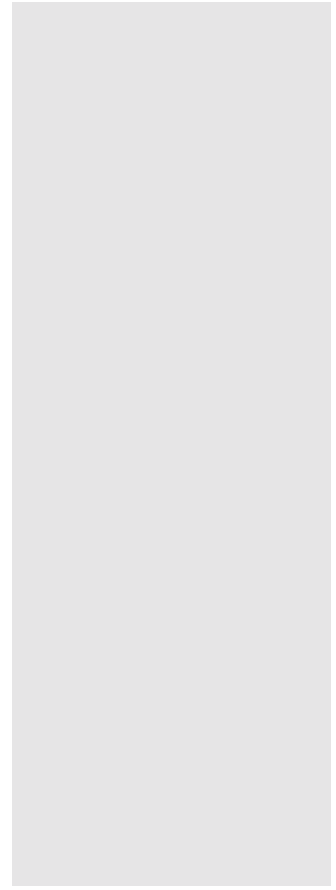


**THE                    ROLE  
SAFEGUARDERS  
SCOTLAND**

**OF  
IN**



# **THE ROLE OF SAFEGUARDERS IN SCOTLAND:**

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<sup>1</sup> The Convention of Scottish Local Authorities

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## **EXECUTIVE SUMMARY**

### **SAFEGUARDERS**

Safeguarders are persons who may be appointed by children's hearings or sheriffs when they think this is required to safeguard the interests of the child in the proceedings. Their role is to provide support and advice for the proceedings. Safeguarders always provide written reports for children's hearings, reflecting the child's best interests. They may do so for court cases. All local authorities have a duty to maintain a panel of safeguarders, so that a sufficient number are available to meet the need. Safeguarders' fees and expenses are also met by local authorities. Since safeguarders were introduced in 1985, there has been a steady and substantial growth in the proportion of children's hearings cases where safeguarders are appointed, but there has been no systematic research on their role and work since the late 1980s.

### **THE PRESENT STUDY**

This research was commissioned by the Scottish Executive. The broad aim was to describe and evaluate the current use and operation of safeguarders in Scotland. The Scottish Executive stipulated 7 objectives for the study, namely to:

- analyse the availability of and demand for safeguarders
- examine the composition of local authority panels of safeguarders
- describe the selection, training, monitoring and remuneration of safeguarders
- examine the children's hearings and courts' decision-making surrounding the appointment or non-appointment of safeguarders
- describe the nature of safeguarders' work and their case management
- evaluate the impact of safeguarders' reports on children's hearings and court decision-making
- explore the role of safeguarders from the viewpoints of children and families, children's hearings and the courts, social workers, local authority panel administrators and safeguarders themselves.

### **Methods**

The study took place between March and September 2000. Data was gathered in four ways:

1. *National questionnaire surveys*: of safeguarders, administrators of local authority safeguarder panels, panel members, panel chairs, sheriffs principal, sheriffs and sheriff clerks.
2. *Interviews and group meetings with key people*, including representatives of the groups who participated in the surveys, plus reporters and social workers. This part of the study took place mainly in 3 designated areas.
3. *Interviews with children and parents* following observation of a hearing with a safeguarder present.
4. *A comparative case record study*, which identified and compared features of hearings' cases where safeguarders were appointed with cases without a safeguarder. Information was abstracted from reporters' minutes of the hearings.

## **THE PROFILE OF SAFEGUARDER PANELS AND SAFEGUARDERS**

The total number of safeguarders in Scotland was estimated with reasonable confidence to be about 200. Some worked for more than one local authority, so there were about 300 safeguarder positions. Local authorities were often unaware of how many of their safeguarders served on more than one panel. The size of panel in each authority varied from 4 to 21 individuals, but the most common size was 9-12.

The numbers of cases to which safeguarders were appointed had risen substantially during the 1990s, but had fallen somewhat after 1998. The overall number of cases dealt with by hearings was decreasing at a higher rate, so the *proportion* of cases with a safeguarder still rose in the 1999-2000 period. This occurred against the background of an important legislative change introduced by the Children (Scotland) Act 1995 which came into effect in 1997 allowing children's hearings more discretion to appoint safeguarders than before. At the time of the study, safeguarders were appointed in just under one in ten cases, more often in non-offence cases. However, officially collated information did not provide a reliable, comprehensive record of all safeguarder appointments, nor enable a clear comparison to be made between appointments by panel members and by sheriffs.

According to available evidence, the number of safeguarders had stayed fairly stable. The supply of safeguarders was thought by administrators and other key parties to be generally adequate, though in some areas shortages were acknowledged to exist. Most safeguarders reported a relatively small workload (a few cases per year), reflecting the fact that for many this was a secondary or occasional activity.

The safeguarder 'workforce' was fairly stable and usually had relevant professional experience to draw on. The majority had been doing the work for three years or more. Two thirds of safeguarders had qualifications in law or social work, which was also the predominant pattern in the 1980s. About two fifths had a legal background and one quarter a social work background. Across Scotland about 60% of safeguarders were women, though the gender distribution varied considerably from one place to another. In a few areas, the panel had only one or two men to call on.

## **RECRUITMENT AND REMUNERATION**

Most councils accorded the responsibility for safeguarders to one or more administrators in a legal, administration or corporate services department. The study revealed a wide diversity of arrangements in virtually all aspects of the management of the service, except for fees, which were paid at a standard rate.

In order to recruit safeguarders, only a few authorities advertised publicly and the majority of applicants were either formally nominated or urged to apply by key parties in the children's hearings system, i.e. panel chairs, panel members, sheriffs and reporters. Application forms for safeguarders were used in two thirds of authorities. Their contents were diverse. Three quarters of authorities interviewed safeguarder applicants, but the people involved in the interviews were varied. Some

respondents criticised the application and selection system for its haphazard nature, lack of openness and potential for bias.

Safeguarders normally worked from home or from the office where they were employed in their main occupational capacity. They usually made their own arrangements for typing reports. Many respondents thought that the safeguarding fee was too low, although some administrators were concerned about where the money to pay for any rise would come from.

## **INDUCTION, TRAINING, SUPPORT AND MONITORING**

When safeguarders in the survey first took on this role, they usually had considerable previous knowledge of the children's hearings system, though a minority did not. The information, guidance and training provided to safeguarders were highly variable but for the most part was very limited in scope. A near consensus existed that safeguarders should have access to more extensive and standardised training. Safeguarders received little if any support and feedback to help improve their work, while arrangements for monitoring and accountability were minimal. Formal complaints were rare, but panel members, reporters and sheriffs tended not to use against anyone they considered unsatisfactory. Both administrators and safeguarders themselves were often not aware of the judgements made by decision-makers and reporters about the quality of safeguarders' work.

## **APPOINTMENTS OF SAFEGUARDERS TO CASES**

National figures from the Scottish Children's Reporter Administration indicated that safeguarders were appointed much less often in offence than non-offence cases. The research analysis of hearings minutes showed that in other respects the characteristics of safeguarder cases and non-safeguarder cases were very similar, except that non-safeguarder cases included more reviews and correspondingly more children who were already on supervision. Just over half the children involved in the safeguarder cases were teenagers. A wide range of grounds of referral was represented in cases with a safeguarder, the most common grounds being lack of parental care, offences and school non-attendance.

According to panel members, conflicting views were the most frequent reason for appointing safeguarders, but difficulties obtaining the child's view or gaps in information were other common factors. The case record analysis revealed that sometimes the stated reasons for appointing a safeguarder were vague and quite often safeguarders were not provided with a specific remit.

Normally reporters and clerks allocated the particular safeguarder to undertake the case, occasionally guided by the panel or sheriff. Rota systems for allocating safeguarders occurred in some areas, though sometimes the characteristics or known qualities of the safeguarder were taken into account. Elsewhere selection of the safeguarder was affected by availability, an effort to match to the needs of the child, or the judgement of the reporter or clerk. Some respondents, including reporters themselves, questioned whether it was right that they should have the discretion to choose the safeguarder.



## **COURT APPOINTMENTS**

Information from sheriff clerks was found to be patchy concerning the number of court appointments of safeguarders. Some gave apparently accurate figures, but others provided estimates or no information at all.

The majority of sheriffs with relevant cases said they appointed safeguarders, but in equivalent circumstances some appointed curators instead. This difference reflected contrasting interpretations of the law, as well as varying views on the need for a lawyer to safeguard children's interests in their proceedings. A further consideration was that curators were paid more.

Most sheriffs thought it appropriate to appoint a safeguarder in a proof hearing, but a number of reporters disagreed, since they saw the judgement to be made as a factual one not involving consideration of the child's interests. Sheriffs said they made appointments in a wide range of circumstances, including cases where the child was too young to express a view, where an older child needed assistance to express a view and where there was a conflict of interest between parties. Most sheriffs thought that the appointment of a safeguarder did not usually lead to delays and might even expedite matters.

The great majority of safeguarders believed they should operate in courts as well as hearings. Most sheriffs thought it was a matter for safeguarders' discretion whether or not to enter the proceedings, but some thought they should always do so. Sheriffs were divided in opinion for or against safeguarders offering advice to children about accepting or rejecting the grounds of referral.

## **SAFEGUARDERS' ASSESSMENTS AND REPORTS**

From respondents' accounts, several key stages were identified as desirable in safeguarders' casework, although some individual safeguarders omitted one or more elements in practice. The components were:

- carefully reading of the case papers
- meeting the child and parents face to face, usually separately
- obtaining information from other relevant parties
- looking behind surface accounts and checking facts
- identifying the child's best interests and, separately, the wishes of children or parents
- explaining to family members the planned recommendations and their rationale
- writing and submitting a comprehensive but not excessively lengthy report
- attending the hearing.

The time spent on each case varied greatly, but in most instances amounted to the equivalent of one to two days work spread over a few weeks. Some safeguarders spent more time on explaining or even mediating, which appeared to pay dividends in terms of acceptance by the child or parents of the recommendation. Some social workers and reporters emphasised the importance of safeguarders checking out what they were told and not having preconceptions about what was best for children.

Most safeguarder reports were submitted within recommended time-scales. Panel members and sheriffs were generally well satisfied with the quality of reports, although there was uncertainty about the purpose of the report for a court in proof hearings. Some reporters were critical of the fact that they were not able to see reports to the sheriff. Opinion among all respondents was divided on whether reports should follow a more standardised format.

## **EXPERIENCES AND VIEWS OF CHILDREN AND PARENTS**

Interviews were carried out with 25 children and in all but three cases also one or two parents. Safeguarders, social workers and reporters thought that children and parents tended to expect a safeguarder to side with them, rather than reach an objective view about the child's best interests. The family members themselves showed a broader if still partial understanding of the safeguarder's role and remit. Children mainly saw it in terms of the safeguarder presenting an overview to the panel and did not necessarily comprehend the aspect of acting and recommending in their interests. Some parents doubted safeguarders' independence. Most children and parents who were interviewed felt that the safeguarder listened carefully to their views and usually respected them. They did not seem concerned about characteristics such as age or gender: the main thing was that the safeguarder took them seriously. Likewise they thought that the safeguarder had an important influence, usually for the benefit of the child. A minority had negative feelings, particularly parents. The sense of grievance was greatest when parents or young people had gained the impression the safeguarder supported their viewpoint, only to experience the opposite at the hearing.

## **APPRAISALS OF SAFEGUARDER IMPACT AND PERFORMANCE**

Panel members and safeguarders usually thought the impact of the safeguarder on case outcomes was considerable, but more than half said that even so it was given no greater weight than the social work report in the case. Panel members said that the safeguarder report was most crucial when conflict persisted among other parties. Social workers tended to think that more weight was given to safeguarder reports than their own.

Safeguarders who participated in the study were generally satisfied with their role. The main changes they wanted to see were adequate fees, more training and better co-operation from other parties in some instances.

Panel members, sheriffs, reporters and social workers were virtually all in favour of the legal provision for safeguarders. Even those who had initially been sceptical about whether safeguarders were necessary now admitted to being largely won over through experience. The fact that safeguarders were free of resource and role constraints, especially compared with social workers, was seen to make their recommendations independent and helpful to decision-makers. The quality of work done by the great majority of individual safeguarders was seen by other parties as very good. However, a small minority were perceived to perform poorly. Among the reasons why a few safeguarders fell short of the usually high standard were: spending little time on the case, not explaining their recommendations to parents and children in advance, providing a brief or superficial report and non-attendance at the hearing. Some people attributed these shortcomings to inadequacies in the recruitment and monitoring of safeguarders. As a result, some respondents were in favour of a nationally organised service.

## CONCLUSIONS AND IMPLICATIONS

The role carried out by the great majority of safeguarders was generally recognised to be a valuable one by other key parties in the children's hearings system. The study identified little that needed changing in the actual work done by most safeguarders, though the shortcomings of a small minority suggested that it is desirable for the best practices to become standard practice.

However, the study's evidence on current practices together with the opinions of participants indicated that significant alterations are desirable to improve the management of the safeguarding service. These include the following points:

- new Government Regulations and Guidance were advocated by many respondents to ensure greater formality, consistency and openness with respect to recruitment, induction, training and monitoring. The arrangements varied greatly among authorities and many safeguarders themselves criticised the lack of consistency
- nearly everyone who commented on remuneration recommended that it needed to be increased, so that it would be commensurate with the time taken up and the complexity of the task. This might also assist the current confusion about whether sheriffs should appoint a curator instead. Administrators' budgetary concerns indicated that attention is required to how higher fees should be funded
- the brevity of current safeguarder training and the views of most participants, including safeguarders themselves, highlighted the need for a dedicated core training programme, universally available for safeguarders
- in view of the divergent opinions about, for instance, the option of using a curator in a children's hearing case or the nature of the safeguarder's role in a proof hearing, several aspects of the safeguarder's role in court require clarification, possibly by amendments to the law
- the problems the research team had in obtaining local or national figures for safeguarder appointments and the questions raised in the report about the accuracy of official figures suggest that it would be helpful if standard information about both hearings and court appointments were recorded and collated nationally
- the systems for allocating safeguarders to a case ought to be reviewed so they are seen to be open and fair, since our evidence indicated that those who could be viewed as having an interest in the case influenced the choice of individual
- since some children and parents had only a partial understanding of safeguarder's roles, it would be helpful to have a simply worded leaflet about safeguarders for children and their families.

In the eyes of virtually all respondents the chief quality of safeguarders that was widely valued was their independence. Therefore any changes that are made should not compromise this.

## **CHAPTER ONE: BACKGROUND TO THE STUDY**

This report describes research commissioned to review the part played by safeguarders in the Scottish children's hearings system. A safeguarder is a person appointed by a children's hearing or a sheriff to safeguard the interests of the child under consideration.<sup>1</sup> Safeguarders may be appointed when it is thought that a contribution to the decision-making by this additional person is in the child's interest. Their role is to provide support and advice for the proceedings. Safeguarders always provide written reports for children's hearings, reflecting the child's best interests. They may do so for court cases. After they were introduced in 1985, safeguarders were used in a small minority of cases, but the number of safeguarder cases rose considerably during the 1990s.<sup>2</sup>

This first chapter briefly outlines the aims of the study, then discusses the legislative basis and practice context for the safeguarder's role.

### **STUDY AIMS AND TIME-SCALE**

The research was commissioned by the Scottish Executive. The broad aim was to describe and evaluate the current use and operation of safeguarders in Scotland. The Scottish Executive stipulated 7 objectives for the study, namely to:

- analyse the availability of and demand for safeguarders
- examine the composition of local authority panels of safeguarders
- describe the selection, training, monitoring and remuneration of safeguarders
- examine the children's hearings and courts' decision-making surrounding the appointment or non-appointment of safeguarders
- describe the nature of safeguarder's work and their case management
- evaluate the impact of safeguarder's reports on children's hearings and court decision-making
- explore the role of safeguarders from the viewpoints of children and families, children's hearings and the courts, social workers, local authority panel administrators<sup>3</sup> and safeguarders themselves.

The study formally lasted 7 months from March to September 2000, though negotiation of access began earlier. Fieldwork began in April and finished in July. The design and methods used in the study are outlined in the next chapter, but firstly the legal and practice context is presented.

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<sup>1</sup> Although the UN Convention on the Rights of the Child defines a child as anyone up to the age of 18 and the children's hearings system may deal with the same age range, many older children do not wish to be referred to as a child. Therefore, where appropriate the terms "young person" and "young people" are used to refer to those in the middle or late teens. However, it would be cumbersome when referring generally to repeat the expression "children and young people", so use of the word "children" should be taken to cover the full age group.

<sup>2</sup> See later in this chapter for details.

<sup>3</sup> This term refers to staff in the local authority who are responsible for recruitment, management of the safeguarder panel, payments etc. Sometimes in the same authority more than one individual is concerned with different aspects and they have different levels of authority and responsibility, as described later in the text. For convenience, this term is used to cover them all.

## THE STATUTORY AND PRACTICE BACKGROUND

### Origins

Safeguarders came into existence in Scotland on June 30th 1985 as a consequence of an amendment to the Social Work (Scotland) Act 1968 by statutory instrument. This made it possible for a children's hearing or sheriff to appoint an additional person whose sole remit was to safeguard the interests of the child. The new statutory provision<sup>4</sup> required that, in each case considered by a children's hearing, the hearing chair.<sup>5</sup>

*“shall consider where it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of the parent, to appoint a person for that purpose...”*

Exactly the same requirement was placed on a sheriff considering a child's case, either an application for proof of the grounds for referral or an appeal against a hearings' decision. The word “safeguarder” was not used in the primary legislation but appeared in the amended Children's Hearings Rules and Sheriff Court Procedure Rules, as it was the preferred term following a consultation process.

The suggestion to have an independent person safeguarding children's interests had been imported from England, where it had been recommended for court cases concerned with child abuse (Howells 1974). However many people in Scotland initially expressed considerable doubt about the relevance of this idea to the different system north of the border. Here significant concerns about children's welfare were dealt with through the children's hearings system, not by juvenile or youth courts as in England and elsewhere (Lockyer and Stone 1998). The main decision-makers and professionals involved in the hearings system are reporters, children's panel members, sheriffs and social workers. Among each of these groups opinion about having this additional safeguarding role was divided. Some saw safeguarders as unnecessary because the existing participants could look after children's interests adequately (Martin 1983), whereas others argued that Scottish children should not be denied a potential source of additional assistance. Supporters of the innovation held divergent views about the role of safeguarder. Some saw it as time-limited and confined to providing a report and speaking up for the child at the hearing itself. Others envisaged a longer-term function where the safeguarder kept in touch with the child beyond the proceedings, perhaps throughout the period of compulsory supervision (Curran 1989).

Regulations were issued by the Government in 1984 and gave all Scottish local authorities the duty to establish a safeguarder panel.<sup>6</sup> Initially there were 12 authorities, but since local government reorganisation in 1996 they have comprised 32 unitary councils. Authorities were required to act throughout in consultation with the local panel chair<sup>7</sup> and sheriff principal and were required to keep arrangements under review (Section 8).

The 1984 Regulations gave wide discretion to local authorities as regards how they established and administered safeguarder panels. For instance, authorities might specify “the experience, aptitudes and standard of any qualification” (Section 4(4)), but need not do so.

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<sup>4</sup> Section 34A of the Social Work (Scotland) Act 1968.

<sup>5</sup> The panel member who chairs the discussion at a hearing is known as the “hearing chair”. See also note 7.

<sup>6</sup> *The Social Work (Panel of Persons to Safeguard the Interests of Children) Regulations 1984* (SI 1984/442 S119).

<sup>7</sup> The “panel chair” is the person appointed by the Scottish Minister to manage the rota for the panel area. Panel chairs are also known as authority chairs.

Councils could pay “such fees and allowances as they think fit” (Section 10), though in practice common rates have been agreed through COSLA. The Regulations made no mention of training.

Partly in view of the uncertainty and controversy surrounding the introduction of safeguarders, a comprehensive study was carried out on behalf of the Scottish Office (Curran 1989). This was the only systematic investigation of safeguarders carried out before the present study. It identified several issues that remain highly relevant and these will be referred to during the presentation of the current research findings.

### **The 1989 Report on “Safeguarders in the Children’s Hearings System”**

Curran (1989) found that the usage of safeguarders was much lower than expected. Following a consultation exercise, it had been estimated that safeguarders might be used in 3% of hearings’ cases and 15% of cases before the sheriff. This produced an expectation of around 1000 appointments per annum. In practice, during the first year of operation 1985-6 there were only 142 appointments, two thirds by courts (94) and one third by hearings (48). This represented well under 1% of possible hearings cases.

In the two subsequent years the number of hearings cases with a safeguarder doubled. This was linked to a shift in panel members’ attitude. Many had been originally sceptical but became positive about the value of safeguarders once they had received reports and had experienced safeguarders’ contributions to hearings.

In contrast, sheriff appointments decreased over the same period. The number of court appointments was, and remains, affected by the disposition of some sheriffs to appoint *curators ad litem* instead of safeguarders. The courts in Scotland have a long standing power under the common law to appoint a *curator ad litem*, a court officer to act on behalf of a ward or minor to ensure the case is conducted in his or her interests (for further details see Macphail 1998). Opinion was (and remains) divided on whether the statutory creation of safeguarders ought to be used in preference to the common law provision for curators.

Curran identified an important difference in the systems for allocating particular safeguarders to take on cases. The children’s hearings mainly used members of safeguarder panels in rotation, which had been recommended by the Scottish Office so that “each safeguarder develops experience as quickly as possible” (SWSG *Guidance Notes* Note 12). In contrast, sheriffs and their clerks were inclined to make repeated use of a few known individuals, who nearly always had a legal training. This introduced a gulf of experience among safeguarders, with lawyer safeguarders taking mainly court appointments and others largely serving hearings. Another consequence of courts favouring trusted individuals was that others were not used at all. In the first year more than half of the 102 initial safeguarder recruits had not been given a case.

Curran’s conclusions were broadly favourable as regards the value of safeguarders, but he suggested that a number of matters should be addressed. In particular, he recommended improvements in guidance and training for relevant parties. This would help to clarify the safeguarder’s role and to ensure panel members and sheriffs were aware of their obligation to consider making appointments.

## **Changes introduced by the Children (Scotland) Act 1995**

A number of reports and seminars in the early 1990s showed that safeguarders had increasingly become accepted as an integral part of the children's hearings system (CCLR, 1990). This was fortified by the ratification by the UK of the UN Convention on the Rights of the Child and by debates about the recommendation of the Orkney Inquiry Report to consider an "enhanced role" for safeguarders in emergency child protection proceedings (Clyde 1992).

The Children (Scotland) Act 1995 was introduced as a comprehensive statute for children's services. It incorporated the safeguarder provision, which was by now widely accepted, but also brought a number of significant changes. The Act widened the circumstances for appointing safeguarders, dropping the condition that there must be an actual or potential conflict of interests between parents and children. Now children's hearings and sheriffs were required to consider "if it is necessary to appoint a person to safeguard the interests of the child in the proceedings" and if so shall appoint "on such terms and conditions as appear appropriate" (Section 41 (1)(b)). The consideration of whether or not to appoint a safeguarder was now to be made by all three panel members rather than the hearing chair, as previously. Hearings must also state explicitly in writing their reasons for making an appointment. (Section 41 (3)). The Act also required that safeguarders always make a report to hearings. The report must be made available not only to panel members but also to "relevant persons" (i.e. parents or parental figures).

However, the role of safeguarders with respect to proof proceedings before a sheriff was not clarified and Clyde's suggestion to give safeguarders an extended role in child protection proceedings was not adopted. Nevertheless the desirability of having the same person to look after the child's interests in both court and hearings proceedings was taken seriously (Lockyer 1994). The new Sheriff Court Rules required sheriffs to appoint the same safeguarder as the hearing if one had already appointed to the case, unless there is good reason to make a different appointment.<sup>8</sup> The presumption here was that individual safeguarders would be willing and able to function in both forums.

Like the UN Convention on the Rights of Child, the Children (Scotland) Act 1995 underscored the principle of "listening to children" (Lockyer and Stone 1998). The children's hearings system had from the outset attached importance to taking account of children's views in determining their best interests. One of the purposes for which safeguarders could be used by hearings or sheriffs was to ensure that the child's views were elicited and given due weight, since it is in a child's general interest that his/her views be known and taken seriously. A conflict could arise, though, where a safeguarder's judgement of what action is best for a child differed from the child's own view (Sutherland 1995).

Following the 1995 Act there has been an increased level of appointments. By the year 1999/2000 the proportion of cases with a safeguarder appointed had risen to nearly one in ten (9.3%). (Information provided by SCRA headquarters staff: see chapter 3 for details.)

### **Recent initiatives and proposals**

Scottish Ministers have the power<sup>9</sup> to make regulations for the establishment of panels of persons serving as curators ad litem, reporting officers and safeguarders. The regulations may relate to appointment, qualifications and training; the management and organisation of the panels; and provision for expenses to be defrayed by local authorities. To date no new

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<sup>8</sup> (SC 1997 Rules 3.7. (2)).

<sup>9</sup> Under Section 101 of the Children (Scotland) Act 1995.

regulations have been made under this power. However, three initiatives concerned with management, fees and training have occurred.

A Time Intervals Working Group was set up by the Government in 1997 and proposed measures to speed and tighten up procedures for handling children's hearings cases. The Group drew up the Blueprint Code of Practice and Standards (1999), which included a number of sections related to safeguarders:

- children's panel members to specify as clearly as possible those aspects of the case that they wish the safeguarder to investigate
- maximum time-scales for safeguarders to receive case papers and submit reports
- safeguarders to attend the hearing
- local authorities to review regularly their panels of safeguarders and to ensure prompt allocation to cases (The Scottish Office 1999).

During the course of the study, COSLA proposed that recommended fees for safeguarders be raised considerably, but also include some standard expense items. Also, the Scottish Executive proposed that Children's Panel Training Organisers take on core safeguarder training. The Regulation of Care (Scotland) Act 2001 was enacted with appropriate powers to enable Scottish Ministers to support the Children's Panel Training Organiser structure in this training role.

### **The current role of safeguarders**

The *Notes of Guidance for Persons Appointed as Safeguarders* (Social Work Services Group, 1985) issued by the Scottish Office prior to the introduction of safeguarders did not go into detail about their intended role. The document stressed that it was essential for safeguarders "to act and be seen to act, quite independently of the local authority or any other agency" (paragraph 4). However, it went on to say that "the need for independence would not preclude members of a safeguarding panel from getting together to share experiences and exchange general information about aspects of their function with a view to helping each other to develop their role in the system." (Paragraph 5)

The limited opportunities for such sharing at local or national level was one of the main complaints found by a survey of safeguarders in 1992. The "sense of isolation described by many safeguarders" pointed to the need for a "national forum" which would enable safeguarders to make a distinctive contribution to the debate about their role within the children's hearings system (Conference Report 1993). Subsequently the Scottish Safeguarder's Association was created to fulfil this purpose.

The Association compiled *Practice Guidelines* (Feb 1999) which identified three core responsibilities within the overall remit to safeguard the interests of the child in the proceedings of a children's hearing. The first was "to ensure that the child's rights are protected"; the second was that "the views of the child are established, valued and communicated to the hearing"; the third was "to ensure that any proposals being made are in the child's best interest". The Guidelines gave advice on each stage of the safeguarding process from receiving documentation to carrying out the "investigation" and making the report. There was said to be no standard layout of reports, whose style and content would vary with individuals, but certain areas "should be covered" including reaching a conclusion and making recommendations.

The Guidelines stated that safeguarders have the *right* to attend the hearings when their written reports are considered, but did not specify whether or not safeguarders *should* attend.



However, it was noted that panel members are “entitled to expect” they “will make every attempt to attend hearings and will do so more often than not” (paragraph 10.1).

The role of the safeguarder in relation to the Sheriff Court was less fully specified than with respect to children’s hearings. The Guidelines stated that the “safeguarding task in the sheriff court is essentially the same as for children’s hearings - to safeguard the interests of the child” (paragraph 11.2). However, the function of the sheriff in proof proceedings is not to look to the interest or welfare of the child, beyond determining the facts and establishing the grounds. Therefore, the safeguarder’s task of looking after the interests of the child in the proceedings is much less clear cut.

For instance the safeguarder has the option of deciding whether or not to become a party to the proceedings – that is, take an active part in the proof, personally or by appointing a legal representative. This decision must be taken on the basis of a judgement about the child’s interests, but the Guidelines did not explain what considerations should enter into this decision. Similarly, no clear guidance was given on whether it is desirable to make a report when becoming a party. The Guidelines noted the diversity of practice between courts in these matters and advised the safeguarder to “comply with whatever system operates in the courts making the appointments” (paragraph 14.5).

## **SUMMARY**

Since 1985 it has been possible for children’s panels and sheriffs to appoint a safeguarder. As their name suggests, their remit is to safeguard the interest of the child in the proceedings. Safeguarders are recruited and paid by local authorities, whose number increased from 12 to 32 in 1996. The Children (Scotland) Act 1995 widened the circumstances in which safeguarders might be appointed and since then the number of cases with a safeguarder has risen. The present study was commissioned to examine the present usage and range of opinions about safeguarders, in view of the changed context since the previous survey of the late 1980s. The methods used to meet these aims are described in the next chapter.

## **CHAPTER TWO: RESEARCH DESIGN**

This chapter outlines the main elements of the study. The design for the research took into consideration the need to meet seven specified objectives and to obtain both information and views from a number of different parties over a short period. Therefore a combination of methods was required, notably questionnaires, individual interviews, examination of case records and group discussions. Some forms of data collection served more than one purpose (e.g. to identify safeguarders' activities and to obtain feedback about their performance).

### **DATA SOURCES AND METHODS OF DATA COLLECTION**

The main methods used in the research were:

1. national questionnaire surveys
2. interviews and group meetings with key people, mainly in 3 designated areas
3. interviews with children and parents following observation of a hearing with a safeguarder present
4. a comparative case record study.

It had originally been intended to analyse national data about the characteristics of cases in which safeguarders were appointed. This information is routinely compiled by reporters and collated by the organisation Lambda. Unfortunately the data was not available in a suitable form during the study period, but total figures for relevant cases were provided by SCRA Headquarters and will be reported in chapter 3.

The short time-scale for the study imposed a number of limitations. For example, the number of interviews for each type of respondent was small, systematic observations of hearings were not carried out and no safeguarder reports were read.

Much of the information was sought on a national basis. For some purposes indicated below, data was gathered in relation to three local authority areas. The three areas were chosen to give a geographical spread and included locations which official figures indicated were high or low users of safeguarders. To avoid lengthy repetition, these will be referred to in the rest of the report as the 'study areas'. The four main elements of the study will now be described.

#### **National questionnaire surveys**

Self completion questionnaires were devised and sent to:

- all safeguarders in Scotland
- the person(s) responsible for safeguarder panel recruitment and administration in each local authority
- selected sheriffs principal<sup>10</sup>
- all sheriffs
- all children's panel chairs
- a sample of panel members in each area.<sup>11</sup>

In addition, the clerk in every Scottish court area was sent a letter requesting details of safeguarder cases in the previous year.

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<sup>10</sup> In view of the small numbers of sheriffs principal, the findings presented in the report usually combine their views with those of sheriffs in order to protect individuals' anonymity.

<sup>11</sup> Normally 10%, but more in the three study areas.

The contents of the questionnaire varied according to the respondent. Overall the main topics covered were:

- safeguarders' characteristics and reasons for becoming a safeguarder
- recruitment processes
- training, financial and support matters
- the appointment and allocation of safeguarders to particular cases
- key features of cases where safeguarders were appointed
- monitoring and review arrangements.

In all over 500 questionnaires were completed and analysed (see Table 2.1 for details).

**Table 2.1 National questionnaire surveys: data sources and sample sizes**

<b>Data source</b>	<b>Potential number of respondents</b>	<b>Actual number of respondents</b>	<b>Response rate</b>
Safeguarders	182	88	48%
Local authorities	32	31	97%
Children's panel chairs	32	21	66%
Children's panel members	477	338	71%
Sheriffs and Sheriffs Principal	122	56	45%
Sheriff clerks	50	23	46%
<b><i>TOTAL</i></b>	<b>892</b>	<b>557</b>	<b>62%</b>

### **Interviews and group meetings**

To explore relevant issues in greater depth, individual interviews (65) and group discussions (13) were arranged with safeguarders, professionals and officials on a more selective basis (Table 2.2). These mostly involved contact with people in the 3 study areas, but a few did not (e.g. group meetings with representatives from the Safeguarders Association and of safeguarders who were not members of the Association). The interviews also included two professional perspectives not included in the questionnaire surveys, i.e. those of reporters and social workers. It was not practical to seek respondents at random or in a fully representative way, so respondents were chosen on the basis of their experience of safeguarder cases.

**Table 2.2 Individual and group interviews: data sources and sample sizes**

	<b>Individual Interviews</b>	<b>Group Discussions</b>
Safeguarders	18	4
Sheriffs/ Sheriffs Principal	6	-
Children's panel members/chairs	3	5
Administrators in the 3 areas	3	-
Sheriff clerks	3	-
Reporters	18	1
Social workers	11	3
Children & Young people	25	-
Parents	22	-
<b><i>TOTAL</i></b>	<b>112</b>	<b>13</b>

## Interviews with children and parents

The research team was mindful of the potential difficulty of gaining co-operation from young people and parents. Hearings can be stressful for families. Also family members have often ‘told their story’ many times to different people, so they can be understandably reluctant to speak to researchers, especially if they feel that the result of the hearing has gone against them. The recent large-scale studies of the children’s hearings system managed to interview only small number of young people (Hallett et al 1998; Waterhouse et al 2000). It was decided that the best way of gaining access was to seek to interview immediately after a hearing at which a researcher had been present. This method was shown to be successful by Martin et al (1981). Prior consent was obtained from the family, reporter and hearing members.

During the fieldwork period the research team was notified of 55 hearings where a safeguarder was due to be present. In 13 instances, either the parent or child refused consent, usually in advance but twice on the day. In a further 17 cases, the reporter advised that it would not be appropriate to attend, the child was too young or the time given to us for the hearing proved mistaken. This resulted in interviews taking place with 25 children and young people and, in all but three of these cases, with one or both of the parents too (Table 2.2). The child and parent were nearly always seen separately.

The interviews with children and parents covered broadly the same topics. They included understandings of the role of safeguarder; the amount and nature of the contacts; perceptions of the safeguarder’s qualities, independence and impact on the hearing decision.

The attendance at hearings was included in the study only as a prelude to the interviews, not as a separate data gathering exercise in its own right which was beyond the scope of this study. Nevertheless, certain core features of the hearings were recorded and impressions were gained which were useful to the interpretation of the data.

### A comparative case record analysis

Using reporters’ minutes of hearings, a comparison was made between the characteristics of cases where a safeguarder was appointed and cases with no safeguarder (see Table 2.3). The safeguarder case records were sent from 28 hearing centres widely spread across Scotland to SCRA headquarters in Stirling, where relevant data was abstracted. In most instances, minutes were available for both the hearing where a safeguarder was appointed and the hearing where the report was considered (55 cases involving 73 children). Only the papers for the first hearing were present for twelve cases (on 19 children). While the safeguarder cases were broadly national, for reasons of practicality the comparative data was obtained on 48 ‘non-safeguarder’ cases from the 3 study areas.

**Table 2.3 Case record analysis: sample sizes**

	<b>Number of cases</b>	<b>Number of children</b>
Safeguarder cases	67	92
Non-safeguarder cases	48	67
<b><i>TOTAL</i></b>	<b><i>105</i></b>	<b><i>159</i></b>

## **ANALYSIS**

The nationally collected data was analysed using SPSS to produce frequency distributions and relevant cross-tabulations. For some cross-tabulations, the 32 local authority areas were grouped into 3 by population size, location (west, east and north) or type (urban, rural, mixed). Interview data was analysed qualitatively by identifying themes, levels of support for different viewpoints and consideration of exceptional cases.

## **ACCESS AND ETHICAL CONSIDERATIONS**

Information was gathered on the understanding that no individual participant should be identified in reports of the research and that any reference to particular cases would be anonymised. All respondents were given a full explanation of the research in advance.

Parents and children were notified about the research when they received the notifications about the hearing from the reporter. They were informed of the researchers' wish to attend the hearing and interview them on a confidential basis. At that stage they could decline to participate. A further opportunity to withdraw was given verbally prior to the hearing. If a child, young person or parent did not wish to answer a particular question, this was respected. Interviews did not take place when the reporter indicated that to do so could cause distress or interfere with care plans, in accordance with normal ethical standards for research with children (Alderson 1995; Hill 1998). The procedure for obtaining consents and arranging to see children and parents was agreed in advance with SCRA and representatives of the Children's Panel Chairmen's Group.

## **STRUCTURE OF THE REPORT**

The results of the research will be discussed thematically rather than according to data source, so that the different perspectives on the same topic are presented alongside each other. The next few chapters consider the more collective issues: panel composition, recruitment, induction, training, support and monitoring (Chapters 3-5). Attention turns next to the arrangements for appointing a safeguarder to a particular case (Chapter 6), with data specific to the safeguarders' role in courts presented in Chapter 7. Safeguarder assessments and reports are discussed next (Chapter 8). The following chapter gives the viewpoints of children and parents, which are presented separately from other perspectives on account of their distinctive position as the recipients or targets of the hearings system and its decisions (Chapter 9). The final findings chapter examines the opinions of decision-makers and professionals on the overall performance of safeguarders and their impact (Chapter 10). Conclusions and implications are discussed in Chapter 11.

## CHAPTER THREE: SAFEGUARDER PANELS AND THE CHARACTERISTICS OF SAFEGUARDERS

This chapter begins the presentation of the research findings, starting with information obtained from local authorities and safeguarders themselves concerning the numbers of safeguarders available and their workloads. Also included are views about the adequacy of the supply of safeguarders in different parts of Scotland. The final part of the chapter covers safeguarder characteristics.

### THE OVERALL NUMBERS OF SAFEGUARDERS

It was not possible to formulate an exact figure of all safeguarders in Scotland. The Safeguarders Association seeks to obtain the names and addresses of all safeguarders and provided us with the total figure known to them. However the survey revealed that a few on the list had moved, given up safeguarding or died. This may also have applied to some of those who did not respond when sent a questionnaire. Furthermore one area supplied names of a few individuals who were not known to the Association. Allowing for these small margins of error, a best estimate was made that there were just under 200 *safeguarders* in Scotland. This represented a doubling in number since 1985 (Curran 1989).

All Scottish local authorities except one gave us the number of safeguarders they were responsible for. Aggregating their figures yielded a total of 306 *safeguarder positions*.<sup>12</sup> This figure is one third greater than the number of individual safeguarders because some work for more than one authority, so that double counting occurs (see next section).

### SAFEGUARDER PANELS

The legislation requires that each authority maintain one or more safeguarder panels. All but two authorities had a single panel of safeguarders serving both children's hearings and courts. The two exceptions retained separate panels formed with respect to Sections of the Social Work (Scotland) Act (1968) which are now redundant:

1. a panel of safeguarders to serve the hearings only (S. 34A)
2. a panel of reporting officers, curators-ad-litem and safeguarders for court work only (S. 18A).

Most authorities kept a separate list of curators, though seven authorities said they did not.

#### Panel sizes

Given the large range of geographical and population sizes among authorities, the number of safeguarders on the panels ranged widely, from 4 to 21. About half comprised 9-12 people.

**Table 3.1** The size of local authority safeguarder panels (N=31)

Panel size	Number of authorities
Four to eight	10
Nine to twelve	16
Thirteen to sixteen	3
Twenty or twenty one	2

Source: Survey of safeguarder panel administrators

<sup>12</sup> Based on 31 of the 32 local authorities. The missing authority was not large.

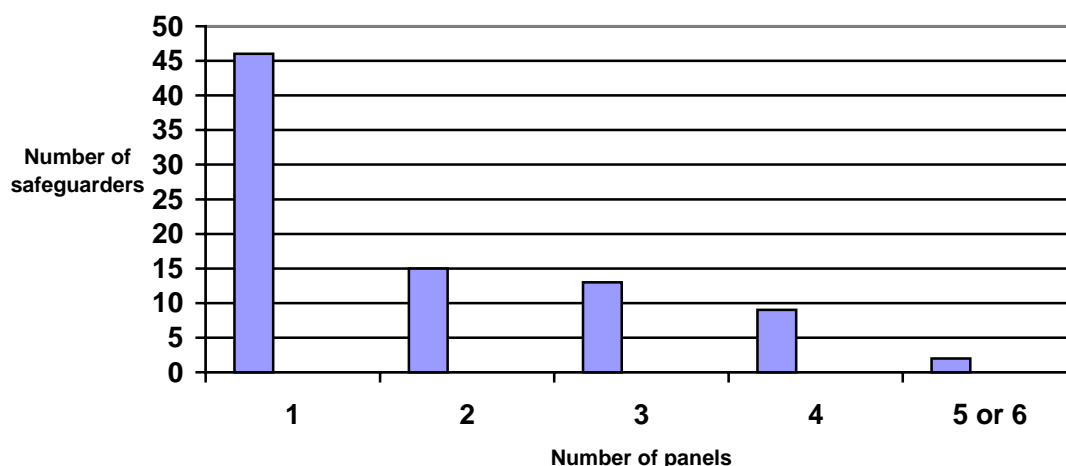
Administrators were asked about changes in the numbers of safeguarders since 1996, as this was the year in which the new 32 authorities inherited their safeguarders from the previous 12 Regional and Island Authorities. The overall number of safeguarder positions in Scotland had changed little between 1996 and 2000, since the total for the 31 authorities showed a rise of just 3 from 303 to 306.

This apparent stability masked considerable diversity in trends from one authority to another. Thirteen authorities had experienced a reduction in numbers and the same number had an increase. In the remaining authorities, no change had occurred. The proportional changes were in dramatically opposite directions in some cases. In three authorities the number of safeguarders in 2000 were fewer than half the 1996 figure, but one panel had doubled in size and another increased from one to nine. Certain authorities had recruited more safeguarders, because of increased demand, a perceived low inheritance from the Regional Council or expectations of higher demand arising from the widened scope for appointing to cases after the 1995 Act. Decreases were said to be related to low demand and/or the introduction by the local authority of more rigorous reviews of safeguarding work.

### Safeguarders serving on more than one panel

Safeguarders are allowed to serve on more than one panel covering different areas. The safeguarder survey indicated that slightly fewer than half of respondents (39 or 46%) served in more than one local authority area (Table 3.2).

**Table 3.2 The number of panels to which safeguarders belonged (N=85)**



Source: Safeguarder survey

Most of those on 4 or more panels were located in the West of Scotland and served several parts of the former Strathclyde Region.

It is likely that across Scotland the number serving on more than panel is about twice as many as the survey identified, since just under half of safeguarders took part. This suggests a figure of approximately 80. However, when the local authorities were asked how many of their safeguarders were known to be serving on more than one panel, the total number given by the 31 authorities was only 24. Thus it seemed that the local authorities were often unaware of people serving on more than one panel.

### The adequacy of panel sizes

The research team sought to assess how far the availability of safeguarders was appropriate in two main ways. Firstly each authority's panel size was compared with its population. This gave only a very crude indication of the need for safeguarders, which would be affected by other factors, such as age distribution, levels of deprivation, the rate of referrals to reporters, the number and distance of hearings centres. In most cases the number of safeguarders was broadly in proportion to the council population size, but some significant discrepancies were apparent. For instance, two authorities with a population of fewer than 100,000 had *11 or more* safeguarders, whereas two with populations of more than 200,000 had *fewer than 11* safeguarders. The number in one Island authority was double that in a large rural mainland authority with a considerably bigger population.

Secondly key participants gave their views on the adequacy of supply. The administrators' evidence about the demand for safeguarders was largely indirect. Very few kept detailed records of the number of appointments to cases, so they usually gained an impression of usage through their awareness of how many fees were paid and to whom, together with feedback from reporters, panel chairs and occasionally sheriffs principal. A majority of the administrators were of the opinion that they had an adequate number of safeguarders (19), but about a third thought they did not have enough (10), while two believed their panel was too large.

Several authorities had recruited more safeguarders in view of the anticipated increase in workload following the 1995 Act. A few thought they had overcompensated, two stating that the number was now too high, since some safeguarders were not used.

The authorities who thought their supply was too low spoke of increasing demand for appointments to cases, some safeguarders being called on too often, difficulties in allocating cases and not having enough females. Several were therefore in the process of seeking to recruit.

The perspective from children's panels was also that in most areas the numbers of safeguarders available was enough. Two thirds of panel chairs said the number was about right (69%), though a quarter said there were too few. More often than not, panel chairs thought that reporters monitored availability (58%), with only one quarter believing the local authorities did this.

Nearly a third of panel members felt they did not know enough to comment on whether there were sufficient safeguarders, but the majority of those who did express a view thought there were enough. However a significant minority (17%) were of the opinion that there were not enough and in three small authorities a majority of panel members held this view. Similarly a quarter of the whole sample of panel members stated that they were sometimes aware of difficulties in finding a safeguarder to appoint. Some sheriffs reported being very satisfied with the quality and number of safeguarders available; others reported shortages especially in rural localities. Those sheriffs who were most positive about safeguarders tended to want more variety to choose from.

## **NUMBERS OF APPOINTMENTS AND WORKLOADS**

Indications of the demand for safeguarders and of the demands placed on them (workloads) came from details of the number of cases to which they were appointed collectively and individually. This information was obtained from national figures and from the questionnaire and interview responses of individual safeguarders.



## National figures on the number of cases where safeguarders were appointed

It was not easy to obtain details for the total number of cases in which safeguarders were appointed, or to compare levels of hearings and court appointments. The Scottish Courts Service stated that details of court appointments were not collated centrally. Local authorities were asked by the research team to provide the data for both children's hearings and court appointments, but hardly any were able to do so and even then they had obtained the information from reporters. A request was made to all sheriff clerks asking for details of the number of appointments in the previous year. Fewer than half did so and many of these were in the north of Scotland with low populations, so that no meaningful total could be extrapolated (see chapter 7).

National information was available from the Scottish Children's Reporter Administration (SCRA) about appointments of safeguarders and this is summarised in Table 3.3. These draft figures were intended to cover appointments by hearings together with sheriffs, as provided in records by reporters. However there may have been some under reporting of sheriff appointments (see chapter 7). The figures are likely to exclude cases not returning to hearings. 7). The annual totals showed that the "demand" for safeguarders in the year of the study was 477, i.e. averaging between 2 and 3 per safeguarder. The figure for 1999/2000 was lower than in the previous year, but as the number of all children's hearings cases and disposals had fallen considerably the proportion of cases with a safeguarder increased (Table 3.3).

**Table 3.3 Number of safeguarder appointments in Scotland (draft)**

Year	Total number of disposals	Total number with safeguarders appointed	%
1998/1999	6842	572	8.4
1999/2000	5108	477	9.3

Source: Information provided by SCRA

Comparisons with earlier years are difficult to make because of changes and uncertainties in the sources of information. However, the latest relevant Statistical Bulletin reported a fourfold rise in safeguarder appointments between 1987 and 1996/7 (SCRA 2000).<sup>13</sup> Even so, the great majority of cases (just over 90%) still did not involve a safeguarder in 1999-2000.

### Safeguarder survey information on workloads

Taking children's hearings and court cases together, most safeguarders in the questionnaire survey said they undertook an average of under 12 cases per year, i.e. less than one case per month. However 14 out of 84<sup>14</sup> stated they took on 13-26 cases per year and a further 13 reported 27 or more.

<sup>13</sup> The figures in the Statistical Bulletins have generally been understood to refer to hearings appointments, because they relate to hearings disposals. The data was derived from standard returns completed by reporters. The form required reporters to record whether a safeguarder had been appointed in the case, without making it clear whether it was a hearing or court appointment. Reporters have informed us that some returns included court appointments.

<sup>14</sup> Two cases had missing data.

Since safeguarders may be appointed by a court or hearing, they were asked separately about these two types of appointment. Nearly all the safeguarders who took part in the survey had taken on at least one case from a children’s hearing. The number of cases they claimed to have handled in the previous two years ranged up to 120, but most had dealt with 2 to 16 children’s hearings cases over that period. These individual variations were reflected in a marked imbalance in safeguarder usage in some authorities. One administrator reported “four safeguarders out of ten on the Panel carry out all the casework”.

In general, fewer safeguarders took on court cases than hearings cases and they handled smaller numbers of court cases. Overall two thirds of the safeguarder survey sample had been involved in at least one court case, though usually this entailed fewer than 5 cases in the last two years. In about half the court cases, the safeguarder had also prepared a report for a children’s hearing, while in half the only involvement was at the court. The proportion with court experience was the same for those with and without legal training, illustrating that overall courts are willing to appoint non-lawyer safeguarders, where this is appropriate (see also chapter 7).

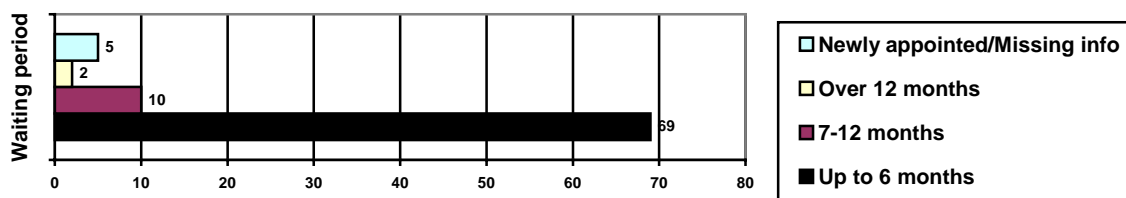
The large majority of court appointments had been for proofs. In other words, the grounds of referral had been denied or could not be accepted and had to be tested in court. Only if proven, would the case return to the children’s hearing. Just over one in three safeguarders (33) had been involved with cases where a decision by a children’s hearing was appealed to the Sheriff Court. Roughly a quarter of safeguarders (18) had been appointed in emergency protection proceedings, which concern urgent situations where children are at risk. Although the number of court cases per safeguarder were generally low (1-4), several had dealt with 10 or more proof hearings and one person claimed to have done 20 appeals.

Among safeguarders interviewed, 90% said that they had been appointed in both court and hearings proceedings or were prepared to.

### Starting work

A further indicator of the sufficiency of numbers is how long the safeguarder had to wait before their first appointment to a case. Most safeguarders gained experience in the role within 6 months of starting, but a fair number (12 i.e. 15%) had to wait longer before being allocated to their first case (Table 3.4).

**Table 3.4 Length of time safeguarders waited for their first case (N = 86)**



This pattern is in marked contrast to the first year after safeguarders were introduced, when half waited 12 months or more for their first case (Curran 1989). This reflects the rise in demand and also a more even distribution of cases among safeguarders.

### The characteristics of safeguarders

Information was obtained about safeguarder characteristics from safeguarders themselves and local authorities. Questions covered such features as age, gender, occupational background and experience, since these may have a bearing on safeguarders' knowledge and skills or affect how children, parents and panel members perceive them.

Summing all the figures from the authorities provides a more comprehensive picture since details were given by all except one authority, but where a safeguarder served more than one authority his/her details will have been counted twice or more. The safeguarder survey involved no such double counting, but only about half of all safeguarders took part. The patterns from the two sources were very similar, indicating that the sample of safeguarders was broadly representative of safeguarders as a whole. To avoid duplication, the data reported here comes largely from the safeguarder survey.

The data showed that little change had occurred in the broad profile of safeguarders since the 1980s and 1990s (Curran 1989; SWSG 1992). Two thirds of safeguarders had a background in either law or social work (Table 3.5). These two professions have knowledge which is immediately relevant to the hearings. Over two fifths (43%) had a legal background and one quarter (24%) a social work background. However, significant numbers of safeguarders were school teachers, with universities and medicine being the next most common professional backgrounds. For the majority, safeguarding was an occasional activity, but nearly one fifth indicated it was a secondary work activity and for about one in ten it was their main work activity.

**Table 3.5 Safeguarder characteristics (N=86)**

<b>Occupational background</b>	<b>Number</b>	<b>Percentage</b>
Legal	37	43%
Social work	21	24%
Teacher	14	17%
Other <sup>15</sup>	14	17%
<b>Prominence of safeguarder work<sup>16</sup></b>		
Occasional activity	59	70%
Secondary work activity	16	18%
Main work activity	10	12%
<b>Gender</b>		
Female	53	62%
Male	33	38%
<b>Age grouping</b>		
Up to 39 years	11	13%
40-49 years	28	33%
50 years and over	47	55%
<b>Length of experience</b>		
Up to 3 years	35	41%
4 to 9 years	30	36%
10-14 years	18	21%
15 years and over	3	4%

Source: Safeguarder survey

Safeguarders are not allowed to be children's panel members. One in five of the respondents were formerly panel members, however. These proportions were very similar to those reported in 1985 (Curran 1989).

<sup>15</sup> E.g. medical, academic.

<sup>16</sup> In one case the information was missing so N=85.

More safeguarders were female than male (62% of those surveyed). In about one third of authorities, though, this general gender balance was reversed, with men being in the majority. Only two authorities had fewer than three women safeguarders, but four authorities' panel included just two men and three had only one. These were mainly smaller authorities, but two with a population of over 200,000 had only two men each on panels of nine and ten people. As some respondents regarded it as important to match the safeguarder's gender to the needs of a child (See chapter 6), having so few of either sex restricted that option.

Interestingly, the three main occupational backgrounds (law, social work and teaching) all had approximately twice as many women as men, but among the minority making up the rest of the safeguarders this gender pattern were reversed. This suggests that if a wider range of people were recruited, more men might be appointed, while if recruitment concentrates on those with most directly related professional experience the gender imbalance may well be greater.

Just over half the safeguarders were aged over 50 and most of the rest were in their 40s. About one in ten were aged between 30 and 40, and none were younger than that. Occupational background was clearly linked to age, as lawyers were on average younger than other types of safeguarder were. Whereas three quarters of those with legal backgrounds were aged *under* 50, the same proportion of other safeguarders were aged *over* 50.

According to local authority data, three quarters of safeguarders had been appointed three or more years ago. The length of experience of safeguarders who took part in the survey was more evenly spread (Table 3.3). Most of the younger safeguarders (7 out of 11) had been appointed within the last 3 years. Even so, the majority of recent recruits were aged 50+ (20).

## **SUMMARY**

At the time of the survey in 2000 the total number of safeguarders in Scotland was about 200. Some worked for more than one local authority, so there were about 300 safeguarder positions. Local authorities were often unaware of how many of their safeguarders served on more than one panel. The size of panel in each authority varied from 4 to 21 individuals, but the most common size was 9-12.

The number of safeguarders had not changed much over the preceding few years, yet the proportion of cases to which they were appointed by children's hearings had increased substantially to just under one in ten. The absolute number of appointments had also increased substantially during the 1990s, though with a dip in 1999-2000. This meant that on average safeguarders were being called on more often than before. Nevertheless, in the view of administrators and other key parties the supply of safeguarders seemed generally adequate, though in one third of authorities shortages were acknowledged to exist.

Seven out of every eight safeguarders received their first case within 6 months of being appointed to the panel. Most safeguarders reported a small workload (up to five cases per year), reflecting the fact that for many this is a secondary or occasional activity. However, for some people safeguarding was their main activity and a fair number dealt with more than one case per month.

Unfortunately, the data available about court appointments did not permit national totals and trends to be identified. However, most safeguarders reported handling fewer court than hearings cases.

Two thirds of safeguarders had a background in law or social work, which was also the predominant pattern in the 1980s. This reflects the desirability of safeguarders having relevant knowledge and experience (see later chapters). Across Scotland about 60% of safeguarders were female, though the gender distribution varied considerably from one part to another. In a few areas, the panel had only one or two men to call on, which might restrict the capacity to match safeguarder gender to a child's needs (see chapter 6).

Just over half of safeguarders were aged 50+ and the majority had been doing the work for more than 3 years, so that they generally had significant prior relevant experience to draw on in their work. Whether or not a safeguarder's age or other characteristics affected how they were seen by children and parents was one of the questions put to family members. The answers are reported in chapter 9.

The overall picture was one of a well established service, with a fair degree of stability. Steady overall numbers and a low turnover had resulted in a body of safeguarders containing many people with substantial experience in that role, on top of their previous or current professional experiences. Average workloads had increased over the last decade, reflecting an increasing acceptance of the value of safeguarders, which will be elaborated on in later chapters.

The profile of safeguarders is influenced by the manner and criteria of their selection. The next chapter examines the processes and procedures involved in recruitment, as well as remuneration issues.

## **CHAPTER FOUR: RECRUITMENT AND REMUNERATION**

### **INTRODUCTION**

Having discussed the composition of safeguarder panels in the last chapter, attention turns to the methods of recruiting individuals to serve on the panels. Besides describing the procedures for identifying potential recruits and for appointing people to the safeguarder panel in different areas, the chapter includes feedback from participants on how satisfactory or not they viewed the arrangements. The second half of the chapter deals with safeguarders' access to office facilities, fees and expenses.

Safeguarders act in a free-lance capacity, receiving a fee for each case handled. However, they can only operate once they have become approved as members of a local authority panel. Local authorities are responsible for ensuring that they have a panel of adequate size and quality. Hence the relationship between safeguarders and local authorities is a crucial one, but differs from that of employee-employer. This has resulted in a considerable degree of informality and diversity in the arrangements for identifying and appointing suitable persons as safeguarders.

### **LOCAL AUTHORITY RESPONSIBILITIES FOR SAFEGUARDERS**

The Regulations governing local authority responsibilities for safeguarders date from 1984.<sup>17</sup> Since then, local authorities have been responsible for recruitment and various aspects of the management of the service, including payment.

The Regulations give considerable discretion to local authorities in relation to the establishment and administration of safeguarder panels, although they must do this in consultation with the panel chair and sheriff principal. The researchers' initial meeting with members of the Safeguarders Association alerted us to the great diversity of practice across Scotland and this was borne out in the findings of the survey, where few aspects of the work were carried out in a uniform way across Scotland. In order to obtain information about the local authority arrangements, a letter was sent to the Chief Executive, who in every case provided a contact department and individual. A detailed questionnaire was sent to the named person and a reply received from all but one of the 32 councils.

Local authorities have located responsibility for safeguarders away from departments directly involved in the cases of individual children who come to the attention of the children's hearings system (social work and education), in order to minimise any potential conflict of interest. The local authority survey (N=31) identified that nearly all safeguarder panel administrators were located in a department with general council responsibilities, but the names varied. The most common were Corporate Services (8) and Legal and Administration (7).

Within some departments two or three people were responsible for different elements of the work. Usually the questionnaire was filled in by an administrator or clerical officer, but occasionally a director.<sup>18</sup> The main occupational backgrounds of the individual who

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<sup>17</sup> The Social Work (Panel of Persons to Safeguard the Interests of Children) Regulations 1984 (SI 1984/442 S119).

<sup>18</sup> For convenience, they are referred to collectively as 'administrators' in this report.

completed the questionnaire for each authority were administration (14), committee work (10) and legal (7). In nearly all authorities (29) the individual(s) responsible for safeguarder work also supported the children's panel; indeed for most of them the work in relation to safeguarding was a small element of much wider hearings based activities. This general support work did not include any direct casework. Frequently there were other responsibilities too, most usually support to Council Committees.

The administrators said their work on safeguarding took up little time, except when the service was being reviewed. All but three respondents said they usually spent fewer than 4 hours per month dealing with safeguarder work. A typical response was

*"1-2 hours dealing with expenses claims. More time if recruiting or re-appointing safeguarders". (Administrator questionnaire)*

## **RECRUITING SAFEGUARDERS**

An important role of the local authorities is to recruit new safeguarders. However, since panel sizes were mostly thought to be adequate and there is not a large turnover, this did not happen very often and some administrators had no personal experience of recruiting.

### **Identifying potential safeguarders**

No standard way of attracting applicants existed. Two thirds of authorities accepted self nomination, but a third only accept nominations by other people. Besides direct applications, the main way of recruiting was to obtain nominations, from the panel chair (18 authorities), sheriff principal (17) and chief social work officer (13). A small number of authorities (6) used advertisements, but others opposed direct approaches to the public.

*"The use of a public advertisement can ... lead to applications or expressions of interest from many people who are unsuitable..the Scottish Safeguarders Association do not favour public advertisement.. A variety of issues surrounding a number of high profile cases involving children and child abuse together with some documented arguments do not support using public advertisements. (Administrator questionnaire)*

Evidently, recruitment largely relied on either individuals knowing about the role and openings *and/or* on the contacts and favourable opinions of those closely involved with the children's hearings system.<sup>19</sup> The lack of public openness raises questions about equity and potential discrimination, although as the above quote suggests this can be counterbalanced by an argument from children's interests.

Nine out of 21 panel chairs (43%) said they had made a nomination in the previous two years. Usually this involved only one nominee, but a few had nominated several people. In the main these were ex-panel members, though some were known personally or through previous work. It is noteworthy that four panel chairs stated that appointments had been made against their advice.

The sheriff principals reported that they had not nominated individuals themselves and several thought it inappropriate to do so. On occasion they did support self nominations or suggestions made by sheriffs.

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<sup>19</sup> The report of an inter-agency seminar in South East Scotland in 1998 advocated an annual public recruiting campaign "to attract potential safeguarders other than those known to individuals making nominations". (p.2)

The general view of local authority administrators was that it was “moderately difficult” to recruit safeguarders (17). Only a few found it “very difficult” (4) and a quarter “easy” (8).

### **Criteria for appointing of safeguarders**

The Regulations state that, when selecting safeguarders, local authorities *may* specify “the experience, aptitudes and standard of any qualification” (Section 4(4)). About half of local authorities said they had written criteria for appointing safeguarders. Sometimes this was a document they themselves had produced or adapted from the previous Region, but a number of authorities applied the Safeguarder Association Guidance. Half of the panel chairs said they had received guidance from the local authority about nominating safeguarders and half had not. Sheriffs principal were unaware of guidance but were in favour of receiving it.

Administrators were asked to comment on a list of possible criteria for judging the suitability of people to be safeguarders. Nearly everyone stated that they took account of them all to some extent, but there were interesting differences as to those they regarded as particularly important. An ability to understand and relate to children and families received greatest support, though over half rated report-writing skills highly. The majority of authorities stated that understanding of hearings was “very much” taken into account, but knowledge of the law and courts was only “to some extent” a consideration for most. Thus, in general, formal knowledge was seen as less important than understanding and skills related to the direct tasks of safeguarding.

Administrators generally did not see a need to recruit safeguarders with particular language skills or from minority ethnic backgrounds. About a third of the authority respondents acknowledged that they had families in their areas who might require to communicate in a language other than English, but hardly anyone had direct experience of this and it would normally be dealt with by the use of interpreters. The chief languages mentioned were Urdu, Punjabi, Chinese and Gaelic.

### **Views on the requirements for safeguarders**

Panel members and panel chairs were asked to comment on a list of various characteristics to say which they regarded as essential, important, quite important or not. Although all the items were stated as essential by some, there were three things so regarded by over 90%:

- independence of judgement
- ability to gain the trust of children
- understanding of children’s needs.

More than half thought it essential for safeguarders to submit reports on time, have flexible availability, write clear reports and be willing to undergo training. Probably the most striking finding was that very few regarded legal knowledge as essential and nearly one in three said this was not important at all. This was the only item on the list that significant numbers indicated was unimportant. Most believed that verbal presentation skills and an ability to co-operate with reporters and social workers were important but not essential. The order of priority expressed in these views corresponded quite well with that adopted by local authority administrators with regard to recruitment.

In their more spontaneous remarks on questionnaires panel members emphasised the ability to devote time to the task and communication skills:

- *“Time to undertake the role when asked – some safeguarders are too committed elsewhere.”*
- *“Ability to weigh up the situation and not pull any punches in making*



*recommendations.”*

- *“To talk to the child and his family more in layman terms.”*

Like many panel members, social workers often said they knew *“very little, if anything”* about the background(s) of individual safeguarders or safeguarders in general. When asked what they thought made a “good” safeguarder, social workers tended to downplay professional qualifications and considered personality and attitude to the work to be most important, combined with good initial training. Vital qualities were knowledge of children, the ability to relate well to families and understand the context of family life. In particular, applicants had to have a genuine interest in the welfare of children and be open-minded. One said:

- *“It is not so much about qualifications but having a particular worldview.”*

*(Social worker, group discussion)*

Several said it was unfortunate if a safeguarder held fixed, blanket views (e.g. that children should never be removed from home). A number of social workers emphasised the need to ensure a police check was carried out on all potential safeguarders.

While social workers did not consider the professional background of a safeguarder to have a bearing on his or her ability to do the work, they recognised that it could have a major impact at the hearing. Solicitors, because of their training, were considered more comfortable about speaking in hearings and better at producing clear recommendations, although they did tend toward a legalistic mode of representation (i.e. *“acting as solicitors”* in the safeguarding role). Social workers said that panel members could be impressed and influenced by this presence, sometimes to the detriment of social work.

A number of social work interviewees said the present system led to a skewed range of individuals being appointed. One commented:

*“The vast majority of safeguarders are middle class, whereas most families that come before the panel are working class. It would be more useful to have [a] more grounded understanding of the issues families face. This is a recruitment issue”.* *(Social worker interview)*

Reporters generally held the view that individual ability was more important than occupational background, but some said that a safeguarder with a legal background was more useful in proof proceedings because of their understanding of court processes. One reporter emphasised the high level of communication and observation skills that were required in many cases. She mentioned the ability to take into account both verbal and non-verbal communication, especially by young children. Another stressed the importance of safeguarders being willing to participate in the hearing and being open to change their minds.

## **The application process**

The majority of authorities used procedures for appointing safeguarders which were akin to those for formal employment, such as application forms, references and interviews, but a significant minority relied on ad hoc or informal processes. Two thirds of authorities had a dedicated application form for safeguarders (21). Although all the forms related to the same role, they were extremely varied in contents. The only apparent standardisation occurred when clusters of two or more adjacent authorities had carried on using a format inherited from the Region to which they used to belong.

The research team compared the questions on the forms. Not one item appeared in every form. Most did ask about a core set of characteristics: qualifications, occupation, knowledge of hearings and experience of work with children and families. Just over half included space for a

personal statement. A significant minority of application forms had questions on marital status, parental status and health. As many forms asked for details of a spouse as for knowledge of courts, which seems more relevant (7). Certain seemingly important questions were asked by just a few authorities (2-5 each). These included: times available, ability to take time off from work, whether or not the person is already a safeguarder or curator elsewhere, office needs and disability. Usually the form told applicants that a criminal record check would be made, but not all did so. Two thirds of the forms (12) required a declaration of any relevant criminal convictions.

Four fifths of authorities indicated that they took up references on applicants and in just under half (14) referees' names and addresses were included on an application form. All but two councils said they made police checks, though not every authority included reference to this on their application forms.

Three quarters of authorities held interviews for suitable candidates, though for a few this was a recent innovation or not universal (e.g. "Only if not known to the authority"). Some administrators admitted that they lacked the knowledge or guidance to know what qualities to look for when interviewing safeguarder applicants. Usually three or four individuals conducted the interviews, but the types of people varied considerably. Besides representatives of the department responsible for safeguarders, the people most often involved were: social work department representatives (13), panel chairs (11), reporters (9) and council committee chairs (7). It can be argued that some of these might have a vested interest, or be seen to have one, which could vitiate against their objectivity in making the appointment of these independent persons. Also, while most authorities had a children's hearings perspective present, only one involved the sheriff principal and none included anyone else from the Courts. Thus, the court side of the safeguarder's role was likely to have been underplayed as a consideration at interview.

The final decision about appointing a safeguarder was usually made by the head of the department responsible for the safeguarder panel or by a social work committee or subcommittee. Occasionally another council committee or a special panel took the decision. Overall, elected councillors took part in the decisions in about half the authorities. These differing arrangements illustrate contrasting emphases on the relevance of:

- independent official responsibility (from the corporate/administrative department)
- professional expertise (from social work)
- democratic involvement (from counsellors).

Our interviews suggested that the decision-making for safeguarder appointments tended to reflect wider council policies about appointing employees.

Few authorities seemed to have a formal contract with safeguarders, but most had a standard letter of appointment.

Both reporters and social workers voiced concerns about what they saw as the "lack of rules" concerning safeguarder appointments and their perceptions that "there is no assessment".

## **SAFEGUARDERS ON RECRUITMENT**

The majority of safeguarders indicated that the impetus to take on this role derived from their previous involvement with the children's hearings system. The main ways in which the survey respondents said they learned about the position of safeguarder was through their own experience of the courts (33%) or children's hearings (29%). About one in ten found out through advertisements. Similarly, about half said they first considered undertaking the role at

the suggestion of a panel member, sheriff or other legal officer. About a quarter indicated that the idea came from themselves.

Slightly more than half the sample reported that they had been formally nominated, mostly by the sheriff principal (18%) or panel chair (17%). Among those who nominated themselves were some who did so at the behest of someone involved with the children's hearings system.

The sample was almost equally divided between those who thought the system for appointing safeguarders was rigorous and those who believed it was not rigorous enough. Likewise, asked whether the system for appointing safeguarders would identify people who are not suited, about half responded "Yes" and half "No". This represents a large number who lack confidence in the recruitment process. The Safeguarders Association representatives also expressed concern about the diversity of recruitment practices and in some instances the lack of formality.

Unfortunately there was not a clear consensus about the rigour of particular authorities, since in nearly all there was at least one safeguarder who thought the process was rigorous and at least one who did not. However, authorities in the east of Scotland tended to have a higher approval rating in this respect than elsewhere.

Safeguarders in the survey suggested changes in relation to recruitment as follows:

- more thorough, searching or formal interview 29%
- have panel chair, reporter and/or safeguarder on interview panel 15%
- introduce a probationary period/early performance review 9%
- use national criteria or job description 5% .

## **CONSULTATIONS ABOUT THE SAFEGUARDER PANELS**

### **Administrator consultations with panel chairs and sheriffs principal**

The Regulations directing local authorities in the establishment and administration of safeguarder panels lay stress on the need to consult with panel chairs and sheriffs principal in all aspects of recruiting to and maintaining the safeguarder panel. In practice their relationships with these two parties were dissimilar. As the safeguarder administrators were nearly always responsible for general children's hearings issues as well, they had frequent contact with panel chairs, mostly by phone or letter. About a half said weekly and a quarter stated monthly. They spoke about safeguarders less often, typically about once or twice a year. Communication with sheriffs principal was normally on an annual basis. Face to face meetings with either person were not common, since 26 of the administrators stated that they never met the sheriff principal, while 16 did not meet the panel chair.

Both administrators and panel chairs reported that their discussions about safeguarders mainly concerned appointments, the suitability of safeguarders and re-appointments. Occasionally wider matters such as training were raised. All the sheriffs principal (or their predecessors) had likewise been consulted about nominations and the suitability of re-appointments by at least one local authority within each principal's jurisdiction, but not by all. Strangely they did not recall being asked about the adequacy of the number of persons on the panel.

Sheriffs principal intimated that their role in approving appointees was largely formal. They would examine the names and brief background of persons passed on by written communication, about whom they might enquire further if they wished. None of the sheriffs principal registered dissatisfaction with the mode of consultation by letter and occasional

meetings, but it was said to be “somewhat ad hoc” and done “haphazardly, or not at all”. The sheriffs principal voiced a view, echoed at some of the meetings with panel members and reporters, that it was vital for safeguarder appointments to have an independent check, since the local authority also provides social work services that can on occasion be in disagreement with a safeguarder. The Human Rights Act 1998<sup>20</sup> was said to reinforce this point.

### **Other consultations by local authority administrators**

Although the Regulations do not specify a need for contact between local authorities and reporters, it was evident that many administrators saw reporters as the main people who were in touch with the day to day work of safeguarders and hence an important source of information. Some maintained contact monthly and most were in touch with reporters more often than with sheriffs principal. Interestingly, in some areas a wider range of issues besides appointments were discussed with reporters, e.g. performance of safeguarders, standards of reports, fees, training. Two thirds of local authority administrators said they consulted with the social work department about appointments and one half with reporters. Several involved their own head of department, other departmental heads or a council committee.

Two fifths of local authority administrators had no contact with the Safeguarders Association and most of the others were in touch occasionally, but two authorities communicated with the Association several times a year. Some notified the Association about changes of safeguarders and some passed on information and guidance from the Association. Training and recruitment were the main issues discussed.

### **TERM OF OFFICE**

The Regulations specify that three years is the maximum term of office for safeguarders and all but one council (with 5 years) adhered to this. Five stated that they did not have a specified time limit. Six authorities had introduced periods shorter than the maximum, three each having one or two year terms of office. About two thirds of safeguarders believed that they served for a fixed term of office and one third did not. However, there seemed to be a lack of clarity on this issue since in half the authorities represented in the survey, safeguarders working in the same area provided different views on whether or not there was a fixed term of office. In one authority, five said yes and four said no.

### **FACILITIES FOR SAFEGUARDERS**

Once a safeguarder is appointed, certain practical and financial support is needed for them to carry out their role. These include the space and means to compile a report, remuneration for time spent and reimbursement of expenses.

Administrators had a clear expectation that safeguarders operate from their own premises, whether at home or in the office where they carry out their ‘regular’ occupation (e.g. as a solicitor). This accords with the independent, freelance nature of their work. Only three local authorities indicated that safeguarders sometimes used council office space. Most administrators affirmed that they would make available secretarial support if required, but only a few were aware of this being taken up, mainly for correspondence or reports.

Four authorities stated that just a few of their safeguarders asked the council to have their reports typed. The majority of safeguarders indicated that they typed their own reports on

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<sup>20</sup> This applied the European Convention on Human Rights and was implemented in 2000.

word processors or, less often, could arrange for a work-based secretary to do the typing. About 30% said they had to pay for reports to be typed (though this was true for very few with a social work background). This was usually done privately and the money claimed back from the local authority.

## **REMUNERATION**

According to the Regulations, it is for the local authority to pay “such fees and allowances as they think fit” and they are bound to defray expenses “reasonably incurred” (Section 10). This provision left scope not simply for differing views about fair remuneration but about the professional or semi-voluntary standing of the service offered.

### **Budgets**

The interviews in the three study areas revealed that the authorities did not have an earmarked budget for safeguarder work and the money available was limited. This meant they were very exercised by any potential increase in spending, since this would probably have to be paid for by reducing expenditure elsewhere. It was also pointed out that they had no way of controlling the amount of money needed to meet safeguarder claims since both the number of appointments and the costs per case were determined by other people or circumstances:

- *“Because it is a demand-led budget, it is difficult to budget” (Administrator questionnaire)*
- *“If workload increases, will have significant effect on budget arrangements for local authorities.” (Administrator questionnaire)*

An administrator in one of the study areas explained that her financial allocation for safeguarding work was already overspent and that increasing fees could more than double the deficit. One of the panel chairs pointed out that the greater the use of safeguarders, the less money was available for panel member training, because they both had to be paid for from the same limited budget.

### **Fees**

Although the Regulations allow authorities to set the rate of payment to safeguarders as they think appropriate, in this as in other matters all councils had agreed to follow a standard rate per case recommended by the Convention of Scottish Local Authorities (COSLA). This was confirmed in the survey where all 31 respondents said they paid the COSLA rates, though curiously the figures given for this varied from £92 to £98.

Only a minority of questionnaire responses by administrators pointed to difficulties in relation to fees. They mentioned the inadequate level (3), how to recognise complex cases (3) and lawyers wanting to be paid legal rates (2). As noted above, though, the interviews in the three study areas revealed major concerns about the limited nature of the budget available for meeting fees and expenses.

By contrast, in the survey of safeguarders, four fifths registered dissatisfaction with the fee level. None regarded the fee as too high and only a minority said it was about right (19%). The rest were fairly evenly divided into those who regarded the fees as too low or as much too low. Similarly, all but one of the safeguarders interviewed thought that the basic fees needed revising. They usually wanted a higher minimum payment per case, though some favoured an hourly rate.

A number of sheriffs (8 out of 52) mentioned that financial considerations had a bearing on

their appointment of curators rather than safeguarders. They and three sheriffs principals commented on the low level of safeguarder fees. No doubt one sheriff spoke for many others in stating “good lawyers cannot afford to be safeguarders”.

The amount of time spent on cases will inevitably fluctuate (See Chapter 8), if only because the number of family members and professionals to be seen is variable, as is the time taken up by travel. It was generally believed by safeguarders that the payment structure should allow for the complexity of cases and travel time, especially when visiting family members elsewhere in the UK. This view was supported by some social workers. However only a few administrators indicated they would make additional payments (usually half as much again) for a particularly complex case or for separate reports when there was more than one child in the same family.

Some safeguarders expressed the view that payment is a matter of principle, since it affected the types of people able to take on the role:

*“It is not good that safeguarders are made up of people only able to reimburse themselves as it destroys the balance of people who might be able to do the job.” (Safeguarder interview)*

The usual system for payment as described by administrators was for a cheque to be sent out within 1-4 weeks once the claim was processed. Most safeguarders said they received their payment within a month, though a few said it took 2 months or longer (under 10%).

## **Expenses**

Safeguarders mainly incurred expenses in their work by spending on travel and typing costs. Some administrators informed us that not uncommonly the amount of expenses claimed by a safeguarder in a case exceeded the fee. About a fifth of safeguarders stated they had difficulties in covering their expenses, but most did not. Several safeguarders pointed to the fact that their travel and other costs were only covered in relation to work on individual cases. They had to meet costs themselves for more general expenditure, for example to attend seminars, conferences or support meetings.

A fair number of administrators were aware of problems in relation to expenses. Six mentioned the absence of standard rates. Other issues were: deciding what the fee included; the cost of long journeys and lawyers wanting legal rates, e.g.

- *“Different rates are claimed, some individuals claiming COSLA rates while others claim solicitor’ rates (“excessive” claims for phone calls, typing etc.)”*
- *“Fees for report-writing vary from £10 per report to £11 per page”*

## **SUMMARY**

Local authorities have a duty to recruit and maintain an adequate supply of safeguarders, but have wide discretion in how they set about this. This has resulted in a wide diversity of arrangements. Usually the responsibility is given to one or more administrators in a legal, administration or corporate services department. Responsibility for the safeguarder panel was a small part of the administrator’s role. They fulfilled their responsibilities to consult with panel chairs and sheriffs principals, but in highly variable ways.

In order to recruit safeguarders, only a few authorities said they advertised publicly and the majority of applicants were either formally nominated or urged to apply by panel chairs, sheriffs principal, panel members, sheriffs and reporters. This accorded with the common

view of key parties that vital requirements for the role are understanding of children, families and children's hearings, but some criticised the system for its haphazard nature and lack of openness. The recruitment system in most authorities favoured people who were already connected to the children's hearings or court system.

Although safeguarders are free lance, most but not all authorities have developed the normal range of procedures for applicants as for employed posts: an application form, taking up references, police check and formal interview. However, the application forms and the people involved in interviewing were highly varied from one authority to another. It was a common view, especially among safeguarders themselves, that the recruitment process needs to be more rigorous and standardised.

Safeguarders normally worked from home or at the office used for their main employment. Most organised their own typing. The general view was that the fees safeguarders receive were too low, but local authorities had budgetary concerns about any increase. Administrators wanted expense arrangements to be rationalised. A number of sheriffs regretted the low level of safeguarder fees and this played a part in their appointing curators instead, a matter which is further pursued in chapter 7. Next, though, attention turns to the issue of safeguarder training.

## **CHAPTER FIVE: INDUCTION, TRAINING, SUPPORT, MONITORING**

This chapter reviews evidence about the kinds of preparation, support and monitoring which was said to occur. Respondents' views are reported on what kinds of training they thought were and should be available. Also included are the many gaps identified and improvements suggested by respondents.

### **THE KNOWLEDGE AND SKILLS SAFEGUARDERS BEGAN WITH**

Given that most new safeguarders already have relevant experience as lawyers, social workers or former panel members, it is to be expected that they bring with them a range of knowledge and skills that will be useful in the role. In the questionnaire survey, the great majority of safeguarders indicated that, when they started, their understanding of hearings, children and families was satisfactory or good. However a quarter indicated that their legal or court knowledge was minimal. This applied to 12 of the 14 safeguarders whose professional background was as a teacher.

### **INDUCTION AND TRAINING**

Although many safeguarders were experienced and felt reasonably competent when appointed, nevertheless they would usually need specific preparation for taking on this new role. The evidence was that induction, initial training and further training opportunities were all limited and patchy.

#### **Local authority arrangements for preparation and induction**

Local authorities usually gave out an information pack to new safeguarders. Most provided details about both fees/expenses and the Safeguarders Association guidance. Half said they gave their own guidance. Interestingly, over a third claimed to distribute Central Government Guidance, although strictly - as one respondent stated - "there isn't any". Presumably they were referring to the circulars produced by the Scottish Office Social Work Services Group in the mid 1980s, judging by materials a few sent with their completed questionnaire.

Fewer than half of local authorities said they gave safeguarders information about the children's hearings system, and a quarter each provided details about courts or the Children (Scotland) Act 1995.

Besides the documents above, only a minority of councils arranged preparation or induction. Some pointed out that it was difficult to organise group induction since appointing a new safeguarder was quite infrequent and might involve only one or two people at the same time. Where it was offered, the main form of induction was for safeguarders to meet key people like reporters or sheriffs. About one sixth of the agencies linked up with training for children's panel members or the Safeguarders Association. Two administrators referred to arranging for safeguarders to buddy or shadow one another.

#### **Safeguarders on induction**

In the light of the limited scope of induction acknowledged by local authorities themselves, it is not surprising that many safeguarders expressed considerable dissatisfaction when asked for their views about the initial familiarisation with the task of safeguarding that they received (Table 5.1).



**Table 5.1 Safeguarders' views on their initial familiarisation with safeguarding (N=83)**

<b>Assessment of preparation</b>	<b>Percentage</b>
Good or very good	11%
Adequate	28%
Inadequate	35%
Very inadequate	26%
<b>Total</b>	<b>100%</b>

Source: Safeguarder survey

Over 90% of safeguarders said they had been given the guidance prepared by the Safeguarders Association and only slightly fewer had received details of COSLA recommended fees and expenses. On the other hand over half had apparently not received written information about the children's hearing system or the courts, Sheriff Court Rules and government guidance. A third reported having had no written matter about the Children (Scotland) Act 1995. Not uncommonly, even when information had been received, it was not available from the start (Table 5.2).

**Table 5.2 Information received as a safeguarder (N=86)**

<b>Subject</b>	<b>At the start</b>	<b>Later</b>	<b>Not at all</b>	<b>Missing data</b>
COSLA fee and expenses guide	37	36	10	3
Central Government Guidance	34	18	29	5
The Children's Hearing System	28	12	39	7
Children (Scotland) Act 1995	28	27	25	6
Safeguarders' Assn. Guidance	21	56	6	3
A Code of Conduct	18	30	35	3
Sheriff Court Rules	17	12	50	7
Council Guidance	16	21	41	8
The courts	16	15	49	6

Source: Safeguarder survey. More experienced safeguarders would have started before there was any Safeguarders Assn. guidance

Unsurprisingly, nearly half of safeguarders thought the written material provided was inadequate (30%) or very inadequate (17%). Many stated a wish for a set of national standards, rules or practice guidance. Among the suggested contents were:

- what issues to cover in reports
- the developing role of the safeguarder
- personal safety
- advice on tackling difficult circumstances
- options for safeguarders in making their recommendations.

Thus, the main expressed wish was for more information directly related to their role, not wider knowledge about the hearings system or family contexts.

### **Training offered by local authorities**

Both administrators and safeguarders provided details about initial and further training. Most councils had not offered any training to safeguarders over the previous year. Nine administrators reported that their authority had organised a training event. This lasted either

one full day or half a day. In addition five authorities had arranged an event through or with someone else (e.g. another authority, children's panel training organiser, reporter). Typically the topics covered were the role of safeguarder and reporter, and the nature of children's hearings and court work. A few training events dealt with social work functions or the Children (Scotland) Act 1995. Evidently, since the total time devoted to the training was only 3 or 6 hours, the coverage of each topic would be brief. The number of people attending the event from the authority ranged from 4 to 9.

### **Safeguarders on training**

About two thirds of safeguarders said they had received no training when first appointed. Correspondingly only a quarter thought that their initial training was adequate. Very few regarded it as good and even then there was nearly always someone else in the same authority who described the initial training as inadequate. There was some evidence of improvements in training since 80% of safeguarders with 4 years of more experience regarded their training as inadequate, but "only" 60% of newer recruits, though this was still the majority.

Half the respondents had not attended training in the previous year. Most of the rest had spent the equivalent of a day or part of a day. Just nine had experienced 10 or more hours of training. The training was usually organised and paid for by the local authority, though 14 people in the sample said they had been to Safeguarder Association training. The attenders at training divided fairly evenly into three groups: those who thought it was inadequate, adequate or good/very good. They confirmed that training mostly consisted of instruction about different people's roles in the system. A few each had received input on the law, the European Convention on Human Rights, communicating with children or report writing.

To remedy the inconsistency or paucity of training they identified, most safeguarders interviewed thought standard training should be available, though one regarded this as unnecessary. No clear view emerged about who should provide the training. The Scottish Executive, local authorities, the Safeguarders Association and those responsible for training panel members were all mentioned as possibilities.

The questionnaire included a list of topics on which safeguarders might like to receive training. None of these was requested by more than half of the respondents, perhaps reflecting the length of experience of many who had by now learned most of what they felt they needed to know. However a majority did want some further training. Similar proportions of experienced and newer safeguarders wanted this. The main areas on which training was wanted were: court appearances (41%), knowledge of the law (37%), understanding children and families (31%) and communication skills (19%). As was to be expected, very few of those with a legal background wanted training on the courts and the law, while few with a social work or teaching background felt they needed training on children and families. The interviews provided similar suggestions, but also with some specific additions, e.g. communicating with children who have learning difficulties, dealing with trauma and difficult situations, social attitudes, personal safety.

### **Panel members on safeguarder training**

Since panel members see directly how safeguarders perform verbally and in writing, they were asked to comment on what training they thought was necessary to equip safeguarders to carry out their role well. On the questionnaires and at group meetings panel members admitted to ignorance of what training, if any, safeguarders receive. Consequently, nearly two thirds of the survey respondents felt unable to comment on whether safeguarders are

adequately trained or not. The rest were evenly divided between those who thought the training good enough and those who did not. The research meetings with panel members revealed that many were unsure about how people become safeguarders and what preparation they get. Some panel members expressed the view that safeguarders should not simply be included in panel training events. Three quarters of panel chairs thought that safeguarders receive no training. Among the others, one particularly recommended the scheme in place locally. The majority of panel chairs wanted more formalised training for safeguarders, perhaps on a regional or national basis and covering all aspects of safeguarder work.

In view of their lack of knowledge about current training, most panel members felt unable to comment on what topics safeguarders should be trained on, but about a quarter did so. They referred mainly to preparation of reports and recommendations, hearings procedures, communication skills, knowledge and skills related to children, and understanding of the law. One panel member stressed the need for safeguarders to be fully aware of the “powers available to panel members”, so they “could make realistic recommendations”.

Most panel members thought they themselves knew enough about the role of safeguarders and when to use them. It was a central element in pre-service and in-service training. A quarter wanted more training on this, but a few said that too much emphasis was already given to safeguarders in panel member training. However, many wanted to know more about the backgrounds of safeguarders and how they came to be recruited. This would inform them when making appointments to cases. About one in ten wanted details of how safeguarders exercise their role. Some were unsure about how information passes from the panel to the safeguarder and a number were interested in safeguarder work commitments and availability. In the main, panel chairs supported the view that panel members did not need more training on safeguarders in general, but four fifths of them thought panel members did need more guidance about when it is appropriate to use safeguarders or not.

### **Sheriffs, social workers and reporters on safeguarder training**

Many sheriffs also admitted they knew little about the training safeguarders received. For the most part safeguarders were peripheral within their overall workloads. For much the same reasons, a large minority acknowledged their own need for more information on the use of safeguarders. Sheriffs expressed a need for more discussion, though equally it was noted that it was hard to spare the time. Several sheriff principals favoured more debate. Two suggested the “Judicial Studies Committee” might be used, in the words of one “to educate sheriffs from the experience of those involved in the Children’s Hearings System”.

All of the social workers in the study agreed that safeguarders should undergo some form of basic training. For some, good training was considered more important than occupational background. The topics that social workers said should be covered included:

- *non-discriminatory practice* – social workers commented that it would be helpful if safeguarders had a better understanding of what is acceptable for children in a variety of family settings. They spoke of a tendency of safeguarders to make what they regarded as inappropriate value judgements (e.g. about poverty, female sexuality). One said:  
*“Some safeguarders are shocked about the conditions our clients live in. They think “This child shouldn’t be living here”. But poor conditions are a result of poverty and the benefit system, rather than the fault of individuals. (Social worker, individual interview)*

- *competence with children* – Social workers spoke of a need for training on communicating with children and young people, and the need to develop a better understanding of child development
- *hearing processes and social work systems* – social workers also felt that safeguarders should have training about, or at least access to information on, the role of each of the actors in the hearing system. Also helpful would be a basic knowledge of social work procedures and practices relating to children (e.g. Looked After reviews)
- *the law and court procedures* – training on legislation (notably the Children (Scotland) Act 1995), court procedures and language, and on how best to present evidence would be helpful for those without a legal background.

Those social workers who expressed a view on the organisation of safeguarder training were of the opinion that it should be structured and formalised. This need not compromise their independence. Others saw merit in some joint sessions, with panel members, safeguarders and social workers. This would be particularly beneficial in addressing the third training need identified above.

Like everyone else, all the reporters interviewed were in favour of universal training for safeguarders, given that they come to the role with a variety of knowledge, skills and experiences. One reporter suggested that core training should occur on key topics with further optional modules available.

Reporters suggested the following topics for safeguarder training:

- child development
- children's hearing system
- disposals available for safeguarders to recommend
- rights of parents
- roles of other professionals
- report writing
- family dynamics.

To sum up, other key parties as well as many safeguarders themselves believed there was a need for more extensive and standardised training for safeguarders. There was also a broad consensus that this should cover all of the main aspects of the role: engaging with and understanding children and families; working within the hearings and court systems in relation to other key parties; preparing reports. It was also clear that many panel members, sheriffs and social workers thought they themselves needed to learn more about safeguarders, their backgrounds and knowledge.

## **SUPPORT FOR SAFEGUARDERS**

It is increasingly recognised that professionals require not only preparation and training to carry out their functions, but also ongoing advice, support and in some instances supervision (Hawkins and Shohet 2000). Safeguarders do not receive extensive training for their role nor are they employed in the way that most professionals are, though they usually have professional qualifications acquired for their previous or concurrent occupation.

Nearly all those the research team spoke to indicated that being a safeguarder involves the kind of situations where support is likely to be helpful. These include handling conflict, meeting people who are distressed or angry, encountering resistance and making difficult decisions within a short space of time, on the basis of complex assessments. Yet safeguarders receive very little preparation for the role. As one reporter put it, they can be “very exposed”.

On the other hand, most are experienced professionals who are used to working independently in their current or former roles.

Support in carrying out paid work is a somewhat indeterminate concept, but it is something that is provided for and valued by a range of professionals and volunteers. It tends to embody a combination of two elements. First, information or advice may enhance the knowledge or skills required for the task. Secondly, emotional support refers to help in coping with stress, feeling valued and not feeling isolated. Talking through issues tends to blend these two elements. A complicating factor in giving and receiving support is that it may entail aspects of monitoring and control.

In the light of these considerations, both administrators and safeguarders were asked about what support was available and what form it took.

### **Local authority support**

On the whole administrators did not see themselves as offering support and were rarely approached to provide it, though some were active in facilitating support by others. The staff in the three study areas acknowledged that they lacked the expertise necessary to offer informational or emotional support.

By far the most common reason for contact between administrator and safeguarder was in relation to expenses or fees. Just a few administrators had been approached to clarify an aspect of the safeguarder role or difficulties with parents. Several had been asked about training. About one in ten panel administrators said safeguarders never consulted them about anything.

On specialist matters, safeguarders were often referred on to someone else. Asked about what alternative sources of advice could be accessed, three-quarters of administrators said this was available. About half of these mentioned people in their own department or the council's legal services. Most others mentioned reporters. Generally reporters themselves confirmed that they were phoned quite frequently for advice. While they wished to be helpful, it was pointed out that this could be "extremely demanding" and "somewhat inappropriate" in view of the safeguarder's supposed independence.

In meetings, some safeguarders pointed out that local authorities have given little or no thought to issues of safety. Given that some of the individuals they meet will be potentially aggressive, it was suggested that provision should be made for safeguarders to have mobile phones and for their whereabouts to be known by others when visiting. One safeguarder offered precise guidance on this subject:

*"Let someone know where you are, carry a mobile phone, always do background checks on possibly violent individuals and think about meeting such individuals in a place with others around" (Safeguarder questionnaire)*

### **Peer support and the Safeguarders Association**

In many professional and social care contexts, peers are a major source of support. This seemed to be the case for safeguarders, although this was only irregularly available across Scotland. In a number of areas, experienced safeguarders acted as "mentors" or "buddies" to new recruits. This entailed being available for consultation. Less often, it might also involve the new safeguarder accompanying or shadowing the more experienced one as an assessment is carried out.

However, the availability of opportunities for safeguarders to meet each other was limited or non-existent in some areas. As a result, many of those interviewed wanted more contact with other safeguarders. Similarly four fifths of the questionnaire respondents expressed an interest in attending a local or national forum for safeguarders.

The Safeguarders Association was set up in the early 1990s, when the need for mutual support was revealed at seminars (SWSG 1992). Information from the Safeguarders Association indicated that well over 90% of safeguarders belong to the Association, with about 12 in the south east of Scotland preferring not to join. The non-members meet together regularly so they too have access to peer support.

In the survey, 77 respondents said they belonged and seven did not (two did not answer this question, N=86). Four of the non-members gave pragmatic reasons for not joining (e.g. time, not having details of the association). Two expressed dissatisfaction with the priorities and training of the Association. The last person simply noted that her local group was separate for unknown reasons. In interview, one person said that the group of non-members saw the Association as “not child focused”.

Respondents to the survey made suggestions about additional things that it would be helpful for the Association to do. The main ideas were:

- arrange more training
- organise local or regional meetings
- lobby local authorities about rates of pay and conditions
- provide up to date information.

## **MONITORING THE WORK OF SAFEGUARDERS**

Local authorities must review the work of safeguarders. However, just as the freelance nature of safeguarder employment makes it uncertain what kind of support they ought to have, so their ambiguous employment status combines with the legal requirement for independence to make the notion of monitoring the quality of their work more problematic than for other professionals in the hearings system. The position of safeguarders may be compared with that of panel members who similarly are required to be independent but are monitored by members of the relevant CPAC. [Currently there is nobody to fulfil this role with respect to safeguarders. However, local authorities have responsibilities for safeguarders’ initial and review appointments and should have in place a framework for monitoring safeguarders’ general performance \(e.g. timeliness of reports, any feedback, attendance at training\).](#)

[In practical terms, though, it is not easy for local authority administrators to monitor safeguarders’ everyday practice in detail. For instance, administrators who were interviewed for the study emphasised that information on children and families should be confidential to the reporters and hearings, so that they were not entitled to know about case details. Furthermore, as certain respondents pointed out, the local authority as a whole can be seen as having a vested interest in case decisions, because of its other legal responsibilities towards children.](#)

### **General reviews**

Most authorities said they had carried out a review of the safeguarder service in the last few years. Two thirds had done so in 1999 or 2000, as encouraged by the Blueprint report

(1999).<sup>21</sup> Usually the review consisted of checking about whether existing safeguarders should be re-appointed and/or dealing with the possible need for new appointments. In about half the authorities, this was done by consulting with the panel chair, sheriff principal and reporters. Nearly a quarter of authorities said they consulted safeguarders themselves. In some instances, councillors or the social work department were included in the review.

In the main, reviews appeared to consist of sharing experiences and views by a few key parties. Three authorities took a wider and more systematic sounding of opinion. Two circulated a monitoring form or questionnaire to panel members and reporters. One council carried out a comprehensive analysis of safeguarders as a Best Value review. On the whole, though, reviews seem to be about checking that it was appropriate to continue with individual safeguarders and checking the adequacy of supply, rather than assessing the overall nature of the service.

As a result, changes were seldom made following the review, apart from a decision to expand the panel size (6 authorities) or reduce it (2). One council decided to tighten up its application process and another introduced a new monitoring system. Re-appointments appeared to be made mainly on the basis of limited feedback, e.g.

*“Will reappoint current panel members provided no negative comments received from children’s panel chair or sheriff principal.” (Administrator questionnaire)*

### **Giving and receiving feedback on safeguarders’ performance**

Safeguarders in the survey were asked if they had been appraised in their role. Only two replied affirmatively. Probably they were referring to the review and re-appointment procedure. Only one in eight said they had regular feedback from any source (12%). This suggests it was hard for safeguarders to know how well they were performing their role or to learn about aspects of their work they could improve.

Safeguarders who were interviewed said that any feedback they obtained about their reports and input to the proceedings was always informal. Most often it came from panel members, but occasionally from families or the reporter. In the absence of explicit comments, some took the fact that they were re-appointed to cases as confirmation that they were “doing okay”.

Although few local authorities had a formal system for gathering routine feedback on safeguarders, about two fifths of panel members indicated that they were able to record their views of safeguarders. A higher proportion of panel chairs believed there was a means for panel members to record their views (76%). Sometimes the feedback only went to the panel chair and was not passed on to the local authority. Some panel members thought that existing arrangements for commenting were satisfactory and a few pointed to the danger of panel evaluation compromising safeguarder independence. However, a majority of panel members and panel chairs were in favour of providing feedback routinely by means of a pro forma, comments book or register. About one in ten preferred the option to report back to a designated person or committee as necessary.

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<sup>21</sup> This report sets out a code of practice and national standards for the processing of children’s hearings cases. It was developed by the Time Intervals Working Group (TIWG) established by the Scottish Office Minister in 1997 (See chapter 1).

Panel chairs tended to see reporters as being the key people in monitoring safeguarder availability, and the timeliness and quality of their reports. However, most of the reporters were unaware of any formal mechanism for them to pass on comments about the quality and performance of safeguarders. The few that did do so were unsure of the influence of this feedback on re-appointments.

The majority of reporters were in favour of having a formal process to which they contributed, though two were unsure (N = 21<sup>22</sup>). Generally, they did not think that this would conflict with the independence of safeguarders. The wish for routine monitoring was linked to concerns about the absence of training and accountability:

*“There is [monitoring] for the other professionals concerned. I think it is even more important for safeguarders who have no formal training.... After all, they are being paid with taxpayer's money. They have to come up to a certain standard. I worry that people working with children are not being monitored.”(Reporter interview)*

A few reporters thought that safeguarders might welcome comments on their work:

*“I think Safeguarders themselves would want feedback on satisfaction or dissatisfaction on the performance or quality of their reports to bring some structure to their work; perhaps a national protocol to provide equity and fairness to allow safeguarders to feel secure and comfortable with their role.” (Reporter interview)*

Social workers were unaware of any formal process of monitoring and/or appraisal. They thought that safeguarders should be subject to some form of ongoing evaluation, although they were unsure about how this should work in practice. Some respondents commented that it would be useful to have a monitoring form where they could raise issues and concerns about safeguarder performance, but others were not keen on this as it might affect safeguarder independence. Some said that they thought monitoring or appraisal should take the same form as social work supervision, where an individual discusses his or her performance with a senior colleague who offers appropriate support and advice.

Some social workers also believed that parents and children should have an opportunity to seek redress, if they felt they had been misrepresented. They were agreed that there should be a forum for children and their parents to express whether they were happy with the performance of the safeguarder. In practice, no authority regularly sought feedback on safeguarders directly from children or parents. In the three study areas, the administrators indicated that it was hard to envisage how a system for routine feedback from children and parents could be easily and economically introduced.

## **COMPLAINTS AND CONCERNS**

### **The local authority perspective on complaints**

Section 7 of the Regulations states that a safeguarder appointment may be terminated by the local authority at any time if the person is deemed “unable, unfit or unsuitable to continue” but only with the agreement of the panel chair and sheriff principal. As administrators are not involved in safeguarders’ everyday work, they can only become aware of possible “unsuitability”, if someone else draws this to their attention.

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<sup>22</sup> Includes three seen together.



Formal complaints about safeguarders were reported to be rare. Two thirds of administrators had no experience of a complaint and only one had handled more than one. The sources of complaints were varied: parent, reporter, panel member, social worker, sheriff clerk, carer. The most common reasons for the complaint were poor quality of report (4) and the attitude or manner at a hearing (3). An administrator who was interviewed gave as an example of a complaint from a foster carer who felt that her self-confidence and ability to care has been undermined by the questioning of a safeguarder with a “powerful personality”.

Seven authorities gave details of complaint outcomes. In two instances the complaint was thought to be unfounded and in two further cases the issue was not clear-cut, so no action was taken. Just three authorities reported having removed the safeguarder following a complaint.

Although formal complaints were evidently uncommon, dealing with complaints was uppermost in the minds of administrators in two of the three areas where interviews took place. They acknowledged that concerns about safeguarders seldom came to their attention, but when they did this took up a lot of time and caused major difficulties, which reflected wider issues about the administrator’s ability to fulfil a monitoring role effectively. They felt ill equipped to deal with complaints on at least two grounds. Firstly, they lacked the relevant expertise and experience to know what ought to be required from a safeguarder’s assessment, behaviour or report. Secondly, on grounds of confidentiality and advice from reporters, they were unable to know details of the specific circumstances in the case. This made it hard to adjudicate in circumstances where family members or social workers strongly opposed what a safeguarder had done.

### **Concerns expressed by other parties**

Sheriffs principal indicated that sheriffs would inform them if a safeguarder's conduct was brought into question and found to be unacceptable. They were confident that they could then arrange for the individual to be removed from the panel, but none recalled this ever needing to be done. One sheriff principal observed that this might suggest the lack of an effective local authority monitoring system.

A number of sheriffs in the survey suggested that they would deal with a safeguarder performing unsatisfactorily simply by not using the individual. In any case they tended to use known solicitors to avoid uncertainty (cf. Curran 1989). Four out of ten sheriffs thought there should be a mechanism whereby their views could be regularly taken into account when re-appointments were being considered. The group discussions with panel members and reporters indicated that they too would usually deal informally with what they regarded as unsatisfactory performance. Like sheriffs, they would simply not use the person again, rather than notify the local authority, let alone make a formal complaint. From these discussions it was apparent that the grapevine soon alerted other reporters or panel members to the individual safeguarders who were thought to be inadequate.

As far as social workers were aware, severe complaints could be passed on to the Chief Executive, who was seen as the person responsible for appointing safeguarders.

*They are appointed at a high level and can only be taken out at a high level.  
(Social worker, group discussion)*

Less serious concerns could be raised with the reporter or the safeguarder directly.

Social workers gave examples of concerns about safeguarders which had not been acted upon. One social worker described a recent case where she had protested about important inaccuracies in a safeguarder’s report, but in her view the challenge to the safeguarder’s

claims were disregarded at the hearing, with potentially very bad repercussions for the child. Other social workers also mentioned the great power they saw safeguarders as having, with little in the way of checks or “accountability”. Of course, some other parties see social workers as the powerful agents.

## **CEASING TO BE A SAFEGUARDER**

The turnover of safeguarders during a two year period appeared to be about 1 in 5<sup>23</sup>, with 60 positions in the 31 authorities having been given up. Usually this was voluntary, at the safeguarder’s own request. Most commonly this resulted from pressure of work commitments or personal reasons. Occasionally, conflicts of interest, moving home, not having enough work and health were mentioned as reasons.

Seven individuals had been asked to withdraw by the authority. Reasons given for this included unsatisfactory performance and late or absent reports. One was taken off the list because of misconduct. It did not seem to be routine to notify other authorities when safeguarders were removed from the panel. As noted earlier, administrators were often unaware of dual allegiances to different authorities, so it is possible that a safeguarder who was removed from a panel in one area could continue to operate in another.

The administrators were asked to give the kinds of grounds that they thought would warrant removing a safeguarder from their panel. The most common response referred to incompetence or poor quality work. Another important consideration was the amount of work done (e.g. low availability, refusing cases without good reason). About a third referred to misconduct or fraud. One sixth mentioned late or absent reports.

Interestingly other parties were often unaware of the possibility that a safeguarder could be “dismissed”. For instance, most panel chairs did not think there was a mechanism for removing an unsatisfactory safeguarder from the panel (76%).

## **CHANGES WANTED BY ADMINISTRATORS**

This chapter and the previous two have reviewed many aspects of the operation of safeguarder panels. At the end of their questionnaires, administrators were invited to identify changes they would like to see in these general arrangements for safeguarders. The issue mentioned by the largest number of administrators was training. They usually wanted this organised on a national or at least more consistent basis. A few wished this to be compulsory or certified. Also prominent was a desire for information or clarification of various aspects of safeguarding. Several asked for Government guidance. Also wanted were clarification of such matters as how to monitor safeguarders, the accountability of local authorities and selection criteria. One asked that a national service be set up and another requested a regional service.

One in three administrators thought it desirable to have clarification concerning fees and expenses. One urged that fees be increased and another that the Government take on the expenditure.

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<sup>23</sup> Allowing for the double counting in local authority returns explained earlier.

## SUMMARY

Within a few years of the creation of the safeguarder role, reports urged that arrangements for preparation and training should be extended and improved (Curran 1989; CCLR<sup>24</sup> 1990). Yet this study showed that information, guidance and training provided to safeguarders was highly variable and for the most part limited in scope. Training for safeguarders was of short duration and not available everywhere. A near consensus existed that safeguarders should have access to more extensive and standardised training, specifically oriented to their needs.

The work of safeguarders is highly demanding and has major implications for children and their families. Yet safeguarders received minimal support and feedback to help improve their work, while formal arrangements for monitoring and accountability were minimal. The main supports available to safeguarders were each other and sometimes reporters.

Very few councils had in place systematic mechanisms for monitoring safeguarder performance. Formal complaints were rare, but panel members, reporters and sheriffs tended not to appoint again anyone they considered unsuitable. This seems unsatisfactory from all points of view. Safeguarders may be unaware of adverse opinions and lack the opportunity to counter or learn from criticism. Equally, aggrieved parties can be frustrated by the absence of formal processes. Many participants in the study wanted a routine, open way of registering their views on the quality of safeguarders' work.

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<sup>24</sup> Child Care Law Review.

## CHAPTER SIX: APPOINTMENTS OF SAFEGUARDERS TO CHILDREN'S HEARINGS CASES

The report thus far has considered safeguarders in general: who they are, how they are recruited, what kind of training and support they receive. Now the focus shifts to the use of safeguarders in particular cases. This chapter and the next review evidence about decisions to have a safeguarder and the reasons for this. Later chapters describe the work done by safeguarders in individual cases and opinions of that work.

Safeguarders may be appointed either by a children's hearing or by a sheriff in children's hearing cases. This chapter focuses on the former and chapter 7 on the latter. The first part of the present chapter presents panel members' opinions about the circumstances in which safeguarders should be used. Then decisions to appoint are examined, with separate attention to two distinct aspects: deciding that a safeguarder is required and selecting which individual safeguarder should take on the case.

### THE NEED FOR SAFEGUARDERS

When the legal provision for safeguarders was first discussed and then introduced, opinion was divided on whether this was a useful option for hearings or not (Martin 1983; Curran 1989). The present findings confirmed that safeguarders have become an accepted and broadly welcome part of the system. Virtually all the panel members in the survey agreed that safeguarders are a valuable resource for hearings (95%), with only a few admitting to uncertainty. Consistent with this, over two thirds *disagreed* with a statement that safeguarders are usually unnecessary because others can look after children's interests in a hearing. Nearly one in six did *agree* with that statement, however, suggesting a fair amount of support for very sparing use of safeguarders. Well over half saw safeguarders as available to provide a check on the social work view, if necessary. At research meetings with panel members, they stressed that safeguarders were less constrained than social workers by resources and ongoing relationships; they could take a "fresh look". The views of panel chairs were very similar.

The Children (Scotland) Act 1995 broadened the range of situations in which a safeguarder may be appointed. Previously this could be only when there was an actual or possible<sup>25</sup> conflict of interests between parents and children in matters relevant to the proceedings. Section S41(1)(b) of the 1995 Act simply stated that children's hearings (and sheriffs in relevant cases) must always consider *if it is necessary to appoint a person to safeguard the interests of the child in the proceedings*. The criteria used in practice when deciding to appoint a safeguarder were ascertained by asking key respondents and through an examination of case minutes.

Firstly, the questionnaire to panel members offered a list of circumstances and asked them to indicate which ones were likely to benefit from the appointment of a safeguarder (Table 6.1). Conflict remained a core situation where nearly all panel members and panel chairs agreed a safeguarder could be very useful. Just under 90% thought that a safeguarder would be very useful where there was conflict between child and parents, and about 75% when social workers and the family were in conflict. A reporter summed up what many saw as the most common relevant circumstance:

*"An appropriate appointment is one where there is a conflict of interest, for example where a child is having to choose between his or*

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<sup>25</sup> The terms "hearing" and "panel" are both used by different people to refer to the decision-making meeting with the three panel members.

*her parents in the full glare of the hearing. The safeguarder’s role is to ascertain the child’s view and to come to his or her own view of what is in the child’s best interests.” (Reporter interview).*

Many panel members (77%) agreed that children’s absence or unwillingness or inability to express their views at hearings were other occasions when a safeguarder would be useful. Perceived deficiencies in social work recommendations were also thought to warrant appointing a safeguarder. The relevance of safeguarders was evident to fewer panel members with respect to emergency protection proceedings or the presence of parents' legal representatives.

**Table 6.1 Situations where panel members find it useful to appoint safeguarders (N=338)**

	<b>Very useful</b>	<b>Of some use</b>	<b>Not useful</b>
There is conflict between child and parent(s)	300	35	1
The child is unwilling/unable to express their view at the hearing	266	61	7
There is conflict between social workers and the family	259	72	2
Background reports lack clear recommendations	156	141	30
There is concern that resource availability is influencing social work recommendations	154	130	45
When the child is absent	132	150	29
When reaching a decision is difficult	97	174	51
In emergency protection proceedings	60	147	109
When parents (or relevant persons) have lawyer representatives	45	166	104

Source: Panel member questionnaire survey.

## **DECIDING TO APPOINT**

Panels are advised to verbalise in every case that they have considered whether or not to appoint a safeguarder, and to give “a brief explanation of the role” (Joint Hearings Guidance 1999, p.5). Nearly all panel members informed us that they did this, although 11 out of 335 said they did not. However, in the study’s group discussions many voiced discomfort about doing so, often with great strength of feeling. Some also took the opportunity under “Other comments” on the questionnaire to state their dissatisfaction about the worry or confusion this caused families, e.g.

*“Whilst I would agree that a safeguarder needs to be considered in most cases, I do not like this being translated into a rule that their use must be discussed (or mentioned) at every hearing. This can confuse and alarm families unnecessarily.” (Panel member questionnaire)*

All reporters saw it as their role to remind the panel of the option to appoint a safeguarder, but a quarter expressed disagreement with the procedure of having to verbalise formally the consideration of a safeguarder appointment at every hearing. One reporter admitted she sometimes refrained from reminding the panel, because this would highlight that they had forgotten or did not know, which “could undermine the authority of the chairman or the competence of the hearing in the eyes of the family”.

The researchers did not attend any hearings at the point where a safeguarder was appointed. Therefore information about the decisions and reasons for appointments all came indirectly from written or verbal reports by others. Interviews and hearing minutes indicated that normally panel decisions to appoint were unanimous. The only example of significant disagreement revealed in the case record analysis (N = 55) was a situation where one panel member dissented from the decision to make an appointment, as this would add to the strain on the children. In a few other cases the appointment was also by a majority decision.

Social workers said that occasionally panel members sitting at a continued hearing disagreed with the previous hearing's decision to appoint a safeguarder. Some linked this to the more general issue of the discontinuity of panel members between hearings, which was seen as a disadvantage for children. They expressed the view that it was especially desirable to have one or more panel members from the hearing which made the appointment present at the continued hearing.

To help their decision-making, hearings sometimes requested an additional assessment alongside the safeguarder appointment (8 out of 67 cases in the case record survey). These assessments were to be done by a psychiatrist, psychologist or health visitor.

### **THE TYPES OF CASE WHERE A SAFEGUARDER IS APPOINTED**

Having acquired an understanding of the general circumstances panel members considered relevant for the appointment of a safeguarder, the research sought to understand why they did appoint in particular cases, using two main types of information. Firstly some of the characteristics of cases where safeguarders were appointed were compared with those where they were not. Secondly an analysis was made of the explicit reasons given for appointment as recorded in minutes. Since the reasons for *not* appointing a safeguarder were seldom recorded (and according to our discussions with panel members were not always discussed), it was impossible to include a comparative component in the analysis of recorded reasons. In the non-safeguarder cases (N = 48), just four records referred to the reasons for not appointing a safeguarder and then only in the most general of terms (e.g. "not necessary", "inappropriate").

National figures demonstrated a few general differences between cases with and without safeguarders. Ever since they were introduced, safeguarders have been much more used when children are referred on what are termed "care and protection" grounds than in offence cases (Curran 1989). The 1996/7 figures (SCRA 2000) for safeguarder cases were:

Non-offence grounds only	86%
Offence only or both	14%

This compared with the figures for all children referred to hearings, 57% of whom were referred on offence grounds (alone or combined with other grounds). In the two years to 1999/2000, the proportion of cases with non-offence grounds where a safeguarder was appointed doubled from 7.3% to 14.2%, whereas for offence-only cases the increase was much smaller, from 1.8% to 2.2% (SCRA Headquarters personal communication<sup>26</sup>).

Our case record survey enabled us to compare 55 cases where a safeguarder was appointed with 48 non-safeguarder cases. All the cases had been dealt with at hearings in the first half of the year 2000. The details for 55 safeguarder cases were forwarded from 20 authorities to SCRA (Stirling), where data was extracted for analysis. 48 comparison cases were obtained from the 3 case study areas in roughly equal proportions, 15-17 each. It was not feasible to

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<sup>26</sup> A further breakdown of case details (e.g. be age, gender, specific ground of referral) was not available.

match the cases, but in order to enhance comparability cases were sought in the comparison group with a similar range of grounds of referral.

The minutes normally held information about the following:

- age and gender of the child(ren)
- the child(ren)'s living situation (e.g. with parents, in foster or residential care)
- whether or not the child was already subject to a supervision order, emergency child protection order or warrant
- the type of hearing (initial, review, continued or other)<sup>27</sup>
- grounds of referral
- those present at the hearing
- the disposal
- reason for the disposal.

In most respects there was little to distinguish the safeguarder cases from the others (Tables 6.2 – 6.5). It appears that safeguarders were appointed across the same broad spectrum of child, family and hearing characteristics as hearing cases in general. Both groups had a slight surplus of males and the age distribution was similar. In view of the association of safeguarders with care and protection issues, it has sometimes been assumed that safeguarders are mainly involved in cases with younger children. This was not true of the case record sample. Just over half the 73 children in the safeguarder cases were aged 11+. Indeed the most common age was 14 years, which accounted for one in five concerned. Slightly more safeguarder cases involved one child rather than a sibling pair or group (80% against 71%).

**Table 6.2 Characteristics of children in cases with and without a safeguarder**

<i>Characteristics of the children concerned</i>	<b>Cases with safeguarder (N=55 cases; 73 children)</b>	<b>Cases without safeguarder (N=48 cases; 67 children)</b>
<b><i>Number of children</i></b>		
1 child in case	80%	71%
2-4 siblings in case	20%	29%
<i>Total</i>	<i>100%</i>	<i>100%</i>
<b><i>Gender of children</i></b>		
Males	55%	57%
Females	45%	43%
<i>Total</i>	<i>100%</i>	<i>100%</i>
<b><i>Ages of children</i></b>		
Children aged 0-5	27%	23%
Children aged 6-10	18%	23%
Children aged 11-15	52%	48%
Children aged 16-17	3%	7%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Source: SCRA case record analysis

The hearings where a safeguarder was appointed were equally likely to be initial or reviews, whereas review hearings were much more common among the comparison cases (Table 6.3). Correspondingly, more of the children in the comparison sample were already on supervision.

<sup>27</sup> An initial hearing occurs at the first point a case is considered. If the proceedings are deferred, the following hearing is "continued". Review hearings are held to consider the progress of children previously made subject to a supervision requirement by a hearing.

Only 25% were living with their family with no order, compared with 43% of safeguarder cases. Several possible reasons suggest themselves for safeguarders being used in a lower proportion of review than initial hearings. The social work report is likely to have more comprehensive information on which to base a decision, while conflicting views or complex decisions are perhaps less likely at that stage. However, two fifths of the sample cases did involve review hearings. About one third each of both samples were living away from their parental home at the start of the hearing and these were mainly review cases.

**Table 6.3 Types of hearings with and without a safeguarder**

<i>Type of hearing</i>	<b>Cases with safeguarder (N=55 cases; 73 children)</b>	<b>Cases without safeguarder (N=48 cases; 67 children)</b>
Initial hearing	37%	21%
Review*	43%	63%
Continued hearing	18%	15%
Other	2%	2%
<i>Total</i>	<i>100%</i>	<i>100%</i>

\* Reviews were occasionally accompanied by new grounds of referral

Source: SCRA case record analysis. Percentages relate to the number of cases, not of children.

In over a third of the safeguarder cases (38%), lack of parental care<sup>28</sup> was a ground of referral, but for significant numbers the grounds included offending (29%) and school non-attendance (23%) (some cases had multiple grounds). As noted above, the pattern for the comparison cases was deliberately very similar with fewer offence grounds included compared with the national picture (Table 6.4). About a fifth of children in the safeguarder cases were in conflict with parents or carers (e.g. staying away without permission).

**Table 6.4 Grounds of referral in cases with and without a safeguarder\***

<b>Ground Section 52, Children (Scotland) Act 1995.</b>	<b>Cases with safeguarder (N=55 cases; 73 children)</b>	<b>Cases without safeguarder (N=48 cases; 67 children)</b>
S.2a Beyond control	15%	20%
S.2b Moral Danger	8%	7%
S. 2c Lack of parental care	38%	39%
S.2d Schedule 1 Offence	18%	20%
S.2e Same household as child under 2d	5%	9%
S.2f Same household as offender under 2d	8%	4%
S.2g Incest	-	7%
S.2h School non-attendance	23%	20%
S.2i Offence	29%	20%
S.2j Alcohol/drug misuse	2%	-

\* Some children had 2-3 grounds of referral: all were counted. The % refers to the proportion of cases for each ground, so the total percentage is greater than 100.

Source: SCRA case record analysis

The disposals made by the hearings for the two groups also showed little difference (Table 6.5), except that a small number of safeguarder cases were continued without a decision being made (6), which applied to none of the comparison group. Very few referrals in either group were discharged. In four fifths of safeguarder cases an order was made, usually home

<sup>28</sup> Section 52(2)(c) Children (Scotland) Act 1995.



supervision or a supervision requirement with a condition of residence in foster care. Quite often this entailed the continuation or variation of an existing order (49% cases) rather than a new order (31% cases).

**Table 6.5 Disposals in cases with and without a safeguarder**

<i>Type of disposal</i>	<b>Cases with safeguarder (N=55 cases; 73 children)</b>	<b>Cases without safeguarder (N=48 cases; 67 children)</b>
Home supervision	42%	45%
Supervision: foster care	24%	21%
Supervision: residential unit or school	9%	13%
Discharge referral	5%	6%
Terminate supervision	-	8%
Other	20%	7%

***Supervision***

No order	20%	25%
Continued with same condition of residence	27%	40%
Continued with new condition of residence	22%	31%
New order	31%	4%

Source: SCRA case record analysis. The % refers to the proportion of cases to which the disposal applied.

## **REASONS FOR APPOINTING A SAFEGUARDER**

### **Evidence from hearing minutes**

Hearings must state their reasons in writing for making an appointment of a safeguarder<sup>29</sup>. The case record survey included access to the minute of the hearing where a safeguarder was appointed. The reporters wrote the minute on a form, which followed a broadly standard format across Scotland and always included a section on “Reasons for the Decision”. Although the panel decision was not always limited to deciding to appoint a safeguarder, usually the reasons for appointing were stated. It is hard to know how accurately the minute reflected what was said, although some reporters said they took time after a hearing was over in order to clarify what should be put in the minute. This would be sent to the safeguarder with other case papers, sometimes along with an accompanying letter giving further details.

There were two different aspects of the decision to appoint that could be recorded as a *reason* for doing so. The first was an *explanation* of what led up to the decision to appoint (e.g. that there was a conflict of opinion between the parent(s) and the social worker; the information available was not adequate). The second was a *remit* for the safeguarder, which indicated what kinds of information or analysis the panel wanted the safeguarder to provide, so they could make a disposal next time. If only an explanation was provided, this gave the safeguarder no guidance about what issues to explore, but arguably left the safeguarder free to assess what is in the child’s interests. Providing a remit made clear what the focus of the safeguarder’s assessment should be. This was advocated by the Blueprint Report (1999), but can be regarded as constraining the safeguarder’s legal duty to safeguard the interest of the child, so some safeguarders did not mind an absence of specific directions.

<sup>29</sup> Children (Scotland) Act 1995, Section 41(3).

The written explanations were grouped to yield the overall pattern as shown in Table 6.6. Conflict was the most common factor, but interestingly parent-child conflict was rarely the explicit reason. Disagreement between social work and parent was most common, being present in a quarter of the cases where a reason for appointment was recorded. Also important in some instances was conflict of opinion between social work and the child. Some family disagreements involved grandparents, while lack of a shared view among agencies featured in four cases.

**Table 6.6 Most common explanations for appointing a safeguarder (N = 55)**

Reason	Number
Parent-social work conflict	15
More information needed	14
Assess the child's view	10
Young person needs to confide	5
Child-social work conflict	5
Social work/education plan unclear	5
Young person's difficult behaviour	4
Conflict within extended family	4
Conflicting views between agencies	4
<i>No reasons recorded</i>	<i>13</i>

Source: Reporter minutes of the hearing. More than one reason for appointing the safeguarder were given in many cases, so the total of all the reasons exceeds the number of cases.

Many of the explanations given in the records for appointing were vague. Without further clarification they would give the safeguarder no idea which aspects of the case were critical to assess, e.g.

- *"The safeguarders report will help the next panel"*
- *"It is important to gather further information at this important life-stage"*
- *"The panel were confused about all the options for D."*

When conflict was the main explanation, this tended to be less generalised, e.g.

- *"There is also some hostility between Mum and social work, and a safeguarders report would give an independent view"*
- *"Mr W. (the social worker) was largely unable to speak to his report because of Mum's antagonism towards him"*

The use of safeguarders at review hearings typically arose because of a difference of opinion among two or more of the parties concerned about placement arrangements or about contact with a parent from whom the child was separated.

Sometimes the explanation for appointing a safeguarder was that the young person had not been able to express his/her views at the hearing or to the social worker. This could be linked to the need for a safeguarder of the same gender:

- *"(1) great lack of information (2) B. was unwilling to share much information about past events"*
- *"K appeared very unhappy and was not able to discuss her problems today. It was felt that a female safeguarder should be appointed and hoped that K would be able to say more to her".*

Remits were given in just under two thirds of cases. Most often the wish was to explore family relationships or the views of the child. In nine of the 42 cases where a remit was specified, schooling issues were identified.

**Table 6.7 Most common focus or remit given to safeguarder (N = 55)**

<b>Focus</b>	<b>Number</b>
Relationship between child and parent(s) from whom child is separated	13
The child's views	13
The home situation	12
Schooling issues	9
The child's future or long-term plans	7
Family conflict	6
<i>None specified</i>	25

Source: Reporter minutes of the hearing. More than one reason for appointing the safeguarder were given in many cases, so the total of all the reasons exceeds the number of cases.

The suggested focus was usually more specific than the explanation for the appointment, though this varied. For instance, in one case the safeguarder was asked firstly to assess the feasibility of the current care package, taking account of differences of views between the Dad and social workers, and secondly to provide an alternative recommendation in case the care package did not work out. Other examples included:

- *“To look at the unresolved issue surrounding access limits/times and the conflict between Dad and the Social Work Department”*
- *“The safeguarders report should contain options for education and focus to develop her social skills”*

### **Views of participants on reasons and remits for safeguarder appointments**

#### *Opinions about the clarity of reasons for appointment*

Like the Blueprint Report (1999) most people believed that the reasons for the appointment of a safeguarder should be clear, but that this does not always happen.

Safeguarders themselves received all the case papers, so had information in addition to the minute to help them understand why they have been appointed. The safeguarder survey questionnaire enquired whether they thought the reasons for appointment were clear or not. Just under one quarter replied that the reasons were *always* clear. Only two people said they were *often* unclear<sup>30</sup>, but the great majority (70%) stated that they were not clear *sometimes*. This could be because they were not given reasons or the stated reasons were vague. In the safeguarder interviews, just over half regarded the reasons for their most recent appointment as clear (57%). All had experienced at least one appointment where the reasons were unclear or not stated.

Fewer than half the reporters interviewed thought that it was usual for the panel to give reasonably clear reasons for the appointment of a safeguarder. The remainder replied “sometimes” or “rarely”. Several reporters observed that some panel members did not understand the role of safeguarders sufficiently to be very specific, so it was often after a hearing, when the family had left, that panel members discussed in detail the areas they would like the safeguarder to focus on.

Comments by some panel members and panel chairs stressed the importance of not appointing a safeguarder without a clear purpose, simply because the decision was difficult.

<sup>30</sup> Out of 84. Two respondents did not answer this question.

When an appointment was made, the purpose ought to be made clear:

- *“Safeguarders should not be used by panel members as a resource for delaying making a difficult decision” (Panel member questionnaire)*
- *“Panels sometimes appoint a safeguarder and he or she is unclear what aspect the panel would like them to look into”(Panel member questionnaire)*

Social workers were of the view that panel members were not always clear about the reason for appointment. They recognised that conflicting viewpoints justified the appointment of a safeguarder. It was observed that conflict was sometimes more perceived than actual (for example, where the grounds were disputed by the parent, but he or she was working well with the social worker to come to a resolution). Two social workers remarked that safeguarders were sometimes appointed because the case had not yet been allocated to a social worker due to staff shortages.

#### *Views on how often safeguarder appointments are necessary*

Whether or not the hearing's reasons for appointing a safeguarder are clearly apparent, other parties may take a different view on whether the appointment was justified in the circumstances. According to the survey, safeguarders usually thought that their appointment had been necessary always (24%) or in most cases (68%), but nearly one in ten thought they were not needed in the majority of cases to which they were appointed. Three quarters of the interviewed safeguarders stated some appointments were unnecessary. The examples mentioned included cases where the panel members had not listened to or misunderstood the child, and cases where the hearing could not come to a decision or were being too cautious. One safeguarder commented that “sometimes appointments are made to ensure that the decisions taken are watertight”, especially if the case is going to court or the panel members cannot see their way through various options to reach a decision.

90% of reporters interviewed in the study commented that the rate at which safeguarders were appointed was about right. Even so, most had experience of at least one case where they believed the appointment was unnecessary. They gave examples of the types of situation where they thought inappropriate appointments occurred. These were cases where:

- the panel should have asked other professionals to carry out further assessments before appointing a safeguarder
- recommendations in the social work report were believed to be resource driven and instead of tackling the social work department, the panel appointed a safeguarder
- the panel was thought to be delaying a difficult decision and wanted an independent party to confirm their views or make the decision for them.

However, as one reporter said, although an appointment might not be appropriate it could nevertheless be helpful:

*“They have got all the information they need to make a decision but they don’t want to make it. They want some one else to make it for them. Maybe appointing a safeguarder in that position is fine; it will make it easier for them to make a decision.” (Reporter interview)*

Like reporters, most social workers considered the current level of safeguarder usage to be “about right”, although some said they were initially overused. Unnecessary appointments were described as those in which the panel already had enough information to make a decision, but had difficulty in reaching a conclusion. The safeguarder’s report was then “duplicating work already done.” However, this was not thought to happen very often, usually occurred because the panel members had insufficient experience and confidence.

Whilst appointing a safeguarder in such a case inevitably led to delays, it was not necessarily considered a bad thing. If the recommendations made by the social worker had serious consequences or outcomes for the child, then it was recognised that safeguarders could provide the panel with another perspective before making a life-changing decision (such as freeing a child for adoption).

*“Panel members are only lay people - they are not involved in the complexities of a particular case, nor are they aware of all the procedures social workers have to go to. They are often frightened to make what are difficult decisions.”*  
(Social worker, individual interview)

## **SELECTION OF THE SAFEGUARDER FOR A CASE**

Once a hearing has decided to appoint a safeguarder, it is necessary to select from the local safeguarder panel the individual to undertake the work. Dilemmas arise with regard to appropriate methods for allocation<sup>31</sup> of the particular safeguarder to a case. In some authorities a rota system was used whereby names were taken in succession from a list. This had the advantages of equity and neutrality. On the other hand, there are arguments in favour of some kind of matching to the requirements of the case (e.g. by gender, experience), which was a practice followed in other areas. This meant that safeguarders were allocated according to known characteristics, which might result in choices being unduly influenced by personal biases. Sometimes a mix of the two approaches was used.

In children’s hearings, it is the hearing who appoint a safeguarder, but panel members indicated that allocation was most often done by someone else. This was normally a reporter sometimes conferring with the local authority administrator about availability. Only four administrators said they allocated individuals to the case (N=31). This contrasts with the greater role of local authorities envisaged in the Blueprint report (1999). However a third of panel members said they would specify characteristics such as gender (36%), while nearly as many indicated they would suggest a particular individual (24%). Presumably they could only request specific people if already familiar with them from previous experience, which limits opportunities for new safeguarders. Some panel members expressed a wish for greater involvement in the choice and for the necessary knowledge to do so:

*- “Panel members know next to nothing about safeguarders, essentially taking it on trust that the reporter will appoint someone appropriate” (Panel member questionnaire)*

*- “We ought to have the information about safeguarders to be able to make an informed choice” (Panel member questionnaire)*

Reporters confirmed that the most usual process was for them to hold a list of safeguarders and contact them directly to check if they were available to take on a case (90% of those in the study). The others, all in one authority, described a different method whereby the local authority held the list and the reporters’ office approached the authority for the next name on the list. Even then, the reporter or panel members sometimes voiced a preference for specific individuals. Reporters indicated that matching of safeguarders to a particular case was not common, although the reporters’ office might check to ensure there was no conflict of interest.

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<sup>31</sup> In order to avoid confusion with appointments of people to become safeguarders or decisions to appoint a safeguarder for a case, the term ‘allocation’ is used in this report to refer to the selection of which particular safeguarder takes on the case. This subject area is fraught with terms having two meanings dependent on the context, such as hearing, panel and chair.

In practical terms, reporters described the allocation process as running smoothly and with little delay, except that in one of the study areas with a small number of safeguarders there were delays “*due to illness and lack of availability*”. However, three reporters individually and three others in a group discussion expressed concerns about assigning safeguarders to cases. One commented that the independence of the safeguarder could be challenged as a result. Another said:

*“Appointments should be a simple administration task carried [out] impartially by the Local Authority. This would negate possible criticism with regard to Human Rights violation.”* (Reporter interview)

The reporters in one of the study areas had asked the administrator to take over allocation for this reason.

Nearly all the safeguarders interviewed had been allocated to cases by reporters. Most seemed quite happy with this arrangement, though three expressed concern (N=18). One said that appointments should be made by the Chief Executive’s office. Another believed it was not right for reporters to undertake this role, but acknowledged that it did have the advantage that the appointment was informed by the reporters’ good working knowledge of the area. As far as they were aware, the appointment was usually made according to a rota system. One safeguarder stressed that this was preferable to matching, since random selection helped to maintain their independence.

The safeguarder questionnaire survey provided further evidence of divided opinions about allocation procedures. Prompted to express a preference for a rota system or taking account of a safeguarders characteristics or experience, two thirds of safeguarders opted for matching and one third for a rota basis. An even larger majority agreed that characteristics like gender, ethnicity, previous experience as a safeguarder and occupational background have “some bearing” in selection, though relatively few thought that any of these considerations were “very important”.

Some social workers expressed concern about what they saw as the random way in which cases were allocated. They recognised that this was tempered by a degree of discretion exercised by reporters about who should be appointed. Like reporters, they had mixed feelings about this discretion. It could avoid people regarded as unsuitable being used. In one area, social workers said that they themselves telephoned the reporters office to request that certain safeguarders *not* be chosen. Yet respondents acknowledged that such processes could mean that the prejudices of reporters and social workers influenced the choice unfairly.

It may be concluded that the systems for allocating safeguarders had reached an uneasy balance of competing considerations: convenience, equity, matching and impartiality.

## **UNAVAILABILITY OF THE SAFEGUARDER OF FIRST CHOICE**

Just under a quarter of panel members reported that sometimes there was difficulty in identifying an available safeguarder (24%, N =336). According to information from reporters and administrators, it was not often that they approached a safeguarder who was not in a position to take up the case and so had to approach someone else. When this happened it could be because the first person was too busy, either on work for their main occupation or on another case for a different authority. Occasionally, a safeguarder declined to take on a case where there was a conflict of interest (e.g. a solicitor knowing or representing a family member in another context).

Safeguarders were asked if there had been occasions when they could not take on a case. Slightly under half indicated that this had happened once or more. The reasons given were:

holiday or illness	20%
family or business connection to the family	13%
personal knowledge of the family	8%
distance	3%.

## SUMMARY

This chapter has considered the appointment of safeguarders to individual children's hearings cases by comparing these with non-safeguarder cases and by examining the reasons given for requiring a safeguarder and for selecting the particular safeguarder to act in that case.

National figures indicate that safeguarders are appointed much less often in offence than non-offence cases. A comparison was made of the characteristics of cases where a safeguarder was appointed and not appointed. Perhaps surprisingly, there was not much that distinguished the two groups as regards the characteristics and living situation of the child. Also the proportions of different types of disposal were similar. The main difference was that non-safeguarder cases included more reviews and correspondingly more children who were already on supervision. Nevertheless, two fifths of the safeguarders were appointed at reviews, showing that difficulties in reaching a decision occurred even when the case was already a familiar one. This also suggests that conflict between family members and known social workers is an important factor in appointments.

The most common ground of referral for safeguarder cases was lack of parental care, but offending, conflict with parents or carers and school issues were also common. Contrary to some people's expectations, just over half the children involved in safeguarder cases were teenagers.

Most panel members and some reporters had major misgivings about having to verbalise in every case that they had considered appointing a safeguarder. This was seen to introduce an unnecessary formalism into their proceedings.

Conflicting views were the most frequent reason for appointing safeguarders, but difficulties obtaining the child's view or gaps in information were other common factors. Although panel member training and the Blueprint document emphasise the importance of having clear reasons for appointing a safeguarder and stating a specific remit, quite often this did not happen. Some of the minutes gave very generalised explanations and/or did not specify a remit. Over two thirds of safeguarders themselves acknowledged that at least sometimes they were not clearly apprised of the reason for their appointment, which is likely to make their initial engagement with the case more difficult.

Normally reporters allocated the particular safeguarder to undertake the case, sometimes guided by the panel members. Some reporters were uncomfortable that their involvement had the potential to compromise safeguarder independence. When allocating a safeguarder to a case, tensions arose between doing so evenly and neutrally by means of a rota system and choosing individuals thought to be most suited to the case, for example on grounds of gender or experience. Examples of both rota and matching as well as mixed systems were found in different authorities.

This chapter focused on children's hearings, because the circumstances in which safeguarders are appointed in court cases by sheriffs are significantly different, as are some of the implications. These matters will now be examined in the next chapter.



## CHAPTER SEVEN: SAFEGUARDERS AND THE COURTS<sup>32</sup>

### INTRODUCTION

As described in chapter 1, sheriffs are required to consider “whether it is necessary to appoint a person to safeguard the interests of the child in the proceedings” before them.<sup>33</sup> The two types of proceedings that relate to children’s hearings cases are:

- *proofs*, i.e. applications for the establishment of grounds for referral, when these are not accepted at a children’s hearing
- *appeals* against hearings’ decisions, either against substantive disposals or the issue of a warrant (Moore and Whyte 1998).

In appeals the sheriff’s task is to consider whether the hearings’ decision “was justified in all the circumstances of the case” in the light of the child’s best interests. Hence the role of the safeguarder is similar to that performed for children’s hearings, since in both situations the child’s interests are under consideration.

In proof proceedings the role of the safeguarder is less clear cut, because the primary task of the sheriff is to determine whether the grounds for referral are established, on the basis of the facts presented (Kearney 2000). Hence the proceedings do not address in any direct way the question of where the best interests of the child lie. In these circumstances the safeguarder’s role is arguably more concerned with the conduct of the proceedings than with influencing the decision. However, particularly in situations of alleged child abuse, safeguarders might form a view about the validity of the evidence and/or whether action is necessary in the child’s interests. As a result both sheriffs and reporters in the study made mention of whether the input by a safeguarder supported or not the reporters’ case in seeking to prove the grounds of referral.

The role that the safeguarder might play leaves much to his or her discretion. It may include:

- carrying out any “orders” made by the sheriff to ascertain a child’s wishes
- protecting the child’s interests in relation to any agreement (e.g. about what evidence needs to be heard or whether an adjournment should occur pending further investigation)
- offering any other support or advice to the child.

The safeguarder may choose whether or not to enter the proceedings, i.e. take an active part. Entering the proceedings involves attending, and being able to call and examine witnesses and address the court either in person or through a solicitor or advocate. After making appropriate enquiries the safeguarder must inform the clerk in writing, whether he or she intends to “become party to the proceedings” (1997 Rules r8(e)). The safeguarder appointed by the sheriff “has all the powers and duties at common law of a curator ad litem in respect of the child” (1997 Rules r3.8(a))

If the safeguarder chooses not to enter the proceedings he or she must prepare a written report to the sheriff “on the extent of his enquiries and his conclusions as to the interests of the child in the proceedings” (1997 Rules r3.10(1)). In practice many safeguarders provide reports to the court whether or not they enter proceedings. Sometimes the safeguarder’s report may become a source of evidence upon which the safeguarder may be examined (see chapter 8). Equally it may address matters relating to the disposal of the case rather than the proof.

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<sup>32</sup> “The court” is used to encompass the arenas in which sheriffs practice, even though the proceedings can be in the privacy of “chambers” rather than in open court.

<sup>33</sup> Under chapters 2 and 3 of Part 2 of the Children (Scotland) Act 1995.

Our most extensive data on court practice and opinion derives from a questionnaire sent to all sheriffs. These were supplemented by interviews with a small number of sheriff principals, sheriffs and clerks, as well as some questions asked of safeguarders and reporters. Of 119 questionnaires sent to sheriffs, 52 were filled in and returned, giving a response rate of 43%. A significant number of sheriffs who did not return a questionnaire (13) informed us that they did not think it appropriate to attempt to complete the questionnaire through their lack of relevant experience. For the same reason, some of the 52 returned questionnaires were only partially completed.

The comments received from sheriffs indicated three main reasons why they did not have adequate experience to answer the questions in the survey. Some had been appointed very recently; some with considerable experience as sheriffs had “little involvement” in children’s hearings cases (one estimated that they were “less than one per cent” of his cases); some appointed curators ad litem rather than safeguarders to fulfil the safeguarding function in children’s hearings cases.

This variability was reflected in the range of questionnaire response rates among sheriffdoms. The highest rate of return was 62%, but at the opposite extreme only 20% of questionnaires were completed and sent back in the sheriffdom with a well-established general practice of using curators-ad-litem rather than appointing safeguarders. The limited returns from this sheriffdom mean that the quantitative data derived from the questionnaire survey was biased towards those sheriffs and areas with a propensity to use safeguarders. Information about the rationale for preferring not to use safeguarders came from interviews with the sheriff principal, the senior sheriff and reporters in the sheriffdom concerned.

## **THE NUMBER OF COURT CASES**

The research team attempted to gather information on numbers and trends in appointments by sheriffs in Scotland by asking sheriff clerks in each of the 50 court areas. However, only 18 of these returned information for the year 1998/9. Most were outside the central belt and had small numbers, so it was impossible to extrapolate to the whole of Scotland. The total for these 18 areas was 303 safeguarder appointments. Given that most of the more populous areas were among the 32 that did *not* provide information, this suggests that the total across Scotland could approach 1000. This would be a very high figure, compared with the official numbers which have been produced recently (see chapter 5). The basis on which reporters and clerks maintain records on safeguarder appointments would clearly merit closer attention.

The number of appointments varied greatly from one area to another, but two areas said they had over 50 in the 1998/9. Most reported appointing one or no curators in hearings cases, but several recorded 4-10 and one area noted 40. The clerks who provided figures for more than one year usually indicated no great fluctuations.

The patchy nature of the figures, some of which were provided as approximations or “to the best of my knowledge”, make it difficult to draw any definite conclusions other than the need to improve the recording and collation of information about appointments.

## **THE CHOICE BETWEEN SAFEGUARDERS AND CURATORS**

The paucity of national data meant that it was not possible to assess the relative distributions of safeguarder and curator appointments in hearings cases across Scotland. It was clear from the data available that there is major variation in practice among sheriffs and between sheriffdoms. In some sheriffdoms safeguarders were almost always used in children’s

hearings cases and in another curators were almost exclusively used. In most sheriffdoms there is diversity of practice between courts and among sheriffs.

In view of this, sheriffs were asked what affected their decisions to appoint one rather than the other. Several different factors were identified. According to one sheriff principal, a major influence was the background of the sheriff:

*“The truth is that the experience and knowledge of sheriffs in dealing with the use of safeguarders and curators-ad-litem is hugely variable from one to the next depending on the extent to which that sheriff’s previous practice as a lawyer was or was not involved with Children’s Hearings work”. (Sheriff principal questionnaire)*

Many sheriffs (on the questionnaires and in interviews) argued that the basis for appointing a safeguarder rather than a curator, or vice versa, was a legal one. A sheriff principal said:

*“Whether a safeguarder or a curator is appointed should be a question of law rather than policy. (Sheriff Principal questionnaire)*

Some took the view that statute required safeguarders to be used in hearings cases, superseding the common law power to appoint a curator:

*“The law now requires us to use safeguarders in children’s hearing referrals.” (Sheriff questionnaire)*

*“It is straightforward. Safeguarders are used in referrals under section 41 of Children Scotland Act 1995. Curators - in other actings (e.g. applications for residence/contact orders under section 11)”. (Sheriff questionnaire)*

Others argued however that, despite the legislative provision, sheriffs retained the discretion to use a curator under their common law power. The 1995 Act refers to “a person to safeguard the interests of the child in the proceedings” and that person could be a curator. This was clearly the prevailing view in the sheriffdom where the clerk told us that only one safeguarder appointment had been made in the previous year.

However, two further reasons were also given to explain why curators were preferred in this sheriffdom. Firstly a legal training was preferred for the person in the safeguarding role and most though not all curators are lawyers. Secondly curators can claim higher fees than safeguarders, through legal aid. Hence a sheriff explained that the practice of appointing curators rather than safeguarders had initially come about because “suitably qualified lawyers could not be expected to work for wholly inadequate remuneration”. As the sheriffs were well satisfied with the work done by the curators used, “there is no need to depart from an arrangement that works.”

A senior sheriff connected the preference for legally qualified curators to perceived deficiencies in some reporters.

*“As far as I am concerned there is no policy or general rule but only a general feeling that curators be used. ... Reporters are not always legally qualified, more importantly the standards of advocacy from reporters is generally low. At the hearing before the sheriff it is in the interests of the child to have at least one lawyer who knows how to conduct proceedings, question appropriately, and assist with the law”. (Sheriff questionnaire)*

A reporter acknowledged this perception, though did not draw the same conclusion:

*“I know there is a view that reporters lack some of the finer aspects of court craft but this is hardly a good reason for the court appointing agents essentially to do our jobs for us.. What some reporters lack in art they make up for in experience, knowledge*

*of the case, and commitment to protecting the child beyond the court setting ”*  
*(Reporter interview)*

Some reporters as well as sheriffs expressed the view that certain non-legally qualified safeguarders misunderstood their role by introducing considerations relevant to the disposal into proceedings concerned with proof - whereas curators would not make this mistake. One reporter declared that “the safeguarder’s job is to consider the best interests of the child in the disposal, which is why curators should be appointed for proofs.”

Evidently many sheriffs who did appoint safeguarders in proofs (the clear majority in the research sample) did not hold this view. As noted below, in courts where legally qualified and non-legally qualified safeguarders were both readily used by sheriffs, there was testimony from both sheriffs and reporters that safeguarders can make a significant, sometimes crucial, contribution to the process.

The issue of sheriffs choosing between safeguarders and curators was complicated by the fact that they are not always different people. A large minority of safeguarders surveyed sometimes acted as curators as well as safeguarders (39%). This practice was widespread across the country. It was largely confined to those with a legal background, but did include a few others too.

## **THE APPOINTMENT OF SAFEGUARDERS**

Within the court setting, the decision whether or not to appoint a safeguarder (or a curator in the safeguarding role) was usually made on the basis of very limited case information. Case papers gave only the grounds for referral and the ages of the children involved. The sheriff would know if the hearing has appointed a safeguarder and in some places would receive a communication from the reporter advising on the desirability of an appointment in the case.

The majority of reporters interviewed indicated that they usually advised the sheriff if they thought it would be desirable to have a safeguarder (or curator) appointed in a proof, though just under half had done so. A reporter informed us of the following process

*“Reporters in the area usually make a comment in their covering letter to the sheriff clerk indicating their own views about the appointment of a safeguarder, e.g. we might suggest it is unnecessary to appoint a safeguarder in a particular case where a child is represented by a solicitor or alternatively we might consider it to be appropriate where there is a particular conflict between child and parent. Safeguarder appointments are particularly likely to be used where the child is a victim of an offence and likely therefore to be giving evidence.”*  
*(Reporter’s letter)*

Both clerks and sheriffs indicated that there were often standing arrangements for a sheriff to see the case papers as soon as the application for the proof was lodged. One sheriff indicated that he normally had a preliminary hearing with parties to consider an appointment; others indicated that proceedings might begin and then be continued for an appointment to be made.

The lack of information before the sheriff was said by some reporters to explain why, in their view, an excessive number of appointments was made. The most common estimate made by the reporters who were interviewed was that about half of appointments were unnecessary. They suggested that sheriffs tended to “play safe”. Reporters said that in some places appointments were made “almost always” when there were “care and protection grounds”, “the children are young” or there is “apparent conflict.”

Sheriffs were asked to choose from a range of circumstances, when they would usually appoint a safeguarder (Table 7.1). The strongest reason was when a safeguarder had already been appointed by a children’s hearing, though even then some sheriffs would prefer to appoint a curator. Other factors were the need to assist children to express their views or to act on behalf of children who were too young to have a view, as well as conflicts among the parties.

**Table 7.1 Circumstances in which sheriffs would usually appoint a safeguarder (N = 44)**

Circumstance	The proportion of sheriffs who said they would usually appoint a safeguarders
If a hearing has appointed a safeguarder in the case	83%
In a proof where the child is alleged to be a victim	72%
Where the child might have a view but was unable to express it	71%
Where the child was too young to have a view	70%
Where the alleged grounds indicate a conflict between the parties	69%
In an appeal against a hearings disposal	66%

Source: sheriff questionnaire survey: only the responses with the highest proportions are included in the table. Data was missing in 8-12 cases, depending on the question.

Sheriffs indicated that the allocation of a particular safeguarder was normally done by the clerk, sometimes employing a rota. However over half the sheriffs in the survey said they sometimes had an input into allocating the case. In the largest court, the clerk said he operated strictly with a rota. In a second of the study areas, the clerk said it was rare for sheriffs to identify individuals, but some did express a preference.

Not many sheriffs saw the need to improve appointment arrangements, but those who did wanted better information about possible appointees and preliminary views from parties to the case.

## **VIEWS ON THE SIGNIFICANCE OF LEGAL QUALIFICATIONS IN COURT AND HEARINGS WORK**

Safeguarders’ views on whether a legal training is necessary for taking on court work were sharply split according to their own backgrounds. Three quarters of those who had a legal background believed that legal training *is* necessary for this element of the work, whereas four fifths of the rest stated that it *is not*. Most of the latter group argued that knowledge of the system and requirements of their role was sufficient.

The majority of sheriffs surveyed said they would always prefer to appoint a legally qualified safeguarder, despite the entitlement of a safeguarder to appoint a solicitor to act for him or her. This was true for 55% in the study sample, but the preference would be proportionately greater in reality since those who elect to use curators were under-represented in the sample. A number of comments were made that a legally qualified safeguarder would be better at “supporting the reporter’s case,” where they judge it to be in the child’s interests to do so. As noted earlier in the report, the formal remit of the safeguarder is to safeguard the interests of the child in the proceedings and not “support the reporter’s case”.

Geographical variations were apparent. In the west and central south sheriffdoms, the great majority of sheriffs preferred lawyers, but elsewhere non-lawyer safeguarders were equally acceptable to most sheriffs. Indeed, in one sheriffdom “not always preferring legally

qualified safeguarders” was the norm among the sheriffs who returned questionnaires. In a different area with a very positive view of safeguarders and high reported use of them, sheriffs wished their safeguarders to have a greater variety of non-legal backgrounds and skills: two mentioned the need for child psychologists, for instance.

About half the reporters interviewed were sceptical about the value of safeguarders or curators in proofs, whatever their professional background. Their view was that safeguarders would only duplicate the reporter’s role or influence the sheriff through providing a private report the reporter was not allowed to see. However those who were positive tended to favour the legally qualified, because they were seen to provide expertise of the law and procedures, which was especially helpful in difficult proofs. On the other hand, one reporter observed that some safeguarders without a legal qualification are excellent at “supporting children in court...and explaining what is going on.”

### **BECOMING A PARTY TO COURT PROCEEDINGS AND APPOINTING A SOLICITOR**

It was noted at the start of this chapter that one of the distinguishing features of court appointed safeguarders is their discretion to decide whether or not to enter the proceedings and become a party. The research revealed diversity in both practice and viewpoint on this matter. The safeguarders survey indicated that, on the majority of occasions, the safeguarder had chosen to become a party to the proceedings in their court cases, but a quarter of the sample indicated that they had chosen not to be a party on one or more occasion. With a few exceptions, those who were not party to the proceedings had submitted a full report. However, about half of those who had become party to the proceedings said they normally also submitted a report, though not required by the rules to do so (see also chapter eight).

Two thirds of the sample of sheriffs approved of the arrangement whereby safeguarders may decide for themselves whether or not to “enter proceedings.” The main reason given for supporting this discretion was that the safeguarder is in a position to decide once he or she has enquired into the case, whereas the sheriff has insufficient information to do so. There was a minority view (15%) that the safeguarder, like the curator, should invariably enter proceedings, even if only with “a watching brief”.

Eight out of 86 safeguarders had experience of appointing a solicitor (about 10%). This included four who were themselves legally trained. Usually this had been once or twice in the previous two years, but one person had appointed a solicitor ten times in that period. The reasons given for doing so were: disagreement with a child or young person, the complexity of the case and the likelihood of appeal.

### **DELAYS**

Significant delays in proceeding may well run counter to children’s interests. Most reporters expressed concern about the delay which safeguarders might cause to the process, either to the case being called or expeditiously completed. Most sheriffs (70%”) stated that appointments brought about a delay in hearing a case “occasionally”. 10% said “usually”, and 20% “never”.

Not only were delays thought by sheriffs to be unusual, but it was also stated that safeguarders were “sometimes” or “often” able to save time and help accelerate proceedings. This they were able to do by assisting the parties (reporter, families and their agents) to come to agreement on previously disputed issues. One sheriff informed us that frequently the

intervention of a safeguarder lead to cases being resolved and evidence not needing to be heard. It was pointed out by a number of sheriffs and reporters that the safeguarder is often seen by families as a “neutral party” who might act as an “honest broker” and facilitate compromise being achieved. Some children might avoid the trauma of giving evidence as a result of the appointment of a safeguarder.

## **APPEALS AND EMERGENCY PROCEEDINGS**

Safeguarders may be appointed in appeals against any decisions of a children’s hearing. They may be appointed a party in an appeal whether or not they were present at the hearing whose decision is appealed against.

There is currently some doubt as to whether safeguarders are entitled to appeal against a hearings disposal in their own right. The *Notes of Guidance* (SWSG 1985) say that a safeguarder is entitled “under the rules made by the Court of Session” to “submit an appeal against a decision of a children’s hearing either on his own account or as a joint signatory of the appeal with the child.” (Paragraph 24). It was brought to the researchers’ attention by one legal authority that court appointed safeguarders must have the power to appeal since they have all the rights and powers of a common law curator. On the other hand, influenced by a court case in 1995<sup>34</sup>, the Safeguarders Association Practice Guidelines say that “the safeguarder has no independent right of appeal”, but “may sign the appeal on behalf of the child”. Kearney (2000) points out that a safeguarder’s right to appeal independent of the child has been both supported and criticised in the sheriff court.

Two thirds of the sheriff respondents had experience of safeguarders in appeals against hearings’ disposals. Nearly all were either neutral or positive. Several complimented the safeguarders for providing “objective” or “informative” views. In one case, where the safeguarder had clearly been appointed by the hearing, it had been “especially helpful that the safeguarder was present when the initial decision was made whereas the party’s solicitor was not.” Safeguarders were also valued for offering a fresh view from that of the reporter or hearing. For example, the “safeguarder disagreed with the hearing for good reasons, and in the end the reporter did not contest the appeal.”

Two sheriffs reported negative experiences in appeals. One was severely critical of the safeguarder for making the appeal, saying it was “inconceivable that the safeguarder in question thought the interests of the child could be served by his appealing”. This apparently influenced this sheriff’s negative view of “the increasing use of safeguarders”, because they introduce “a loose cannon element into the system”. The second critical sheriff stated that a non-lawyer safeguarder “fundamentally misunderstood his role in the appeal.”

Few sheriffs had experience of safeguarders in relation to the new emergency protection proceeding. All were neutral or positive. One spoke of the safeguarder “calming down heated situations and sometimes bringing a fresh slant to bear.” Another said they are “useful” because of their “independence from social work officers”. Two reporters singled out the role that safeguarders could play in “warrant hearings.” One indicated that it was “supporting the child” and “explaining proceedings” which was particularly valuable. Another said that they played a constructive role in getting “contact” arrangements agreed.

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<sup>34</sup> Ross v Kennedy 1995 SCLR (sh Ct) (Notes).

## THE INTERFACE BETWEEN CHILDREN'S HEARINGS AND COURTS

There has been a long standing view that if both hearing and sheriff think that a safeguarder is necessary in their respective proceedings, it would be desirable for the same person to represent the child's interests in both places. This minimises the number of extra people introduced into families' lives and provides continuity of assistance to the child. The court rules now require the sheriff to consider appointing the same person if a hearing has made an appointment (Rules 1997 3.7(1)(a)).

This means that safeguarders must be willing and able to perform in the two settings. The large majority of safeguarders (nearly 90%) affirmed that it is desirable for them to operate in both hearings and courts. Six of the ten safeguarders who did not agree were lawyers (N = 86).

A way of influencing this continuity is for the hearings to appoint safeguarders prior to proof. Most panel members and reporters were in favour of this:

- *"It enables the first hearing, if the grounds are proved, to have a report."*

*(Panel member interview)*

- *"The safeguarder ..(appointed by the hearing) sometimes makes contact with the family and gives it good advice... I have known a solicitor to ask the sheriff to appoint the safeguarder known to the family."* *(Reporter interview)*

The potential benefit of appointing the same safeguarder was illustrated by a sheriff who cited the example of a safeguarder, previously appointed by a hearing, who had made a decisive contribution to his judgement. The safeguarder:

*"pursued a line of enquiry which brought evidence to bear on the case that caused me to find grounds not established....I doubt that these matters would have come out without the particular energy of that safeguarder or her early involvement in the case."* *(Sheriff interview)*

However, there was a minority view that it was unfair or undesirable for a children's hearing to appoint prior to proof, i.e. before it was established whether there were grounds for action. A panel chair expressed the reservation that "it is invading the family's right to privacy if you appoint someone before anything has been proved."

Whether or not a hearing has already appointed a safeguarder, most sheriffs welcomed having some information from the hearing that might help them to decide if to appoint. One sheriff said it "would help if we always knew why children's hearings had appointed - or why they hadn't".

## SUMMARY

The lack of a consistent system of recording appointments of both safeguarders and curators within the courts system, and the absence of centrally accessible data was a major inhibition to analysis and assessment of court practice.

Especially among reporters, there remained some doubt about the necessity and value of safeguarder appointments in relation to proof proceedings, but sheriffs generally found they had a useful role to play. Sheriffs said they would appoint safeguarders in a wide range of circumstances, including the presence of young children in the case, the need to assist older children express their views and situations where there was conflict between parties. For the



most part, the involvement of safeguarders was not thought by sheriffs to lead to delays and indeed could sometimes speed up matters by helping parties resolve differences.

The great majority of safeguarders believed that there is virtue in them being willing and able to operate in both courts and hearings. This facilitates continuity of appointment between hearings and courts, which was generally favoured.

Sheriffs generally welcomed the practice of the reporter giving a view on the desirability of appointing when the case is lodged. However, as the reporter is party to the proof, this might be seen to lack neutrality. Perhaps it would be better if the panel members discussed reasons for and against appointing a safeguarder at the hearing which instructs the reporter to seek to establish the grounds. The conclusion of the hearing would then be conveyed to the sheriff.

Sheriffs had little information upon which to make the decision. According to reporters this resulted in a significant number of unnecessary appointments. The discretion which safeguarders have in deciding whether or not to become party to proceedings in proofs was generally regarded as advantageous.

There was a marked variation of practice between sheriffdoms and among sheriffs in the use of curators ad litem in children's hearings cases. Moreover, opposite views were expressed about the legal propriety of doing so. There were also different views about the rights and duties of safeguarders to appeal against a hearings decision on behalf of the child. These matters need to be clarified.

This chapter concludes consideration of when, how and why safeguarders came to be appointed and allocated in particular cases or not. The next chapter describes how they set about their task, once appointed.

## CHAPTER EIGHT: SAFEGUARDERS' ASSESSMENTS AND WRITTEN REPORTS

This chapter concentrates on the work done by safeguarders to fulfil their remit in particular cases. The first half examines views on what were thought to be key elements of the safeguarder's role. Consideration is given to the ways in which safeguarders gathered information and communicated with children. The second half of the chapter is devoted to the reports written by safeguarders and opinions about these held by other key participants.

### VIEWS ON SAFEGUARDERS' ROLES AND TASKS

The remit of the safeguarder is described broadly in Section 41(1)(a) of the Children (Scotland) Act 1995, i.e. to 'safeguard the interests of the child in the proceedings'. The Practice Guidelines of the Scottish Safeguarders Association (1999, pp. 5-6) identify three specific components, namely to ensure that:

- the child's rights are protected in the proceedings
- the views of the child are communicated to the hearing
- proposals are made in the child's best interests.

To fulfil this remit in relation to children's hearings, the safeguarder is expected to read the case papers, investigate the case by obtaining information and views from key parties, and prepare a report. Throughout it is expected that safeguarders should seek to form an independent judgement of what is best for the child (Lockyer and Stone 1998). With respect to the Sheriff Court, the safeguarder may *either* become a party to the proceedings and ensure that the proceedings are properly conducted in the child's interests *or* not become a party but provide a report with conclusions as to the interests of the child in the proceedings (Kearney 2000).

The research team sought to find out how far the views of different parties corresponded with these generalised and multi-faceted formal requirements, and which aspects they emphasised. Safeguarders were asked what they regarded as their 'most important function'. A spread of responses was given, with the following being the most common, in order:

- produce an independent view
- safeguard the child's best interests
- allow the child's views to be heard
- present a full picture to the hearing or court
- identify solutions.

It is interesting that only a minority specified safeguarding the child's interest as their main function, with the rest identifying matters which are arguably an aspect or means of achieving that end. For instance 14% cited as their most important function allowing the child's views to be heard, even though the legal responsibility towards the child's interests suggests this is a secondary or partial element of the role.

Since other parties to hearings also have a responsibility to assess and promote the child's best interests, safeguarders were invited to give their opinions about the difference between their role and that of social workers and reporters. Two clear differences from social workers were emphasised by large numbers: firstly, that safeguarders give an independent view whereas social workers are affected by their agency policy (44%); secondly that the safeguarder has a focus on the child while social workers are more affected by the family

(parents) and others (35%). Significantly, this contrasted with the views of some social workers that (a minority) of safeguarders have a tendency to over identify with parents.

Asked about difficulties arising when safeguarders and social workers held different opinions about what was best for the child, two thirds of the safeguarder sample indicated that this was not a problem. They pointed to such things as social workers accepting that more than one view was possible or taking a professional attitude towards the safeguarder's role and right to suggest alternatives. Other safeguarders voiced frustration with social workers' power or what they saw as prejudiced expectations. Quite a few (13%) made the point that social workers' recommendations could be based on resources available rather than the needs of the child, a criticism that occurred elsewhere in interviews and questionnaires.

In relation to proof hearings in court, most safeguarders distinguished their role from that of the reporter. Whereas the latter's role was a formal and specific one to establish the facts, safeguarders saw themselves as taking an independent view of the child's interests. However, some safeguarders (16%) saw the roles as quite similar, with the safeguarder either backing up the reporter or providing additional information.

## **THE TASKS INVOLVED IN CARRYING OUT THE SAFEGUARDER ROLE**

As noted in Chapter 1, the statute and regulations do not specify how safeguarders should carry out their role, except that they are expected to produce a written report (apart from some court cases as noted in the previous chapter). The Safeguarders' Association Guidelines (1999) state that the safeguarder will receive the same documentation as panel members, covering "the grounds of referral plus the supporting statement of facts, the hearings reasons including the reasons for the appointment" (p.7), the social work/other agency reports and any other document seen by the hearing. The Guidelines describe the "investigation" as comprising discussions with key people, but state that it is a matter of judgement who should be seen (p.7). However, the "reasonable" expectation is to *see* the child and parents and it is "usually essential" to *discuss* the case with the social worker. The wording suggests the former should be face to face, but the latter might be by telephone. Discussions can also take place with any other person as deemed necessary by the safeguarder.

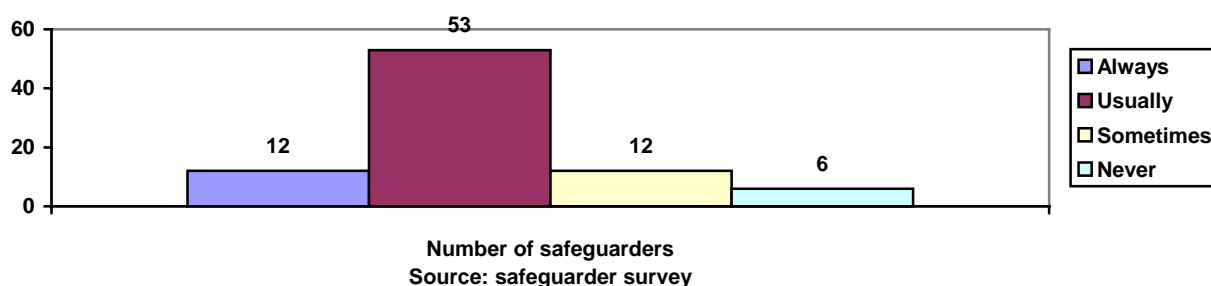
In the light of this fair degree of discretion, the next section reviews the ways in which safeguarders set about gathering the information needed for them to reach conclusions about the child's interests and prepare their report. Information about what they read, whom they saw and how long this took helped convey a picture of the ways in which safeguarders managed their cases. Particular attention is given to situations where safeguarders reached different conclusions from those of children, social workers or parents. The second half of the chapter deals with safeguarders' reports and participants' evaluations of the reports.

## **GATHERING INFORMATION AND FORMING AN ASSESSMENT**

### **Receipt of written information**

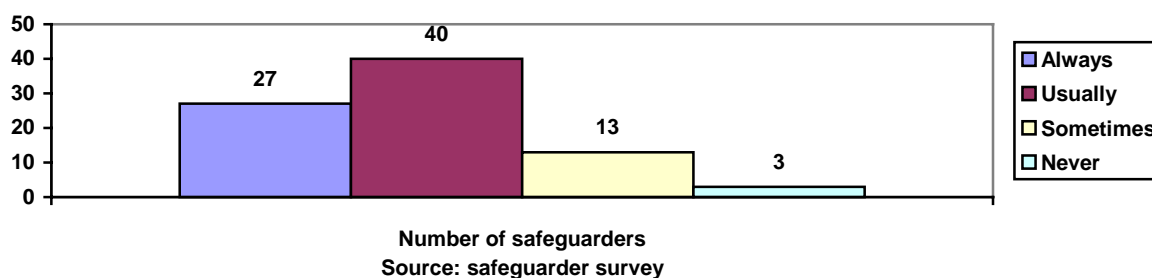
Safeguarders are supposed to be allocated to a case within two days of a hearing and receive the papers within 5 days (Blueprint 1999). About three quarter of those in the survey stated that the procedure was usually or always carried out according to this time-scale, but for the other quarter it sometimes or always took longer, which was likely to result in a short delay in starting work (Table 8.1).

**Table 8.1 Frequency with which cases were allocated within two days, according to safeguarders (N = 83)**



In order to formulate their independent judgements about what is best for a child and to prepare their reports, safeguarders need to gather information by examining existing papers and speaking face to face with relevant people. The written papers usually comprise the current social work and school reports, possibly previous ones and sometimes reports from health visitors and carers. About one third of safeguarders in the survey stated that they always received the papers within the prescribed period of five days and many others said this usually happened (Table 8.2). For a minority, their more typical experience was of waiting longer.

**Table 8.2 Frequency with which case papers were received within five days, according to safeguarders (N = 83)**



In the questionnaire survey, some safeguarders reported they received all the information they needed, but most had experienced a problem in this respect. The deficiencies mentioned most often were:

- Contact details for relevant people 21
- All the relevant case detail. 15
- Clear statement of remit 12
- Indication of family attitudes 7.

Only two referred to lacking the minute of the previous hearing. Although this was a rare occurrence, it represented a fundamental omission.

### Access to reports from previous hearings

When a safeguarder is appointed at a continued or review hearing, papers will have been produced for one or more previous hearings. Uncertainty exists as to whether the safeguarder should receive these earlier reports along with the documents related to the current hearing. Therefore, in the research panel members were asked whether past reports ought to be made available to safeguarders. The great majority agreed that they should (88%), but there was a mismatch between ideals and practice. Under a third (29%) said that in fact such reports were

normally provided. It might have been thought that making the reports available or not would be a fairly uniform practice within different panel areas, but this was not the case. In most of the areas represented, some said past reports were routinely made available and some said they were not. In only 5 areas were all the panel members in agreement about what happened, in each case stating that the past reports were not always sent.

Panel chairs also indicated an absence of standard practice. Half (11) thought that reports were sometimes made available in their area, a third (7) said never and just a few (3) said always. Half thought they always should be and half said sometimes (N=21). Just over half of reporters interviewed thought that previous reports submitted to hearings should be made available in some circumstances, but this depended on the age of the child and relevance of the issues.

The provision of past reports to panel members is a contentious issue. Receiving these has become rare since the introduction of the requirement to make all hearings papers available to relevant persons. In group discussions, some panel members informed us that they are sometimes disadvantaged in hearings by the fact that parents kept and were able to refer to previous reports that the panel members did not have.

### **Reading the written information provided**

The use of the written information was explored mainly in the interviews with safeguarders (N=18). Most of these said they read the reports before making contact with people to gain knowledge in order to be alerted to key issues. A couple of safeguarders said that they read the reports *after* meeting with the child, family and other relevant person(s), which they felt enabled them to keep a more open mind. Nearly all read the reports to inform themselves of the context and historical perspective, but said they drew their conclusions mainly from their interviews. One person who could spare little time for face to face contacts indicated that the papers were the major influence on his recommendation.

### **Gathering information by interviews and discussions**

All the interviewed safeguarders said they always spoke with the child, if old enough, and with parent(s), if available. Everyone had seen the child in his or her home surroundings. About half reported that they had visited the child on one occasion, which lasted between 30 minutes to two hours. The other half had visited the child on two or more occasions lasting between 1-2 hours on each visit. The second visit was usually to discuss the report and explain the recommendations to the child or young person. The pattern for interviews with parents was very similar, whether or not the child was living at home. Again, second visits were often made to discuss the report with the parent(s) and explain the reasons for recommendations made. Others had done this through telephone conversations with the parent(s).

About four fifths of the interviewed safeguarders had also visited or phoned the social work department. A third had contacted the child's school or residential school. Depending on the case, other individuals were also seen. These included, in different cases, grandparents, foster carers, a Young Person's Support Unit, Who Cares? Scotland, and an educational psychologist. One person illustrated a highly child-centred approach in deciding which people to see:

*I will also find out what other things the child has been involved with. For example, if the child is doing badly at school, but well at basketball, I will go and talk to the basketball teacher. (Safeguarder interview)*

None of the 18 safeguarders interviewed reported that any information had been withheld from them in their last case, nor had they been refused access to any material or information. Occasional practical difficulties were noted in making contact with key informants, as when a child's new carers were on holiday and a professional was not available.

In the questionnaire survey (N=86) safeguarders were asked which agencies or individuals it was generally most hard to obtain adequate information from. One third did not specify any problem. The two thirds who did identify a difficulty most often mentioned social work data (16 out of 56) and medical information (15) as hard to obtain. Since social work information is normally already available to the safeguarder and the hearing or court, the difficulties in obtaining medical details may be most significant.

It might be conjectured that social workers could be resistant to co-operating with safeguarders, since there would be no need to appoint a safeguarder if the social work report included all the necessary information and the hearing accepted their recommendation. In practice, three quarters of safeguarders in the survey said that the social worker's response to their involvement in a case was mainly positive. Just one saw it as mainly negative. Of the remainder who judged the response to be mixed, most were legally trained (13 out of 18), suggesting that the difference in background may have contributed to a less co-operative attitude.

Interviewed safeguarders said that the main communication difficulties they faced were with families and children, although one mentioned the social work department. Often the difficulty with families was as a result of pre-existing hostilities towards the authorities, which the safeguarder would ask the family to put to one side.

## **COMMUNICATING WITH CHILDREN**

Both the guidelines and all our informants were in agreement about the importance of the safeguarder meeting the child. This involves at least two skills. The first is to engage as a stranger with the child in a short space of time. The second is to take into consideration the child's views while recognising that the legal remit of a safeguarder is to safeguard the child's interests and not advocate their views.

Safeguarders have to gain the co-operation of children quickly, normally in only one to two contacts. They were asked what tactics they used to gain trust. The most frequent response emphasised the need to spend as much time with the child as possible, given the constraints. Others highlighted ensuring the child was clear about their role and independence or being honest and realistic about possible outcomes. Listening skills, empathy and adapting to the individual child were also mentioned. A few stressed the importance of meeting with children in surroundings that were both comfortable and familiar to the child.

Safeguarders expected to explain their role to children unless the child was too young or could not understand. There was a variety of ways in which they made the explanation, but two points were stressed by all. First, it was necessary to convey that they acted independently of the social work department and secondly it should be made clear that they represented the child's best interests. A further point made by some was that children should know that things said to the safeguarder might be included in the final report.

One safeguarder reported "that the biggest challenge for safeguarders is always with young children". In her experience it was difficult to build a rapport with the child because access

was often through the social work department and visits were supervised. However, regular visits, which included some reading and drawing with the child, helped build a relationship.

Social workers averred that a safeguarder's ability to ascertain the views of the child depended upon his or her experience in communicating with children and young people. Safeguarders were deemed to have varying levels of competence in this regard, and some were criticised for focusing on the adults involved rather than the child. On the other hand, social workers did acknowledge that any fault did not always lie with the individual safeguarder, as some children were simply reluctant to communicate and resented all involvement with the hearings system.

## **CHILDREN'S INTERESTS AND CHILDREN'S VIEWS**

As the Safeguarders Association Practice Guidelines state, it is an accepted part of the safeguarder's role to ascertain the child's views and take them seriously. In chapter 6 it was noted that not uncommonly the main reason for panel members to appoint a safeguarder was to help convey the child's perspective. On the other hand, the overriding role according to the statute is to pursue the child's best interests. When the safeguarder and the child are in agreement about the best option(s) or the child is too young to express a view, then the safeguarder's responsibility towards "interest" and "views" are quite compatible. On the other hand, if the safeguarder reaches a conclusion about what is best for the child which differs from the child's own opinion, then a tension arises (Griffiths and Kandell 2001). Hence it was important to explore how safeguarders dealt with this.

Safeguarders in the questionnaire survey were asked about difficulties or issues that arise for them when their own view about what is best for a child differs from the child's expressed wishes. Some pointed out that their relationship with the child could be adversely affected, usually noting a loss of trust. Most described how they sought to avoid or deal with this difficulty. Over a third emphasised the need to explain clearly their roles or views in the hope of enabling the child to recognise the reason for the discrepancy. Others highlighted the importance of ensuring that the child's view was included in the report, even though the safeguarder reached a different conclusion.

In interview a number of safeguarders highlighted the need to be honest and sensitive in explaining that their conclusion might differ from what young people wanted. This should be made clear from the start, so that the child did not automatically expect their position to be supported:

- *"I always explain at the outset and stress I will explain the child's wishes as well as my own views" (Safeguarder interview)*
- *"The safeguarder needs to be assertive enough to differ with his or her views BUT without leaving the teenager feeling betrayed". (Safeguarder interview)*

Several described how they made a second or even third visit to discuss with the child any divergence between the child's opinion and their own conclusions, so that at least the child was forewarned and at best reconciled to the difference. A few sought to achieve the same purpose by telephone. One safeguarder, though, did not think it necessary to deal with any differences in advance, but said he would justify his recommendations at the hearing.

## **THE ROLE WITH THE CHILD IN COURT CASES**

In court cases, too, a distinction may be made between acting in children's interests and doing what they want. Some sheriffs and reporters emphasised that safeguarders should avoid simply becoming an advocate for the child. Responding to questions about when

appointments have been “unhelpful” or “detrimental”, one reporter and two sheriffs stated that a safeguarder had over identified with the child’s perspective. There was a danger, as one sheriff put it, that safeguarders “lose their objectivity”.

Considerable disagreement existed among sheriffs as to whether it is appropriate for safeguarders, in pursuing “the child’s interest in the proceedings”, to offer advice to children on whether or not they should accept the grounds for referral. Two thirds thought it appropriate, but one third regarded this as beyond the safeguarder’s remit or competence. Some sheriffs viewed such advice to be part of the safeguarder’s duty to give assistance, though care should be taken “not to persuade” children or families on how to respond to grounds. Other sheriffs took a different view, with a number relating the question to legal competence, i.e. it was “inappropriate for the non-legally qualified to advise on such matters.”

Safeguarders themselves were generally opposed to offering advice about accepting or denying the grounds of referral, though it could be appropriate to recommend seeking legal assistance. Some did see it as legitimate to discuss, clarify or explain the grounds, while others felt this was not part of their role. A few made the distinction that it was all right to advise a child at risk, but not parents.

## **MEDIATION**

Formally, safeguarders are expected to investigate, assess and report for hearings. They do not have a remit to intervene in or change family circumstances. However, the researchers’ observations at hearings and interviews showed that sometimes one or more of the other parties came to accept a plan they previously opposed, as a consequence of discussions with the safeguarder. Indeed at times this appeared to be either a covert aim of the appointment or a conscious goal of the safeguarder. Some safeguarders stressed the importance of explaining their recommendations and/or alternative options. The manner in which this was done could not only give information about possible outcomes, but also help alter attitudes. Likewise, sheriffs stated that, at the proof stage or when dealing with warrants, safeguarders not uncommonly helped parties reach a shared understanding about the grounds for referral. This might not only facilitate agreement, but also reduce delays. Sometimes the need for evidence to be heard was obviated (See chapter 6).

## **SOCIAL WORK AND REPORTER PERSPECTIVES ON SAFEGUARDER ASSESSMENTS**

Social workers emphasised the importance of safeguarders taking the trouble to make a comprehensive and multi-faceted assessment. They should meet and speak to all necessary parties to get a clear picture of the family. As one person observed, a good safeguarder was someone who understands the need to “give enough time and input to all the parties concerned”. Seeing the family members at home was seen as essential to gain an accurate picture of their circumstances. A key safeguarder attribute, according to social workers, was the ability to move beyond a literal reading of what parents and young people said to a more critical understanding of the case. This entailed being “aware of the non-verbals”. Also they should check what family members say and not take things at face value.

Some social workers were critical of certain safeguarders’ ability to represent the child’s best interests. Naturally, this tended to occur when social workers had formed a very different view of what was best for the child on the basis of much more extended involvement. On the



other hand it was acknowledged that professionals should be open to challenge by safeguarders, too:

*“I know it must be extremely difficult for safeguarders. We know the background. But they have to check and double check and not be influenced by people in authority.” (Social worker interview)*

Reporters too were clear in their views about what constituted a good safeguarder and they similarly emphasised the importance of thoroughness and verification:

*“Very thorough in checking details, for example, contacting the police to verify an account. S/he doesn’t take people’s viewpoints at face value, but goes that bit further in checking stories.” (Reporter interview)*

Other reporters talked about good safeguarders as asking difficult questions and confronting the family with difficult issues, before coming to their own view and making a recommendation. The comments of both social workers and reporters suggested an anxiety that safeguarders might be misled through superficial acquaintance with the child, parents or both.

## **ATTENDANCE AT HEARINGS**

The National Seminar on Safeguarders held in 1992 recommended that it should be a legal obligation for safeguarders to attend the hearing where their report is considered, but this was not enacted (SWSG 1992). The research meetings with representatives of the Safeguarders Association revealed that they believed safeguarders should always attend a hearing, unless there was some highly exceptional circumstance. In the survey, safeguarders were asked in what circumstances, if at all, it is *not* necessary to attend children’s hearing in person. A clear majority (63%) concurred with the official Association view, replying that safeguarders should always attend. However a third stated that safeguarders could sometimes be excused. A higher proportion of legally trained safeguarders (50%) than others (29%) expressed this view. The main reasons given for not attending were: the recommendations are uncontentious; a full report means that there is nothing more to contribute; a hearing may be purely procedural.

The case record analysis revealed that the safeguarder was usually but not invariably present (86% of times in the 55 cases). The reasons for the absence were not usually specified in the minute of the hearing. In one instance, the young person went missing a week before the hearing and it was thought she would not attend. Unexpectedly she turned up on the morning when it was too late for the safeguarder to come, so she faxed an update of her report.

Social workers had a definite expectation that safeguarders attend hearings. They said this reflected the importance of the safeguarder role in the proceedings and allowed them to address any queries from those attending the hearing. A further consideration was that, as the author of a report, the safeguarder should be accountable for its contents and available to respond to any query or indeed factual disagreement raised by anyone else present, including the social worker.

## **SAFEGUARDERS’ WRITTEN REPORTS**

The Safeguarders Association Practice Guidelines (1999) do not prescribe the format or contents of reports, except to say that there is no need to repeat in detail information which is already present in other reports. They urge that the language should avoid jargon and that family members and professionals should have been alerted to any major points in advance. The Blueprint Report (1999) identified target time-scales for the production of reports.

In view of the objectives and time-scale set for the study, no attempt was made to inspect and analyse safeguarders' reports. Instead, the views of different participants in the research were sought on certain aspects of the reports. These included time-scales for producing the reports, the extent of sharing the information beforehand, the contents and how they were dealt with at hearings. The chapter concludes with a review of comments about the quality of reports for firstly hearings and then courts.

### **PROMPTNESS IN PRODUCING WRITTEN REPORTS**

Two thirds of the safeguarders surveyed claimed they usually completed their reports within 20 working days, as the Blueprint Report recommends. However, 15% said this happened occasionally or never.

The most common reasons reported by safeguarders for delaying the production of a report were either difficulties in arranging to meet professionals or family members' failure to make or keep appointments (Table 8.3). Nearly one in five safeguarders referred to their own work commitments as a cause of delay and most of these were lawyers (13 out of 16). Local authority administrators gave similar reasons to those provided by safeguarders, though they were more conscious of travel distance as a factor.

**Table 8.3 Reasons why reports are delayed according to safeguarders (N = 84)**

<b>Main reason for delay</b>	<b>Number of responses</b>	<b>Percentage</b>
Difficulties in arranging contact with professionals and agencies	29	34%
Family members' failure to make or keep appointments	24	29%
Safeguarder's own work commitments	16	19%
Changed circumstances	4	5%
Number of people to interview	4	5%
Other	7	8%
<b>TOTAL</b>	<b>84</b>	<b>100%</b>

Source: safeguarder survey. Responses missing in two cases.

Four fifths of sheriffs agreed that, where safeguarders lodge reports, these are usually lodged within 20 working days of appointment. Panel chairs in about half the areas indicated that the timeliness of reports was monitored. Reporters indicated that reports were seldom late, in part because dates for hearings were not set until the timetable for producing a report had been agreed with the safeguarder. A small number of reporters said that very occasionally the lateness of a report had delayed proceedings. Generally, when a full report had been delayed, the safeguarder had submitted an interim account for the hearing to consider.

The case record analysis only gave us access to the time between hearings, rather than time spent on production of the report. The latter is shorter, allowing for the time taken to allocate the safeguarder and send out of the papers, as well as the need to submit the report in advance of the hearing. However, the gaps between hearings were mostly consistent with the 20 working day target, since usually the second hearing took place 5 to 7 weeks after the first. When the gap was longer, the reason was not always indicated, but it was sometimes because of factors unrelated to safeguarder diligence. For instance, a few hearings deliberately asked for a lengthy period, e.g. to give parents time to change, await the outcome of a social work review or enable the safeguarder to carry out a thorough assessment of a complex situation.

## **THE CONTENTS OF REPORTS**

Since panels already have access to social work and usually education reports, it was important to assess what “added value” comes from the safeguarder report. Safeguarders in the survey listed a number of matters that they thought were contained in their reports, but not in others. These were (in order of frequency):

- the child’s views
- personal information about the child
- clear overview or analysis
- details of the child’s or family’s history
- options for disposal.

These topics are standard expectations for inclusion in social work reports (Moore and Whyte 1998), so the implication was that the social work report had not covered the ground adequately or impartially. The research observations, interviews and case records indicated that in some instances this resulted from communication difficulties with the child or parents.

Interviews with safeguarders provided details about what their last report contained, which they thought was not included in either school or social work reports. They mentioned the long-term implications for the child, the child’s view, the parents’ view, and a more detailed and up-to-date picture of the situation.

About a quarter of the safeguarders surveyed thought that there should be more standardisation of safeguarders’ reports, but rather more (41%) disagreed. It appears that on balance safeguarders prefer the freedom to prepare reports in their own way. Views did not differ by occupational background.

## **SHARING REPORT CONTENTS**

Earlier in the chapter it was noted that the recommended practice for safeguarders is to inform family members and relevant professionals in advance of report contents. It was also the prevailing view of safeguarders surveyed that it was part of their responsibility to share the contents of their report with the child (85%) and the parents (82%; N=86). Most also said they usually or always explained the contents in person to children old enough to understand, though only a minority of legally trained safeguarders said this was their common practice. Four safeguarders who were lawyers and two who were teachers said they never explained the contents.

Safeguarders were invited to comment on the change in the law which meant that parents must now be able to read the report prior to a hearing. This has more substantial implications compared with the safeguarder verbally conveying the gist of the report. Consequently responses were more divided about this, with many safeguarders identifying difficulties. Among the negative consequences mentioned were: greater mistrust, loss of confidentiality and inhibiting the child. Even so, a slight majority indicated that it was not a problem or was indeed a positive development resulting in greater openness or transparency.

Compared with their support for sharing report contents with families, not quite as many safeguarders stated that social workers knew the contents in advance of the hearing, but this was still a clear majority (71%). Representatives of the Safeguarders Association told us that it was good and normal practice to let social workers see the report beforehand, but most did not think social workers should have a formal right of receipt.

Social workers confirmed that some safeguarders routinely let them see their reports, but others did not. Several social workers had never been given a copy of a safeguarder report. This meant that they were sometimes ill prepared to respond to the safeguarder's comments and recommendations or deal with the consequences, especially when these differed from their existing plans.

*"You have to pick it up as you go along". (Social worker interview)*

A number of the social workers who took part in the research interviews and meetings expressed a strong wish see the safeguarder's report in advance of the hearing.

*"There is a one way flow of information, we are going into hearings blind.*

*Copies of the reports should be circulated before hand." (Social worker interview)*

Others demurred, recognising that if they were aware of the content before the hearing, this might be viewed by the family as a conspiracy, and thus jeopardise safeguarder independence. However, they still wanted a copy of the report after the hearing. This was seen as useful for social work planning.

Social workers' desire to see reports was supported by reporters. None dissented from the view that the safeguarder's report should be shared with the social work department prior to the hearing.

## **HEARINGS WHERE SAFEGUARDERS' REPORTS WERE CONSIDERED**

The research gained information about how reports were dealt with at hearings from three different sources: direct observations, the interviews with safeguarders and reporters' minutes in the case record survey.

### **Hearing observations**

Our observations of hearings were not intended to produce systematic data, but impressions of the process were recorded. The opening remarks about the reasons for the hearing usually included reference to the safeguarder, but sometimes not. It was nearly always the hearing chairs who introduced the discussion of the safeguarders' reports, normally by asking the safeguarder to highlight key points or doing so themselves. The timing of this depended upon the chair's management of the hearing. At times, the introduction of the report came first and on other occasions it followed an update of recent events or the chair's wish to hear first from the child or other parties. It was noted at a number of hearings that events had changed between the date of appointment of the safeguarder and the delivery of the report. This would lead to discussion of the change of focus and the need to address the child's current position.

In many instances there was an assumption within the hearing that all parties were familiar with the report contents, except in the rare event where the report had been delivered late or was non-existent. Hence the details were not usually verbalised. This did not appear to cause any problems.

While the first opportunity for the safeguarder to speak was usually at the request of the chair, later in the discussion some safeguarders took the initiative to reinforce a point they wished to make or to ensure the child's view was not overlooked. Some also demonstrated an inclusive willingness to be interrupted or responded to by the child or parents. The hearing sometimes revealed that skilled safeguarders had been able to mediate where tensions existed between parties. Sometimes this had happened during the preparation of the report or when sharing its contents, but now and then it occurred during the discussion at the hearing.

In a few instances, the safeguarder’s contribution seemed to heighten rather than mollify tensions. This was apparent when an over legalistic or confrontational approach was adopted. In these circumstances a skilled chair could rescue a hearing’s direction and placate grievances concerning a safeguarder’s report content. Otherwise suspicion or wariness persisted from families and/or social workers about the safeguarders’ recommendations.

### **Safeguarders’ comments on how their reports were dealt with**

Most safeguarders interviewed about their recent case stated that the panel had both placed sufficient focus on their report and that it was well received (15), though one felt the report had not received adequate attention and another was unsure about the panel’s response.

### **Information from reporters’ minutes**

The case record survey gave some details about the hearing where safeguarders’ reports were presented. Safeguarders were normally present (86% of cases). In about two thirds of cases the child was there when the safeguarder’s report was considered (Table 8.4). Mothers were present slightly more often, and fathers slightly less. These proportions were nearly the same as in the comparison cases.

**Table 8.4                      Persons present at hearing (N=49)**

<b>Person</b>	<b>Present</b>	<b>Not present</b>
Child	35	14
Mother	39	10
Father	31	18
Safeguarder	42	7

Source: SCRA records. Data was missing in the minute in 6 cases

The reporters’ minutes of the hearing where the safeguarder’s report was presented made mention of either the written or verbal report in less than half the cases. The reference was sometimes cursory, merely noting that the safeguarder’s report was considered without any elaboration on what was said or what influence this had on the decisions made. In about a third of the minutes, some details were given of key points and/or whether or not these agreed with the social work plan. The only unfavourable comment was “The safeguarders’ report was biased to the young person’s point of view”. The notes on the safeguarders’ verbal contributions tended either to state the safeguarder’s broad conclusion or record specific concerns (e.g. about access to a parent). Thus, with some exceptions, even though the hearing had normally been deferred primarily for the safeguarder’s reports, often the minute revealed little about the safeguarder’s input or impact.

In one unusual case, it was recorded that a young person had critically questioned a safeguarder’s report. The panel decided not to discuss the report since it was “now contentious” and to proceed on the basis of the current discussion at the hearing (which the safeguarder did not attend).

In the case record analysis, the hearing with a safeguarder’s report usually resulted in the commencement or continuation of a supervision requirement (Table 8.5). Quite often the conditions of residence or contact were altered:

**Table 8.5 Primary disposals<sup>35</sup> made at hearings after considering a safeguarder’s report (N=55)**

<b>Disposal</b>	<b>Number of cases</b>
New supervision requirement	17
Supervision to continue with same residence condition	15
Supervision to continue with new residence	12
Continue hearing	6
Discharge referral	3
Issue or continue warrant	2
<b>TOTAL</b>	<b>55</b>

Source: SCRA records

Normally the safeguarder’s role ceased after the report was considered, but in three hearings out of the 55 the hearing was continued and the safeguarder’s service retained. For example, in one case where a young person’s life-style was thought to place her at considerable risk, a Place of Safety warrant was issued and the involvement of the safeguarder was continued “to act on F.’s behalf to ensure the period of the warrant would be as fruitful as possible”.

### **OPINIONS OF SAFEGUARDER REPORTS FOR CHILDREN’S HEARINGS**

Four fifths of panel chairs thought that reports were usually all right in terms of length and detail, with fewer than one in five thinking that they were usually too detailed or too vague. Information from panel members indicated that they too were generally satisfied or pleased with safeguarders’ reports. Only 12% expressed dissatisfaction with the typical length of reports. Some said reports tended to be too long (9%) and only a few too short (3%; N= 338). Likewise, most thought the reports were “rarely” unnecessarily detailed (70%) and only 4% said this was “usually” the case. Rather more (32%) thought that reports were sometimes too vague. Panel members tended to value definite conclusions. One said that reports were particularly helpful “when the safeguarder does not sit n the fence”.

In discussions with the researchers, some panel members told us that certain reports were superficial as a result of safeguarders’ competing work commitments or that the language used was legalistic and not child or family friendly. At these meetings, most panel members appeared to favour a set format for reports, though with some flexibility.

In general, social workers felt that their perspective was well understood and represented in safeguarder reports. In some cases, the social work report was seen to have a considerable influence on the safeguarder report. Where differences arose, they tended to relate to issues of contact between a child and family.

Whilst social workers were generally satisfied with the quality of reports, some felt that safeguarders did not always spend enough time speaking to the parties concerned or checking their facts.

*“He didn’t bother to check any of the details. For example, he said the area where the foster carer lived was ideal because there was a swing park. If he had bothered to look at the swing park he would have seen that it is covered in broken glass and used syringes. The older boys hang out there to drink and take drugs.”. (Social worker, individual interview)*

<sup>35</sup> There were sometimes ‘secondary’ disposals, such as calling for an early review or discharging the safeguarder.

Sometimes the lack of dialogue between safeguarders and other professionals resulted in confidential information being made available in the report, to the distress of the family. Two workers gave recent examples where the address of a child or mother was disclosed to an abusive father/partner via the safeguarder report.

About half the reporters interviewed were broadly satisfied with the quality and length of safeguarder reports. The other half found some unsatisfactory. It was suggested that “it might be helpful to have a more consistent layout and perhaps have a protocol for report writing.” Reporters thought that some safeguarder’ reports could be improved by focusing more clearly on the issues and being more concise. One reporter made a link between the remit given to the safeguarder and an unfocused report:

*“Lack of clarity in the report resulted from lack of clarity in the request from the panel.” (Reporter interview)*

Like social workers, reporters raised the concern that, on a few occasions, the safeguarder had disclosed confidential information to other family members who should not have had access to this.

The reporters were clear however about what the safeguarder’s report offered which was different from other reports. The safeguarder’s report provided a more objective and up-to-date picture of the situation:

*“Social workers have often worked with an individual or family over a long period of time and as a result their judgements are coloured by previous relations. Safeguarders, on the other hand, came to the situation fresh” (Reporter interview).*

## **HEARINGS AND COURT REPORTS**

Before considering feedback on safeguarders’ reports for courts, it is helpful to summarise the information on the relationship between hearings and court reports. Given that some safeguarders did not handle court cases and a number who did regarded it as inappropriate to produce a written report, unsurprisingly the last report written by the majority of respondents to the survey had been for a children’s hearing (83%) rather than a court (17%; N = 86).

Only about half the survey sample of safeguarders felt able to comment on the difference between court and hearings reports, if any. The principal difference was seen to be the narrower focus and more factual content of a report for the court, whereas hearing reports were more comprehensive and included recommendations.

## **SAFEGUARDERS’ REPORTS TO THE SHERIFF**

The purpose of a safeguarder’s report is less clear in proof before a sheriff than at a hearing. A panel seeks to make a disposal in the child’s best interests, so the safeguarder’s judgement about what is best for the child is clearly relevant. The applicability of such views are less obvious when a sheriff in a proof hearing adjudicates on whether the facts of the case are proven or not. One sheriff who had not seen a safeguarder report confessed to not knowing what to do with it, if he did see one.

When appointed by a sheriff, safeguarders are required to submit a written report only if they have chosen *not* to become a party to proceeding (See previous chapter). When they decide to enter the proceeding, safeguarders do not have to provide a report, but may do so. Four fifths of sheriffs overall recorded having had a safeguarder “entering but also providing a report.”

Only in one sherrifdom, where lawyer safeguarders predominated, was it the norm to enter and not to report. Sheriffs' views on this were mixed but many welcomed having a report.

The sheriffs surveyed who had experience of reports usually found them to be "mostly good" (83%). There was also considerable agreement about what the reports ought to contain, but also some strong dissenting views. About three quarters of sheriffs agreed that safeguarders ought to indicate whether they supported the "reporters' approach to the case". A similar proportion agreed that safeguarders' reports should deal with "matters that might be addressed in evidence" but a minority demurred emphatically on this.

The majority of reporters interviewed were against the safeguarder report commenting on the facts of the case. Firstly they doubted that the safeguarder's report should address matters of evidence, but even more strongly they objected to such a report going to the sheriff in private. Generally reporters said they never saw reports to the sheriff. Some sheriffs also expressed concern about receiving the report as a private communication.

The Court of Session has now made it plain that the sheriff should not rely upon a safeguarder's report until it has been spoken to in evidence.<sup>36</sup> Sheriff Kearney "tentatively submits" (2000, p. 86) that once the report has been spoken to the safeguarder may be regarded as "an independent source of evidence". Some safeguarders told us that they had been made a witness in the case and cross-examined on the content of their reports.

About 80% of sheriffs (N = 53) approved of the safeguarder reporting their views "relevant to the disposal of the case", even though as noted at the start of the previous chapter this is not ostensibly a factual matter related to the process of proof. Indeed a few sheriffs did make the point that the safeguarder's assessment of what is the best outcome for the child is not strictly relevant to the sheriff's deliberation in a proof (as opposed to an appeal). The fact that the great majority of sheriffs did favour safeguarders' reports to them giving views relevant to the disposal presumably relates to the finding that nearly 90% sheriffs believed that safeguarders' reports written for them should be made available to subsequent children's hearings, where the disposal would be made.

The above issue touches on the much discussed area of how much panel members ought to be told about matters that arise at proof. Reporters are generally reluctant to allow hearings to see more than what has been formally established. Suffice here to say that at present there is no mechanism by which the sheriff can communicate views directly to a children's hearing, nor any means by which court-appointed safeguarders can directly convey their views to a subsequent hearing.

Most safeguarders thought that a report submitted to a sheriff in a proof hearing should be made available to the next children's hearing, but a small number (mainly legally trained) thought not.

## **TIME TAKEN UP ON INDIVIDUAL CASES**

Following the review of the stages and elements in safeguarders' work on individual cases, this section summarises the duration of the main activities involved. Safeguarders in the survey provided details of how much time had been taken up on different elements of their work in the last case when they had prepared a report. The details of the range of hours spent were as follows:

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<sup>36</sup> AR v David Walker 1999 SCLR 341. See Kearney (2000).



<i>Travel</i>	From half an hour to 24 hours [Most common 2-3 hours]
<i>Interviewing</i>	From quarter of an hour to 20 hours [Most common 5-8 hours]
<i>Writing</i>	From quarter of an hour to 40 hours [Most common 2-5 hours]

This large degree of variation is understandable, since the number of key parties who need to be seen and their distance can vary greatly. Nevertheless, a few people seem to have spent very little time interviewing (5 out of 86 said less than two hours altogether), while more than 10 hours appears a long time to write a report (claimed by 4 individuals).

The occupational background of the safeguarder affected the amount of time spent on interviews. Three quarters of those who had spent only one hour or less were legally trained. Two thirds of those with a social work background and over half teachers spent 3 or more hours, which was true for only one in five safeguarders with a legal background. This relates partly to the fact that more lawyers did safeguarding work alongside a full-time job. Not unexpectedly, those in full-time employment spent less time on cases, usually between 7-10 hours, whereas those in part-time employment, self-employed or retired said they devoted 3-4 days to one case.

## **SUMMARY**

Safeguarders saw the main elements of their role as giving an independent view, safeguarding the child's interests, ensuring the child's views are heard, providing a rounded assessment and identifying the way forward in the case. Reporters and social workers emphasised the importance of safeguarders checking out information they are given.

The two key elements of the safeguarder's casework were gathering information and preparing a written report. Respondents indicated that there could also be vital intermediate steps that assist in both reaching a fair conclusion and securing acceptance by the child or parents of unwelcome recommendations. These steps included looking behind surface accounts and checking facts; identifying separately the wishes of children or parents and the child's best interests; explaining the recommendations and rationale for them to family members.

Safeguarders almost invariably interviewed the child (if old enough) and parents or carers as part of their "investigation". Half of those interviewed said they made a second visit to the child to explain what their recommendations would be. This seems to be a good practice, which could be desirable in all cases, with both children and parents. Sometimes through this process and/or at the hearing, safeguarders had helped children or parents accept a previously unpalatable plan, especially through careful explanation of options. A minority of safeguarders had difficulty in gaining family co-operation or obtaining social work or medical information. Reporters and social workers highlighted the need for safeguarders to treat information they received with caution and check it.

Most safeguarder reports were submitted within the time-scales recommended by the Blueprint Report (1999). Panel members and sheriffs were generally well satisfied with the quality of reports, although there was uncertainty about the purpose of the report for a court in proof hearings. Opinion was divided on whether reports should follow a more standardised format.

Safeguarders usually shared the contents of their reports with children, parents and (somewhat less often) social workers in advance of the hearing. This gave participants time either to accept or adjust to a recommendation with which they disagree or to prepare a

challenge of facts or conclusions they wish to dispute. For these reasons social workers wished it to be standard practice to receive a copy of the report in advance.

The time spent on each case varied greatly, but in most instances amounted to the equivalent of one to two days' work spread over a few weeks. The most time consuming component was the interviewing. The amount of time taken up overall appeared to depend mainly on the number and distance of people to be seen, but was also affected by the safeguarder's other work commitments. It appeared that adequate time was usually spent, resulting in an assessment and report seen by other participants as helpful. However some safeguarders did not give time to explaining or mediating aspects of their role.

Evidently the contact between safeguarders and children and their families were central to the fulfilment of their role. The next chapter explores the viewpoints of children and parents on the experience and outcome of having a safeguarder in the case.

## **CHAPTER NINE: EXPERIENCES AND VIEWS OF CHILDREN AND PARENTS**

### **INTRODUCTION**

The previous chapter described the different aspects of the work undertaken by safeguarders in individual cases, from their own perspective and those of the professionals and panel members. This chapter will concentrate on feedback obtained directly from children and parents. However, first it is useful to consider briefly the expectations of the other participants about family members' understandings.

#### **Perceptions of children's understanding and expectations**

The views of safeguarders, reporters and social workers were obtained about the understanding and expectations of children and parents concerning the safeguarder.

Most safeguarders themselves had doubts about how well children understood their role and the reasons for appointment. In the survey, fewer than half expressed the opinion that children usually or sometimes understand well (45%). One quarter averred that usually the understanding is poor (24%). A minority of interviewed safeguarders believed the child's understanding was "pretty good in the context of what was happening in their lives" or even in one instance "very sophisticated". The pattern was similar in relation to parental understanding, with nearly half the safeguarders stating that parents' understanding was usually partial.

Unsurprisingly safeguarders mainly thought that children expected a safeguarder to speak for them or listen to their views (52%). Others suggested that many children were too young or confused to have definite expectations (17%). Some thought children wanted the safeguarder to solve their problems or make things right for them (13%), while a few (8%) suspected the children wanted the safeguarder to be their lawyer. This all indicates that safeguarders almost invariably expected that the children want them to do as the children wished and, by implication, would find it hard to understand that they were there to form a separate view of what was best.

In the opinion of reporters and social workers, the extent to which children understood the role of safeguarders was highly variable. It depended on:

- the age and level of understanding of the child
- the child's comprehension of the hearings process
- the ability of the safeguarder to explain his/her role.

When the child was older, social workers felt a responsibility to explain about the safeguarder's role in order to prepare the child for the contact with this new person. They described the safeguarder to the child as someone who would be visiting them to ask questions about where they lived and so on, but normally did not go into detail about the safeguarder's role as independent of the system.

#### **Perceptions of parents' understanding and expectations**

Safeguarders, reporters and social workers were in agreement that, just like many children, parents would often expect or hope the safeguarder would support their viewpoint rather than take an objective overview of the child's welfare. About a third of safeguarders said the parent typically wanted a safeguarder to represent or advocate for them (34%). Roughly one

in five suggested that parents wanted the safeguarder to redress their grievances with other agencies (usually social work) or be an ally in their struggle (19%). On the other hand, a fair number of safeguarders believed that parents did recognise them as independent (15%), or less positively expected very little to come from their involvement (12%). In interview, some safeguarders emphasised the need to clarify with parents the difference between parental views and children's interests, and to assure parents that their views would be included in the report, even if the safeguarder's conclusion was different.

Reporters also believed that some parents did not realise that the role is to act in the best interests of the child and not the family. They might not see how the safeguarder's judgement about the child's interests could differ from their own views or the child's. It was considered "vital" that parents understood the independence of safeguarder. In particular the appointment should not be seen by parents as related to either the social work department or to the reporters' office.

*"It is not only important that safeguarders are independent, but that they are seen to be independent by the families." (Reporter interview)*

One reporter suggested that parents' levels of satisfaction with the performance of a particular safeguarder affected their understanding:

*"If the safeguarder's recommendations supported the parents view, then they were likely to have a good understanding. If it went against the parents' point of view, in other words it supported the social work position, they will just be labelled as another social worker." (Reporter interview)*

Two reporters recommended that leaflets for children and parents should be produced explaining the role of the safeguarder. These could be sent to families after the hearing and could perhaps be used by social workers in their follow-up work with families.

Social workers opined that some parents regarded the safeguarder as another part of "the system", while conversely others saw the safeguarder as someone appointed to put across *their* point of view. It was seen as necessary to offer clarification after the safeguarder was appointed: -

- *"Panel members explain the role of the safeguarder at the hearing, but it is helpful to explain this in more depth to the client later." (Social worker, individual interview)*

- *"I explain that a safeguarder has been requested because of the recommendations of my report. The panel has to check we have done everything we are supposed to. I also emphasise that it is their chance to have their say." (Social worker, individual interview)*

## **THE INTERVIEWS WITH PARENTS AND CHILDREN**

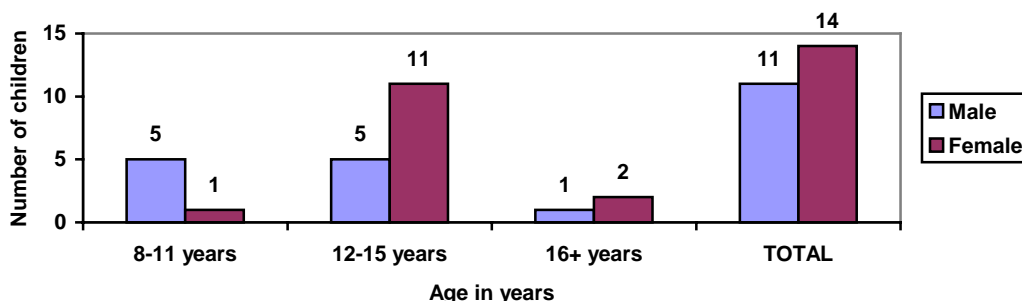
As explained in chapter 1, research interviews took place with 25 children and 22 sets of parents.<sup>37</sup> The interviews covered broadly the same topics: understanding of the role of the safeguarder, positive and negative aspects of safeguarder appointment, level and nature of contact, views on safeguarder performance and perceived impact on the hearing decision. Since all the interviews took place after a children's hearing, the study did not obtain feedback about safeguarders in court.

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<sup>37</sup> One or both parents were seen, depending on who was present at the hearing.

Table 9.1 shows the age and sex of the sample of 25 children who were interviewed. Most were in their teens, but a quarter were aged under 12. Girls and boys were almost evenly represented.

**Table 9.1: Age and sex of children interviewed (N=25)**



Most of the young people who agreed to be interviewed were seen just after a review hearing of a supervision requirement, but for some it was a continued hearing (i.e. a follow up to an initial hearing when the safeguarder was appointed). Children were usually interviewed alone, but in some instances chose to be interviewed with a member/s of their family, their present carer or their representative. Parents were normally seen separately from the child. When two parents were both present they were usually seen together, except when they were in conflict with one another.

### **GENERAL APPRAISAL OF HAVING A SAFEGUARDER**

Overall, most of the children felt positive about having a safeguarder. Only one young person said that s/he thought that having a safeguarder was a “bad” idea, compared to 14 who said that they thought it was a “good” idea. The remainder of children interviewed said that they either did not know or did not care. Parents’ views were more mixed, ranging from the very appreciative to highly critical.

### **AMOUNT AND NATURE OF CONTACT**

Most children said that they met with safeguarders on two occasions, usually at their own home. Some were interviewed at their parents’/guardians’ homes and others were taken to a local café to talk to the safeguarder. Most young people felt that this level of contact was about right, although some would have preferred to meet with the safeguarder more often, or in another setting.

- *“I didn’t really know him because I only met him twice. I had nothing to say to him.” (Child interview)*

- *“I didn’t talk to her much as there was too much going on in the home when she came. I didn’t want to talk to her. It would have been better to see her somewhere else.” (Child interview)*

That said, most of the young people said that they “got on okay” with the safeguarder and that they found him or her “easy to talk to”.

The level of safeguarder contact with parents varied on a case by case basis. Some parents claimed never to have met with the safeguarder in advance of the hearing, whereas others had three visits of an hour and a half each. Parents who were dissatisfied with social workers tended to seek advice and support from safeguarders, some of whom spent a considerable

amount of time with the family, listening to their views and explaining the hearing process and/or their recommendations. In one case, where the safeguarder was suggesting a residential assessment, the safeguarder carefully talked through her report with the family. As a result, their initial fears of having their daughter taken from them were allayed and the family expressed agreement at the hearing for the residential assessment to take place. This exemplifies the mediation role which safeguarders sometimes fulfil, as noted in chapter 8. The safeguarder's action in taking time to reassure the family prevented possible conflict and eased the process for the hearing.

In most cases, however, the safeguarder interviewed the parents only once, at their own home. Visits usually lasted around one hour. Parents generally felt that this level of contact was too brief and only permitted a superficial understanding of the situation. Most would have liked to see more of the safeguarder, to bring up other issues or to talk over the case.

- *"She sat for a good hour. I'd like more contact for the next panel."* (Parent interview)

- *"You can't say all you want to because it is such a short time."* (Parent interview)

## **UNDERSTANDING OF THE ROLE OF SAFEGUARDER**

In the interviews with children and young people, respondents were asked to describe the roles of the various hearing participants, namely the reporter, panel members, social worker, and safeguarder. Older children in particular tended to have a good knowledge of the system and the various actors involved. For instance, a typical description of the role of panel members was "listening to everyone and making decisions about what is going to happen to me". Typically the reporter was identified as the person who "records the decision and keeps everyone right", whereas social workers "write a report" and "see how to sort things out". Their understanding of the role of safeguarders was generally less certain, though some young people were better informed than others.

Children and parents tended to be ignorant of their safeguarder's professional background and/ or training, although some thought they were current or former social workers. A handful of young people offered an accurate account of the safeguarder's role, i.e. to safeguard the child's best interest and be independent of others in the system. Most, however, were not clear or saw the safeguarder as a general information gatherer:

*"To see how to sort things out. To see what I'm daein' "*

*"Taking everyone's views into consideration"* (Children's interviews)

Several recognised that this resulted in a verbal or written overview being given to the panel, but did not specify that the safeguarder would make a recommendation or more generally act in their best interests:

*"He was, ken, asking loads and loads of questions and that. He was to go back to the panel and write a report."* (Child interview)

Some thought the safeguarder was employed to help the child *and* the family, and others thought he or she was a social worker. This was particularly the case where the social worker requested the safeguarder appointment. Not all were clear who the safeguarder was or what their functions were. When one young woman was asked about the role of the safeguarder, she replied, "Who is my safeguarder?"

The majority of children did not know, or could not recall, who had appointed a safeguarder or why. When asked about the reason for appointment, many talked about why they had been referred to the panel in the first place. An English study of guardians-ad-litem, who have a similar but more extensive role compared with safeguarders, also found that children's

understanding of the role was often limited, although it tended to be better when they had been given a leaflet (McCausland 2000).

Parents' explanation for the reason for appointment was typically that "there were too many differing views" or that there was conflict between the parent(s) and child, the parent(s) and Social Work Services, or between two parents. The safeguarder was thus described as someone who considered everyone's views and wrote these in a report. Most parents understood that the safeguarder's prime concern was the welfare of the child, but they were less clear about their independence. A number of people were initially suspicious of the safeguarder, and considered him or her as "part of the system", but said that these fears were allayed by the safeguarder on his or her first visit.

*Initially we thought, "Who is this safeguarder?" It is a good thing she spent quite a bit of time with us. A fresh look by someone else in the system. The safeguarder put this clear when visiting. (Parent interview)*

Others were aware of the principle of independence, but did not think that this worked in practice:

- *"He knew Mr McKay [the child's social worker] from before. When I tried to put across my point of view, he kept saying what a capable social worker Mr McKay was. If I hadn't been told that he was independent, I would have thought he had something to do with the social work department". (Parent interview)*
- *"The social work recommendation is powerful. [Social workers and safeguarders] are talking the same language". (Parent interview)*

Nevertheless, two thirds of parents who were aware of the safeguarder's independence said that speaking to someone who was not a social worker was helpful. The others thought it did not make a difference.

## **VIEWS ABOUT WHAT MAKES A GOOD SAFEGUARDER**

Children and parents were asked whether they would have liked the safeguarder to be a different kind of person, for example as regards age, gender or approach. Most indicated that they were quite content with the safeguarders' characteristics. Although most safeguarders were close in age to the parents, they were accepted by young people who did not ask for someone closer and perhaps more in touch with their generation. Being "friendly", "down to earth", "easy to talk to" and, perhaps most importantly, "not a social worker" were all considered more important than age or gender. The thing that people liked best about safeguarders was that they listened to what they had to say, without judging or patronising them.

- *"I thought it was good because you got to express your own opinion." (Child interview)*
- *"I was able to talk to him because he was older, a bit like my dad really, and because he had kids he knew what he was doing." (Parent interview)*

Feeling that the safeguarder took their point of view seriously was a key part of the positive evaluations of the appointment. For some parents and children, having someone "on their side" was more important than the result of the hearing itself.

*"The safeguarder told them what I wanted. She was on my side. Not one person was on my side at the last hearing." (Child interview)*

It was therefore all the more disappointing if, as happened in a minority of cases, parents or children felt the safeguarder's apparent understanding of their viewpoint was then belied in

their statement or report to the hearing. This led to a sense of disloyalty which was the main reasons why some were dissatisfied with the safeguarder:

- *“He’s probably on other people’s side. He said some stuff today that is different from what he said when I saw him.” (Child interview)*
- *“When he spoke to me in the house he agreed with me that so and so was unfair. But his report was totally different. It was bit of a shock when I read the report.” (Parent interview)*

One parent criticised the safeguarder for being narrow-minded and having “old-fashioned views”. These biases, she felt, had impinged upon the safeguarder’s assessment of the case.

## **ASSESSMENT OF THE SAFEGUARDER’S PERFORMANCE**

The majority (17) of young people believed that the safeguarder had helped them at the hearing to some extent. Approximately one-third (8) said that the safeguarder had helped them “a lot”. Of the 5 young people who said the safeguarder had not helped at all, 4 were unhappy about the safeguarder’s recommendations and/or the hearing decision. In the other case, the safeguarder did not attend the hearing.

This generally positive view was upheld by parents, most of whom said that the safeguarder had helped their child “a lot” (11) or “a little” (2). A similar number of parents (13) said that the safeguarder had helped them themselves at the hearing.

*“She was extremely helpful, and brought out more than I thought she would. It highlighted the problems.” (Parent)*

Only two parents said that the safeguarder had been of no assistance whatsoever.

The main complaint surrounding safeguarder performance, from children and parents, was that the safeguarder either did not fully grasp, or did not put forward, their point of view.

- *“He didn’t really reach the things that bother me.” (Child interview)*
- *“They didn’t take enough notice of what we had to say, they ignored a large part of the story. Too much attention was given to [the child’s] wishes.” (Parent interview)*

One mother wished that the safeguarder had spoken to more people on her “side”, like her drugs worker (“She knows the progress I have been making”) and her solicitor (“She knows about my case”). Other negative comments related to insufficient contact and inclusion of what children and parents considered irrelevant material.

- *“He says I’m bad tempered and sleepy in the house. I didna’ want him to say that. Well, it is true, but I just didna’ want him to say it”. (Child interview)*
- *“He told the Panel I had been to Amsterdam [thereby suggesting I had gone to take drugs], but he didn’t mention that I also went to the Hague.” (Parent interview)*

## **ASSESSMENT OF THE SAFEGUARDER’S IMPACT**

The majority of parents (13 out of 22) and young people (18 out of 25) thought that the safeguarder had influenced the result of the hearing, but not all were able to articulate in what way. Approximately half of the young people (12) said that they thought that the Safeguarder had influenced the result “a lot” and most felt that the outcome of the hearing was “better” for having a safeguarder involved. Some went so far as to say things like “today’s hearing was the best so far”, as a direct result of the safeguarder’s contribution. A 9-year old believed that the safeguarder had helped persuade the panel to let him have more contact with his father. Similarly a young woman was delighted that the safeguarder had helped the panel view her contact with her mother more favourably:



*“They wouldn’t have decided about contact (otherwise). The safeguarder spoke up about contact with my Mum. She’s brilliant. And she helped.” (Child Interview)*

A young person said the safeguarder helped ensure the panel listened to her viewpoint. By contrast another teenager believed the safeguarder had influenced the result “a lot” but did not feel that she had helped her, because she had not put forward her point of view.

One young man expressed mixed feelings about the safeguarder. “He was a wee bit of help”, but in the boy’s eyes the outcome was a ‘double punishment’ because “they made the Supervision Order” and also required him to attend a special project. “I’d prefer to be on one, because being on the two of them takes up more of my time, you ken.” He attributed this outcome partly to the safeguarder. Among those who thought the safeguarder had little impact was a boy who said “(She) didn’t tell the panel anything they did not already know.” In another case, the safeguarder was also seen as ineffective, but this time her efforts were appreciated:

*“The Safeguarder told them what I wanted but it didn’t work. But it was good. I’ll keep her now, keep her for the next time.” (Child interview)*

She clearly expected to continue seeing the safeguarder on an ongoing basis.

Parents were less emphatic about the influence of the safeguarder. Fewer than half (six) felt that the safeguarder had influenced the result “a lot”. For instance one mother said “We’ve not got anywhere until now”. The same woman felt that the Safeguarder helped her put forward her own views: “I thought the Safeguarder was quite good, really. Because when I wanted to speak she interrupted for me.” Another couple thought the safeguarder had supported their request for additional help, so that “Now we are getting somewhere”. A father in a different family believed that the safeguarder had been very influential because she understood his circumstances more – “She had a lot more to say [about his current housing situation] than the social worker”. All of these parents said there was nothing they would have liked the safeguarder to have done differently. Another mother was more ambivalent about the effects of the safeguarder, but stressed she had been influential in ensuring the child had a medical assessment.

Seven parents saw the influence of the safeguarder as moderate and two felt that the safeguarder had no influence whatsoever. One father had found the safeguarder sympathetic, but believed she had been swayed by the social worker to accept their plan

## **SUMMARY**

Safeguarders, reporters and social workers tended to think that older children and parents only had a partial understanding of the role of the safeguarder. They also believed that each would expect the safeguarder to take their side, rather than form an independent judgement of what was best for the child. This picture was largely borne out in the research interviews with children and parents. However, it was also clear that some did acquire a reasonable idea of the safeguarder’s role, through explanations and by witnessing the safeguarder’s involvement unfold. When safeguarders took the extra trouble to meet children and parents a second or even third time to explain their report and recommendations, this was valued.

Most children and parents interviewed felt that the safeguarder listened carefully to their views and usually respected them. Likewise they thought that the safeguarder had had an important influence, usually for the benefit of the child.

A minority had negative feelings, particularly parents. This was sometimes part of a generally suspicious attitude to others involved in the case, with the safeguarder being seen as just

another “part of the system”. In a few instances, a more specific resentment arose when it was thought the safeguarder had shown sympathy towards their wishes when they met, but had given an opposite impression at the hearing. To some extent disappointment is almost inevitable when safeguarders reach conclusions which differ from those of the child and/or parents, but it seems there is scope for communicating more effectively about the reasons for this. In such circumstances, an additional visit by safeguarder before the hearing seems desirable. Also panel chairs, who usually control the timing and opportunities for safeguarders to speak at hearings, could be especially mindful of the need for sensitive discussion of the recommendations.

## CHAPTER TEN: OTHER PARTICIPANTS' PERCEPTIONS OF SAFEGAURDER IMPACT AND THEIR GENERAL APPRAISALS

The previous chapter showed that many of the sample of children and somewhat fewer of the parents thought that the safeguarders had made an important difference to the process or outcome of their case. This chapter begins with a brief review of others' perceptions about safeguarder' impact on the decisions made. It then considers the extent of safeguarders' satisfactions with their role and work, as well as some global appraisals and suggestions for change of other participants.

### DECISION-MAKERS' PERSPECTIVES ON THE IMPACT OF SAFEGAURDERS ON DECISIONS

It is reasonable to expect that safeguarders' written and verbal reports should often be crucial, bearing in mind that they are appointed at a hearing after the child, parents, social worker and often school have already had their opportunity to influence the decision. Also safeguarders are expected to provide a more independent overview than other participants. Even so, a majority of panel members claimed that they gave equal weight to the safeguarder's and social work reports (59%). A substantial minority did say they attached more weight to the safeguarder's report (39%), though a few gave precedence to the social work report (2%). Two thirds of panel chairs stated that the two reports were treated equally.

The great majority of panel members (84%) said their own decisions were usually in accordance with safeguarder recommendations, though about one in six (16%) thought that sometimes the outcome was different. Panel chairs also tended to see hearings as only occasionally or seldom making decisions that diverged from the safeguarder recommendation. This can be seen as evidence of the important influence of the safeguarders' view, but also of the fact that it is not accepted unquestioningly or invariably. Few thought that the safeguarder's recommendations *usually* differed from the wishes of parents, child or social workers, but many did see divergence as fairly common (See Table 10.1):

**Table 10.1 Panel members' responses on safeguarder recommendations (N=338)**

The recommendation	Usually	Sometimes	Occasionally	Rarely	Total
Differs from parents' views	13	197	98	23	331
Differs from social work recommendation	2	158	101	70	331
Differs from child's views	2	117	110	103	332
Differs from hearing decision	0	51	96	182	329

Source: panel member survey

Thus, panel members tended to see a shared view among the parties in many instances, but with parents and then social workers most likely to hold a different opinion. Hallett et al (1998) found that more generally 84% of hearings decisions' accorded with the social worker's recommendation, so probably divergence is greater when a safeguarder is appointed.

Panel members were asked about circumstances when the safeguarder's report was particularly influential. Responses to this paralleled the reasons for appointing safeguarders. Disagreement among the other parties was mentioned most often. Inadequate or conflicting information and previous difficulties in ascertaining the child's views were also mentioned

quite often. Some panel members and panel chairs also stated that more weight was given to reports by safeguarders whose expertise was respected.

The assessment by sheriffs of the overall impact which safeguarders made on cases they had dealt with is revealing. Just a few chose the response “often crucial” (8%) and most said it was “sometime considerable” (58%), but a third felt they “mostly made little difference” (33%). Although numbers were small, it was noteworthy that in the two sheriffdoms with a strong preference for curators, most respondents said that safeguarders usually made little difference (7 out of 10), whereas elsewhere this view was held by fewer than one quarter (8 out of 36).

## **SAFEGUARDERS’ AND SOCIAL WORKERS’ PERSPECTIVES ON IMPACT**

The majority of safeguarders reported that their influence on the outcomes of cases they had dealt with had been “considerable”. Few thought that the impact had been either crucial or negligible, but a sizeable number (33%) thought that the effects had been mixed. A higher proportion of those with a legal background (44%) gave “mixed” as their response. In the interviews, the majority of safeguarders reported uncertainty about the effects of their report on the outcome in their last case. However, the disposals had all corresponded with their recommendations.

Safeguarders could have an impact by reinforcing views expressed by other parties to the hearing or by offering an alternative recommendation. They generally did not see themselves as being frequently at odds with conclusions in other reports, as most said this happened sometimes (71%) or rarely (22%). A similar proportion (two thirds) said they “sometimes” reached substantially different conclusions from the family, but one in five said this happened “often”.

Social workers, like parents and children, tended to rate the impact of safeguarders on hearings more strongly than panel members and safeguarders. They were of the view that the appointment of a safeguarder nearly always had a significant impact on the eventual outcome of a hearing. Most believed that the panel normally attaches more weight to the safeguarder’s report compared to their own.

*There seems to be a hierarchy of reports. Top is the psychiatrist’s, then the independence of the safeguarder report gives it greater weight than the social work report. I’ve never known a hearing go against a safeguarder report.*  
(Social worker individual interview)

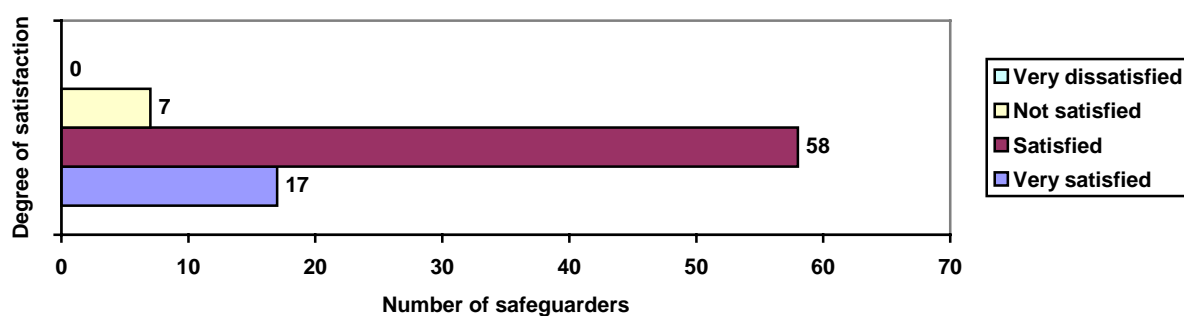
This impact was considered mostly positive, though some were not happy when the safeguarder’s assessment did not concur with the social work view.

On the other hand, social workers did not think the safeguarders often affected their own views, at least in advance of the hearing. Only one social worker said that a safeguarder report had changed his understanding of a case.

## **SAFEGUARDERS’ SATISFACTION WITH THEIR ROLE**

Since safeguarding is a largely voluntary activity and the survey covered only current safeguarders, it was to be expected that the respondents would be at least reasonably satisfied with what they are doing. This turned out to be the case for about nine in ten (Table 10.2), although fewer than one fifth admitted to being “very satisfied”. All but one of the dissatisfied people had been appointed in the last 3 years.

**Table 10.2 Safeguarders’ satisfaction with their role (N = 82)**



Source: safeguarder survey

The aspects of the work found most satisfying were helping the hearing reach a decision or a family accept it; making a positive difference to children’s welfare; and working directly with children and families.

Despite the generally high levels of contentment reported, 90% of the survey sample mentioned something they were dissatisfied with. The main issues were: isolation or lack of feedback (15%); time constraints (13%); and fees (11%).

Given the opportunity to propose three things to change, safeguarders put forward a wide range of suggestions. The most common specific ideas are given in Table 10.3. In the main the proposed changes related either to the role and employment conditions of safeguarding or factors affecting the preparation of reports. The majority in rural and mixed authorities highlighted employment-related changes, whereas more of those in urban areas focused on the contents of their work (gaining information, hearing processes, resources for children).

**Table 10.3 Matters which safeguarders would like to change (N = 86)**

Better co-operation by agencies/respect for safeguarders	44%
Adequate fees	33%
Altered statutory rights of access to people/papers	24%
More training	23%
Adequate resources to implement disposals	13%
More time and resources to do the job	12%

Source: safeguarder survey

One person in the survey suggested that the name “safeguarder” should be changed. At a meeting with safeguarders it was reported that the name can confuse parents and children. Otherwise nobody in the study raised this as a problem.

The interviews with safeguarders included questions on changes they might like in order to improve their work. Most did not think any amendments to the law were necessary, except that one proposed a change in the right of a safeguarder to appeal on behalf of children and young people. Likewise few identified a need to alter their role, though one person put in a plea for more extended involvement for the sake of the child:

*“..it would be better if you are not “in and out” for five minutes. [You are] yet another face at one panel and then you disappear. It’s not helpful when you’ve said your acting in the child’s best interests.” (Safeguarder interview)*

Also current arrangements for appointment to cases were seen as broadly satisfactory, though requests were made for more information about the case when appointed and a greater use of matching their talents and skills.

Safeguarders suggested that the Scottish Executive take a greater role to ensure an effective structure was in place to support their work. Key elements of this were to take responsibility for training and fund the safeguarding service properly. It was thought that local authorities could lobby parliament more effectively with regard to funding issues in terms of payment and training costs locally. Safeguarders also believed that local training events should be organised.

The questionnaires and meetings with various respondents had brought to light a few suggestions that it would be better to have safeguarders as part of a national service rather than located in local government. Therefore safeguarders were asked in the interviews what they thought of this idea. The number who expressed a view was small (12), but two thirds of these supported the idea of a national organisation, and only one definitely thought it a bad idea. However if a national body were to be set up most agreed it would need to have local branches.

Some safeguarders felt it would be useful to have some joint training with panel members to discuss the roles of each and their expectations of safeguarders. It might also help panel members to be clearer about the reasons given for appointments. Suggestions made by an individual safeguarder included having the same panel members present throughout the case and more contact between sheriffs and other organisations involved. Another person thought that more informal contact between safeguarders and social workers would be helpful.

## **PERSPECTIVES OF PANEL MEMBERS AND PANEL CHAIRS ON SAFEGUARDERS**

Our interviews and discussions with panel members showed that they were pleased or very pleased with the quality of most assessments and reports by most safeguarders. Nearly all panel members in the survey stated that safeguarders demonstrated a good knowledge of the case always (25%) or usually (70%). Just 5% stated that the safeguarder’s understanding was sometimes or often deficient. Among enthusiastic remarks about safeguarders were:

- *“An excellent resource which is extremely beneficial to the young people involved.” (Panel member questionnaire)*
- *“Safeguarders are a vital part of the hearing system as they enable panel members to acquire an unbiased view of the child’s difficulties.” (Panel member questionnaire)*

It appeared that in each area one or two individuals were known for being below standard in reliability or quality of report (see also Chapter 5). Both panel chairs (45%) and panel members (21%) stated that variability in safeguarders resulted in loss of credibility or confidence in safeguarders. Others made points about adverse effects on decisions, children’s interests being poorly served or wasted time.

When invited to suggest improvements in several aspects of safeguarders’ work, over a third of panel members saw no need to change or commented that safeguarders’ work was always

good. By far the most common suggestions related to the structure and contents of the reports. Only a handful each made comments about attendance or timing.

Most panel chairs were satisfied with the administration of the safeguarder panel, but a significant minority were dissatisfied or had mixed feelings about it (40%). Suggestions for improvement included:

- introduce routine feedback mechanisms
- recruit more non-lawyer safeguarders
- increase training opportunities
- strengthen appointment and review procedures
- ensure a more even spread of cases among safeguarders.

## **SHERIFFS' VIEWS**

Nearly three quarters of sheriffs could recall cases or circumstances in which safeguarders had been particularly useful in proof hearings. Two thirds thought that safeguarders “always” (15%) or “usually” (51%) assisted the court “in evidential matters;” less than a third only “occasionally”(30%).

30 sheriffs gave “types of cases or circumstances” where they found safeguarders to be “usually helpful.” Principal among them (in descending order) were situations where: there was conflict between child and parents; the grounds involved care and protection; children were young; sexual abuse was alleged; there were disputes about contact or access; the child was not legally represented. The frequency with which “conflict of interests” was mentioned by sheriffs may suggest that they still conceived appointments very much within the legal provisions of the 1968 Act, but it is equally plausible that these terms continued to cover satisfactorily the circumstances in which they wish to appoint.

Only 5 sheriffs (9%) recorded an experience of an appointment which was detrimental. This was due either to the safeguarder’s lack of “understanding” or lack of “objectivity.”

## **REPORTERS' VIEWS**

Nearly all the reporters thought it was a good idea that hearings could appoint a safeguarder. During the course of the interviews most referred to the value in having a check or scrutiny on social work decision-making. Two reporters expressed mixed feelings. Both indicated shifts towards a more favourable opinion since their early experience of safeguarders, but with certain reservations remaining, e.g.:

*- “On balance, initially when the legislation was implemented, safeguarders did not seem an easy fit with our mode of practice; reporters act in the best interests of the child, but since seeing safeguarders in practice my thinking has moved. I see it as a time limited independent appointment which can act as a scrutiny on social work decision making”. (Reporter and interview)*

Only a small proportion of reporters were unreservedly impressed with the quality of safeguarders' work. They described them as “generally committed and professional” or “mostly helpful”. The others stated that safeguarders varied widely. Although most were at least satisfactory, some were poor. This meant someone:

*“who hasn’t gone into sufficient depth and/or hasn’t grasped the pertinent issue”. (Reporter interview)*

Many reporters stated that the system for organising the safeguarder service was inadequate. One urged improvements in “regulation, scrutiny and monitoring”. Another argued that safeguarders’ independence was compromised by the appointments process and payment by local authorities, so the service should be transferred to a national quango or the Scottish Executive.

## **SOCIAL WORKER VIEWS**

It might have been expected that social workers would feel threatened by safeguarders. In chapter 6 it was observed that some of the reasons for appointing a safeguarder implicitly or explicitly reflect a hearing’s view that not enough information has been provided or that it is not (yet) willing to accept a social work recommendation. In fact, social workers were largely positive about the practice of having safeguarders. All but one of those in the study thought it was a good thing for a hearing to have the option to appoint a safeguarder. One particular advantage, from the social worker’s point of view, was that it allowed an independent person to shoulder some of the responsibility for the hearing decision, in the eyes of the child and the parents. This was seen to ease the ongoing relationship between social work and the family:

- *“It is important for clients to see that there is an independent body who acts as a check on social work procedures, especially when the panel are considering long-term care decisions.” (Social worker, group discussion)*

The safeguarder also acted as a check on their own decisions and power:

- *“A report that differs from the social work report can be a necessary thorn in the side. We are not infallible.” (Social worker, individual interview)*

It could help social workers if parents or children who were opposing a plan came to see that an independent person agreed with it. Also a safeguarder might have the freedom to be more forthright than a social worker, who had to be mindful of their future working relationship with the family.

Whilst they were in favour of having safeguarders, the social workers in the research were critical of the arrangements for safeguarder panels. They argued that the local authority administrators involved in the recruitment of safeguarders had an inadequate understanding of the hearing system or the safeguarder role. In their view poor assessment and monitoring systems resulted in the recruitment of some safeguarders who had rigid or inappropriate ideas:

- *“One safeguarder we deal with is of the view that children are always better with their parents.” (Social worker, individual interview)*

Social workers overwhelmingly felt that there should be an independent body making appointments and providing training, separate from but similar to arrangements for panel members.

## **SUMMARY**

Panel members and safeguarders usually thought the impact of the safeguarder on case outcomes was considerable. However, they did not necessarily have greater influence than the social work reports. This fitted with the research observations at hearings, where the safeguarder’s contribution was usually significant but was considered alongside the input of children, parents, social workers and others. Social workers, though, tended to think that more weight was given to safeguarder reports than their own.



Safeguarders who participated in the study were generally satisfied with their role. The main changes they wanted to see were adequate fees, more training and better co-operation from other parties in some instances.

Panel members, sheriffs, reporters and social workers were virtually all in favour of the provision for safeguarders and even sceptics admitted to being largely won over by experience. The fact that safeguarders were free of resource and role constraints, especially compared with social workers, was seen to make their recommendations independent and helpful to decision-makers. The lack of a continuing relationship with families could also make it easier for them to make detached statements about what they thought was best for the child.

The performance of individual safeguarders was seen as mainly very positive. However, a small minority were perceived to perform poorly. This was linked to worries about inadequacies in the recruitment and monitoring of safeguarders. As a result, some respondents were in favour of a nationally organised service.

## CHAPTER ELEVEN: CONCLUSIONS AND IMPLICATIONS

The key research findings will now be reviewed in relation to the seven objectives of the study in order to illuminate each in turn and draw out implications. The chapter ends with consideration of some of the broader themes, which linked the different elements of the study.

### AVAILABILITY AND DEMAND

Local authorities are required to maintain a panel of safeguarders to ensure they are available in sufficient numbers. This duty was usually carried out by the department responsible for legal, corporate and/or administrative matters. This gave distance from the services that might have a vested interest in relation to safeguarder cases (social work and education). Arguably, that distance has been diminished by the recent emphasis on the corporate responsibility of the whole authority for children, especially those who are “looked after”.<sup>38</sup>

The demand for safeguarders depends on the propensity of children’s hearings and sheriffs to appoint. Generally local authority administrators were not in a position to provide precise figures for the number of occasions a safeguarder was appointed to a case in their area. In order to monitor the availability and usage of safeguarders, it would be helpful for panel administrators to maintain a record of all children’s hearing and court cases where a safeguarder is appointed, with brief details (date, type of case, person appointed to act as safeguarder).

At the national level, the demand for safeguarders was found to be much higher than 10 years previously, though it had dipped after 1998. Data from SCRA indicated that the *proportion* of children’s hearings cases where a safeguarder was appointed has risen from under 1% to just over 9% in 1999/2000 (though some concerns were recorded earlier in this report about the accuracy and meaning of all the figures). This trend reflected both the growing acceptance of safeguarders as a helpful part of the hearings system and also the widened range of circumstances for appointing safeguarders provided by the Children (Scotland) Act 1995. Although safeguarders were being used in an increasing percentage of cases, the recent decline in the overall number of cases dealt with in the hearings system meant that the *absolute number* of safeguarder appointments had decreased somewhat.

In line with this recent slight reduction in usage, respondents in most areas thought that the availability of safeguarders was adequate. This general balance reflected the increase in supply from about 100 safeguarders across the whole of Scotland in the late 1980s to approximately 200 in the year 2000. However in a third of authorities safeguarder panel administrators perceived a deficit, indicating the need for further recruitment.

Unfortunately, separate data for court appointments were not readily available and had not been collated, so trends there are unknown. The research interviews indicated that usage varied widely from court to court and depended in part on whether or not the sheriff opted to appoint a curator ad litem instead. It seems desirable that local and national statistics should be produced and collated concerning court appointments of safeguarder and curators, so that patterns of safeguarder usage in courts can be assessed more precisely. Clerks could maintain a record with brief details of all the cases where a safeguarder or curator is appointed and make this available to local authority administrators. Understanding of trends

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<sup>38</sup> “Looked after” children include all those placed on supervision by the hearings.

would also be increased if reporters' records of appointments and the resulting aggregated data distinguished between decisions made by hearings and by sheriffs.

## **LOCAL AUTHORITY PANELS OF SAFEGUARDERS**

The number of safeguarders on local authority panels ranged from 4 to 21, but half the panels had between 9 and 12. Panel size was broadly in proportion to the population of the authority, but a few authorities had a panel that was notably smaller or larger than other councils of similar size. Nearly half the safeguarders surveyed said they served on two or more local authority panels, but the councils themselves were aware of only a minority of these double or multiple appointments. Better communication is needed to ensure that authorities know about all individuals who also serve on another panel (so that any concerns about performance may be shared, for instance).

The great majority of safeguarders had taken on the role following lengthy experience in other relevant roles: particularly as lawyers, social workers or panel members. As a result, over half the safeguarders in the study were aged 50 or over. This meant that the safeguarders in the main brought to this role a high level of work-based and personal knowledge. The gender balance varied from area to area, but overall about 60% safeguarders were female. Some smaller councils would have very limited choice if a request were made specifically for either a man or a woman. Many reporters, panel members and sheriffs indicated that they sometimes wanted to allocate a safeguarder on the basis of gender or professional background. Therefore it would be helpful for panels to have available a mix of men and women and also a range of professional backgrounds represented.

For some safeguarders, this was their main role. Others combined safeguarding with part-time or full-time work. Doubts were expressed in some quarters during the study about the compatibility of carrying out the role effectively alongside a busy full-time job. The period of office varies between authorities and perhaps should be standardised across Scotland.

## **SELECTION, TRAINING, MONITORING AND REMUNERATION**

The overall responsibility for the safeguarding service rested with local authority administrators, taking up a small proportion of their time. Often their roles were confined to recruitment, periodic reviews and payment of fees. The available budgets were small. In most areas, administrators were not involved in or aware of the day to day work of safeguarders. This made many of them reliant on other parties, particularly reporters, for information about the operation of the service and any issues arising.

### **Recruitment and selection**

The number of safeguarders in most authority areas was small and the turnover low, so the need for new recruits tended to arise only occasionally. Active recruitment campaigns have been rare and most authorities did not advertise. It would be helpful to seek a common view about the appropriateness and desirability of advertising.

New safeguarders were identified mainly by individuals putting themselves forward or by nominations from senior individuals involved in the children's hearings system. Most but not all authorities had application forms and held interviews, but the contents of the former and personnel involved in the latter were highly varied. Recruiting authorities could benefit from sharing ideas about the issues covered in application forms, as some omitted important items that were included elsewhere. In the interests of client safety and quality control, it seems that

all applicants ought to be interviewed and have a police check, which they are informed about.

In some areas, those who interviewed applicants had little knowledge of the safeguarding role. Social work staff or councillors with a social services responsibility were involved in making and reviewing safeguarder appointments in many areas. In view of the potential for conflict in interest between safeguarders and social workers, this could be seen as inappropriate.

### **Induction, training and guidance**

Partly because of the low numbers of safeguarders involved, the induction and training organised by local authorities was at best brief (typically a half or whole day per year) and in some places non-existent. Although many safeguarders had previous experience of the hearings or courts, a significant minority did not. Even those who were familiar with the hearings system usually wanted assistance with the specifics of their role. Consequently, safeguarders and other key respondents in the research almost universally agreed that better and more standardised induction and training was needed. During the course of the study, the Government proposed that core training be provided by Children's Panel Training Organisers. Some administrators and safeguarders supported this, but others expressed reservations that training by people primarily responsible for panel members might affect independence or would not be well tailored to safeguarders' needs. These misgivings about the proposal could be overcome if a dedicated safeguarder training programme were devised and the names and functions of Children's Panel Training Organisers amended to make clear they were responsible for Children's Hearings training as a whole. Respondents in this study were largely in agreement about the main elements for a core curriculum (for details, see chapter 5). Certification of the course would be valuable for people wishing to obtain credit in other work or education.

There was a widespread wish for comprehensive, common guidance to be provided by central government to local authorities, panels and safeguarders.

### **Support**

Usually safeguarders provided the main support and advice to each other, but buddying and other kinds of support were not routinely available. If such arrangements for informal support were universal, all new safeguarders would have access. Consideration should also be given to the introduction of some kind of feedback and appraisal system to help safeguarders improve their work, where necessary. As suggested by a few safeguarders, their personal safety should be considered in induction, guidance and support (e.g. mobile phones).

### **Monitoring**

Monitoring, feedback and effective quality control processes were generally ill defined. Some panel members used a comments book to include feedback on safeguarders, but the status and use of this was unclear. Panel members and reporters stated that when a safeguarder was thought not to have performed well, the main way of dealing with this was for the individual not to be used again. Usually neither administrators nor safeguarders were aware of this, so were not in a position to challenge or remedy the perceived difficulties. Safeguarders rarely received any feedback, good or bad, which might help them learn and improve. Arguably they are entitled to know when there are concerns about their performance, instead of covert decisions being made about their future use.

Therefore it is desirable that there should be clear and open procedures for monitoring safeguarders' availability, timely production of reports, quality of reports and participation in proceedings. Panel members, sheriffs, reporters and others could complete short feedback sheets for the attention of administrators. When the work of a safeguarder is thought to be unsatisfactory by anyone else involved in a hearing, administrators ought to be notified. A clear procedure should exist for handling this, allowing for feedback to be given to the safeguarder in a sensitive manner. This process of conveying and responding to concerns would be a different process from formal complaints, which were reported to occur rarely. Complaints were normally handled without involvement of any other authority the safeguarder was working for. Better communication about joint panel membership would mean that concerns or complaints could be shared among all potentially affected. Administrators reported that they felt hampered in managing complaints by not having access to case records needs on grounds of confidentiality. This matter is worth reviewing.

### **Remuneration and other 'employment' conditions**

The fee level was a matter of considerable contention and many participants in the research in addition to safeguarders themselves regarded the present rate as inadequate. Although fees were meant to be standardised, occasionally safeguarders successfully charged higher legal rates. Local authorities were sometimes uncertain about how best to deal with expense claims. COSLA (2000) has now accepted that it is desirable to increase the fees substantially, but to incorporate certain standard costs. There was general agreement that the current rates of payment were not commensurate with the expertise and workload of safeguarders, so should be increased. If the COSLA recommendations on fees and expenses are accepted, the question arises of whether the funding to cover this should be ring-fenced, since administrators indicated potential for budgetary problems.

### **General implications about the management of the safeguarding service**

Almost all aspects of the management of the safeguarding service were characterised by great diversity among authorities, which many respondents saw as unsatisfactory. This indicates a need for new Regulations to replace those of 1984<sup>39</sup>, which left wide discretion to local authorities. Greater consistency could be fostered, with authorities encouraged to follow best practice in such areas as recruitment, selection, appointment, re-appointment, monitoring, record-keeping and reviews. More co-operation between authorities is desirable in specific aspects of the service (e.g. training, communication about dual or multiple panel membership and exceptional instances of poor practice).

A number of people questioned whether local authorities were sufficiently independent from safeguarders' work to be responsible for their employment. As a result, some supported the idea of transferring responsibility for safeguarders to a dedicated national organisation, which merits further consideration. On the other hand, much of the evidence pointed to ways of improving rather than replacing the present arrangement. Independence in the processes of appointments, monitoring and review could be enhanced if all administrators were made answerable to an interdisciplinary Safeguarder Committee. This might be constituted by representatives of the local authority, the panel chair or nominee, sheriff principal or nominee, authority reporter, and appointees including a safeguarder. An additional advantage of such a Committee would be gains in consultation, which the study revealed to be patchy and, on the courts side, little more than nominal.

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<sup>39</sup> Children and Young Persons - The Social Work (Panel of Persons to Safeguard the Interests of Children) (Scotland) Regulations, 1984.

## **THE APPOINTMENT OF SAFEGUARDERS TO CASES**

### **Appointments by children's hearings**

The Regulations require that, in every case, a children's hearing must give consideration to appointing a safeguarder or not. This has been endorsed by guidance stating that this be verbalised. Although nearly all panel members claimed to follow the guidance by explicitly addressing the possibility of appointing a safeguarder at every hearing, most panel members and some reporters disapproved strongly of having to do so. Therefore a re-examination of this practice would be welcomed. If the requirement is retained, then prior information needs to be available to families so they can make sense of this option and put it in perspective. There is also some force in the argument that both hearings and Sheriffs must verbalise this, or neither should be required to.

When safeguarders are appointed, the process involves three main elements: making the decision to appoint, stating the reasons and allocating a particular individual as safeguarder. Although conflict among family members or between them and social work remained the most common reasons for involving a safeguarder, appointments were also made and found to be helpful in other situations, especially when there were difficulties ascertaining the child's views. The evidence supports the value of the extension of the circumstances when safeguarders can be used, which was made by the Children (Scotland) Act 1995.

The reasons for appointing a safeguarder recorded in the hearing minute usually included an explanation of why a disposal could not be made without a safeguarder. They sometimes specified a remit (i.e. the issues the hearing wished to be investigated to help it decide on its disposal). Only occasionally were both elements present. Often the reasons recorded for the appointment were vague. It seems that many hearings were still not giving safeguarders a clear remit, despite repeated urging (Curran 1989; Blueprint 1999). Clarity of purpose would be achieved if guidance and training for panel members emphasised that, when a safeguarder is appointed, the panel should state

- the reasons for this
- particular issues that the panel wishes the Safeguarder to investigate
- where particular characteristics are needed in the appointee, e.g. gender.

This could be represented and reinforced by the minutes of hearings stating clearly the reasons for the safeguarder appointment and intended focus of their assessments.

Safeguarders have from the outset been appointed in a lower proportion of cases where children are referred on offence grounds and this remained true in the case records sampled. Otherwise the profiles of characteristics for safeguarder and non-safeguarder cases were very similar. The most common grounds of referral in safeguarder cases were similar to those in non-safeguarder cases, with about half involving some kind of abuse or neglect ('lack of parental care' or a Schedule 1 Offence).

In the opinion of a number of people, safeguarders were sometimes appointed unnecessarily, e.g. because panel members were reluctant to make difficult decisions; the local authority was unwilling or unable to provide the desired resources. This suggests that appointments of safeguarders might be avoided when the information required by the panel can be readily provided directly from the family, social work and/or education.

## **Appointments by sheriffs**

Ideas among sheriffs differed about when, if at all, safeguarders should be appointed rather than curators. Indeed, opposite interpretations were offered of the legal position. Some sheriffs took the view that safeguarders must be used where there is statutory provision for them, while others held that common law curators may be used in the safeguarding role. A similar difference in view occurred among reporters. In the West of Scotland, curators were normally appointed in the same circumstances as elsewhere a safeguarder would be. Some reporters believed that curators rather than safeguarders should be used in proof proceedings. From this perspective the same safeguarder should not appear as a party to the proof and then as a person investigating the family and reporting to the hearing. However, there was majority support among most other informants for the same person to be appointed in both forums.

There was a wide variation in practice in relation to safeguarders entering the proceedings before a sheriff. Many sheriffs favoured having a person with a legal qualification in the safeguarding role, but others valued non-legal safeguarders. Legal opinion was also divided on whether safeguarders may appeal on behalf of a child. This left many safeguarders uncertain on this point.

In view of the significant number of unresolved issues about the safeguarding role in court, and about the inter-face between courts and hearings, it is desirable that an appropriate forum be identified to discuss these matters, after which statutory clarification could occur.

With respect to appointments to individual cases, sheriffs would be assisted if they had more information before them to be able to consider whether an appointment is needed. In cases that go to court for proof, the children's hearing might discuss with the family the possibility of a safeguarder acting in the court and invite the reporter to convey their view(s) to the sheriff. Sheriffs generally welcomed the practice of reporters and other parties submitting views to the court about the advisability of appointing a safeguarder prior to applications for proof. However, some reservations were expressed concerning reporters' neutrality in this role.

## **Arrangements for allocating a safeguarder to a case**

Although formally hearings and sheriffs have the statutory responsibility for appointing safeguarders to cases, in practice selecting and allocating them was usually done by reporters and sheriff clerks. Only in a few areas were the administrators involved. Reporters have taken on the responsibility for safeguarder allocation in hearings cases without formal recognition and largely because nobody else does it. While there were practical advantages, this risked compromising impartiality and fair distribution of work among safeguarders. It also distanced administrators from the operation of the system they are ultimately responsible for. The allocation system could ensure more independence and rational distribution of work if the safeguarder panel administrators were always included in decisions to allocate safeguarders to particular cases, in dialogue with reporters and sheriff clerks. There was considerable variability in the extent to which safeguarders were allocated according to a rota, or selected to "fit the case". Although it is usually impractical for panel members and sheriffs to appoint individuals, they are entitled to specify desirable characteristics, such as safeguarder gender, since the law permits appointments to be made "on such terms and conditions as seem appropriate".<sup>40</sup> There was widespread support for some degree of matching safeguarders to

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<sup>40</sup> Section 41(1)(b) of the Children (Scotland) Act 1995.

cases rather than operating a rota rigidly, but that did risk unjustifiable biases influencing selection.

## **SAFEGUARDERS' WORK AND CASE MANAGEMENT**

The main elements of the safeguarders' casework for hearings were to read the hearing papers; gather further information and views from family members and other key parties (e.g. social workers, teachers, carers); prepare a report; and participate at the hearing where the report was considered. The nature and amount of work naturally varied according to the needs and circumstances of the case, but also some differences in orientation were apparent among safeguarders. Nearly all visited the child and parents once for assessment purposes, but some took the trouble to make a second or even third contact in order to explain their intended recommendation. This appeared to be a helpful practice, which could be more widely adopted. The time spent on cases was much affected by the number and distance of relevant parties. Typically, safeguarders reported spending between 5 and 8 hours on interviews, 2-3 hours on travel and 2-5 hours on report writing.

Both interview data and the case record analysis indicated that, on the whole, safeguarders kept to the time-scales advocated by the Blueprint Report (1999). Only rarely did they not attend the hearing without good reason. Safeguarders attended the hearing in over four fifths of the instances in the case record survey. Many respondents took the view that it should be an expectation embodied in Government Guidance that safeguarders must attend the hearing, unless there is a special reason not to, for which the prior agreement of the hearing chair could be obtained.

## **SAFEGUARDER REPORTS AND THEIR IMPACT**

Our information indicated that reports were nearly always submitted on time. Making available the report to social workers prior to hearings was generally acknowledged to be good practice, but was not always done. In general, panel members were well pleased with the contents, length and format of reports. Very occasionally the reports were said to have revealed names and addresses which could have put people at risk, so attention must be given to confidentiality in safeguarder training, guidance and feedback.

The safeguarder's report was generally acknowledged to have a major influence on case outcomes, with hearings usually but not invariably concurring with the recommendations. Often the recommendations were similar to those of other parties, but it was also fairly common for divergence to occur. The minute of hearings where a safeguarder's report was considered did not usually refer to the report in much detail and seldom conveyed its impact on the decision. It would be useful if the minutes routinely gave brief attention to safeguarders' written and verbal reports, noting any differences between their recommendations and the disposal.

Considerable misgivings were voiced, especially by reporters, about safeguarder reports for courts being seen only by the sheriff. A case can be argued that the report to the court ought not to be considered a private communication to the sheriff but made available to parties in the case. This would enable their investigation to be examinable, if relevant to disputed matters of evidence. Consultation and guidance also needs to provide a clearer view of the purpose that may be served by the safeguarder's report to the sheriff.



## **PERCEPTIONS OF THE ROLE OF SAFEGUARDERS**

### **Perspectives of safeguarders, decision-makers and professionals on key elements of the safeguarding role**

When the safeguarding role was first proposed and introduced, many participants in the children's hearings system saw little need for this innovation, particularly thinking that it duplicated the responsibilities of panel members, sheriffs, reporters and social workers, or in the case of courts, curators-ad-litem. The present study demonstrated that such views are no longer common. In relation to children's hearings, the great majority of all parties stated that safeguarders performed a distinct and helpful role, although its precise nature varied from case to case. They saw safeguarders' independence as a central feature, in particular providing a crucial check on social work planning. Safeguarders could take a more detached view than the child or parents and were not constrained by resource, management or policy considerations, as social workers were sometimes seen to be.

In the court, the role of safeguarders was largely seen as helping the child to express his or her views and to safeguard the child's interests in relation to the proof process, which often included a mediating role between parties. At hearings the role was more seen as representing the child's interests in recommending a decision, but there too they could have a role in helping children or parents accept a disposal. Reporters and social workers stressed the vital importance of safeguarders checking thoroughly information they were given.

The safeguarder's role is a complex and variable one. Many aspects are usefully covered in the Safeguarders' Association *Practice Guidelines* but these do not have any legal status and provide only limited assistance with regard to court cases. Many respondents recommended that the Scottish Executive should issue new guidance for safeguarders, following consultation with the Association and other interested parties. This should provide an authoritative statement of the safeguarder's role for all parties within both the hearings and courts.

### **Evaluations of safeguarders' role performance**

The work of most safeguarders was highly valued. From all the accounts given during the research, a composite image of a good safeguarder emerged. The characteristics included a sound understanding of the hearings and children's services systems, a good ability to communicate with children and families, a critical approach to information gathering and a capacity to formulate quickly a clear, comprehensive overview of situations while overtly recognising different perspectives. The majority of safeguarders were thought to live up this expectation, which reflected well on the recruitment arrangements as well as on safeguarders themselves.

The performance of a small number of individuals was seen as inadequate. From the perspectives of panel members and reporters, poor safeguarding work included: limited contact with key parties; a very brief written report; non-attendance; little or no analysis or overview. Panel members and especially panel chairs said that the variable performance needs addressing to maintain confidence in the work of safeguarders. Social workers' main concern was that some safeguarders operated with fixed ideas or were too easily led by families. Sheriffs were occasionally critical of safeguarders not properly understanding their role in court. Some of these deficiencies could be partly remedied through improved training.

## **Children's and parents' perspectives**

Although some of the children involved are too young to understand about the safeguarder or communicate with them, the case record analysis indicated that the majority of those who have a safeguarder are aged 8 or over. Most of a sample of 25 who were interviewed had a reasonable understanding about the independence of the safeguarder, but often did not comprehend their specific remit. It is difficult for children and parents to take in verbal information about safeguarders at a hearing (cf. Hallett et al 1998), though safeguarders normally offered further explanations when they contacted families. A short leaflet in simple language could be given to children and parents, when a safeguarder is appointed in their case. This could be referred to in subsequent explanations by safeguarders and social workers.

Most of children and parents in the study were positive about the involvement of the safeguarder, though some were indifferent. Usually they felt their viewpoints were listened to and respected by safeguarders. This may be compared with findings by Griffiths and Kandell (2001) who found a number of young people thought panel members did not show an interest in their views. Parents in the present study were more likely than young people to have misgivings about the safeguarders' involvement, particularly when the safeguarder supported a disposal that the parents opposed. Children and parents were sometimes helped to accept unwelcome recommendations when the safeguarder took the trouble to explain carefully the reasons. Some parents experienced a sense of betrayal when they had felt understood by the safeguarder before the hearing and then the safeguarder's written or verbal report to the hearing was not to their liking, so it is important that safeguarders share their conclusions verbally with the family in advance. It could also pay dividends to spend more time with parents or young people, when a significant disagreement occurs.

## **GENERAL OBSERVATIONS**

The first point to emphasise is that safeguarders have become generally accepted as an integral part of the hearings system and the work of the great majority is highly regarded by other parties. This contrasts with the widespread suspicion that preceded and accompanied their introduction in the 1980s (Curran 1989). The quality of the service delivered is generally high, the contribution of safeguarders largely welcomed and the long-term trend in number of appointments has been upward. This corresponds with the conclusions about Guardians-ad-litem in England: that they can make proceedings "more comprehensive and more child-focused" (McCausland 2000, p.95).

The valuable work done appears largely due to the personal qualities and lengthy relevant experience of most safeguarders, since a number of shortcomings have been identified in recruitment procedures, induction, training and management of the service. In rectifying those infrastructure defects, it is vital that the generally good quality of individual safeguarders' performance is maintained.

Both the strengths of safeguarders' work and the weaknesses in the service management derive in large measure from two key features of safeguarders' organisational position: role ambiguity and the interconnectedness of their work with that of other key players. The ambiguity is apparent on several dimensions. Safeguarders receive minimal training and support, yet perform a complex function with major consequences very similar to that of salaried professionals. The existing fee level recognises that the role entails more than community service, but is less than commensurate with the skills, knowledge and impact of safeguarders' work. The free-lance status of safeguarders helps them to be independent, but

has resulted in a lack of monitoring or openness about appointment and allocation processes compared with other bureaucratic and legal arrangements. Many of the suggestions for change that emerged in the research have been in favour of greater accountability and formality, but respondents have also emphasised that this should not compromise safeguarder independence.

The work of safeguarders is crucially dependent on others for information, advice and support. Therefore the way they carry out their work is contingent on the actions of panel members, reporters, sheriffs, administrators and others. On the whole, co-operation has been demonstrated to be good in this study, but a gulf was apparent between the administrators, who were responsible for the overall service but had little case-specific knowledge, and those involved in the daily practice of safeguarders. Reporters in particular have taken on advisory and allocation roles, sometimes by default rather than as a result of deliberate decisions that this is fair or appropriate. A small number of respondents stated that certain aspects of the current organisation of the work, notably allocation of individuals to particular cases and perhaps their accountability to local authorities, compromise safeguarders' independence, although the majority did not express such concerns.

The study also showed how safeguarding is affected by the perennial tensions about geographical equity, between on the one hand local autonomy and flexibility and on the other hand equity and standardisation across the country. Variability has been a constant theme in this report. On such crucial matters as recruitment criteria and procedures, induction and training, allocation to cases and providing a remit in a particular case, no common approach existed. A schism has developed between different Sherifffdoms on the question of whether curators may be appointed by courts in children's hearings cases and on the extent to which they are appointed. It is not necessarily appropriate to seek uniformity on all these matters, but many people in the study regarded the variations not as positive instances of adaptation to local circumstances, but undesirable inconsistencies. There was a general view that local authorities should have a more extended and consistent role, while a number of people favoured a national organisation. The variations in court practice require to be examined more fully in their own right.

It may be concluded that 15 years experience has shown that safeguarders have become a positive and successful option for the children's hearings system. The time has come, though, for the Government to introduce Regulations and Guidance, which reflect and promote best practice with regard to recruitment, induction, training, monitoring and appointments to cases, as well as safeguarder's assessments and reports.

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