

Submission from Relationships Scotland of 29 March 2022

PE1917/B: Provide full legal aid to all parents fighting for access to their children

Relationships Scotland welcomes this opportunity to comment on the matter of providing full legal aid to all parents seeking support for agreeing living arrangements for their children, regardless of their income.

Relationships Scotland is a network of 21 Member agencies providing a range of support to families with relationship difficulties. In the context of family law, we work with families with issues arising from separation and divorce, parenting, contact and residence disputes. This is primarily through family mediation, which helps parents to discuss and agree arrangements for the care of their children, and through Child Contact Centres that support children to have a relationship with a parent or carer who they no longer live with. We also offer counselling for adults, children and young people and parent education sessions (Parenting Apart).

Our experience of working with families in this context is that there are a number of issues with the current Legal Aid provision that is dependent on income.

- Where one parent is eligible and the other parent is not, this leads to an imbalance and one parent perhaps prolonging matters to the detriment of the other who is having to pay. If both parents were eligible they would be on an equal footing with no advantage or disadvantage to either side.
- Some parents who just fail to qualify for legal aid find it extremely difficult to fund the substantial costs associated with legal support. This may lead to them withdrawing and a child not having the opportunity of a relationship with this parent.

- If a parent who is not eligible for legal aid pursues contact with their child and has to fund the full costs themselves (for example for the supervised contact service) this can create significant hardship for those parents. It also generates ill-feeling between the parents, making any co-parenting relationship further down the line even more difficult.
- There is an increase in party litigants as parents are looking at alternatives to the high costs of legal support. Our understanding is that this is less efficient and more challenging for the court process.

We are aware of wider issues with the current legal aid provision

- Finding solicitors who are prepared to take on legal aid cases is a challenge, particularly in some parts of the country, most noticeably the Highlands & Islands, and Argyll & Bute areas.
- A significant and increasing number of families with complex issues (usually due to vulnerabilities / addiction / mental health / trauma) are not able to secure legal representation as solicitors are not prepared to take them on. These families are currently being 'turned away' due to not having money, and are not able to access the legal and contact services support that they need.
- Children and young people struggle to access legal aid as this is means tested based on their parents' resources.

Relationships Scotland supports the principle within the petition that money should not come in-between a child having a relationship with their parents. We are aware of many families where finance is a barrier, children are losing out and the stress is contributing to serious mental health issues. The current system is failing many children and their families.

We suggest that this consideration of extending the legal aid provision is focussed on Section 11 orders of the Children (Scotland) Act 1995 relating to parental responsibilities only. This would support children's rights under the UNCRC.

We appreciate that any extension of the criteria of eligibility might lead to more people seeking support through legal aid and perhaps prolonging the time that support is needed for.

We acknowledge that the current provision is more generous than some other jurisdictions, and that any expansion of the provision might have an impact on the public purse.

We suggest that the emphasis in funding is put on early resolution mechanisms such as mediation, use of child contact centres and co-operative solicitor negotiation that focusses on the needs of children to minimise the need to go to court. Costs in the court system could be saved if the system was front loaded.