

Citizen Participation and Public Petitions Committee

9th Meeting, 2022 (Session 6), Wednesday
18 May 2022

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

Note by the Clerk

Lodged on 2 December 2021

Petitioner Amy Stevenson

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to
provide full legal aid to all parents who are fighting for access to their
child/children regardless of their income.

Webpage <https://petitions.parliament.scot/petitions/PE1917>

Introduction

1. The Committee last considered this petition at its meeting on [23 February 2022](#). At that meeting, the Committee agreed to write to One Parent Families Scotland, Relationships Scotland, and the Scottish Legal Aid Board.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from Relationships Scotland, Shared Parenting Scotland and the Petitioner, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

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

Clerk to the Committee

Annexe A

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

Petitioner

Amy Stevenson

Date lodged

2 December 2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to provide full legal aid to all parents who are fighting for access to their child/children regardless of their income.

Previous action

I have contacted my local councillor and spoken with my MSP and they have advised that I raise a petition with the Scottish Parliament.

Background information

It would reduce mental health issues and suicide rates if we could allow all parents legal aid when fighting for access to their children in courts regardless of their income. Money should not come in-between a child having a relationship with their parents. Parents are having to pay for access contact centers and court fees and unfortunately in some cases when parents run out of money to fight for access to their kids they have sadly ended their own lives. I had over 60 men write their own stories to me about fighting for their kids, struggling to afford court fees and feeling like giving up, all very similar circumstances. Granting legal aid would put an end to this and benefit the next generation.

Annexe B

Extract from Official Report of last consideration of PE1917 on 23rd February 2022

The Deputy Convener: PE1917, which has been lodged by Amy Stevenson, is on providing full legal aid to all parents fighting for access to their children.

The petitioner highlights that, when couples separate and are unable to agree on contact arrangements, parents are often faced with High Court costs and contact centre access fees that they might struggle to afford. She states that that often results in many parents experiencing mental health issues.

The Scottish Government's submission on this petition highlights a 2019 consultation on legal aid reform in which 75 per cent of respondents agreed that those who could afford to contribute towards costs should do so. It also explains that

“The number of cases relating to child contact and residence means that providing legal aid without a means test for those seeking these court orders would have a considerable impact on the legal aid budget”,

and it advises that the Scottish Government provides financial support to Relationships Scotland for the operation of contact centres.

Do colleagues have any comments?

Ruth Maguire: I appreciate the Scottish Government's response regarding the details of legal aid and the consultation that has taken place. I also appreciate the point about means testing and affordability in a budget context. Nonetheless, the matter is really important. It comes up in my constituency casework—as, I am sure, it does for other members of the committee.

The petitioner talks about the mental health impact on parents. We need to remember that the issue is not simply access to justice but the wellbeing of children. We need to ensure that what we have in place is as helpful as possible to families that are going through break-ups and looking after children.

I suggest that, in the first instance, we write to some stakeholders to seek their views on the issues that are raised, perhaps including One Parent Families Scotland, Relationships Scotland, the Scottish Civil Justice Council and the Scottish Legal Aid Board.

Alexander Stewart: I concur with Ruth Maguire's comments; there is no doubt that there is an impact on mental health. In situations in which there is domestic abuse, it is important that that is recognised.

Only yesterday, the Equalities, Human Rights and Civil Justice Committee held a round-table event on a very similar topic involving access to support for families and young people. It would be useful for us to take on board and think about what came out of that evidence session. I would be very keen to continue the petition in order to see what more information we can glean on the issue, and we can analyse that at a later stage.

Paul Sweeney: I concur. I recognise that some of the issues are being raised in casework, and the petitioner has identified a valid public need to investigate the issue further, so I am content with the suggestion that we continue the petition.

The Deputy Convener: We will keep the petition open and write to all the relevant stakeholders. Are members agreed?

Members *indicated agreement.*

Annexe C

Relationships Scotland submission 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.

Submission from Shared Parenting Scotland 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.

Petitioner submission of 8 May 2022

PE1917/D – Provide full legal aid to all parents fighting for access to their children

Thank you for taking on my petition and understanding there is a gap between 2 parents splitting up and what's in the best interest of the child. Too many children are growing up in a 1 parent family due to 1 parent withdrawing contact from the other parent without a valid reason. This is having a detrimental impact on a child's upbringing and the alienated parents' mental health. There needs to be a system in place to stop this from happening. I hope that going forward a social work review and a contact agreement will come from a registered professional rather than the parents who cannot agree contact arrangements. This will help minimise parents having to spend thousands of pounds in court fees and reduce the amount of time that the child will be alienated from their other parent.