

Shared Parenting Scotland submission of 18 April 2022

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

Shared Parenting Scotland has been established as a separate Scottish Charity since 2010, initially as Families Need Fathers Scotland. We changed our name to Shared Parenting Scotland in February 2020 to reflect the increasing diversity of the individuals who contact us for information and advice - that is non-resident mothers as well as non-resident fathers, new partners, grandparents and brothers and sisters.

We had close to 1,000 active enquiries during 2021.

We staff a daily telephone helpline for individual enquiries. We run monthly support group meetings in Edinburgh, Glasgow, Stirling, Dundee and Aberdeen. All have returned to in person meetings after two years online during the period of Covid restrictions. We run one online meeting a month for people who are still uncomfortable with in person gatherings. All our meetings now have a family law solicitor in attendance on a pro bono basis for general advice about the law and legal procedures.

We also publish several free 'user guides' to help inform individuals about rights and responsibilities of parents in relation to maintaining and nurturing a meaningful relationship with their children after divorce or separation. [Downloadable guides and publications from Shared Parenting Scotland - Shared Parenting Scotland](#)

Our general advice for those who get in touch with us is to avoid going to court if at all possible. Family courts are unpredictable, slow, expensive and, sitting within the adversarial approach of civil justice, often generate entirely new tensions and disagreements between the parties as they seek to 'win time' with their children rather than collaborate to be as good co-parents as possible.

We believe the Scottish Parliament missed a major opportunity to change the narrative of family separation in the Children (Scotland) Act 2020. There is a frequently expressed perception among those who

contact us that the current arrangements are simply unfair and do not achieve their stated paramount objective of putting the interests of the children first.

Setting aside therefore our view that it is usually better not to go to court we fully understand the frustration with the current system captured in the terms of Petition PE1917. It is drawing to the attention of the Committee entirely legitimate concerns that deserve Scottish Government attention.

First, there is an 'inequality of arms' phenomenon when one party has legal aid and the other has not. If one party is funded by the public purse there is a suspicion that there may be advantage, for example, in prolonging correspondence about trivial or non-existent matters or stalling on good faith negotiation that will lead to settlement. This not only wears down the finances of the non-legally aided party who may incur a substantial fee for every solicitor's reply. Far more important for the Committee to note is that the longer the correspondence can be strung out the more it may damage the relationship of the child with the other parent as a new status quo sets in.

Secondly, we suspect it is not commonly known by legislators unless they have personal experience just how expensive even an average family court case can become, quickly running into tens of thousands of pounds for a non-legally aided party. We have seen costs of £30,000 - £50,000 in cases that raised no great legal issues or safety concerns about either parent. We have also seen more complicated cases topping £100,000.

While it has been a matter of some pride within the Scottish Government that we continued to make legal aid available for family cases after it was stopped in England and Wales the cut-off point is not generous in the context of average family law case costs. The marginal cost for a party being a few pounds over the resources threshold can be catastrophic.

The choice for many parents in that situation is to give up, sometimes walking away from their children completely, or to represent themselves as a Party Litigant.

Our most downloaded user guide is [Representing Yourself in Scottish Family Court - Shared Parenting Scotland](#). In recent monthly meetings

up to half of attendees are considering or have already become Party Litigants.

We are aware of a number of Party Litigants who have been largely successful though all will admit that running their own case became effectively a full-time preoccupation. We are aware of others who have found it difficult to separate their emotional commitment to the case and to their children from the requirement of the court for evidence to be independently verified.

In this specific context there is an issue that already crops up for Party Litigants who take their case to proof. What can be done if the Party Litigant is prevented from cross examining their former partner? Sheriffs are already wrestling with this as an interests of justice issue. At the very least there will have to be a legally aided alternative when the possibility of cross examination is stopped entirely.

Our view, expressed separately to the Scottish Government and to the Scottish Legal Aid Board and to the Evans Review of Legal Aid is that legal aid can play an important role in supporting alternative, less adversarial routes to helping parents resolve their disagreements after separation or divorce. Parents need support in putting the broad welfare of their children first exactly at the time when they may be least able to do it amid the disruption of their relationship break up.

Our children and their parents really need less court, not more. Parenting should not be means tested. In the meantime, however, fundamental issues of child welfare as well as access to justice have been identified by this petition and we urge the Committee to take them forward.