

Accessing Justice in Hard Times



Introduction

FLAC is an independent human rights organisation that seeks equal access to justice for all. As part of this, FLAC is committed to advancing the goal of an effective, accessible and sustainable state system of civil legal aid. To this end, FLAC provides information on the state civil legal aid scheme and monitors its effectiveness and accessibility for people who need help accessing justice, holding the State to account on its responsibilities in this area.

Background and Rationale

Access to justice is a fundamental human right. In Ireland, one of the ways in which the State recognises the need to provide access to justice is through access to the legal system. The civil and criminal legal aid systems are the main avenues by which the State enables the realisation of this right.

Over the past decade, FLAC has produced a number of reports and papers identifying shortcomings in the civil legal aid scheme. Notable among these is the 2005 report, *“Access to Justice: a Right or a Privilege?”*, which highlighted inadequacies in the system and suggested a blueprint for how a fair, equitable scheme to facilitate access to justice might be achieved. In 2009, *“Civil Legal Aid in Ireland: 40 Years On”* reflected on the changing status of civil legal aid since FLAC’s establishment in 1969 and advocated for a comprehensive scheme.

These reports highlighted a range of issues including lack of public awareness of the civil legal aid scheme, inadequate staffing levels in and resources allocated to the Legal Aid Board, as well as extended waiting lists for and delays in accessing legal services. Other issues included the restrictive nature of the civil legal aid scheme; financial eligibility criteria that exclude and deter deserving applicants; a lack of diversity in the work undertaken by the Legal Aid Board; and charges for legal aid services that serve as a barrier for people on low incomes.

However, FLAC is concerned that as the recession took hold, pressures on the Legal Aid Board increased, reducing already limited capacities and straining a system which was never comprehensive in the first place. While FLAC acknowledges the considerable difficulties faced by the State in coping with the recession, access to justice - like all other human rights - is not expendable during recessionary times. It is imperative that human rights are upheld and that the rule of law is respected even in times of restricted resources and economic hardship.

Report Objectives

This report aims to shed light on how the civil legal aid scheme in Ireland was impacted by the economic crisis, what changes were made to the scheme in response to the recession and what were the consequent effects on those seeking access to justice. FLAC also assesses whether the State complied with its obligations under domestic and international human rights law to ensure equal access to justice for those on low incomes during the economic downturn. The report makes the case for maintaining funding of civil legal aid services in times of economic constraint and formulates recommendations for improving access to justice.

Outline of the Report

The first chapter outlines long-standing issues with the civil legal aid scheme, as identified in previous FLAC reports, and provides a brief overview of the impact of the recession on civil legal aid, especially increased waiting times for access to a Legal Aid Board solicitor.

Chapter 2 affords an insight into growing levels of unmet legal need during the economic crisis, particularly in the areas of debt, housing, social welfare and employment. FLAC's Data Collection Programme reinforces the findings that unmet legal need in these areas grew considerably during the recession. This chapter also considers whether the current legal aid scheme conforms to international human rights standards contained in the European Convention on Human Rights and the International Covenant on Economic, Social and Cultural Rights.

The third chapter examines changes to the financial eligibility criteria and the increased financial contributions for legal services provided by the Legal Aid Board during the economic crisis and their impact. There is a particular focus on people whose main source of income is a social welfare payment and on victims of domestic violence. The chapter also looks at the extent to which waivers of legal fees on grounds of hardship were applied and compares the operation of the civil legal aid scheme with its criminal counterpart.

Chapter 4 tracks the levels of funding allocated to the civil legal aid scheme, the number of staff employed by the Legal Aid Board and the amount of work outsourced to lawyers on the Private Practitioner's scheme during the economic crisis.

The fifth chapter looks at demand for legal services provided by the Legal Aid Board during the economic crisis, as well as the number of applicants on waiting lists and waiting times for accessing legal services. It also examines the types of cases dealt with by the Legal Aid Board in the relevant period, highlighting in particular the rise in child care cases and the lack of diversity in the work undertaken by the Board.

Finally, the sixth chapter explains the need for ensuring an efficient, accessible and sustainable civil legal aid system in times of economic constraint.

Conclusions



Undoubtedly, states are faced with tough choices during recessions. However, in Ireland, while some efforts were made to mitigate against the negative impact of the economic crisis, the regressive nature of most of the changes to the state-funded civil legal aid scheme underlined the state disregard for the right to equal access to justice. As a scheme dedicated to ensuring that "persons of insufficient means" have access to legal services, restrictions, cuts and delays disproportionately impacted on vulnerable and marginalised groups.

Need and demand for legal services in areas such as debt, housing, social welfare and employment, which remain largely excluded from the scope of the civil legal aid scheme, grew considerably during the recession. As a result of their continued exclusion and greater relevance, more individuals were not in a position to effectively represent themselves in proceedings connected to these areas, especially where the issues involved were complex. FLAC believes that the inability or unwillingness of the Board to expand its remit to

cover more areas of civil law, especially to include issues which became more prevalent during the recession, created extra barriers for vulnerable and marginalised groups seeking to access justice.

Nonetheless, as the economic crisis took hold, more people found themselves eligible for services provided by the Legal Aid Board. In response, the State sought to limit the growing numbers of people eligible for the scheme through a variety of measures. One example of this was that in 2013 the Board increased its basic charges for information and advice as well as legal representation. FLAC is particularly concerned about the impact of such a move on those whose primary source of income is a social welfare payment and on those at risk of or subject to domestic violence. The inevitable effect of raising costs for legal services was both to deter and deny access to justice.

At the same time, the Legal Aid Board as a structure was confronted with a number of difficulties where despite a stark rise in demand for its services, there was no corresponding increase in its funding:

- ★ In 2007, there were 10,164 applications for legal services in Law Centres, excluding asylum-related applications. By 2011, this figure had increased by a staggering 84% to 18,657 applications. In the face of rocketing demand for its services and despite the dedication and hard work of its staff, cuts to funding and human resources took their toll, in particular on the timely provision of services. Delays in accessing legal services increased exponentially, denying people their right of timely access to justice while exacerbating their existing problems.
- ★ Despite the introduction of some measures to alleviate pressures on the Board, waiting lists and waiting times continued to increase. The number of people waiting for a consultation with a solicitor jumped from 1163 in 2007 to 5067 in 2013.

Demand for the Legal Aid Board's services in family law cases remained high during the recession. One noteworthy trend in this area was the increase in cases involving children being taken into state care. The Legal Aid Board was required to devote a considerable and much needed amount of time and resources to these cases, which inevitably impacted on its capacity in other areas, but appropriate funding increases did not take place to fund this development.

In line with international human rights law, FLAC has long argued that access to justice, like all other human rights, is not expendable during recessionary times. States undoubtedly face challenges in figuring out how best to respect, protect and fulfil fundamental human rights in times of economic uncertainty. Yet they must take account of the effects of such cuts on the most vulnerable in their societies and make those cuts in a non-discriminatory way that clearly shows they have considered the impact on the groups affected before reaching a decision.

Given that the stated purpose of the civil legal aid scheme in Ireland is to provide legal aid and advice to socio-economically disadvantaged people, the State's actions during the recession can be seen as discriminatory. This is despite the fact that the right to equality before the law is guaranteed in both Irish constitutional law and international human rights law. By seeking to exclude some of those on low incomes from the scheme and failing to adequately resource the Legal Aid Board, it is clear that the State did not fulfil its obligation to make equal access to justice a reality for all.

Recommendations



FLAC recommends that the Government:

- a) Provide sufficient funds to the Legal Aid Board in order to ensure the provision of an efficient, accessible and sustainable civil legal aid scheme.
- b) Increase staffing resources within the Legal Aid Board to ensure the provision of an effective and efficient service.
- c) Amend the Civil Legal Aid Act 1995 to place a statutory obligation on the Legal Aid Board to undertake periodic reviews of legal need in Ireland in full consultation with disadvantaged and marginalised communities and the organisations working on their behalf.
- d) Ensure the Legal Aid Board appears yearly before the Oireachtas Joint Committee on Justice, Defence and Equality to discuss its annual report and work.
- e) Undertake human rights and equality impact assessments of any future cuts to legal aid services to evaluate their potential impact on vulnerable and marginalised individuals and groups and their compliance with Ireland's international human rights obligations.
- f) Undertake a review of the compliance of Section 28(9)(a) of the Civil Legal Aid Act 1995 with the European Convention on Human Rights.

FLAC recommends that both the Government and the Legal Aid Board:

- g) Ensure the provision of legal aid services in a wide range of areas, including by expanding the remit of the Legal Aid Board in line with the recommendation of the UN Committee on Economic, Social and Cultural Rights.
- h) Ensure that borrowers in financial difficulty receive adequate legal advice and are supported in any legal proceedings which may result in repossession or eviction.
- i) Review the means test, including disposable income and capital limits, as well as the financial contributions required for legal services provided by the Legal Aid Board so as to ensure that all individuals of modest means who have a genuine need for legal aid and advice can access these services.
- j) End the requirement for victims of domestic violence to make financial contributions for legal services.

FLAC recommends that the Legal Aid Board:

- k) Publish and promote the guidelines on applications for waiver of contributions in cases of hardship and circulate these guidelines to all Law Centres and Private Practitioners who are contracted to carry out work for the Board.
- l) Ensure that waiting times do not exceed the Legal Aid Board's own stated goal of two to four months and take steps to reduce waiting lists and times as much as possible.
- m) Make additional use of the Private Practitioner Scheme to reduce the waiting times for persons seeking legal services.
- n) Increase the visibility and awareness of the civil legal aid scheme, particularly in light of the new public sector duty to protect human rights.

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