

Citizen Participation and Public Petitions Committee

3rd Meeting, 2022 (Session 6), Wednesday
23 February 2022

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

Note by the Clerk

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. This is a new petition that was lodged on 30 December 2021.
2. The petition seeks to ensure that all parents have equal access to legal aid regardless of their income, in situations where they are fighting for access to their child/children. The petition highlights that parents are often faced with High Court costs and contact centre access fees which they may struggle to afford. The petitioner states this has resulted in many parents experiencing mental health issues or sadly in some circumstances, parents have chosen to end their own lives. The petitioner feels that if legal aid were to be granted in all cases where a parent is trying to maintain contact with their child, this would put an end to the mental health issues that many subsequently suffer. A petition summary briefing can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.

4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 365 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

6. The Committee is invited to consider what action it wishes to take on this petition.

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:

30/12/21

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 centres 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

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'SPIC' in a larger font and 'e' in a smaller font. To the right of 'SPICe', the text 'The Information Centre' is in white, and 'An t-Ionad Fiosrachaidh' is in a smaller white font below it.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1917](#): Provide full legal aid to all parents fighting for access to their children, lodged by Amy Stevenson

Brief overview of issues raised by the petition

The system for resolving parenting disputes

The [Children \(Scotland\) Act 1995](#) (as amended) ('the 1995 Act') sets out various parental responsibilities and rights (PRRs) in respect of children living in Scotland. These exist where practicable and in the best interests of the child.

Where a child does not live with a parent, PRRs include the right and the responsibility to have **contact** with that child. Contact was referred to as **access** under the predecessor legislation to the 1995 Act, and the latter term is still somewhat in use in practice.

Under section 11 of the 1995 Act, if a parent or other person cannot resolve a dispute about PRRs on their own, they can apply to the court for a court order aimed at resolving that dispute.

One type of court order under section 11 is a **contact order**. If parents can't reach agreement about the arrangements for a parent to see a child they do not live with, the court can grant this type of order stipulating the future arrangements.

In considering any application under section 11, the court must apply various statutory criteria. The welfare of the child is the paramount (i.e. most important and overriding) consideration.

If a court order, including a contact order, is later disobeyed ('breached'), the person affected by the breach usually has to raise fresh court proceedings. These aim to draw the court's attention to the breach and ask the court for a remedy to the problem. Further legal costs are typically incurred, associated with these enforcement proceedings.

Legal aid and family cases

The legal aid system provides support to people on low and moderate incomes to access legal advice on an issue and legal representation in court. Solicitors who carry out legal aid work are paid a fee, set in legislation, for their work.

There are two main types of assistance that can be accessed from the legal aid budget for family cases, including those associated with a dispute about PRRs under the 1995 Act. **Advice and Assistance** provides advice but not representation in court by a solicitor. **Civil Legal Aid** provides representation from a solicitor in court. To qualify for either type of assistance, **financial eligibility tests** must be met. [In the case of Civil Legal Aid](#), there are other requirements as well.

The normal rule in litigation is that **expenses follow success**, in other words, that the losing party in litigation pays their opponent's legal fees, as well as their own. However, if a litigant who is legally-aided is found liable for their opponent's expenses, they can apply to the court to restrict the amount to one they can afford to pay. In many cases, this will be nothing at all. This approach is known as [modification of expenses](#) and it is a significant advantage for legally-aided litigants. It reduces the risks and costs of taking court action.

A significant proportion of the Scottish population ([thought to be around 70%](#)) qualifies for some assistance out of the legal aid budget. However, in some circumstances, people need to contribute from their own income towards the costs of the legal services they receive. This contribution increases as income increases. People who, on the face of it, qualify for legal aid can be put off by this requirement.

Automatic legal aid, i.e. legal aid without any financial or other eligibility tests being applied, is currently available to legal aid applicants in criminal cases in Scotland [in some specified circumstances](#). These cover situations where it is in the interests of justice for the accused to be represented. However, it is **not** available in relation to applications to court under section 11 of the 1995 Act.

Legal aid reform

The Scottish Government commissioned an independent review of legal aid to look at reform of the current system. [A report of the review was published in 2018](#). The report recommended a citizen-centred system which was flexible and focussed more on matching advice provision to identified need. It envisaged greater co-ordination between the services provided by lawyers and those of other publicly funded advice providers. [The Scottish Government responded to the review in 2018](#). It accepted most of the recommendations but noted the need for further consultation on how they were to be delivered.

The Scottish Government went on to [issue a consultation in 2019](#). The [analysis of responses](#) showed broad agreement with the principles set out in the review. However, there was a lack of consensus about how change should be delivered, with contrasting views between the legal profession and the third sector in many cases.

Sarah Harvie-Clark

Senior Researcher

14/12/2021

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot. Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Scottish Government submission 15

December 2021

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

Publicly funded legal assistance ('legal aid') allows people to pursue or defend their rights or pay for their defence when they could not otherwise afford to do so.

In order to target funding appropriately, when someone applies for legal aid, the application is subject to statutory tests which cover the merits of the case and the means available to the applicant. These tests allow the scope of legal aid to remain one of the most inclusive in Europe and the Scottish Government is committed to ensuring that legal assistance continues to be available to all those facing issues within that wide scope.

In our Programme for Government we committed to engage with the legal professionals and other stakeholders to review the Legal Aid system, and to introduce a Legal Aid Reform Bill in this Parliament, ensuring that the system is flexible, easy to access and meets the needs of those who use it.

The Scottish Government consulted on legal aid reform in 2019 and has stated its willingness to take forward supported recommendations that will deliver an enhanced system of legal aid across Scotland. The 75% of respondents to that consultation agreed that those who could afford to make a contribution to their legal advice should continue to do so - [Legal aid reform: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2019/12/1917a/analysis/html/index.html).

There are a large number of cases in the courts which relate to child contact and residence. Table 5 in the Statistical Bulletin Civil Justice Statistics 2019/2020 provides information on family procedure cases in the courts, including in relation to parental responsibilities and rights: [Civil justice statistics in Scotland: 2019-2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/statistical-bulletin-civil-justice-statistics-2019-2020/html/index.html). 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.

Between 2016 and 2020 the average annual expenditure on Advice and Assistance and Assistance by Way of Representation for contact cases was £2,319,400. During the same time period average annual expenditure on Civil legal aid for contact was £8,790,400, with an average case cost of £3,487.

Current data from the Scottish Legal Aid Board (SLAB) shows that the majority of refusals relating to any Civil legal aid application is based on merit rather than means.

It is incumbent on the SLAB to investigate any representations querying the granting of legal aid to an opponent. This is often due to perceived unreasonableness or delaying tactics on the part of the assisted person. On investigation SLAB often discover that those representations are due to frustration by the non-assisted party rather than the actions of the opponent themselves. There are no barriers to anyone making an application for civil A&A, ABWOR, or legal aid. If someone believed they were ineligible based on either their income or capital they can request a review of the position by setting out why SLAB should disregard the appropriate element of their income or capital. Each case is considered on their own individual set of circumstances.

If legal aid without a means test were granted for those seeking contact, it seems inevitable that legal aid without a means test would have to be granted to those opposing the granting of a contact order as well. This would again increase pressure on the legal aid budget.

In addition, as the Statistical Bulletin notes in paragraph 3.2 [Civil justice statistics in Scotland: 2019-2020 - gov.scot \(www.gov.scot\)](http://www.gov.scot), family law cases may have multiple craves and may, as a result, be about more than one issue – for example, the pursuer may be seeking divorce and contact with their children. If free legal aid were granted for child contact, this would raise questions about whether free legal aid would have to be granted for any family law case which included contact and other issues such as divorce: again, this would increase pressures on the budget.

The petitioner mentions child contact centres. The Scottish Government does provide resources to Relationships Scotland to support the operation of these centres. In addition, in some cases the legal aid

budget may already be meeting costs in relation to centres. This Business and Regulatory Impact Assessment, produced in relation to Covid-19 regulations, provides more information: [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Miscellaneous Amendments\) \(Scotland\) \(No. 2\) Regulations 2021 \(legislation.gov.uk\)](#) [see under Legal Aid Impact Assessment].

The Scottish Government recognises the importance of child contact cases and continues to take steps to implement the Children (Scotland) Act 2020 [Children \(Scotland\) Act 2020 \(legislation.gov.uk\)](#) and the Family Justice Modernisation Strategy [Family Justice Modernisation Strategy - gov.scot \(www.gov.scot\)](#) .