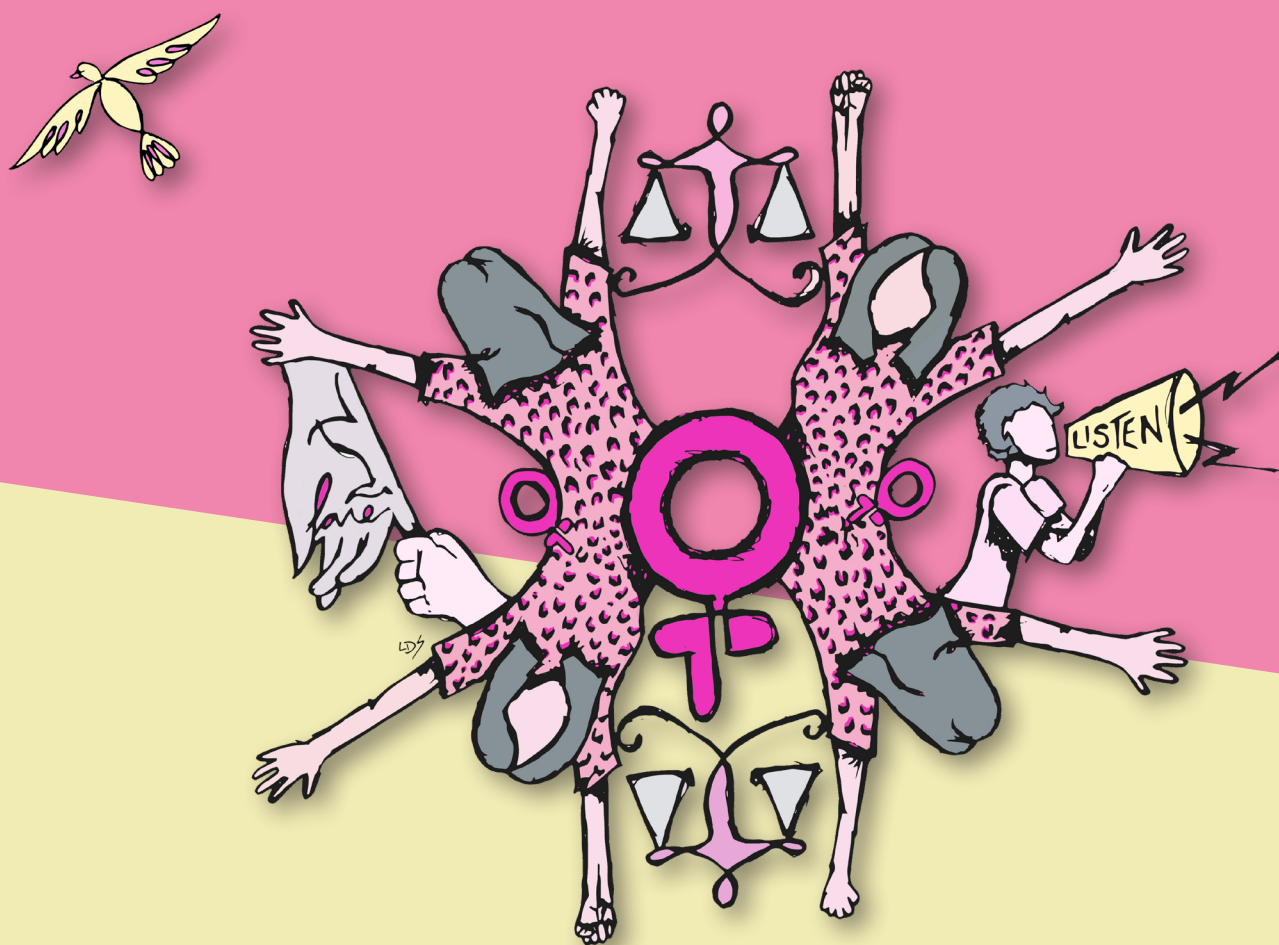


# Court-Ordered Child Contact in Scotland



Glasgow Women's Aid



# Court-Ordered Child Contact

We know this might be a worrying time for you. You may be feeling concerned for your safety and that of your child. You might be worrying about having to go to court, and how you can access help. We are here to help you understand. This information sheet was written by Women's Aid workers, and women in our services who have experienced court-ordered contact. This document is not to replace or give legal advice, however it does have a lot of legal terminology and references, so we also had a solicitor fact check what has been written. There is also an explanation of some legal terms at the end of the book which may help.

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# Feeling Concerned About Your Child Having Contact With The Other Parent?

Mothers who have experienced domestic abuse often tell us they feel unable to offer the perpetrator contact with their child(ren). This can be due to safety concerns for both themselves and their child. They may be concerned about the perpetrator using contact to monitor what they are doing or where they live.

Women are often concerned that their ex-partner will be abusive to their child, whether that be emotionally, physically, sexually or by neglect of care. They may also worry that their child will not be returned at the agreed day/time.

Other women tell us that they feel okay to offer the perpetrator some **contact** but would initially like it to be supported or supervised by other adults to ensure their child feels safe and comfortable. Some women may be okay with their child seeing the other parent without supervision or support but are unable to organise this, because communication with the other parent may be abusive, stressful, and/or the requests for contact unreasonable.

## What To Do If You Are Feeling This Way?

When women have any of the above issues, or any concerns in relation to child contact, it may be that they need intervention and support from other services. Where there has been previous domestic abuse or coercive control, it is never recommended that women should manage the contact on their own – i.e. the drop-offs/pick-ups, and/or the supervision of the contact.

You may also have it suggested to you that you should attend **mediation**. Women's Aid do not recommend that women put themselves through the process of mediation as it might be used as a tactic to further manipulate, control or intimidate them into following the wishes of the perpetrator.

Often women seek legal advice if they feel forced to send their child to contact but do not feel it is safe. Solicitors may initially take on the role of communicating with the other parent. Often this is when the woman feels that contact can still happen, in some capacity. This can help remove the stress of having to come to a contact agreement with the other parent.

Women tell us this has been successful in some instances. However if women feel that contact is not safe to happen at all, or for a range of reasons come to form this view after contact has been happening, other legal advice might be given. Women may be advised at this stage to cease contact altogether if they have genuine concern, and evidence, to provide that it is not in the child's best interests.

We recommend that women speak to their solicitor before making this decision (unless there is an immediate urgency). If you do stop contact, the onus is then on the other parent to take the matters further, by raising a child contact **action**, at a Sheriff Court. Some will go on to do this quickly, particularly if they manage to gain legal representation. Others may not be able to gain legal representation, or for a variety of reasons, may not want to go to court. Should they be unable to take a court action forward, that is not a matter of concern for you or your child. You should still not send your child for any contact if you believe your child to be at risk, and have had legal advice.

# What Is Court-Ordered Child Contact?

- If a child contact action is raised at court (most often by the other parent, see previous reasons) a **Sheriff** may become involved to help make a decision around a child's upbringing, and specifically who they have contact with and who they live with.
- This type of law is called 'family law' and takes place in a civil court.
- This has happened because the parents of a child are unable to come to a decision together about what contact should look like.
- Once a Sheriff makes a decision, it is legally binding on both parties. Both parents need to comply with the terms of any decision.
- When making a decision, the Sheriff's main consideration has to be what is best for your child. That means that it will be your child, and what is best for them, that should be at the centre of the decision making.
- If either parent's solicitor disagrees on a point of law then it can be appealed. Equally, if the situation changes, mum can go back to court to have the decision reviewed.
- Civil law is based on the premise of the 'balance of probabilities'. The Sheriff will listen to your account, and that of your ex-partner, and decide which one they prefer. They may believe varying points from both of you.
- The majority of your evidence will most likely come from your memory and recollection. If you feel safe and able to do so, you might want to think about keeping a note of any dates and incidents which you think the Sheriff will need to know about.

If you have received a letter from a solicitor acting on the other parent's behalf, or a letter summoning you to court, it is important that you seek legal advice if you haven't already. You must be clear with your solicitor that there has been previous domestic abuse, plus note any other risks that you feel there are for your child in relation to seeing the other parent.

## What Are Parental Rights?

Parental rights are covered currently by the Children Scotland Act (1995) Part II.

- Having **parental rights and responsibilities** for a child does not automatically mean that that person has rights to see the child, particularly if it is deemed unsafe. However it does mean that they have the right to certain information about the child and to have a say in that information – such as their education and medical input, unless a court order says that this is not to happen.
- A father has parental responsibilities if he is married to the mother when the child is conceived, or marries her at any point afterwards. An unmarried father only has parental responsibilities if he is named on the birth certificate, from 4th May 2006. Please be aware that even if the father is not named on the birth certificate, he can go to court to establish his 'parental rights'.

The person that has the main care of a child is said to have the '**residency**' rights to the child. It is important to seek legal advice and obtain residency rights for your child through the courts, if you believe the child's other parent may be trying to gain more contact with your child, or if they are trying to become the main carer themselves. They may have made threats to do this or you may have already received a letter from a solicitor acting on behalf of your ex-partner saying that they want to extend their rights to contact or to residency.

# What Are My Child's Rights?

Most pieces of legislation state that children have the right to a family life, however they also acknowledge that children have the right to be safe. The Children (Scotland) Act 2020 will come into force in the future which will ensure that children of any age will have a right to their views being asked in any matters that may concern them, in a family court. This requires secondary legislation and hasn't yet taken place at the time of printing, but will happen.

The 2020 act will sit alongside the 1995 act that we mentioned, and will add more parts to that Act for the court to consider when making decisions around children. One key part is that it will insert section 11ZA which will require the court to take account of the *impact of abuse or risk of abuse on the child*. Sections of this include that the court must regard:

- the welfare of the child concerned as its paramount consideration
- the need to protect the child from abuse, or the risk of abuse, which affects, or might affect, the child, the effect that abuse, or the risk of abuse, might have on the child
- the ability of a person to care for, or otherwise meet the needs of, the child, where that person has carried out, or might carry out, abuse which affects, or might affect, the child
- the effect that abuse, or the risk of abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has caring responsibilities for the child
- whether it is, or would be, appropriate for an order to require that two or more persons co-operate with one another with regard to matters affecting the child.

It also defines abuse as:

- violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress,
- abuse of a person other than the child, and
- domestic abuse

The United Nations Convention on the Rights of the Child (UNCRC) is also being enshrined into Scots law, so this is a helpful document to read as well if you feel you want to learn more about the rights of your child.



# Where To Get Help

## Who Can Help Me?

There will hopefully be organisations in your local area that can help. Find out who your local **Women's Aid** group is, if you aren't already linked in with them. Support may be available for both you and your child. There may also be other voluntary agencies who can offer support.

If you require a solicitor, ask if your local Women's Aid group can recommend one.

There is also a website directory provided by the **Scottish Legal Aid Board**  
<https://www.slab.org.uk/new-to-legal-aid/find-a-solicitor/>

The **Law Society of Scotland** also have a directory: <https://www.lawscot.org.uk/find-a-solicitor/>  
Look into free legal advice helplines – this might be particularly useful if you intend to represent yourself.

The **Scottish Child Law Centre** offers legal advice to parents, carers and professionals:  
Call 0131 667 63333 or email them at [advice@sclc.org.uk](mailto:advice@sclc.org.uk)

The **Scottish Women's Rights Centre** offers free legal advice at certain times of the week, as well as advocacy services. See their website for timings: [scottishwomensrightscentre.org.uk](http://scottishwomensrightscentre.org.uk)  
Call 08088 010 789 on Monday 2-5, Tuesday 6-8, Wednesday 11-2, Friday 10-1 for the legal advice times but please note this number and the times may be subject to change.

## Discussions With Solicitors, How Can I Prepare?

- Before deciding which solicitor to use, you can speak to a few and ask them for quotes for the work and whether this could be covered by Legal Aid. You aren't obliged to use any particular solicitor, and if you feel you need to, you are able to change solicitor.
- Have a prepared list of questions – i.e. about their experience dealing with domestic abuse and child protection cases.
- Have a prepared brief list of your main areas of concerns regarding contact, and ask them specifically if they feel they can help with this.
- Try to have most of your correspondence in email, and follow up any face to face meetings with an email summarising what you discussed and agreed.
- Request a copy of everything your solicitor lodges in court, including minutes and evidence, to make sure that all your points and concerns have been raised.

### *A survivor told us:*

If you are able to access Legal Aid, or decide that you want to pay for a solicitor to represent you, research who you choose carefully. To protect yourself, make sure all correspondences with your solicitor are in writing - email is usually easiest.

### *A solicitor told us:*

Discuss with your solicitor the impact of seeking the child's views, the use of advocacy workers and the vulnerable witness provisions.



## Who Can Help My Child?

The new Children's (Scotland) Act 2020 has stipulated that children will have an 'advocacy worker' to support them through the court process, should they want this. At the time of printing this guidance, it has not yet been implemented and it is not yet clear what it will look like; but it is something that will come into effect that you should investigate.

Your local Women's Aid group may have a support service your child can be referred to, for support around their experiences of domestic abuse and court ordered contact. There may be other voluntary groups who support children as well.

Your child also has a right to representation of their views by a solicitor, if they are capable of instructing a solicitor. This is something you can investigate directly with a law firm. Your child can also ask advice from a free legal helpline, as a starting point. There may also be an already established independent advocacy service for children in your area.

It is important to offer your child lots of reassurance. Children who have experienced domestic abuse may feel silenced by the perpetrator and scared to speak out against them if they have been told not to. Children might also be worried to speak about what has happened at home because it could cause you more worries.

**Scottish Child Law Centre** offers a free helpline for children to contact them directly:  
Call 0800 328 8970 from a landline Call 0300 330 1421 from a mobile phone

**Clan Childlaw** also offers a free helpline for children to contact them directly: Call 0808 129 0522

## Paying For Child Contact Actions

Being represented can be very expensive for women and this can be a barrier for women and children to fully engage in legal processes. A solicitor can work out with you whether or not you will qualify for full Legal Aid (meaning you shouldn't pay anything), partial Legal Aid or no Legal Aid. 'Proof hearings' (explained later) require higher sums of money as they last longer, as does the child welfare report and any assessment by a court appointed psychologist. Contact centres also incur a cost.

Some women who do not qualify for Legal Aid, due to financial circumstances, have told us they could not afford a solicitor due to other financial commitments. In that instance see the previous section of the booklet on **'Who Can Help Me?'** for the details of some free legal services for parents, who may be able to give you some information on how to navigate the process yourself. Some women we have supported have successfully represented themselves by doing lots of research and taking advice as they go along, so don't be disheartened if you believe you may be in this position.

# A Day At Court

The day of attending the Sheriff Court for a hearing can be daunting for many reasons.

- A lot of people have never been inside a court before.
- It can be the first time that you see your ex-partner since you separated.
- Many women are nervous to have to speak in front of the Sheriff.
- It is a time of huge importance in the life of you and your child/children.
- You don't know what to expect.

During the Covid-19 pandemic, the courts have mainly been operating remotely, with hearings taking place via telephone conference or video call. Your solicitor should be able to advise you how your hearing will take place. If you do not have a solicitor, the Sheriff Clerk's office should be able to assist you.

## In Advance of Your Hearing

Familiarise yourself with the parking/bus/trains routes to ensure you know how to travel there on the day. Many women tell us they do a journey there and back so that they are familiar with the route, as well as noting the court's entrance/exits. This will help decrease your stress levels.

You may also want to speak to a family member/support worker/friend about accompanying you on the day for extra support. Have a paper and a pen ready to bring in your bag to note down points.

### *A survivor told us:*

Although it is family/civil court and not a criminal case, the room is very much set up like a court room with Sheriff sitting at a higher position and a court minute taker in room. It feels very formal. I was anxious about being in the same room as my ex-partner and I turned my chair so that I didn't have to make any eye contact with him. The solicitors do the majority of the talking. The Sheriff may ask you a couple of questions, but sometimes they don't ask you anything at all. Your solicitor is your voice here.

### *A solicitor told us:*

During the hearing, if you are represented, your solicitor will mainly do the speaking, however be prepared that the Sheriff may choose to direct a question at you at some point. If you need to use the Sheriff's name, you should call them 'My Lord' or 'My Lady'. If the Sheriff says anything you do not agree with, do not object directly to them. Speak quietly to your solicitor or write down the point to your solicitor.



## On The Day of the Hearing

The good news about the day of your hearing, is that unlike going to court as a witness in a criminal trial, you will be given a time slot to have your case heard. It is unusual for there to be a long delay, so normally you won't have to sit around waiting for hours (although this has not been the experience of all women, so it would be best to plan to be at the court for the majority of the day).

We would recommend arriving at court at least twenty minutes before your assigned time. There can be a queue to pass through security, and this will also give you time to speak to the main desk and work out which court room you need to go to. Your solicitor may also want to discuss last-minute details. Sometimes your solicitor may have already started liaising with your ex-partner's solicitor and they may have a 'proposal' ready about where/when/how long they want contact to take place. It is vital you are not late for your hearing.

The hearing will always take place in private. It will sometimes take place in the Sheriff's office (known as "chambers") or otherwise in a court room which has been closed to the public. Your solicitor is not required to wear their gown and the Sheriff will usually not be in their gown or wig. Present in the room will be the Sheriff, the clerk, you and your solicitor, and your ex-partner and their solicitor. There may also be an interpreter if anyone needs one. No members of the public, friends or family are allowed inside the hearing.

In most court set ups, there is a good chance that you will see your ex-partner and anyone accompanying them. The waiting area might be very busy, and there are solicitors, police, families and court workers everywhere you look. You might want to find a seat far away from your ex-partner if you feel nervous or intimidated. If you need help at any time, you can go to the front desk.

The courts have protective measures in place for vulnerable witnesses, and these measures are being strengthened by the Children (Scotland) Act 2020. These measures now include using a screen, having your evidence given by video link or allowing a supporter to come into court with you. These measures aren't available in every case, but we suggest speaking to your solicitor about this in advance.

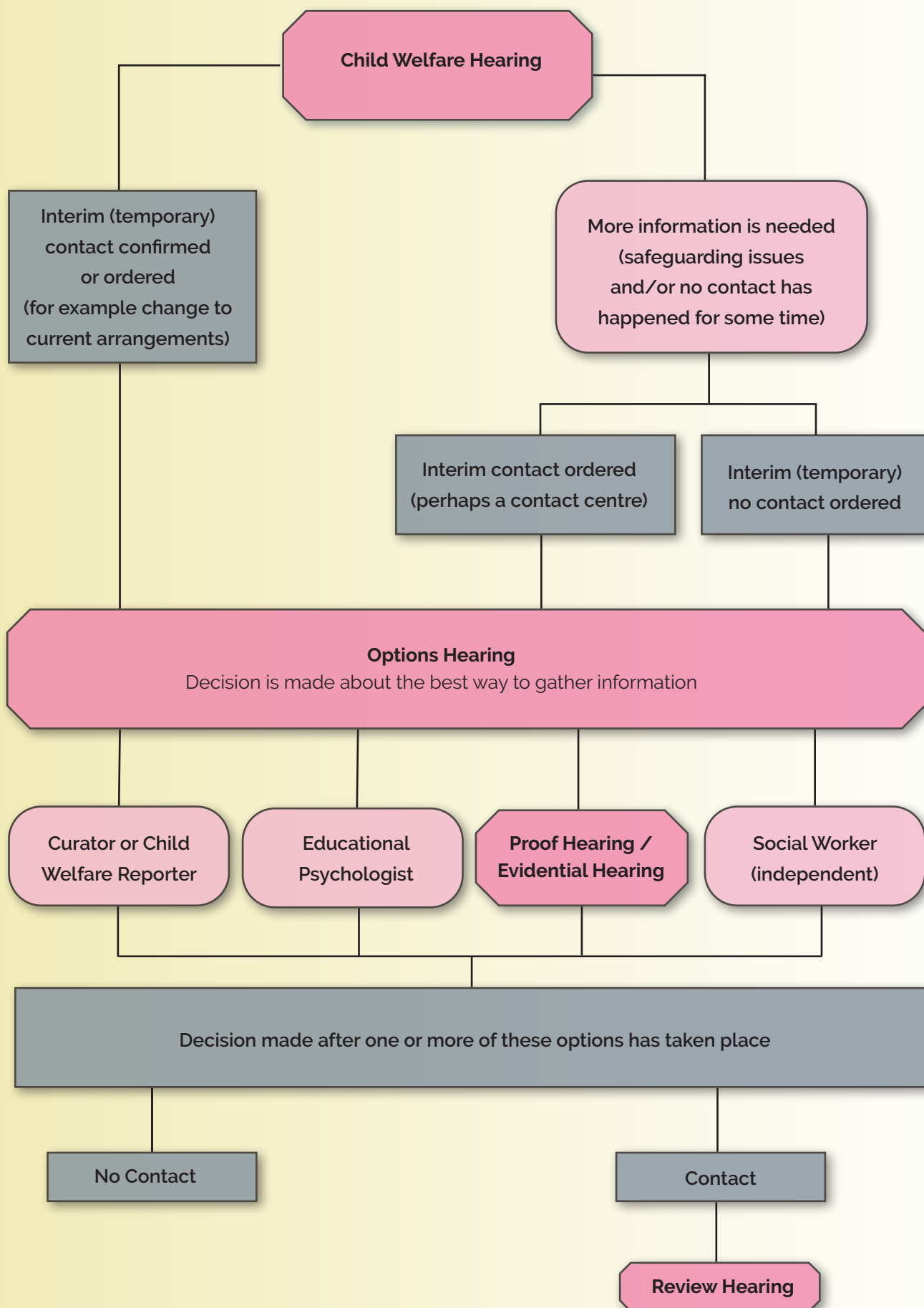
If you bring a supporter, they will have to wait outside the hearing room whilst you are in there with your solicitor, the Sheriff etc, unless the court has agreed to use the vulnerable witness process.

If English is not your first language, your solicitor can arrange for there to be an interpreter in the court room too. Make sure to tell your solicitor you would like an interpreter a few weeks before the hearing, so that it can be arranged in plenty of time. It may be that you have generally been confident in speaking to your solicitor in English, but the terminology used in the court room may mean that you need the extra support.

## After The Hearing

After the hearing, when you are leaving the waiting area and exiting the Sheriff Court, you may want to wait back a little until your ex-partner has left as you might both end up queuing for the exit area. Most people do not cause trouble inside the Sheriff Court, but you might not have that confidence in your ex-partner. You may want to have a taxi already waiting for you, or have parked nearby. If you are taking public transport, be sure to have planned in advance your route home to increase your safety.

Many women want to call friends or family to let them know the outcome as soon as they leave court, but remember to stay vigilant when you are on the phone if there is any likelihood that your ex-partner/family may try to approach or follow you.



# What is the Court Process?

For the women in our services, this usually begins with receiving an '**initial writ**' which is the request set out by the other parent of what contact they want to have with the child. The initial writ must first be sent to court for **warranting** ("authorisation"). Once it has been warranted, the **pursuer** (the person raising the action) can serve on the **defender**. Service can be by Royal Mail or via Sheriff Officers.

Upon receiving this there is a legal duty to respond with your '**defences**' and you normally (as the defender) have twenty-one days to respond if you don't agree to the request. This is your chance to give your side of the story and to set out your reasons why you wish to 'defend' or not agree to the action.

- This is called Notice of Intention to Defend, also known as NID. If you are using a solicitor for your case, they will do this for you and they will become involved from this point onwards.
- Following on from submitting the NID, you will be invited to attend a child welfare hearing.

Most women tell us that the Sheriff in their first hearing is the Sheriff who remains involved in the case; and therefore first impressions really mattered as the Sheriff formed their own view from the very first day. Some women however have said that the Sheriff changed in the initial stages. The hearing tends to take part in the local authority (i.e. the geographical area) of the person who has raised the action for contact (the pursuer).

## Child Welfare Hearing (CWH)

This is the first stage of the process. If you have obtained a solicitor, they will act on your behalf and assemble all the necessary paperwork. They can also assemble your case as to why you oppose the **motion** for the other parent to have some form of contact, or residency (full time care of child) – whatever it is that they are seeking to gain (it may be both). If you are self-representing, you need to assemble this information (see "**Who Can Help Me?**" section for free legal advice helpline). The hearing is held in closed court and is intended to establish how the general welfare of children can best be maintained. It will also consider if contact can be agreed in the first instance – so if you have safety concerns, it is important to have all your evidence prepared to explain your reasons for not wanting to allow contact / or to reduce current contact arrangements.

If you have all the evidence assembled and reasons for opposing what the other parent has sought, the Sheriff is likely to want to investigate the matters much more closely.

- They may take the case to a Proof Hearing / Evidential Hearing.
- They may assign a child welfare reporter to investigate further.
- They may order other measures such as a parent having a drugs test (if this was noted as a concern).
- They may order that the child is assessed by a psychologist.
- They may make an **interim** (meaning temporary) order of no contact at this stage, if there is enough concern and further matters to be investigated.
- They may also order interim supervised contact at a contact centre; or make an order of some form of unsupervised contact where the child can start to see the parent immediately, if no safe guarding issues have been raised, and the child perhaps already had regular and recent contact with their other parent.

Try not to worry if a decision is made that you don't agree with – there are regular review child welfare hearings to begin with, where you can raise concerns, and you may raise a variation or emergency hearing with your solicitor if a safeguarding issue arises during contact.

## Assembling Evidence

1. You may at this stage (or further stages) be asked if you have other agencies/witnesses that you would like to name, for next steps in your case (for example, if a child welfare reporter is going to be commissioned to do a report - see page 13 for more details). Consider and be prepared in advance of who you would choose to support your case – i.e. Women's Aid worker, ASSIST worker, health visitor, GP, midwife, nursery worker, school teacher, neighbour, family member etc.
2. If you have proof of abusive communications i.e. text messages, these can be downloaded on to a computer file using various apps, which may make them easier to collate/download.
3. You could compile any crime reference numbers and information if this has been a relevant feature in your case.
4. If you have kept a diary or note of relevant dates you could bring copies of these with you.

## Options Hearing

This is a procedural court hearing to decide next steps for the case. This may be a standard part of the process or may also happen if the case has been going on for some time with no resolution; or if repeated issues have arisen. Each party/side will put forward their suggestion to the Sheriff of the best way to proceed. The Sheriff will decide which next option/procedure is best.

## Proof Hearing / Evidential Hearing

In complex contact cases where there is no clear course of action for the Sheriff, they may also order a 'proof hearing' to take place. This might come early in your case or it might follow once other avenues have been exhausted. It may also happen after some contact has been established but concerns and allegations continue to arise, showing the Sheriff that a more in-depth analysis is required. A proof hearing will probably last several days and will involve hearing the information about allegations of risk/concern. It will often involve the Sheriff speaking to other witnesses as well as you and the other parent. A solicitor is helpful at this stage as a lot of information must be compiled.

Time will be given in order to prepare your case for a proof hearing as it may take time to assemble witnesses to speak, or sign sworn in affidavits. (An affidavit is a written witness statement.)

A proof hearing is not usually closed. This means family and friends of your ex-partner can sit and watch the hearing once they have given their evidence (if they are a witness). You may want to have a friendly familiar face there too.

### *A survivor told us:*

The Sheriff will ask you to take an oath to tell the truth. During the process your solicitor and the Sheriff will ask you questions. Then your ex-partner or his solicitor will ask you questions (cross examination). If you have witnesses you'll be able to call them into the court. Each witness will also be asked to take an oath to tell the truth. Your solicitor will ask them questions to help your case. Then the opposing party and the Sheriff will have a chance to ask your witnesses any questions they may have.

## If You Are Represented By A Solicitor

Before the proof hearing it is important that your solicitor has all of the information and evidence needed to prepare the case for proof. You should make sure that your solicitor has all of the information you have compiled from the "assembling evidence" section.

## If You Are Representing Yourself

Your questions should be closed questions. A 'closed question' is usually a question with a yes or no answer. In court-ordered contact cases, an example may be: "did you drop off your child at the agreed time of 2pm?"

Think very carefully about the questions you're going to ask before the court day as asking the wrong questions could harm your case. If you're representing yourself, write down the questions you wish to ask each witness as it's easy to forget what you have asked or want to ask. You can also take notes on what each witness said as, again, it's very difficult to remember all that was said, especially if there are several witnesses.

You must listen to what the pursuer has to say without interrupting. You must not interrupt even if you don't agree with something that is being said or you think that it is wrong. Write down anything you don't agree with so that you or your solicitor can question the pursuer or any witness on it when you are told you can do so in re-examination.

When both you and the pursuer have had your say and all the evidence and witnesses have been presented to the court, you'll have a chance to make a case submission about your case to the Sheriff. This should be a summary of the main points you are making and what you're asking the Sheriff to do. It could be beneficial to reference child laws used in cases that have won, that are similar to yours.

### ***A solicitor told us:***

Both sides are able to call witnesses. The court will normally first hear all of the pursuer's witnesses, before hearing all of the defender's witnesses. Each witness will be questioned, cross-examined (by the other side) and then re-examined (by the initial party doing the questioning). For example, this means that you or your witness will first be questioned by you/ your solicitor, then cross-examined by your ex-partner/their solicitor, then re-examined by you. This means that if you or your witness is asked any questions in cross-examination, you will have another opportunity in re-examination to clarify what they meant.

### ***A survivor told us:***

You don't find out the outcome on the last day of the hearing. The Sheriff may take several days or weeks to make a decision, after they have considered all of the evidence.

# Other Court-Appointed Professionals

## Report by 'Child Welfare Reporter' or 'Curator ad litem'

- A solicitor may be commissioned as a Child Welfare Reporter (CWR) (a.k.a. Bar Reporter) to investigate the child's family circumstances, and to help provide the Sheriff with a fuller picture of your family circumstances; as well as come to a recommendation around contact.
- They will speak to you, the other parent, other relevant family members, and potentially other agencies around the child, such as the school and health professionals, as well as any support services involved.
- They will probably speak to your child as well unless they are considered too young to have a voice, in which case a 'curator ad litem' may be appointed instead, who has a similar role to the CWR but has specialist knowledge in representing the interests of those who are considered incapable of giving a view, perhaps due to young age.

The CW reporter/Curator will compile a lengthy report with a conclusion on what form of contact they feel is most appropriate for your child; which the Sheriff may then use as a guide for their own decision making. It is not always binding - some women have told us that the Sheriff chose not to follow the recommendations of the CWR. Some women have told us that the information in the report was not correct or that there was missing information. You should speak to your solicitor about this, as they will consider ways to ensure that the Sheriff knows that you do not agree with all of the report.

## How To Prepare To Speak To A Reporter Or Curator

- This reporter/curator will meet with you at least once and will be testing your evidence against that of your ex-partner.
- They often come to your home to see the environment in which the child is living.
- It is important to be prepared to meet with the CWR and to have your evidence ready, clear in your mind and with a timeline where possible, and briefly bullet pointed.
- When speaking to the CW reporter, focus on the risks to your child particularly, and any concerns you specifically have about the other parent and their ability as a caregiver.
- You can also let them know about any domestic abuse you suffered as well. Domestic abuse harms children as well as adult victims. Let them know your child was a victim to this as well as you, and particularly if they directly witnessed any incidents. They may have questions for you about the abuse you suffered. You might find it easier to make a note if there were any other witnesses and/or police reports, charges or convictions.
- Speak to a support line or a Women's Aid worker if you have one, if you require more details or support and advice around what to expect from a meeting with a CWR. Try not to worry about this process. The CWR is not biased and should be objective. Be honest at all times with them and be clear and organised with your views. This will show that you are a credible witness.
- You may be told or read allegations about you that are not true, that have been said by the other parent and sometimes women tell us, the other parent's family members as well. Try not to worry about this, and have your evidence ready to refute this (your own clear verbal account, and any texts, call logs, diary entries, emails, other witnesses details).

The family law team at the Scottish Government are currently bringing out guidance for children about child welfare reporters – ask your local Women's Aid group about this or check online to see if it is available, if the court hasn't already provided this to you.

## Court Appointed Psychologist

On occasion the Sheriff may order that your child should be assessed by a psychologist, due to behavioural concerns noted that may give rise to your child requiring specialist help. A child psychologist may also be appointed to interview your child in place of a Sheriff to ensure a more child-friendly setting.

The child psychologist will probably meet with you alone, and the other parent alone, and possibly with the child in both of your presences and alone as well, if appropriate.

A psychologist may also be appointed to assess you or the other parent, depending on the concerns and issues that have been raised by either side. One woman told us that her ex-partner demanded she be assessed psychologically, which was allowed by the courts, but that this had in actual fact worked in the woman's favour as it became clear she did not require the evaluation and that her ex-partner was therefore lying and unreliable.

Depending on the outcome, a psychologist may be ordered to become more involved with your family, and conduct further therapy sessions to help matters progress in a way that best supports the child.

## Decisions By The Court

- A Sheriff may decide initially that an order of 'no contact' should be made with the pursuing parent, while the courts gain more information, and particularly if contact between the pursuer and child has not happened for some time. This decision could also be made at the end of a case due to it being proven that contact is not in the child's best interests. In cases of proven high risk or with older children with a clear opposing view to contact, the Sheriff may also order indirect contact i.e. contact by only letter or telephone.
- Another option at the Sheriff's disposal is to order that contact can take place in a supervised environment, such as a child contact centre (see page 15 for more details).
- The Sheriff may also choose to order unsupervised contact with the pursuer that may be for a few hours a week, or may include longer amounts of contact such as weekly overnight contact. When the overnights take place may depend on how close the pursuer lives to the child's nursery/school.
- They may be able to take a role in dropping the child off at school or nursery or it may be better for contact to take place mainly at the weekends.
- The Sheriff may also make an order regulating where your child should spend specific days, such as their birthday, religious and school holidays. You have an option to put forward your opinion of when contact should and shouldn't take place, to best meet the needs of the child and your time with them. It may feel to you that the decision of the court goes against what you consider is in the best interests of your child. This can be distressing.

Whatever the decision made regarding contact, it is important to follow the order made by the Sheriff. Abusive ex-partners often try to extend or shorten the time they see their child/children. They may also ask you to change the location of the 'handover'. Doing anything like this is in breach of the court order, and abusive ex-partners may try to use this against you deliberately at the next hearing. **No matter how harmless it might seem to suggest or agree to change a contact time, for example from 1pm-3pm, into 2pm-4pm, run any changes past your solicitor first'.**



# Child Contact Centres

Where there are concerns about safety or if your child hasn't seen the other parent for some time, a Sheriff may order that contact initially takes place in a child contact centre.

- It may be 'supported' meaning there are staff around in the room but not specifically sitting with your child and parent.
- It may be 'supervised' meaning there will be a staff member supervising the contact.
- Be clear what type you feel would be better, especially if you have safety concerns or that the other parent may try to gain information from your child about where you now live etc.
- Contact centres are generally only used as a 'stepping stone' for contact to then progress to unsupervised, unless the contact at the centre is not going well. Be aware of this before agreeing to this initially; if you have real fears around your child's safety.
- Contact centres can eventually be used as the 'handover location'.
- The contact centre should be able to facilitate the contact so that you and your ex-partner leave at separate times through different entrances, to avoid seeing each other. Speak to your local Women's Aid group as well to see if they have any information on local contact centres and if some are more recommended than others.

## What Do I Tell My Child?

It might feel challenging for you to support your child with a possible change like seeing their other parent again. It might also feel worrying for both you and your child. See the '**Who can help my child?**' section regarding what emotional, practical and legal support you can organise for your child.

### **Don't**

- Tell your child about the fears you may be having, as that may worry them more.
- Go into a lot of detail, particularly if the court case is early on. Explain in stages, as new decisions are made, so that it is not an overwhelming amount of information for your child.
- Tell your child too much about your own opinion or how they should feel. Avoiding this, as well as going into detail, will help you remain impartial and avoid any accusation of 'coaching' your child. Some women have told us that their ex-partner has accused them of telling their child what to say, and as a result the court has stopped listening to the views of their child as they wrongly believe the child's views have been influenced.

### **Do**

- Try to tell your child calmly and reassure them you are there to support them with what happens next.
- Explain some background - that mum and dad don't quite agree about when they should both see you, and so another adult is helping them decide, and to keep it safe.
- Write down any fears, or questions your child may have. Tell them you may need time to get some of the answers or ask other adults to help.
- Consider telling your child that someone else from the court might also want to listen to their questions and how they feel at some point, and you will let them know before it happens (if it is going to happen).
- Try to encourage them to speak to another trusted adult in their life as well, such as a support worker, teacher or club coach.

# Communicating With Your Ex-Partner

Some women find it very stressful to communicate with their ex-partner regarding their child, due to previous domestic abuse and/or continuing unacceptable communication.

- Whatsapp messages or text messages can sometimes be hard to ignore.
- Some women have said that parenting apps help them have a level of separation and head space, as you can more easily control when you choose to read them.
- Some women say the same for emails.
- Some women have a separate phone that they can switch off except for around contact time.
- Some women have asked to have it court-ordered that the communication needed for younger children is recorded in a journal, to avoid verbal or text conversation with their ex-partner at hand-over time, but to still be able to meet the needs of the child.
- Some women have told us that their ex-partner's lawyer has used printed phone records and/or transcripts of text messages and emails between her and her ex-partner, as evidence. Please be mindful of anything you put down in writing.

## *A survivor told us:*

I've learned over time to not communicate or appeal to my ex-partner with matters regarding my child, as he does not focus on our child but uses the communication to attempt to manipulate or further abuse me. I use the 'grey rock' method of communication – I respond minimally, briefly, and with no signs of emotion. This helps me avoid further abuse from him and also remain child focused/and court order focused.

# Going on Holidays

Section 2(3) of the Children (Scotland) Act 1995 says that where both parents have parental rights and responsibilities, one parent cannot take a child out of the UK without the consent of the other.

If your ex-partner refuses to consent, you should seek legal advice. You may be able to seek a Specific Issue Order, to allow you to take your children abroad. You may need to give specific assurances to the court, like showing that you have a return ticket booked and there is no risk of the children not coming home at the end of the holiday.

If your ex-partner wishes to take your children abroad and you do not agree to this, you can refuse. Your ex-partner would also then be able to seek a Specific Issue Order, and you would be able to oppose this.

If there is no court order in place and you are worried that your ex-partner may take the children abroad anyway, you may be able to obtain an interdict or Specific Issue Order. The court may also order that your children's passports are held somewhere safe, e.g. with a solicitor.

This does not apply to holidays within the UK, but you should be careful not to plan a holiday which would mean that contact could not take place. The Sheriff might allow a break of a few weeks to allow a holiday to take place.

It would be expected that a child's passport is held by the parent who has primary care. If your ex-partner has your children's passports and is refusing to give them to you, a Specific Issue Order could also be sought.

# Glossary of Terms

*Definitions are provided below of some legal terms and acronyms. If there are any terms missing that you would like to know more about, please check <http://www.scotcourts.gov.uk/library/publications/docs/glossary.pdf>*

**Action** Proceedings that are started by a person in a civil court. Child contact hearings are 'actions'.

**Amendment** This is the process of making changes to written pleadings after the 'period of adjustment'.

**Contact** Communication between, or time spent together by a child and parent who live apart from each other; replaces the former term 'access'.

**Contact order** A formal order by a court in relation to how the child of a relationship is able to communicate or spend time with a non-resident parent or grandparent.

**Crave** An outcome sought by any party in an action, specified in the initial writ or defences.

**Defences** The statement by way of defence lodged at court by the defender.

**Defender** (usually the women that we support) The party against whom a civil action is brought, who disputes the claim of the pursuer, and lodges defences against the pursuer.

**Ex proprio motu** On the court's or judge's own initiative.

**F9 form** A form sent during a case to a child who is the subject of a court action regarding contact to inform them and ask about their views on contact

**Initial Writ** This is when the other party raises court proceedings to start the process of trying to see the child. The Initial Writ will state what 'the pursuer' wants to happen, and this is put down in writing in the 'Writ'.

**Interim** Temporary ruling or decision

**Interlocutor** This is another name for an order/or decision, made by the Sheriff. Each interlocutor is signed and these sheets form part of the court process - leading up until the final judgement or decision.

**Joint minute** An application to court signed by both agents and possibly by the parties they represent.

**Motion** An application made in court for some subsidiary purpose during the course of an action.

**Ordinary cause action** Relatively formal action initiated by writ in the Sheriff court.

**Period of adjustment** Most court actions allow a period of adjustment of the pleadings – during this period changes can be made to the pleadings either by addition or deletion.

**PRR** Parental Responsibilities and Rights

**Pursuer** (usually the father of the child) The person bringing a civil action to court.

**Residence** Status as parent or guardian with whom the child lives; replaces the former term 'custody'.

**Residence order** A formal order by a court in relation to whom the child will live with.

**Serving the action** This is when the Initial Writ is sent to you, i.e. to the 'Defender'. This can be sent by recorded delivery or by Sheriff Officers. The court must be satisfied that the Initial Writ has been successfully served on you.

**Sheriff** The judge in the Sheriff Court is actually called a Sheriff. Sheriffs will be referred to as 'My Lord' or 'My Lady'.

**Sist** To stay or stop process in an action.

**SLAB** Scottish Legal Aid Board

**UNCRC** United Nations Convention on the Rights of the Child

**Warrant** The Sheriff must grant a warrant so that the Initial Writ can be served upon the Defender.

Notes:

**Glasgow Women's Aid**

4th Floor, 30 Bell Street,  
Candleriggs, Glasgow, G1 1LG  
Scottish Charity No. SC005227

Helpline Telephone Number:

0141 553 2022

[getsupport@glasgowwomensaid.org.uk](mailto:getsupport@glasgowwomensaid.org.uk)

[glasgowwomensaid.org.uk](http://glasgowwomensaid.org.uk)

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