

Citizen Participation and Public Petitions Committee

7th Meeting, 2021 (Session 6), Wednesday
17 November 2021

PE1857: Regulate the role of curator ad litem

Note by the Clerk

PE1857: Lodged 18/02/21

Petitioners Stephen Leighton

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to regulate the curator ad litem and ensure historical claims of malpractice of curators ad litem in Scotland are investigated.

Webpage <https://petitions.parliament.scot/petitions/PE1857>

Introduction

1. The Committee last considered this petition at its meeting on [1 September 2021](#). At that meeting, the Committee agreed to write to key stakeholders seeking their views on the action called for in the petition.
2. The issue of retrospective complaints was highlighted in the Committee's correspondence with various stakeholders. However, this was not directly addressed in the submissions received.
3. A summary of past consideration of the petition, responses to information requests and suggested areas for future investigation are provided for the Committee's consideration.

Background

4. The Committee received 5 written submissions in relation to this petition.
5. A curator ad litem ('a curator') is an individual who can be appointed by a court or tribunal to represent the interests of someone in court or tribunal proceedings who does not have capacity to do that for themselves. The concept of capacity is defined in law.

6. It is important to note that the curator ad litem's role is to represent someone's interests, not to advocate on their behalf.
7. The SPICe briefing highlights recent reforms in the law relating to curators ad litem, including the introduction of a [new process](#) for the appointment of curators in relation to the Mental Health Tribunal for Scotland. It also highlights provision in the Children (Scotland) Act 2020 for a new regulatory regime for curators (operational by 2023).
8. This regulatory regime includes the establishment and maintenance of a register of curators ad litem. [Section 17](#) of the 2020 Act states that the Scottish Ministers may by regulations make provision for or in connection with –
 - a) the requirements that a person must satisfy in order to be included, and remain, on the register (including requirements as to training and qualifications),
 - b) the processes for including a person on, and removing a person from, the register (including appeal rights),
 - c) the process for how, and by whom, a registered person is to be selected as the appointed curator ad litem in a case,
 - d) the remuneration by the Scottish Ministers of curators ad litem appointed in accordance with section 11D, including expenses and outlays (such as counsel's fees),
 - e) the operation and management of the register.

This provision, however, is not yet in force.

9. The briefing also highlights the Scottish Mental Health Law Review, noting that the team supporting the review has confirmed that the role of curators will be included within the scope of the review.

Scottish Mental Welfare Commission

10. In its submission, the Scottish Mental Welfare Commission states that curators ad litem are bound by the regulations of their respective professions. Usually this role is held by social workers and solicitors.
11. The submission states that any concerns or complaints in relation to their practice are the responsibility of the relevant professional regulatory body.

Scottish Legal Complaints Committee

12. The Scottish Legal Complaints Committee (SLCC) is an independent statutory public body providing a single point of contact for all complaints against legal practitioners operating in Scotland.
13. Its submission states that the SLCC has no specific role in the regulation of, or in dealing with complaints regarding curators ad litem, however, 'because many people fulfilling that role may also be solicitors, we may have a role if a complaint is made that a solicitor acting as a curator ad litem has breached certain standards of service or conduct which apply to solicitors.'
14. The SLCC highlights that its main statutory focus is to investigate complaints by a client about their solicitor. However, the closest client to a curator ad litem is the court (as the curator ad litem is appointed by the court, rather than by the individual whose interests they are there to represent).
15. The submission notes the Scottish Government's [recent consultation](#) on the Children (Scotland) Act 2020, which concluded in July 2021, and included proposals for a new register of curators ad litem and a regulatory complaints regime.
16. The SLCC noted in its response to this consultation that while a dedicated complaints process might be positive, it could potentially result in parallel investigations on the same matter. The submission highlights that theoretically, two complaints systems could lead to different decisions, outcomes and sanctions being made against a practitioner.

Scottish Social Services Council

17. The Scottish Social Services Council (SSSC) is the regulator for the social work, social care and early years workforces in Scotland. In its submission, the SSSC states that it does not have any role in the regulation of curators ad litem. Neither does it maintain a register of curators ad litem.
18. The submission states that the SSSC's understanding is that the majority of curators ad litem are solicitors and only a small number are social workers. Due to this, it believes that requiring curators ad litem to register with the SSSC would result in dual registration as solicitors are already registered with the Law Society of Scotland. The SSSC also notes the Scottish Government's submission which outlines the role of the Office of the Public Guardian and the Mental Welfare Commission in addressing concerns about curators ad litem.

Action

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

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting –

- [PE1857/C: Scottish Legal Complaints Commission submission of 27 September 2021](#)
- [PE1857/D: Scottish Mental Welfare Commission submission of 6 October 2021](#)
- [PE1857/E: Scottish Social Services Council submission of 6 October 2021](#)

The Scottish Parliament launched a new website at the end of Session 5.

All written submissions received on the petition before May 2021 can be viewed on the petition on the [archive webpage](#). Written submissions received on the petition after May 2021 can be viewed on its [new webpage](#).