

Citizen Participation and Public Petitions Committee

4th Meeting, 2024 (Session 6), Wednesday 6
March 2024

PE2069: Ensure accuracy of statements informing Child Welfare Reports

Petitioner	Nicole MacDonald
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to ensure the accuracy of evidence gathered by Child Welfare Reporters by introducing a requirement that statements provided as part of their report are signed as a true account.
Webpage	https://petitions.parliament.scot/petitions/PE2069

Introduction

1. This is a new petition that was lodged on 4 December 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 98 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE2069: Ensure accuracy of statements informing Child Welfare Reports

Petitioner

Nicole MacDonald

Date lodged

04 December 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure the accuracy of evidence gathered by Child Welfare Reporters by introducing a requirement that statements provided as part of their report are signed as a true account.

Previous action

I have written to Michael Matheson MSP and John McNally MP.

I received a reply from Michael Matheson's team and the Cabinet Secretary for Justice, both of which provided background information in relation to Child Welfare Reports.

Background information

Information given in statements for a child welfare report are not checked as accurate but are treated by the court as true in good faith.

These reports are court documents and should be signed as true in the same way as police statements are. Interviews should be recorded and kept until the report is signed as accurate to allow any discrepancies to be checked. Every deterrent should be in place to prevent false information or inaccurate notes.

As someone trying to raise concerns about an abusive relationship and trying to protect their child, allowing statements that are inaccurate and misleading to be submitted to and acted on by the court is giving other parties another platform to continue their behaviour. The only chance to

challenge inaccuracies is via your solicitor, and if they won't, these statements are taken as fact and can mislead the court.

Our children deserve a fair hearing.

Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2069](#): Ensure accuracy of statements informing Child Welfare Reports, lodged by Nicole MacDonald

An overview of issues raised by the petition

The Children (Scotland) Act 1995: background

Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act') sets out a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland. These exist where practicable and in the best interests of the child.

Section 11 of the 1995 Act enables a court to make a range of court orders relating to PRRs, in the event of a dispute. For example, a court can make a **residence order**, setting out where the child is to live. It can make a **contact order** which sets out the arrangements for a child to have contact with a person they do not live with, for example, a parent or grandparent.

Most cases under section 11 are heard in [the local sheriff courts](#) but the [Court of Session](#) in Edinburgh can also hear and decide such cases.

In considering whether to grant any court order under section 11 of the 1995 Act, the court will have regard to various principles. The **welfare of the child** is the paramount consideration, that is, the most important and overriding one.

Taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity **to express their views**. The court must consider, although not necessarily follow, any views expressed.

Few court cases relating to section 11 get as far as a **proof**, that is, a full hearing where witnesses give evidence and are cross-examined. Instead, most are resolved (by court order) at a **child welfare hearing** or several such hearings. These hearings are relatively informal proceedings, held in private.

The role of the child welfare reporter

In practice, an important role is played in section 11 cases by **child welfare reporters** (previously called 'bar reporters').

There are thought to be around 400 child welfare reporters in Scotland.

Child welfare reporters are court-appointed individuals who report to the court (via a **child welfare report**) on what the views of the child might be and/or what is in the best interests of the child.

The Scottish Government's [2016 Guide to the Child Welfare Report](#), aimed at parents, contains some more detail on this topic:

"The court which appointed the reporter will have set out what the court wants the reporter to do and who the reporter should interview. Your solicitor should receive a copy of this information from the court. The reporter may ask your solicitor for other information which has been given to the court.

In some cases, the court will ask the reporter to speak to a third party such as your child's GP, health visitor, or school. The reporter may also wish to speak to your GP or another professional who has information which will help the court to make a decision. The reporter should only ask for information relevant to the remit...

The report will often include recommendations. It is the sheriff or judge who will decide whether to make an order and if so what order to make."

A child welfare report is one in a range of ways the views of the child can be taken by the court, but it is a common way in practice.

Who acts as a child welfare reporter?

Individuals seeking to be a child welfare reporter may be appointed to lists held by the [Court of Session](#) and, for [the local sheriff courts](#), by the six sheriffs principal (for the sheriff courts in their respective sheriffdoms). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.

At present, child welfare reporters are usually solicitors, often specialising in family law. These solicitors typically come from private practice and charge a fee for their services. They are independent in the case they are appointed to report on and are separate from the solicitors representing the litigants in the case.

What if someone doesn't agree with something in a child welfare report?

The current rules applying to the courts say that the child welfare reporter should normally give a litigant's solicitor a copy of their report three working days before the court hearing where the report is to be considered.

If someone does not agree with something in the report, the Scottish Government's [2016 Guide to the Child Welfare Report](#) has this advice:

“You should read the report as soon as possible...If you disagree with something in the report, your solicitor should raise this with the court.”

Policy issues associated with child welfare reporters

[In 2009 and then in 2011](#), there were influential reports highlighting a variety of policy issues associated with child welfare reporters. These included:

- a lack of standardised requirements relating to their suitability for appointment (for example, the years of experience required)
- that there are no formal training requirements, either initial or ongoing ones
- the use of child welfare reporters across Scotland varies considerably and there is no consistent pattern to their use; and
- there is marked variability in the fees charged.

From 2013–2015, the Scottish Government chaired a working group to examine the role of child welfare reporters.

The Children (Scotland) Act 2020: reforms to the system

The [Children \(Scotland\) Act 2020](#), most of which is **not yet in force**, [contains a wide range of reforms to the 1995 Act](#).

The 2020 Act will expand the role of child welfare reporters to include explaining court decisions to children (section 20) and, when requested to do so by the court, investigating reasons for non-compliance with a court order (section 22).

Crucially, the 2020 Act also provides for a system of statutory regulation of child welfare reporters (section 9). However, this is a high-level policy commitment only, the important detail around the system must be fleshed out in secondary legislation. [The Scottish Government's original policy intention was to have the regulatory regime operational by 2023](#) but this has been delayed.

The Scottish Government [consulted on the regulation of child welfare reporters in 2021](#), publishing an [analysis of responses](#) in 2022.

Sarah Harvie-Clark

12/12/23

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Scottish Government submission of 23 January 2024

PE2069/A: Ensure accuracy of statements informing Child Welfare Reports

Thank you for writing to ask the Scottish Government to respond to Public Petition PE2069 from Nicole MacDonald, which asks the Scottish Parliament to urge the Scottish Government to ensure the accuracy of evidence gathered by Child Welfare Reporters by introducing a requirement that statements provided as part of their report are signed as a true account.

As the SPICe briefing on the petition notes, the Scottish Government is part way through reforming the law on child welfare reporters. The primary legislation is in place in the Children (Scotland) Act 2020. We held a [public consultation](#)¹ on this and have published an [analysis of responses](#)². We have still to make the regulations: this has been delayed by budgetary pressure.

Given that delay, we are going to set up a working group on child welfare reports. This group will help to inform any changes to current practice and the longer term policy on child welfare reporters. The bodies we invite to the group will be similar to the previous working group which the Government chaired and which operated from 2013 to 2015.

The petition suggests that interviews with a child welfare reporter should be recorded. A majority of the previous working group rejected this suggestion. The main reasons for this were that:

- it is already possible to challenge the content of a report in court
- recording interviews can deter the person being interviewed from being open and honest. This could be particularly true for children, who may be concerned about a parent or other family member finding out what they said. A reporter may paraphrase when reporting a child's views to the court in order to meet this concern.

¹ <https://www.gov.scot/publications/children-scotland-act-2020-consultation-registers-child-welfare-reporters-curators-ad-litem-solicitors-appointed-represent-person-prohibited-conducting-case/>

² <https://www.gov.scot/publications/registers-child-welfare-reporters-curators-ad-litem-solicitors-appointed-individual-prohibited-conducting-case-consultation-analysis/>

We will ask the new working group to consider this point and to make recommendations. We will publish minutes of the working group.

The petition says that “information given in statements for a child welfare report are not checked as accurate but are treated by the court as true in good faith.”

Generally speaking, a child welfare report will reflect the views and the position of each person involved in the case. Family cases will be in court because the parents (or other parties) cannot agree about what is best for a child. Where there is a dispute like this, the parties may disagree about what has happened in the past as well as what is best for the child in future.

The reporter’s role is to gather and prepare information for the court. It is for the court to decide what weight to give the report and any recommendation in it. Where the court considers it necessary, it can order a “proof” hearing. Such a hearing allows the court to hear witnesses give evidence and for them to be cross-examined.

The petition expresses concern about the child welfare report process giving someone a platform to continue abusive behaviour.

The Scottish Government is clear that there is no place for domestic abuse in Scotland. We are aware of the potential for an abuser to use a civil court process to continue to abuse someone. The [analysis of responses](#)³ to our consultation in this area notes at paragraph 108 that one respondent said:

“whilst many reporters work well, there are those who are either unwilling or indeed hostile to making any statements in their reports to the court of domestic abuse.”

Once we regulate child welfare reporters, we intend that understanding domestic abuse, including coercive control, will be a key requirement for all reporters. Until then, the Lord President and sheriffs principal are responsible for including child welfare reporters on their lists and the presiding judge or sheriff for appointment of a reporter in a particular case.

We will invite a representative of Scottish Women’s Aid to join the working group.

³ <https://www.gov.scot/publications/registers-child-welfare-reporters-curators-ad-litem-solicitors-appointed-individual-prohibited-conducting-case-consultation-analysis/pages/4/>

The Scottish Government is also planning workshops with key stakeholders to consider what improvements can be made more generally in relation to the interface between the civil and criminal courts in the context of domestic abuse. This follows Scottish Government funded research on [Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings - SCCJR](#)⁴ published in February 2023.

I hope the Committee finds this information to be of assistance in its consideration of the petition.

**SIOBHIAN BROWN MSP
MINISTER FOR VICTIMS AND COMMUNITY SAFETY**

⁴ <https://www.sccjr.ac.uk/publication/domestic-abuse-and-child-contact-the-interface-between-criminal-and-civil-proceedings/>