nearby during the most recent incident of abuse<sup>10</sup>, and thus it is likely that a relatively

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<sup>10</sup> Scottish Government, "DOMESTIC ABUSE RECORDED BY THE POLICE IN SCOTLAND", 2017-18 found at: <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/pages/5/> - we note that The Scottish Government's statistics for 2018-2019 and 2020 do not update on this statistic although report that the

high proportion of cases in which a curator ad litem is appointed will involve a child who may have experienced or witnessed abuse. Furthermore, cases in which a curator ad litem is required may involve child protection concerns which require trauma informed training. Therefore, it is vital that those representing their interests have a solid understanding of the way trauma impacts children and the way mechanisms of abuse such as coercive control function. It is our view that candidates should be required to undertake mandatory training in these areas and to demonstrate their experience in this regard.

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

Yes

We agree with the proposed areas for training, especially that which requires curators ad litem to develop an understanding of domestic abuse and coercive control. An understanding of these dynamics is vital to successfully understanding the needs of a child who has experienced or witnessed domestic abuse, and thus representing their needs successfully. It may be that it is clear from the outset of the engagement that there are allegations of domestic abuse however, it may also occur that domestic abuse is disclosed at a later stage. The curator ad litem requires to be able to sensitively and appropriately handle any disclosure of abuse and any subsequent engagement with children and victim/survivors. In UNICEF's report 'Behind Closed Doors: The Impact of Domestic Violence on Children;' UNICEF reports that domestic abuse has a '*significant risk of ever-increasing harm to the child's physical, emotional and social development*'.<sup>11</sup> The report identifies that children who have been exposed to domestic abuse are prone to behaviour changes such as excessive irritability, emotional distress and poor concentration which can affect their performance in school<sup>12</sup>. In their 2020 report '*The Global Status Report on Preventing Violence against Children*,' UNICEF continues to report on the scale of violence against children and importantly the impact that the Covid-19 pandemic has had, stating that "*The COVID-19 pandemic and the physical distancing measures imposed in response to it have greatly increased the risk of intra-family violence*"<sup>13</sup>. The 2020 UNICEF report then goes on to identify that "*an estimated one billion children – or one out of two children worldwide - suffer some form of violence*

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prevalence of domestic abuse remains: please see <file:///C:/Users/LyndsayMonaghan/Downloads/domestic-abuse-recorded-police-scotland-2018-19.pdf> and <file:///C:/Users/LyndsayMonaghan/Downloads/recorded-crime-scotland-2019-20.pdf>

<sup>11</sup> UNICEF '*Behind Closed Doors The Impact of Domestic Violence on Children*', 2006 <https://www.unicef.org/media/files/BehindClosedDoors.pdf> at p7

<sup>12</sup> *ibid* p7

<sup>13</sup> UNICEF, '*The Global Status Report on Preventing Violence against Children*,' 2020: <https://www.unicef.org/media/70731/file/Global-status-report-on-preventing-violence-against-children-2020.pdf> at p. V

each year.<sup>14</sup> Further, the 2020 report states that “1 in 4 children aged under 5 years live with a mother who is a victim of intimate partner<sup>15</sup>.” Therefore, to be able to deal with this effectively, it is vital that curators ad litem have an understanding of the impact domestic abuse can have on children and families.

We would propose that a curator ad litem should also be required to undertake trauma informed training. We suggest that in instances where a curator ad litem is representing a child who has experienced or witnessed domestic abuse a trauma-informed approach is vital. It is recognised that trauma effects the brain in a number of ways and can impact the way details are recalled and can make seemingly small events incredibly triggering. Successfully representing a child whom may be impacted by trauma requires that these factors are taken into account. Given that we have an adversarial court system, often the court process can be very stressful and could likely lead to re-traumatisation if the requisite care is not taken. For this reason, we believe that training on a trauma-informed approach should be mandatory.

We would submit that it is essential that consideration is given to the potential language barriers and additional support needs that may face parties and children being interviewed. To ensure inclusivity and the safety of parties and children, it is important that curators ad litem are aware of the different needs and have appropriate access to interpreting services and other additional support resources. The importance of such training, policies and resources are increased in domestic abuse situations.

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

Yes

We agree that four days of paid training is appropriate, although the precise number of hours required should also be specified to avoid any confusion. The subject matters that the proposed training covers are extensive and thus require this level of commitment. It is also vital to ensure that training in areas such as domestic abuse go beyond surface level understanding and impact the practice of the curators ad litem. We also suggest that training on more sensitive issues is prioritised and undertaken earlier in the period of a curator ad litem’s appointment. We also emphasise the importance of a trauma-informed approach and suggest that someone should not be appointed as curator ad litem without having undertaken training on trauma-informed practice, domestic abuse and the dynamics of coercive control.

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<sup>14</sup> Ibid. p.V

<sup>15</sup> Ibid. p.8

**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

We agree with proposals to make the appointment processes consistent across sheriffdoms. However, in regard to appointing a curator ad litem to a case, we disagree with the Scottish Government in their determination that the question of whether to appoint a specific curator ad litem or the next one on the list does not arise here, as it does with the appointment of child welfare reporters.

We argue that in cases involving elements of domestic abuse and coercive control, it is vital that anyone being appointed to represent the child in court has an in depth understanding of these dynamics. Without this understanding, it is unlikely that a curator ad litem would be able to fully represent the child's best interests. Further, a court process can be intimidating, and has the potential to be triggering or retraumatising for those who have experienced the trauma of domestic abuse or coercive control. We therefore suggest that only curators ad litem who demonstrate relevant skills or have undergone training in the areas of domestic abuse, coercive control and trauma-informed practice be appointed to these cases. For the child's best interest to be represented, it is vital that those with the necessary skills and understanding in this area are appointed, rather than taking the approach of appointing the next person on the list, regardless of experience. This is why we have proposed that it should be mandatory for all curators ad litem to have undertaken the training referred to at our response to Question 22 of this consultation and that such training should be required to be completed prior to being appointed as curator ad litem.

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

Yes

We refer to our response at Question 19 of this consultation and seek to adopt our answer for this section of our response also. Other than, we note that the complaint process for curators ad litem will be more straight forward than that for Child Welfare Reporters. Complaints against curators ad litem will be made as per the regulatory rules for solicitors and so to one central authority.

We consider that the same considerations should be had for complaints against curators ad litem and Child Welfare Reporters. The process should be accessible and straightforward for the complainer.

We refer also to our answer to Question 19 and highlight that it is important to ensure consistency amongst the handling of complaints and the outcomes of each.

Those handling the complaints should have sufficient knowledge and understanding of domestic abuse and trauma informed training to ensure that they can handle complaints of this nature.

We refer to our comments at Question 19 regarding children and young persons accessing the complaints procedure and the requirement for the process to be inclusive of children/young persons. We would adopt our comments from our answer at Question 19 to this section of our response.

**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?**

Yes

We are pleased to see that the Scottish Government have proposed that solicitors to be appointment “*would need to demonstrate relevant skills and experience in: family law, domestic abuse, particularly the dynamic of coercive control, family conflict and proofs.*” (see section 4.13) We agree that those with conflicting interests as set out in in section 4.11 should be excluded, and that the skills and experience set out in 4.13 are a starting point for relevant minimum experience and qualifications. However, we strongly recommend that solicitors appointed to the list should satisfy further criteria as set out in our answers to Question 29 & 30 of this consultation (below).

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

No

We welcome the requirement that an awareness of domestic abuse, particularly the dynamic of coercive control is a requirement for solicitors’ inclusion on the register.

It is vital that anyone being appointed to the register have an in depth understanding of these dynamics. The court process can be intimidating and triggering for survivors of violence and there is real risk of re-traumatisation. Therefore, we also strongly suggest an awareness and/or experience of trauma-informed practice be included in the requirements a person must satisfy in order to be included on the register of solicitors.

**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?**

No

We disagree that solicitors on the register should require to undertake fewer days training each year. We would submit that the number of appointments that they may require to undertake is irrespective of the training required. The training is required to ensure that each case is handled appropriately and sensitively. There should be consistency across the board and no one case should be left behind. Furthermore, given that this is a new register being proposed, it is uncertain as to the number of appointments that solicitors on the register may receive and so it would be amiss to undervalue the requirement for training/experience.

The legal landscape can quickly change, as can our understanding of social and psychological dynamics of trauma and violence. As the solicitor will play such an important role and work directly with people who have potentially experienced trauma themselves, it is vital they remain up to date and informed as to current practice and awareness.

We would propose that the training required to be undertaken by solicitors on the register could be counted towards CPD hours to further incentivise solicitors.

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

Yes

We consider that the training required of solicitors on the register should reflect that required of Child Welfare Reporters and curators ad litem. We would therefore largely adopt our answers at Questions 11 and 22 of this consultation response.

We welcome that there is a requirement for solicitors on the register to have experience of handling domestic abuse cases. However, we would also submit that there should be an ongoing requirement for solicitors on the register to undertake specific domestic abuse training as we have recommended earlier in this response for Child Welfare Reporters and curators ad litem.

Furthermore, we would recommend that trauma informed training is included on the training program. A traumatic experience such as witnessing or experiencing domestic abuse and coercive control can have a huge ongoing impact on an individual. Trauma manifests in unpredictable ways, and everyday events and situations can trigger a stress response. Trauma impacts a range of mental processes, such as the storing of memory, and as such it can be difficult for those who have experienced trauma to recall events in chronological order. As such, it is important that care is taken by professionals to approach survivors or domestic abuse who may be traumatised with a trauma-informed practice. This is an approach which takes into account the impact trauma can have and works to create a safe, supportive environment for the survivor. This is especially important during the court process, which can be retraumatising and very difficult. As such, we

strongly believe that solicitors should undergo training in trauma informed practice as a compulsory requirement.

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

*Yes, with comment*

In regard to appointing a solicitor to a case, we submit that it may not always be in the child's best interest to appoint the next solicitor on the list willing to work in a particular geographic area.

We argue that in cases involving elements of domestic abuse and violence or coercive control, it is vital that anyone being appointed to represent the child in court has an in depth understanding of these dynamics. Without this understanding, it is unlikely that a solicitor would be able to fully represent the child's best interests. Further, a court process can be intimidating, and has the potential to be triggering or retraumatising for those who have experienced the trauma of domestic abuse or coercive control. We therefore suggest that only solicitors who demonstrate relevant skills or have undergone training in the areas of domestic abuse, coercive control and trauma-informed practice be appointed to these cases. For the child's best interest to be represented, it is vital that those with the necessary skills and understanding in this area are appointed, rather than taking the approach of appointing the next person on the list, regardless of experience.

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

Yes

Once again, we would echo our response at Question 27 and wish to adopt our answer for this question.

**Question 35) Do you have any comments about, or evidence relevant to:**

- a) the draft Business And Regulatory Impact Assessment **No**
- b) the draft Child Rights and Wellbeing Impact Assessment; **No**
- c) the draft Data Protection Impact Assessment; **No**
- d) the draft Equality Impact Assessment; **Yes**

We agree with the suggestion that female victims of domestic abuse may not wish a male Child Welfare Reporter to be appointed, and it should also be considered that children who have witnessed or experienced domestic abuse may also be more

comfortable with a Child Welfare Reporter who is not of the same gender as the perpetrator of the abuse.

e) the draft Fairer Scotland Impact Assessment; **No**

f) the draft Islands Communities Impact Assessment; **Yes**

We agree with the proposals to request that curators ad litem, Child Welfare Reporters and solicitors on the register indicate areas they are available to work in, and for the proposed plan to ensure the covering of travel expenses and other expenses required to ensure that island communities have access to sufficient representation. It is also likely that smaller communities may have more issues with conflict of interest, and fewer alternative options for representation and reporter, and this must be taken into consideration.

Requirements for training must take into account the difficulties posed by geographical constraints. Training for Child Welfare Reporters and curators ad litem must be accessible to those from rural and remote areas, perhaps carried out by video conferencing as standard.

Further to this, in areas where there are fewer available solicitors with the required experience, steps must be taken to ensure that those who are eligible undergo the required training as a priority.

We suggest that there should be input from violence against women organisations working in island communities to brief Child Welfare Reporters, curators ad litem and solicitors on the register who are not based in an island community but are working on cases based on the islands, on the barriers and issues faced in child contact cases in these remote and rural areas. This would be a vital step in ensuring the specific needs of children are met especially in cases with an element of domestic abuse/ coercive control, which manifest in different and specific ways in island communities.

We note that the draft ICIA highlights a lack of data regarding Child Welfare Reporters and curators ad litem working in island communities and we suggest that this lack of data is addressed as a priority. It is not possible to fill gaps in provision and ensure access to justice in island communities if there is not already a detailed understanding of where these gaps lie.

-- End of response --