

# **Equalities, Human Rights and Civil Justice Committee**

## **Civil Legal Aid Inquiry**

### **Supplementary evidence from Shared Parenting Scotland**

**22 May 2025**

Dear Ms Adam

#### **Legal Aid Inquiry - following up from Committee Session - 20/05/25**

Thank you for inviting Shared Parenting Scotland to provide evidence to the committee on 20/05/25. I am grateful for the opportunity yesterday to present some perspective rooted in our casework that may assist the committee's deliberations.

I would like to add an observation as part of the inquiry.

There were many references on Tuesday to 'domestic abuse'. As I understand the remit of the inquiry is into the role the availability of legal aid plays in access to justice for all who have a case to make or defend. I believe the Committee should note that, at the time the issue of availability of legal aid most often arises, the references in most cases will be to allegations of domestic abuse. In civil cases, most are not tested and only a few get to proof. I tried to convey to the Committee our concern that the adversarial process in family cases can encourage parents to attack each other's character or competence.

I did raise my hand at one point to try and make that point. However, I decided it was too detailed to pursue. As a rule, Shared Parenting Scotland is reluctant to trade extreme examples of troubling cases when the problems that need to be addressed are systemic, affecting the majority in the less dramatic middle ground.

The vast majority of Section 11 of the Children Scotland Act cases - for contact or residence when parents don't live together - are heard in the sheriff courts. Very few sheriffs publish their judgments, even after proof. In our view, this hinders policymakers and legislators in building a broader picture of day-to-day business in the courts.

Apart from the insight we get from our casework, which includes mothers, fathers and grandparents, and is therefore confidential, there are very few judgments setting out 'findings of fact' that reach the public domain. They will always be the extreme examples. However, in the context of the Committee's inquiry and the importance of maintaining the distinction between 'allegations' and 'facts' found after due process we draw your attention to the Court of Session judgment from earlier this year in the cause of NF against AF. [2025csoh13-nf-against-af.pdf](#).

The short summary is that the mother received legal aid to defend a contact action brought by the father, who had exhausted his own funds and was ultimately represented by a lay representative. The mother had made a series of very serious allegations against the father over several years, which she had conveyed to the children, with the effect that they withdrew irrevocably from their relationship with him.

Lord Stuart concluded, "...in my judgment the defender [the mother] has engaged in a course of conduct where she has knowingly made false and increasingly serious allegations against the pursuer [the father] concerning abuse of the children, including sexual abuse, and deliberately misrepresented the children's medical symptoms in support of these false allegations, all with the intention of alienating the pursuer from his children."

The judge ultimately decided the damage to the relationships was not repairable.

I repeat our general reluctance to build too much on extreme cases but would urge the Committee to note that funding by legal aid can itself create an inequality of arms.

Yours sincerely

Kevin Kane  
Chief Executive  
Shared Parenting Scotland