

Accessing Justice in Hard Times

The impact of the
economic downturn
on the scheme of
civil legal aid
in Ireland

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1. Introduction

Access to justice is a fundamental human right and is recognised as such under a range of regional and international instruments including the European Convention on Human Rights,¹ the Charter of Fundamental Rights of the European Union² and the International Covenant on Civil and Political Rights.³

While it has no single precise definition, access to justice includes knowledge of and access to the legal system as well as whatever legal services are necessary to achieve a just outcome. It encompasses access to fair systems of redress and states' obligations to vindicate and protect human rights. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision-makers accountable.⁴

In Ireland, the civil and criminal legal aid systems are two of the main avenues by which the State enables the realisation of the right to access justice. For those who do not have the financial means to access private legal services in Ireland, legal aid in civil law matters is provided by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995.

It is worth stating that contrary to popular assumptions, civil legal aid, while subsidised, is not free. The Board charges fees for all its legal services except where payment would cause hardship to the applicant.⁵

Both Irish courts and the European Court of Human Rights have played important roles in elaborating the scope of the right to legal aid in civil law matters and ensuring the State upholds its obligations in this area. In the landmark decision of *Airey v Ireland*,⁶ the European Court of Human Rights found Ireland to be in violation of Article 6(1) of the European Convention of Human Rights, which protects the right to a fair trial, for failing to provide legal representation to the applicant in a judicial separation case. The Court held that "*the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective*".⁷

Furthermore, in *O'Donoghue v The Legal Aid Board, Minister for Justice & Equality and others*,⁸ the High Court found that the plaintiff's constitutional rights had been infringed by the State by virtue of the long delay she had experienced in being granted a certificate for legal aid. Mr Justice Kelly concluded that "*[i]t is not enough to set up a scheme for the provision of legal aid to necessitous persons and then to render it effectively meaningless for a long period of time*".⁹

¹ Article 6(1) and Article 13 of the European Convention on Human Rights.

² Article 47 of the Charter of Fundamental Rights of the European Union.

³ Article 14(1) of the International Covenant on Civil and Political Rights.

⁴ See United Nations Development Programme website at: <http://bit.ly/204OeWJI> [accessed 28 Oct 2015].

⁵ FLAC's concerns on this issue are outlined in Chapter 3.

⁶ *Airey v. Ireland* No.6289/73 [1979] 2 EHHR 305 (9 October 1979), [1981] ECHR1 (6 February 1981).

⁷ *Airey v. Ireland* No.6289/73 [1979] 2 EHHR 305 (9 October 1979), [1981] ECHR1 (6 February 1981), para.24.

⁸ *O'Donoghue v. Legal Aid Board, Minister for Justice Equality and Law Reform, Ireland and the Attorney General* [2004] IEHC 413, Kelly J.

⁹ *O'Donoghue v. Legal Aid Board, Minister for Justice Equality and Law Reform, Ireland and the Attorney General* [2004] IEHC 413, Kelly J., p.44.

As a human rights organisation, FLAC has a longstanding commitment to promoting equal access to justice in Ireland through the state provision of an effective, accessible and sustainable system of legal aid. To this end, FLAC provides information on the state civil legal aid system and monitors its effectiveness and accessibility for people who need help accessing justice, holding the State to account on its responsibilities in this area.

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.¹⁰ 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.¹¹

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.

Legal aid in the recession

Despite these pre-existing problems, more challenges lay ahead. In 2008, Ireland, together with most of Europe, fell foul to one of the most devastating and widespread economic downturns since the end of the Second World War. In response, the Government cut public expenditure significantly, leading to a gap in service provision across a range of public services. Like other statutory bodies, the Legal Aid Board was also adversely affected by budgetary cuts.

This paper aims to shed light on how the civil legal aid scheme in Ireland was impacted by the economic crisis, the changes made to the scheme in response to the recession and the consequent effects on those seeking access to justice. It is also intended to explain the need for maintaining funding of civil legal aid services in times of economic crisis and to formulate recommendations for improving access to justice.

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,¹² restrictions, cuts and delays disproportionately impacted on vulnerable and marginalised groups.

¹⁰ Free Legal Advice Centres (2005) *Access to Justice: A right or a privilege? A Blueprint for Civil Legal Aid in Ireland*, Dublin: FLAC.

¹¹ Free Legal Advice Centres (2009) *Civil Legal Aid in Ireland: Forty Years On*, Dublin: FLAC.

¹² The long title of the Civil Legal Aid Act 1995 is as follows: *“An Act to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases”*.

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 was to raise the cost of its basic services. 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. In the face of increased 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. Moreover, demand for the Legal Aid Board's services in family law cases remained high during the recession. One noteworthy trend was the increase in child care cases. 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.

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.¹³

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 under Irish constitutional law¹⁴ and in international human rights law.¹⁵ By seeking to exclude some

¹³ UN Committee on Economic, Social and Cultural Rights (2012) *Letter by the Chairperson of the Committee on austerity measures*, Geneva: OHCHR.

¹⁴ Article 40.1 of Bunreacht na hÉireann states, 'All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.'

¹⁵ Article 26 of the International Covenant on Civil and Political Rights, which Ireland ratified in 1989, states, 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the

of those on low incomes from the civil legal aid 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.

law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

2. Growing unmet legal need

During the recession, FLAC noted a marked increase in demand for its legal help in matters like mortgage arrears and housing repossessions, as well as issues related to social welfare and employment. These affected vulnerable and marginalised groups to an even greater extent during the economic crisis. However the Civil Legal Aid Act 1995, the primary legislation governing the area of civil legal aid, excludes a number of matters from the remit of the Legal Aid Board which were highly relevant in the course of the recession.

Excluded areas include “disputes concerning rights and interests in or over land”,¹⁶ which means most housing issues do not come within the scope of the scheme. Additionally, the 1995 Act excludes all quasi-judicial tribunals from the civil legal aid scheme, except those which are “prescribed” by the Minister for Justice and Equality.¹⁷ To date, the only tribunal to have been prescribed by the Minister has been the Refugee Appeals Tribunal.¹⁸ Other quasi-judicial tribunals, such as the Social Welfare Appeals Office, the Equality Tribunal¹⁹ and the Employment Appeals Tribunal,²⁰ remain excluded from the scheme. These tribunals are a common route for many people on low incomes to access justice.

In summary, while the civil legal aid scheme was undoubtedly restrictive before the recession took hold, growing levels of unmet legal need revealed the inadequacies of the system as the economic crisis deepened.

2.1 Debt

The recession led to sudden and dramatic changes in the financial circumstances of thousands of families, rendering them unable to meet their monthly mortgage payments. This problem was compounded by the collapse of the property market, throwing many of these mortgage holders into unmanageable debt. The number of principal dwelling houses accounts in arrears peaked at 142,892 in June 2013.²¹

Borrowers in mortgage arrears found it very difficult to access legal supports during the recession. Despite the substantial legal consequences for borrowers of entering into a new agreement with a lender, no legal advice is provided under the Mortgage Arrears Information and Advice Service

¹⁶ Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995.

¹⁷ Section 27(2)(b) of the Civil Legal Aid Act 1995.

¹⁸ Civil Legal Aid (Refugee Legal Service) Order 1999 (SI No. 74/1999).

¹⁹ Since 1 October 2015, the Workplace Relations Commission has assumed the roles and functions previously carried out by the Equality Tribunal. See the Workplace Relations Act 2015 and Workplace Relations Act 2015 (Commencement) (No.2) Order 2015 (SI No. 410/2015).

²⁰ Similar to the Equality Tribunal, the functions of the Employment Appeals Tribunal were transferred to the Workplace Relations Commission on 1 October 2015.

²¹ Central Bank of Ireland (2013) *Residential Mortgage Arrears and Repossession Statistics: Q2 2013*, Dublin: CBI, p.5.

scheme.²² The scheme only offers information and, following the conclusion by a lender of its assessment, a consultation for the borrower with an accountant.²³

While individuals with mortgage arrears problems are entitled to apply for legal aid in debt cases, in many instances such applications are refused under Sections 28(2)(b), (c) and (e) of the 1995 Act for failure to satisfy the merits test.²⁴ The Board often takes the narrow view that an individual is in breach of their contract by failing to pay for their mortgage and, consequently, there is no legal merit to their defence; in 2012, the Legal Aid Board provided legal representation in just 111 cases related to debt.²⁵

Consequently, as mortgage arrears levels rose during the recession, more people than ever were left without legal representation in discussions with their banks about restructuring their mortgage debt. To ensure meaningful access to justice, FLAC is of the firm view that legal advice and representation may be needed in these negotiations. FLAC is particularly concerned at the impact of the imbalance in the power relationship between lenders and borrowers in these negotiations, especially where lenders have dedicated staff whose job it is to achieve the best possible outcome for the bank in the offers they make to recover the money owed to them.²⁶

2.2 Housing

Additionally, housing issues are in large part excluded from the civil legal aid scheme.²⁷ As a consequence, individuals engaged in repossession or eviction proceedings are either unable to access state-subsidised legal services or experience considerable difficulties in doing so. For example, one group which was disadvantaged during the recession was people facing repossession

²² More information on this scheme is available at: <http://bit.ly/1nxYntG> [accessed 23 November 2015].

²³ A report by the Department of Social Protection revealed that only a small number of borrowers in mortgage arrears accessed this service. Despite having informed over 11,000 borrowers of the availability of services by the end of September 2013, lenders had only received just under 200 invoices from accountants for the provision of financial advice under the scheme (Department of Social Protection (2013) *Review of the Independent Financial Advice Service*, Dublin: DSP, p.6).

²⁴ Community Law & Mediation (2015) *Recommendations following Roundtable discussion examining the lack of Adequate Legal Support available to Borrowers facing Repossession of their Family Home*, Dublin: CLM, p.11.

²⁵ Community Law & Mediation (2015) *Recommendations following Roundtable discussion examining the lack of Adequate Legal Support available to Borrowers facing Repossession of their Family Home*, Dublin: CLM, p.11.

²⁶ In January 2016, the Department of Justice and Equality announced the creation of a new scheme to help people who are insolvent and in mortgage arrears to access independent expert financial and legal advice (Department of Justice and Equality, 'Minister Fitzgerald announces new Scheme of access to independent legal and financial advice for those in home mortgage arrears', [press release], 22 January 2016).

²⁷ There are two main exceptions to this. First, section 28(9)(c)(iii) of the Civil Legal Aid Act 1995 provides that where a subject matter of a dispute is the applicant's home, where the applicant either suffers from an infirmity of mind or body due to old age or to other circumstances, or may have been subjected to fraud, duress or undue influence in the matter and where a refusal to grant legal aid would cause hardship to the applicant, legal aid may be granted. Secondly, legal aid may be granted in respect of proceedings arising out of a dispute between spouses as to the title to or possession of any property and in respect of proceedings under the Landlord and Tenant Acts, 1967 to 1994 (insofar as they relate to residential property), the Residential Tenancies Act 2004 and a limited number of other Acts in accordance with section 28(9)(c)(i) of the Civil Legal Aid Act 1995 as amended.

proceedings instituted by local authorities.²⁸ Though the decisions handed down in such proceedings are of huge significance, those affected cannot get legal aid.

In this context, it is relevant to note that there was a sharp increase in the number of repossessions by local authorities over the course of the recession. In the period 2005 – 2009, local authorities took possession of a total of 66 houses.²⁹ However, as austerity intensified, repossessions jumped to 89 in 2010 and to 137 in 2012.³⁰ Given that the vast majority of people living in local authority housing are on low incomes and cannot afford private legal representation, clearly more people were denied the opportunity to effectively represent their own cases in repossession proceedings during the economic downturn.

In addition to lack of legal aid for local authority tenants facing repossession proceedings, another housing problem which came to the fore during the economic crisis was lack of legal aid for issues connected to landlord and tenant law. During the economic crisis, legal need in this area rose considerably, though legal aid is only available for such issues in very limited circumstances.³¹

FLAC notes that people seeking information and advice on landlord and tenant issues from its information line and centres markedly increased during the course of the recession.³² Furthermore, the total number of applications for dispute resolution made to the Private Residential Tenancies Board (PRTB)³³ increased from almost 1500 in 2007³⁴ to 2861 in 2013.³⁵ A central role of the PRTB is to resolve cheaply and speedily disputes between landlords and tenants, affording protection to both parties without having to resort to the courts.³⁶ Nonetheless, some disputes referred to the PRTB or otherwise involving landlord and tenant law will, inevitably, require legal representation due to the complexity of the legal issues involved.

Figures produced by FLAC, coupled with the surge in applications to the PRTB during the economic downturn, demonstrate that legal need for landlord and tenant-related issues rose sharply in the relevant period.

²⁸ Local authorities can provide mortgages to people who are refused a loan from a bank or building society. More information is available at: <http://bit.ly/20svoFM> [accessed 26 January 2015].

²⁹ Figures available on the Department of Environment, Community and Local Government website at: <http://bit.ly/1KFcy57> [accessed 26 January 2016].

³⁰ Figures available on the Department of Environment, Community and Local Government website at: <http://bit.ly/1KFcy57> [accessed 26 January 2016].

³¹ See for instance Section 28(9)(c)(i) of the Civil Legal Aid Act 1995.

³² For more information see Section 2.5.

³³ The Private Residential Tenancies Board was established on foot of the Residential Tenancies Act 2004.

³⁴ Private Residential Tenancies Board (2008) *Annual Report & Accounts 2007*, Dublin: PRTB, p.17.

³⁵ Private Residential Tenancies Board (2014) *Annual Report & Accounts 2013*, Dublin: PRTB, p.21.

³⁶ More information on the PRTB is available on its website at: <http://www.prtb.ie/about-prtb/who-we-are> [accessed 20 January 2016].

2.3 Employment

There was an upsurge in the number of referrals to the Employment Appeals Tribunal during the recession, corresponding to higher levels of unemployment in the State.³⁷

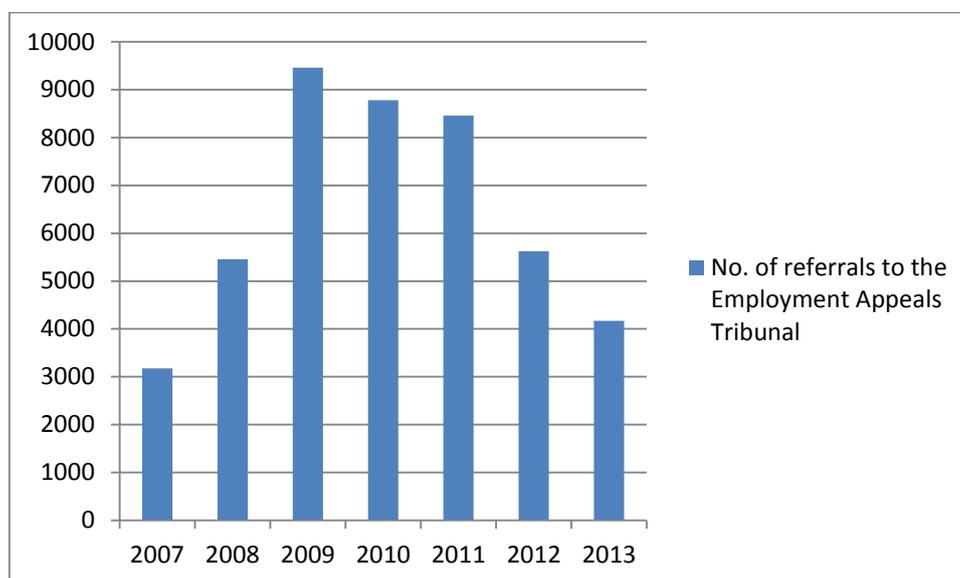


Figure 1 – No. of appeals to the Employment Appeals Tribunal 2007 - 2013

As is evident from Figure 1 above,³⁸ referrals to the Tribunal snowballed during the economic crisis. In 2007, 3,173 complaints were submitted to the Tribunal. However, in the space of just two years, this number had increased almost threefold to 9,458.

The Employment Appeals Tribunal plays a major role in resolving disputes related to issues such as the termination of employment contracts, redundancies and unfair dismissals. Much of the legislation relating to employment law originates from European Union (EU) law and the jurisprudence of the Court of Justice of the EU. Employment law also encompasses complex issues such as constructive dismissal, contract law and procedural fairness. The complexity of Irish employment law, coupled with the dramatic rise in referrals to the Employment Appeals Tribunal, means that far more individuals were disadvantaged by the Legal Aid Board’s narrow remit during the economic crisis.

2.4 Social welfare

The figure below outlines the dramatic increase in the number of applications to the Social Welfare Appeals Office since the beginning of the recession.³⁹

³⁷ The overall unemployment rate and the long-term unemployment rate reached highs of 15% and 9.2% respectively in 2012 (Central Statistics Office (2012) *Measuring Ireland’s Progress 2012*, Cork: CSO).

³⁸ All data compiled from the Employment Appeals Tribunal Annual Reports 2007-2013, available at: <http://bit.ly/1SaXZyb> [accessed 28 Oct 2015].

³⁹ All data compiled from the Social Welfare Appeals Office Annual Reports 2007-2013, available at: <http://www.socialwelfareappeals.ie/pubs/pubs.html> [accessed 28 Oct 2015].

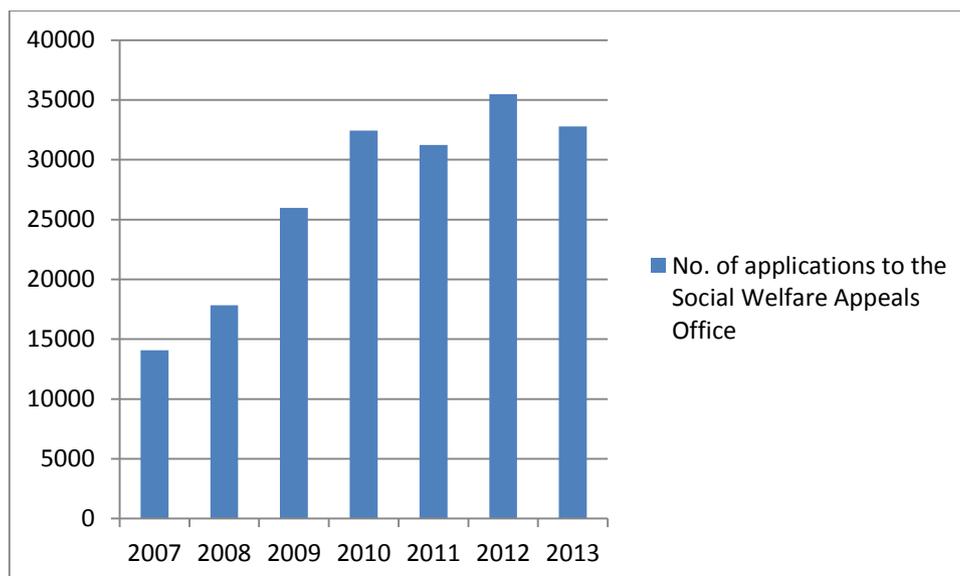


Figure 2 – No. of appeals to the Social Welfare Appeals Office 2007 - 2013

As illustrated above, the number of social welfare appeals applications more than doubled since the onset of the crisis. Given the higher dependency of individuals on social welfare payments during the recession,⁴⁰ it is unsurprising that a higher number of appeal applications were lodged with the Social Welfare Appeals Office over the course of this period. However, as the Legal Aid Board is not authorised to provide legal representation at these proceedings, it is likely that, during the recession, a far greater number of individuals may not have been able to present their cases in the manner that fairness demands, depriving them of access to justice. This is especially the case where applications related to complex issues, such as the Habitual Residence Condition⁴¹ and the ‘right to reside’ clause.⁴²

Difficulties experienced by appellants in addressing legal issues in their appeals due to the lack of availability of legal representation are compounded by the fact that the Social Welfare Appeals Office does not have a publicly accessible database of appeals decisions. As a result, appellants are denied access to decisions which may be relevant to their case. Other concerns with the social welfare appeals process include the fact that hearings are held in private, which leads to a lack of

⁴⁰ The number of social welfare recipients in 2013 represented a 57% increase on 2003 figures (Department of Social Protection (2014) *Annual Report 2013*, Dublin: Government of Ireland, p.6).

⁴¹ The Habitual Residence Condition (HRC) is a qualifying condition for social welfare payments which was introduced on 1 May 2004 in response to EU enlargement. All persons seeking means-tested social welfare payments and Child Benefit after that date have been required to satisfy this condition. The five criteria used by the Department of Social Protection to determine whether a person satisfies the Habitual Residence Condition are: 1) The length and continuity of living in the State or another country; 2) The length and reasons for any absence from the State; 3) The nature and pattern of the person’s employment; 4) The person’s main centre of interest; 5) The future intentions of the person applying for the social welfare scheme. For more information see FLAC’s *Guide to the Habitual Residence Condition*, available at: <http://bit.ly/flacHRC> [accessed 25 January 2016].

⁴² Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 amended Section 246 of the Social Welfare Consolidation Act 2005 by inserting Section 246(5), which provides that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State. For example, asylum-seekers do not have a ‘right to reside’ in Ireland until their applications for refugee status or subsidiary protection have been determined.

public scrutiny, and inequalities between the parties where appellants are unaware of their right to access their own personal social welfare files.⁴³

2.5 FLAC statistics

FLAC’s Data Collection Programme reinforces the findings that unmet legal need has grown considerably during the recession. Given the limited and stretched state services providing assistance, the legal information offered through FLAC’s information line and the advice given in FLAC centres, which are run in partnership with the Citizens Information Service, by volunteer lawyers means that FLAC acts as a bridge for those who cannot afford access to justice.

Telephone Information & Referral Line	2007	2008	2009	2010	2011	2012	2013
Debt	93	158	630	912	1538	1486	1626
<i>(Mortgage Arrears)*</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(648)</i>	<i>(884)</i>
Housing	54	65	272	300	380	642	1178
<i>(Landlord and tenant)**</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	370	754
Employment	850	1861	981	958	1153	965	836
Social Welfare	52	86	139	187	283	241	264
FLAC Centres	2007	2008	2009	2010	2011	2012	2013
Debt	153	259	543	787	1157	1253	1588
<i>(Mortgage Arrears)*</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(456)</i>	<i>(592)</i>	<i>(914)</i>
Housing	330	521	538	671	627	726	819
<i>(Landlord and tenant)**</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	<i>(n/a)</i>	278	441	471
Employment	508	1094	1422	1558	2016	1982	1978
Social Welfare	99	139	196	289	347	379	396

**Mortgage arrears calls are a sub-group of total debt calls*

*** Landlord and tenant related calls are a sub-group of total housing calls*

Figure 3 – Total no. of calls to FLAC’s telephone service and queries to FLAC centres 2007 – 2013

⁴³ Free Legal Advice Centres (2012) *Not Fair Enough – Making the case for reform of the social welfare appeals system*, Dublin: FLAC.

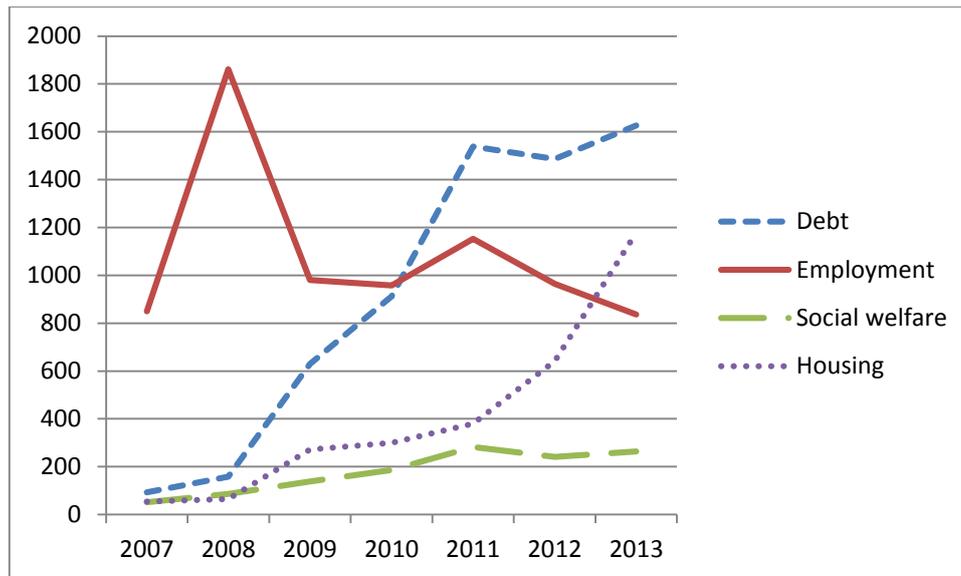


Figure 4 – No. of calls to FLAC’s telephone line 2007 – 2013

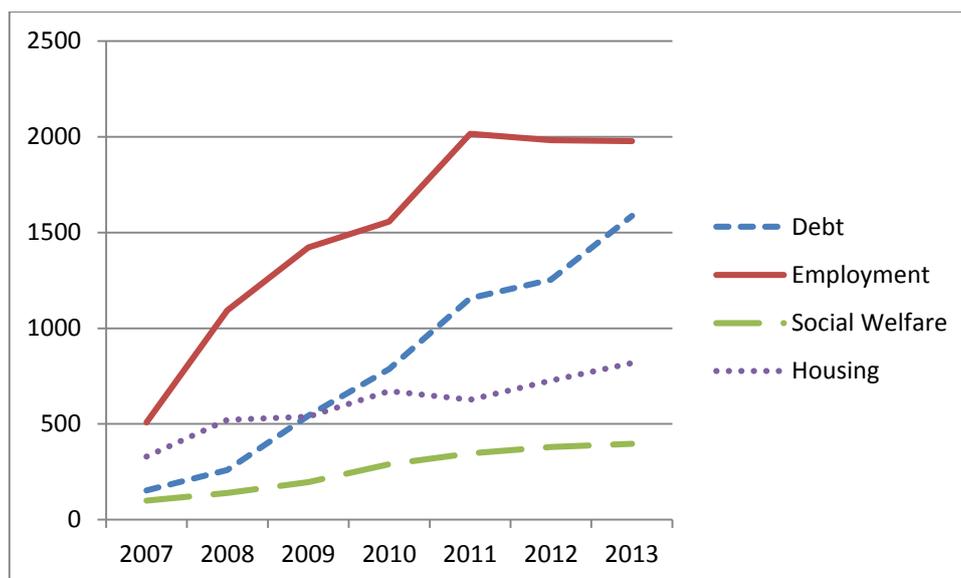


Figure 5 – No. of queries to FLAC centres 2007 – 2013

Statistics from FLAC clearly show that legal need for issues related to housing, debt, social welfare and employment increased dramatically during the period 2007 - 2013. However, despite the increase in requests to FLAC for legal advice and information in employment, debt, housing and social welfare matters, no efforts were made to broaden the remit of the Legal Aid Board. While FLAC reiterates that not all cases related to these areas will require the intervention of lawyers, where cases involve complex legal issues, legal aid must be provided.

2.6 International human rights law

The State has consistently resisted calls to broaden the remit of the Legal Aid Board. For example, on the issue of broadening the scheme to include more quasi-judicial tribunals, the State has argued, *inter alia*, that tribunals are intended to be relatively informal, that legal representation works against the objective of accessibility to users and that legal representation would have adverse resource implications.⁴⁴

While FLAC accepts that not all cases before tribunals such as the Social Welfare Appeals Office, Equality Tribunal and the Employment Appeals Tribunal will require legal representation, the European Court of Human Rights has been clear that there will always be cases where the requirements of justice demand legal representation.

In *Airey v Ireland*, the European Court of Human Rights held that in terms of the scope of the right to a fair trial, there is a positive duty on the State to provide legal aid in matters where the rights and obligations of the individual were in question and the matter was of such complexity that the applicant could not reasonably be expected to represent him or herself effectively. Furthermore, in *Steel & Morris v the United Kingdom*,⁴⁵ the European Court of Human Rights found that the blanket exclusion of any area of the law from the United Kingdom's civil legal aid scheme violates Article 6(1) of the Convention.

Given the jurisprudence of the European Court of Human Rights and the blanket exclusion of certain areas from the remit of the Legal Aid Board, it is highly likely that some provisions of the Civil Legal Aid Act 1995, including s.28(9), are incompatible with the protections afforded to the right to a fair hearing guaranteed by the European Convention on Human Rights.

In recent years, the continued exclusion of quasi-judicial tribunals and other areas of the law from the civil legal aid scheme has attracted criticism from the United Nations. Ireland ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989 and, consequently, is bound by its provisions under international law. The UN Committee on Economic, Social and Cultural Rights (the Committee), a body of 18 independent experts, is mandated to oversee States Parties' compliance with the Covenant.

In June 2015, the Committee on Economic, Social and Cultural Rights considered Ireland's third periodic report under ICESCR. In its Concluding Observations, the Committee expressed concern at the lack of free legal aid services in Ireland, which, in its view, prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, social welfare benefits, social housing and forced evictions.⁴⁶ The Committee recommended that Ireland ensure the provision of free legal aid services in a wide range of areas, including by expanding the remit of the civil legal aid scheme.⁴⁷ Similar

⁴⁴ Department of Foreign Affairs and Trade (2015) *Written responses to questions from the UN Committee on Economic, Social and Cultural Rights, which were unanswered due to time constraints during the third periodic review of Ireland*, available at: <http://bit.ly/1nxYK7R> [accessed 17 December 2015].

⁴⁵ *Steel and Morris v UK* No.68416/01 [2005] 41 EHRR 22 (15 February 2005).

⁴⁶ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

⁴⁷ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

sentiments were expressed by the United Nation's Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, during her 2011 mission to Ireland.⁴⁸

The Committee also voiced concerns regarding the number of long-term mortgage arrears in Ireland and recommended that protections for mortgage borrowers in arrears be strengthened, including through the provision of legal advice when borrowers are negotiating equitable arrangements with their lenders.⁴⁹

2.7 Broadened scope

While the State has rejected calls to broaden the scope of the Legal Aid Board to include issues related to housing, debt, social welfare and employment, in recent years the Board has assumed responsibility for the administration of a number of schemes not traditionally within its remit. These include the Family Mediation Service, the Garda Station Legal Advice Scheme, the Custody Issues Scheme and the Criminal Assets Bureau Ad-hoc Legal Aid Scheme. Furthermore, the Legal Aid Board's remit has been extended to include the provision of legal services to potential victims of human trafficking and to family members of a deceased person in certain specified instances in the Coroners' Courts. Some human and financial resources have been redirected to fulfil these additional responsibilities, however there is no evidence of any analysis of the impact of these developments on the Board's capacity to carry out its other functions.

⁴⁸ The Independent Expert expressed concern that several areas of law that are particularly relevant for people living in poverty, such as eviction proceedings and local authority housing issues, are not included in the Civil Legal Aid Act 1995. The Independent Expert also noted that the legal aid scheme does not provide for representation before the Employment Appeals Tribunal or the Social Welfare Appeals Office and recommended that the Government consider including these tribunals in the legal aid scheme (Office of the High Commissioner for Human Rights (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland, 17 May 2011*, Geneva: OHCHR, p.4).

⁴⁹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.27(d).

3. Financial eligibility for legal aid

The provision of state-funded civil legal aid in Ireland is not based on a legal needs assessment. In order to qualify for legal aid, an applicant must satisfy a number of tests including an overarching principle test,⁵⁰ a merits test⁵¹ and a means test. An applicant must satisfy certain financial criteria as part of the means test. Financial eligibility is assessed by reference to the applicant's disposable income and capital.

3.1 Means Test

The Civil Legal Aid Regulations 2006 stipulate that an applicant's disposable income must be below €18,000 in order to pass the initial means test for civil legal aid.⁵² 'Disposable income' is calculated in accordance with the Civil Legal Aid Act 1995 and the various regulations made under it.⁵³ It is total annual income, less allowable deductions.⁵⁴

Allowable deductions include yearly accommodation and spousal maintenance costs. The accommodation allowance is currently capped at €8000, which equates to approximately €667 per month for rent or mortgage repayments.⁵⁵ However, while rent levels fell in many counties during the recession, the accommodation allowance remained far below the average monthly cost of private rented accommodation.⁵⁶ Moreover, average monthly mortgage repayments are typically well in excess of €667 per month.

Additionally, spousal maintenance to the value of €3500 can be considered as an expense.⁵⁷ However, similar to the accommodation costs mentioned above, this limit is not realistic. It is FLAC's understanding that many people pay spousal expenses far in excess of the €67 per week which is allowed under current limits.

In addition to having a disposable income of less than €18,000, an applicant must also submit to a capital assessment. Capital resources include property, vehicles, cash-in-hand, savings, investments and other resources.⁵⁸ In October 2013, the Civil Legal Aid Regulations 2013 reduced the disposable capital threshold allowance from €320,000 to €100,000.⁵⁹ Prior to this, people who had a disposable

⁵⁰ Section 24 of the Civil Legal Aid Act 1995.

⁵¹ Section 28(2) of the Civil Legal Aid Act 1995.

⁵² Regulation 3(a) of the Civil Legal Aid Regulations 2006 (SI No. 460/2006).

⁵³ Civil Legal Aid Regulations 1996 – 2013.

⁵⁴ For more information on how to calculate "disposable income" see FLAC's *FLACsheet on Civil Legal Aid in Ireland*, available at: <http://bit.ly/flacCLASm> [accessed 23 November 2015]. The Legal Aid Board also has an on-line financial eligibility indicator, available at: <http://bit.ly/1PB5U0J> [accessed 23 November 2015].

⁵⁵ Regulation 3(c)(i) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁵⁶ S. McCárthaigh, 'Rent Prices: What tenants pay varies wildly from county-to-county', *Irish Examiner*, 20 April 2015.

⁵⁷ Regulation 3(c)(i) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁵⁸ The family home is not included in the calculation of capital in accordance with regulation 3(f) of the Civil Legal Aid Regulations 2006 (SI No. 460/2006).

⁵⁹ Regulation 3(a) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

income of under €18,000 and who owned capital valued at less than €320,000 were eligible to receive legal services from the Board.⁶⁰

This action served to limit the availability of legal aid to any individual with assets valued in excess of €100,000, including those who may be asset-rich but cash-poor. This includes farmers or other self-employed people who often own valuable assets such as land or machinery worth in excess of €100,000 but who have a relatively low disposable income. This regressive measure constitutes a severe legal limitation on those seeking access to justice.

3.2 Contributions

The calculated figure of the applicant's total disposable income is relevant, not only in assessing their eligibility for legal aid, but also in determining the contribution that the applicant will be liable to pay for legal services. Applicants for legal services in civil matters are required in almost all circumstances to pay a contribution to the Legal Aid Board. However, while the Civil Legal Aid Act 1995 permits the Legal Aid Board to collect payments via instalments and to waive fees for legal services on grounds of hardship,⁶¹ this mechanism is rarely used.⁶²

In 2013, the required contributions for legal advice and legal aid were increased. For legal advice, applicants previously had to pay a minimum fee of €10. This minimum payment was increased to €30.⁶³ While this may seem like a relatively minimal rise, to those in the lowest socio-economic sphere this was a significant change.

In addition to raising the cost of legal advice, the minimum payment for legal aid increased. Prior to the approval of the 2013 Regulations, applicants had to pay a minimum fee of €50 for legal aid. Now, applicants for legal aid are required to pay a minimum fee of €130, an increase of 160%.⁶⁴

FLAC is concerned that these prohibitive costs may have both excluded and deterred some people from accessing the scheme. For example, people who are solely reliant on social welfare may have been dissuaded from applying for legal aid. The required contribution for legal aid of €130 is almost 70% of a weekly basic supplementary welfare allowance payment.⁶⁵ Therefore, it can be very difficult for those living on the basic rate of social welfare to find the money to pay for legal services, particularly those under the age of 26 who receive a reduced rate of social welfare payments.⁶⁶ The

⁶⁰ For example, a person who owns a valuable asset that he or she uses to generate a livelihood will be reluctant to liquidate it in order to pay for legal services simply because it will remove his/her possibility to earn a wage into the future. Yet if that asset is considered in the calculation for civil legal aid, it may well disqualify the person from receiving legal help despite the fact that he/she has no other way of getting the assistance needed.

⁶¹ Section 29(2) of the Civil Legal Aid Act 1995 as amended by Section 80 of the Civil Law (Miscellaneous Provisions) Act 2008.

⁶² The Legal Aid Board received only 355 applications for waiver of fees on grounds of hardship in 2013 (Communication received by FLAC from the Legal Aid Board on 05 January 2016).

⁶³ Regulation 3(d) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁶⁴ Regulation 3(d) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁶⁵ At the time of writing, the basic rate of Supplementary Welfare Allowance for those aged 26 or over is €186.

⁶⁶ At the time of writing, the basic rate of Supplementary Welfare Allowance for 16 to 24 year olds is €100 and for 25 year olds is €144 per week. Reduced social welfare payments for young people were first introduced in 2009 and subsequently expanded.

increase also came at a time when the cost of living and the cost of basic utilities were rising, while supports and incomes were being substantially reduced.⁶⁷

Individuals at risk of or who are victims of domestic violence must also pay contributions for legal aid. FLAC is concerned that victims of domestic violence may have avoided, or may be avoiding, the civil legal aid scheme for economic reasons. Victims of domestic violence may need to make recurring applications for legal aid which can be very costly, especially given the rise in required financial contributions. Organisations working with victims of domestic violence have stated that the increase in legal fees for advice and representation provided by the Legal Aid Board puts legal assistance out of reach for most women availing of their services, in particular for those reliant on state payments.⁶⁸

Several United Nations Treaty Bodies have raised concerns regarding the adequacy of legal services provided to victims of domestic violence in Ireland. In June 2015, the UN Committee on Economic, Social and Cultural Rights voiced concerns about the insufficient support services for victims of domestic violence, and recommended that such services, including legal aid for victims, be strengthened.⁶⁹ In its 2011 Concluding Observations, the UN Committee against Torture urged the State to enhance its support and funding of support services provided to victims.⁷⁰

Furthermore, victims of domestic violence who do not satisfy the Habitual Residence Condition or the 'right to reside' clause, who are often very vulnerable, experience particular difficulties accessing legal services as they are not entitled to receive social welfare payments.⁷¹ In July 2014, the UN Human Rights Committee expressed its concern "at the existence of administrative and financial obstacles for marginalised women to access essential support services, particularly whose immigration status is dependent on their spouse or partner or who do not meet the habitual residence condition".⁷² The Committee also called on the State to "take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalized groups, have equal access to protection against perpetrators of violence".

Lack of affordable legal representation can have other costly implications. First, an applicant may discontinue their case. This results in a rank denial of justice. Secondly, the applicant may pursue their claim on their own, in which case it will be pursued inefficiently, meaning greater costs for the system and delays for other litigants.⁷³ Moreover, while it is an individual's right to self-represent,

⁶⁷ Law Society of Ireland (2012) *Access to Justice: A Report of the Legal Aid Taskforce*, Dublin: Law Society of Ireland, p.15.

⁶⁸ SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

⁶⁹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.22.

⁷⁰ UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2011) *Concluding Observations of the Committee against Torture: Ireland*, Geneva: OHCHR, para.27.

⁷¹ The Committee on Economic, Social and Cultural Rights expressed concern at the discriminatory effect of the habitual residence condition on women who are victims of domestic violence in accessing social security benefits (UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21).

⁷² UN Human Rights Committee (2014) *Concluding Observations of the Human Rights Committee: Ireland*, Geneva: OHCHR, para.8.

⁷³ Lord Neuberger, "Justice in an Age of Austerity", Tom Sargent Memorial Lecture 2013, 15 October 2013.

without the expertise and legal knowledge of the solicitors in the Law Centres, the lay litigant may self-represent to their detriment.

On a more positive note, in 2013 the requirement for parents to pay contributions in child care proceedings was abolished.⁷⁴ Consequently, individuals who meet all of the requirements, including passing the means test, and are seeking to access legal services in order to defend proceedings against Tusla (the Child and Family Agency)⁷⁵ on foot of the Child Care Act 1991 are no longer required to make a financial contribution to the Legal Aid Board. This was a very positive measure and one which FLAC greatly welcomed. The abolition of fees removed a bureaucratic barrier facing many parents when involved in child care proceedings, which are often stressful, upsetting and have long-term impacts on all those involved.

3.3 Waiver of legal fees on grounds of hardship

While the Legal Aid Board is permitted to waive an applicant's legal fees where failure to do so would cause hardship, FLAC has continually raised the issue regarding lack of public awareness about the fact that a provision for waiver on grounds of hardship exists. In 2013, only 355 applications for waiver of fees on grounds of hardship were received by the Board.⁷⁶ Of these, 335 applications were approved and 20 were refused.⁷⁷ While contributions received from legally aided persons amounted to €875,482 in 2013,⁷⁸ the total amount which was waived by the Board in the same year was just €62,566.⁷⁹

While the problem regarding lack of awareness of the waiver scheme pre-dates the onset of the recession, inevitably, more people would have incurred hardship in making contributions during the economic crisis as levels of disposable income in the State declined.⁸⁰ As a result, individuals may have been dissuaded from making an application for legal aid, creating an extra barrier for those seeking access to justice.

3.4 Criminal legal aid scheme

The system of civil legal aid in Ireland contrasts sharply with the criminal legal aid system. While cases under both schemes can have grave consequences for a person's welfare or livelihood, the criminal legal aid scheme, recognised as a constitutional right, is much more accessible and inclusive as compared to its civil counterpart.

An accused person applies for criminal legal aid, either directly or through their legal representative, to a judge who decides whether or not to grant the request. When deciding whether an individual

⁷⁴ Regulation 3(f) of the Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁷⁵ Child care proceedings were instituted by the Health Service Executive until the Child & Family Agency Act 2013 came into effect. The Child and Family Agency, or Tusla, now deals with child protection cases.

⁷⁶ The Legal Aid Board does not possess reliable data on applications for waiver of fees on grounds of hardship prior to 2013 (Communication received by FLAC from the Legal Aid Board on 05 January 2016).

⁷⁷ Communication received by FLAC from the Legal Aid Board on 5 January 2016.

⁷⁸ Legal Aid Board (2014) *Legal Aid Board Annual Report 2013*, Cahirciveen: LAB, p.45.

⁷⁹ Communication received by FLAC from the Legal Aid Board on 05 January 2016.

⁸⁰ According to the Organisation for Economic Development and Co-operation, household incomes have fallen by €1800 per person since 2008, 64% more than the average drop in income in the other Eurozone countries (Organisation for Economic Development and Co-operation (2014) *Society at a Glance 2014 Highlights: Ireland and the crisis and its aftermath*, Paris: OECD, p.1).

satisfies the merits test, a judge will consider if the individual is capable of receiving a fair hearing without legal representation and the impact of a possible conviction on their lives. While there is a means test, it is an individual assessment of the defendant's capacity to fund their litigation. The matter is one of judicial discretion. A judge will request that the applicant furnish the court with a statement of means to assist the court in determining whether legal aid should be granted. This more discretionary policy in criminal law matters contrasts with the very rigid means test for civil law matters. Furthermore, criminal legal aid, unlike civil, is free. There is no required contribution to be paid by applicants for criminal legal aid.

4. Resourcing of the Legal Aid Board

In 2008, a combination of failures, including a lax credit regime, as well as a lack of oversight and regulation of key institutions meant that Ireland entered one of the most severe economic recessions since the start of the 20th century. In response, and under a memorandum of agreement made with the ‘Troika’ of the European Central Bank, European Commission and International Monetary Fund, the State introduced spending cuts across a range of public services and a formal moratorium on public service recruitment.⁸¹ The civil legal aid scheme did not escape such cutbacks.

4.1 Funding for the Legal Aid Board

As the recession deepened, poverty levels in Ireland increased. In particular, the economic crisis had a disproportionate impact on the poorest in society, who suffered the largest reduction in income.⁸² Data from the 2013 EU Survey on Income and Living Conditions highlights that deprivation rates increased from 11.8% in 2007 to 30.5% in 2013.⁸³ Similarly, the consistent poverty rate almost doubled in the period 2008 – 2013, increasing from 4.2% in 2008 to 8.2% in 2013. In its 2015 Concluding Observations, the UN Committee on Economic, Social and Cultural Rights expressed concern at the increase in the number of people living in consistent poverty or at risk of poverty, particularly among children, single-parent families, older persons, persons with disabilities, migrants, Travellers and Roma.⁸⁴

Inevitably, more individuals became eligible for state-subsidised legal services during the recession as poverty levels increased and average disposable incomes decreased. Logically, it would follow that, as levels of dependency or envisaged dependency on a service increased, funding for that service would increase proportionately. This was not the case. Figure 6, overleaf, indicates the level of funding allocated to the Legal Aid Board between 2007 and 2013.⁸⁵

⁸¹ The EU-IMF bailout agreement imposed budget restrictions requiring €15 billion in savings to curtail public expenditure (Free Legal Advice Centres (2014) *Our Voice, Our Rights – a parallel report in response to Ireland’s Third Report under the International Covenant for Economic, Social and Cultural Rights*, Dublin: FLAC, p.12).

⁸² T. Callan et al (2013) ‘The Great Recession, Austerity and Inequality: Evidence from Ireland’, *Intereconomics*, Vol. 48, Issue 6, November/December 2013, pp.335-38.

⁸³ Central Statistics Office (2014) *Survey on Income and Living Conditions*, Cork: CSO, p.1.

⁸⁴ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.24.

⁸⁵ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: <http://bit.ly/1WNQoo1> [accessed 29 October 2015].

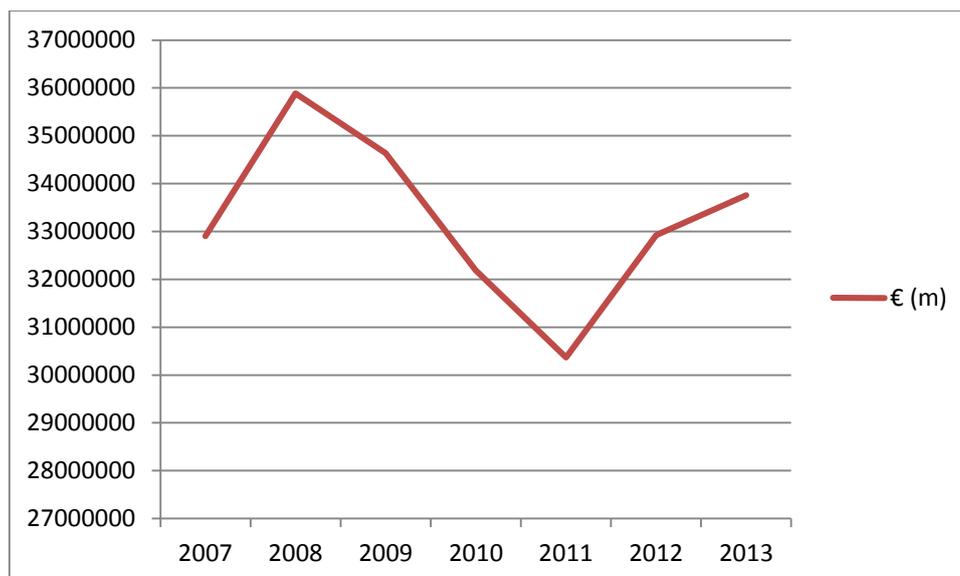


Figure 6 – State funding to the Legal Aid Board 2007 – 2013

In 2008, as illustrated in Figure 6, the Board was allocated just under €36m by the State to perform its functions. Subsequently, state funding fell for three consecutive years, until 2011. By this stage, the Board’s funding had been reduced by over 15%. However, while funding increased successively in 2012 and 2013, financial allocations were still less than 2008 levels, despite much greater demand.

Inevitably, the State’s failure to adequately resource civil legal aid services had repercussions. The substantial reduction in funding allocated to the Board during the early years of the recession negatively impacted on its capacity and the capacity of the Law Centres to fulfil their functions. In particular, the ability of both the Board and the Law Centres to provide and deliver timely services was severely compromised, leading to longer waiting times.

4.2 Staffing levels at the Legal Aid Board

As previous FLAC studies have shown, the number of staff employed by the Legal Aid Board was always inadequate to provide a comprehensive legal aid service.⁸⁶ Nonetheless, as well as funding reductions, the Legal Aid Board suffered cuts in staffing levels during the recession. A government-imposed moratorium on public service recruitment prohibited the Legal Aid Board from hiring staff to relieve the increased pressures placed on Law Centres. An exceptional derogation from this moratorium was permitted in 2010, whereby the Board was permitted to recruit a number of temporary staff who were exclusively deployed to front-line service delivery roles.⁸⁷ Nonetheless, the Board was forced, for most of the period 2007- 2013, to operate with limited capacities.

Figure 7 shows the level of staffing of the Board between 2007 and 2013. For clarity, the number of approved staff, actual number of staff and average number of employees are plotted.

⁸⁶ Free Legal Advice Centres (2005) *Access to Justice: A Right or a Privilege?*, Dublin: FLAC, p.34. See also Free Legal Advice Centres (2009) *Civil Legal Aid in Ireland: Forty Years On*, Dublin: FLAC, p.23.

⁸⁷ Legal Aid Board (2012) *Legal Aid Board Annual Report 2011*, Cahirciveen: LAB, p.34.

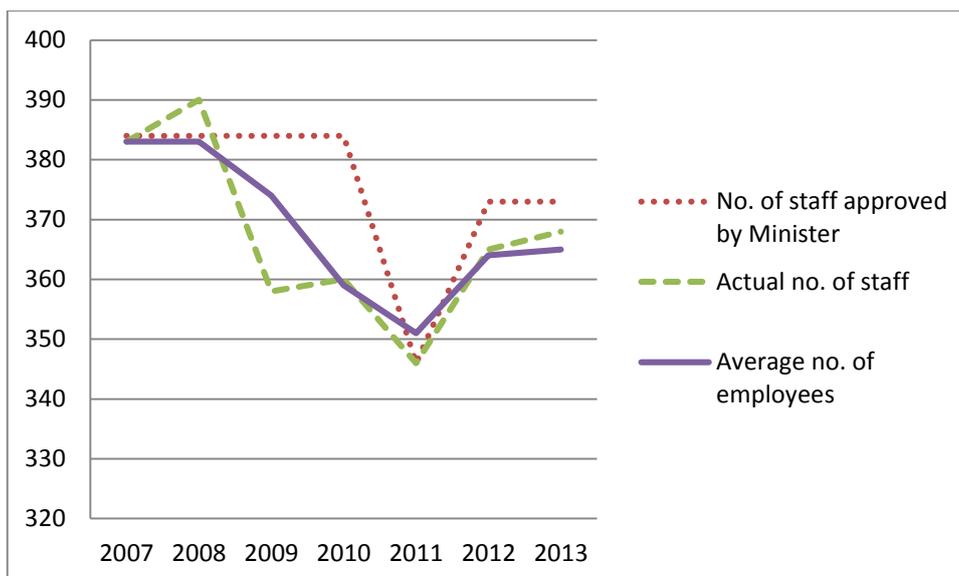


Figure 7 – Staffing levels in the Legal Aid Board 2007 - 2013⁸⁸

Figure 7 shows that, while the actual number of staff increased in 2008, the average number of employees fell. Additionally, while the ministerial-approved number of staff remained static until 2010, the actual number of staff continued to decrease (save only in 2010 where two additional staff members were recruited). In 2011, the approved number of staff dropped sharply from 384 to 346, a figure which corresponded to the actual number of staff employed by the Board. The figures rose in 2012, but the number of staff remained lower than it had been prior to the economic downturn.

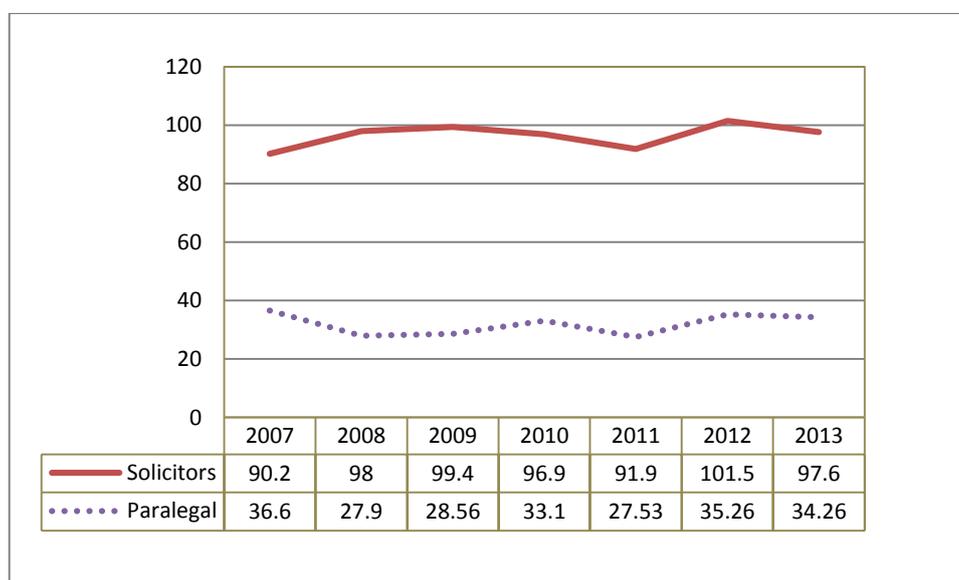


Figure 8 – No. of full-time equivalent solicitors & paralegals working with Legal Aid Board 2007 - 2013⁸⁹

⁸⁸ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: <http://bit.ly/1WNQoo1> [accessed 29 October 2015].

⁸⁹ Figures compiled from correspondence received by FLAC from the Legal Aid Board on 05 January 2016. Figures do not include solicitors working with the Refugee Legal Service (RLS) as the RLS only merged with the Legal Aid Board’s general service in 2010.

Figure 8 shows the number of frontline staff, namely solicitors and paralegals, in full-time equivalent, working with the Legal Aid Board between 2007 and 2013. The number of solicitors does not include those working with the Refugee Legal Service during the relevant period. As is evident from Figure 8, the number of frontline staff working with the Board fluctuates during the economic crisis. However, it is clear that frontline services were not as adversely affected by cuts as compared to general staffing levels during the relevant period.

Overall, reduced staffing levels made the provision of services by the Board throughout the recession particularly onerous. Inevitably, lower numbers of personnel, at a time of heightened demand, impacted on service provision.

4.3 Private Practitioner's Scheme

In addition to its own staff, the Legal Aid Board maintains a number of panels of private barristers and solicitors to support its work.⁹⁰ There are two private solicitors' panels, one of which provides services in relation to divorce and separation cases in the Circuit Court, and the other which provides representation in relation to District Court cases such as domestic violence, maintenance, custody, access and guardianship cases.

During the recession, the Board increased the amount of work outsourced to private practitioners dealing with District Court cases. While 1977 legal aid certificates were granted in 2007,⁹¹ over 5000 were granted in 2012.⁹² This was a welcome move which aimed to improve access to justice for those with a family law matter who were unable to get an appointment with the Legal Aid Board before the court date.

By contrast, the number of legal aid certificates granted to private practitioners working on the Circuit Court scheme reduced sharply.

⁹⁰ See website of the Legal Aid Board at: <http://bit.ly/204POaV> [accessed 28 October 2015].

⁹¹ Legal Aid Board (2008) *Legal Aid Board Annual Report 2007*, Cahirciveen: LAB, p.14.

⁹² 5,077 certificates were granted in 2012. Legal Aid Board (2013) *Legal Aid Board Annual Report 2012*, Cahirciveen: LAB, p.23.

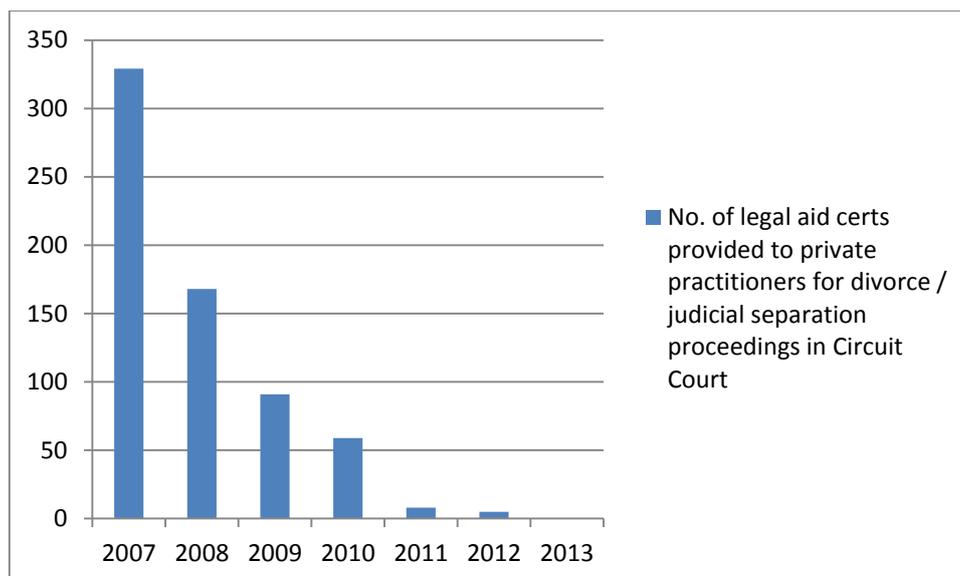


Figure 9 – No. of legal aid certificates provided to private practitioners 2007 - 2013⁹³

As highlighted in Figure 9 above, the number of legal aid certificates granted to private practitioners for representation in divorce and separation matters in the Circuit Court plummeted from 329 in 2007 to zero in 2013. The Legal Aid Board attributed the suspension of this scheme to budgetary constraints.⁹⁴

Given that District Court matters tend to be resolved much more quickly than those in the Circuit Court and that fees paid to District Court private practitioners are only 10 – 15% of the fee payable for private practitioners working on Circuit Court cases,⁹⁵ the suspension of the Circuit Court scheme reduced the already limited capacities of the Board even further.⁹⁶

⁹³ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: <http://bit.ly/1WNQoo1> [accessed 29 October 2015].

⁹⁴ Legal Aid Board (2014) *Legal Aid Board Annual Report 2013*, Cahirciveen: LAB, p.19.

⁹⁵ Legal Aid Board (2014) *Legal Aid Board Annual Report 2013*, Cahirciveen: LAB, p.19.

⁹⁶ Following the publication of Budget 2016, the Minister for Justice and Equality signalled that the Civil Court Practitioner Scheme would be reinstated. Department of Justice and Equality, 'Fitzgerald announces 600 new Gardaí to be recruited in 2016', [press release], 13 October 2015.

5. Practice of the Legal Aid Board

As a scheme dedicated to ensuring access to justice for those on low means, it is unsurprising that demand for state-subsidised legal services significantly increased during the recession. People became less well off, and, as a result, became eligible for services provided by the Legal Aid Board. FLAC’s own data during the recession also showed that legal problems became more complex, with people experiencing multiple intertwined legal issues; particularly involving family law and debt issues.⁹⁷ This increase in demand occurred at a time when resources assigned to the Board decreased which, in turn, had an inevitable impact on waiting times for consultations with solicitors.

5.1 Demand for legal services provided by the Legal Aid Board

Figure 10 below outlines the number of applications for legal services during the period 2007 – 2013.

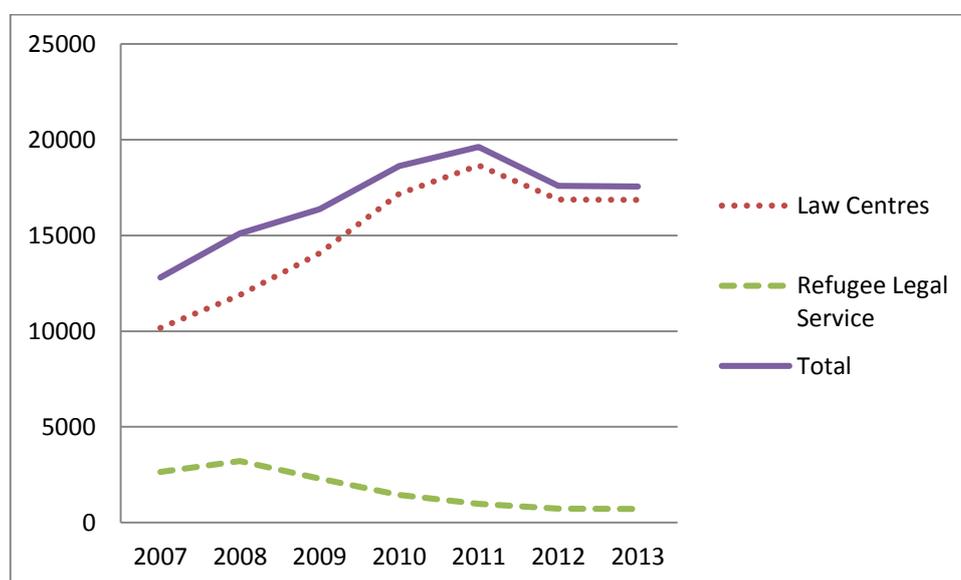


Figure 10 – No. of applications for legal services 2007 – 2013⁹⁸

As evidenced by Figure 10, demand for legal services provided by the Board increased enormously during the recession. Figure 10 shows that the number of applications for legal services from the Legal Aid Board progressively increased on an annual basis between 2007 and 2011. 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. While 2012 and 2013 saw slight reductions, demand remained far greater than pre-recession levels.

5.2 Waiting lists in Law Centres

Figure 11 overleaf highlights the number of people waiting for an initial appointment with a solicitor on 31 December of each year.

⁹⁷ Free Legal Advice Centres (2015) *FLAC annual report 2014*, FLAC: Dublin, p.4.

⁹⁸ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Annual_Reports [accessed 29 October 2015].

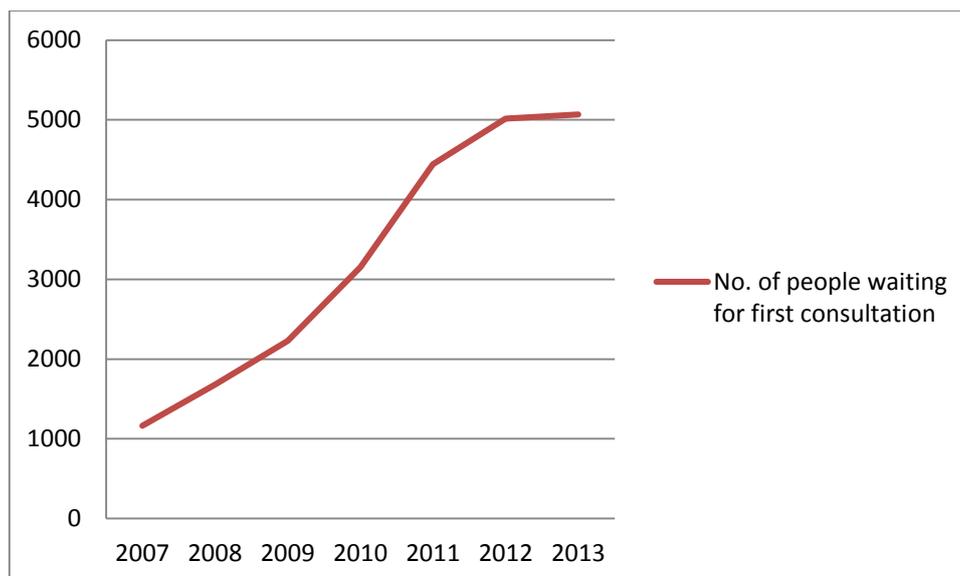


Figure 11 – No. of people waiting for a first consultation with a solicitor in Law Centres 2007 - 2013⁹⁹

As illustrated by Figure 11, there was a substantial increase in the numbers of people waiting for a first consultation with a solicitor during the economic crisis. Between 2007 and 2013, the figure increased from 1163 individuals waiting on a first consultation to 5067, a percentage increase of over 335%. A number of factors, including decreased funding and staffing as well as increased demand, played a significant role in the growth of these waiting lists.

5.3 Waiting times in Law Centres

Undoubtedly, a direct corollary of the increase in people waiting for consultations was a longer waiting time for those services. Figure 12 charts the minimum and maximum waiting times (in months) in Law Centres between 2007 and 2013.

⁹⁹ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Annual_Reports [accessed 29 October 2015].

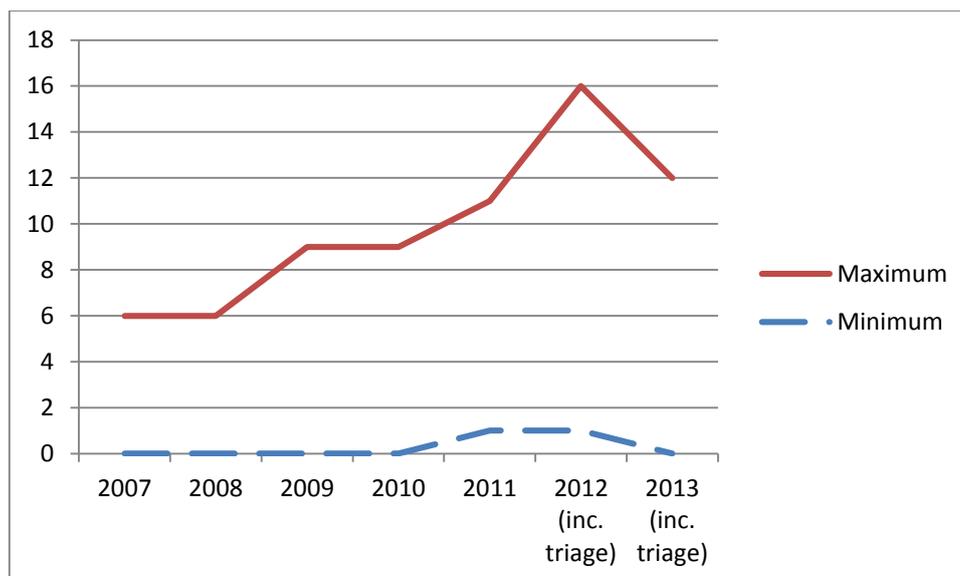


Figure 12 – Minimum and maximum waiting times (months) in Law Centres 2007 – 2013¹⁰⁰

Figure 12 shows that those who were entitled to legal services waited for a longer length of time to access those services during the economic crisis. In 2007, the maximum waiting time in a Law Centre for legal services was 6 months. By 2012 this had leaped to 15 months. While it has abated somewhat since then, FLAC is seriously concerned about the impact of these chronic delays on access to justice.

First, delays in accessing civil legal aid services can lead to avoidance of the scheme, which in and of itself constitutes a barrier to accessing justice. Where waiting times in Law Centres are extremely long, it may seem pointless or futile to potential applicants to even apply for legal aid, especially where their court date is soon. Simply put, if a person is faced with a 9-month delay to see a Legal Aid Board solicitor, he or she may well decide to drop the action, represent him or herself or seek to fund a private solicitor, leading to debt or other difficulties.

Secondly, FLAC is concerned that as waiting times in Law Centres grew, more judges may have proceeded with cases in the interests of expediency. Judicial practice in Ireland has varied and not all judges have been prepared to wait the length of time required for an applicant to access legal aid.¹⁰¹ Such decisions may disadvantage any party who is entitled to receive legal aid but could not access the services that they needed in time. Those who are part of the proceedings but who are represented by a private lawyer or by a Legal Aid Board solicitor from a different law centre are also adversely affected by delays.¹⁰² More generally, where court proceedings are delayed due to lack of legal representation, cases cannot be properly resolved and resources are wasted.

Thirdly, delays can exacerbate existing problems, especially family disputes and domestic violence cases. While applications for legal representation by victims of domestic violence, who are often in need of speedy access to legal remedies such as safety or barring orders, are prioritised by the

¹⁰⁰ All data compiled from Legal Aid Board Annual Reports 2007-2013 available at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Annual_Reports [accessed 29 October 2015].

¹⁰¹ Free Legal Advice Centres (2009) *Civil Legal Aid in Ireland: Forty Years On*, Dublin: FLAC, p.11.

¹⁰² Law Society of Ireland (2012) *Access to Justice: A Report of the Legal Aid Taskforce*, Dublin: Law Society of Ireland, p.10.

Board, other associated problems, such as judicial separation or custody arrangements are not typically dealt with as expeditiously. Long waiting periods can be exploited by abusive partners to drain family assets¹⁰³ and to intimidate victims to drop their cases.¹⁰⁴ Delays in accessing state-subsidised legal services can also place those at risk in increased danger of harm.

In situations involving family disputes, delays can have long-term and serious repercussions, especially on children. Family breakdowns are highly emotive processes for children and prolonged disputes between two parents can be very acrimonious, with children feeling caught in the crossfire.¹⁰⁵ Therefore, delays in accessing civil legal aid services can result in severe and long-term damage to family relationships.

In response to delays in access to civil legal aid during the recession, the Legal Aid Board piloted a 'triage' system in 2012 in some Law Centres. Under this system, applicants are supposed to be seen by a solicitor within the first month of applying for legal services for a short consultation. One of the primary purposes of this system was to allay some of the pressure on Law Centres by providing applicants with an opportunity to explore other options, such as mediation or alternative dispute resolution, while waiting on their substantive consultations. It could also identify and filter out applications which would not pass the Legal Aid Board's three tests. However, by the end of 2012, of the 11 Law Centres operating the triage system, only three had waiting lists of one month.¹⁰⁶ In fact, some Law Centres had waiting lists of 7 and 10 months for triage appointments.¹⁰⁷ While FLAC appreciates the considerable efforts of the Board to deal with the issue of waiting times, lack of adequate resources made it difficult to effectively implement this initiative.

While delays in accessing civil legal aid services posed a considerable problem for access to justice during the recession, it is clear that the Legal Aid Board was forced to work within budgetary restraints which imposed real restrictions on its capacity to operate effectively and efficiently. Pressures on the provision of front-line services were compounded by reduced staffing levels and increases in demand. Many of the Law Centres are small, with no more than a few solicitors and support staff providing a service to entire counties, and sometimes more. In cases where a solicitor or a paralegal resigned, became ill, or even went on holiday, the pressure on the Law Centre and on its clients became even greater. Despite the ongoing commitment and dedication of the Legal Aid Board's staff and board, it was and is unreasonable to expect such a small and reduced number of staff to be burdened with the responsibility of delivering a timely and effective legal aid service to an entire country.

¹⁰³ Dr. C. Humphreys and Dr. T. Ravi (2002) *Routes to Safety – Protection issues facing abused women and children and the role of outreach services*, Bristol: Women's Aid Federation of England.

¹⁰⁴ Unnamed author, 'Domestic violence – Delays leave victims in great danger', *Irish Examiner*, 18 January 2010.

¹⁰⁵ Barnardos (2013) *What About Me? Prioritising Children in Family Breakdown Proceedings*, Dublin: Barnardos, p.2.

¹⁰⁶ Legal Aid Board (2013) *Legal Aid Board Annual Report 2012*, Cahirciveen: LAB, p.24.

¹⁰⁷ Legal Aid Board (2013) *Legal Aid Board Annual Report 2012*, Cahirciveen: LAB, p.24.

5.4 Types of cases dealt with by the Legal Aid Board

Figure 13¹⁰⁸ indicates the types of cases that Law Centres deal with, by their subject matter at the initial appointment.

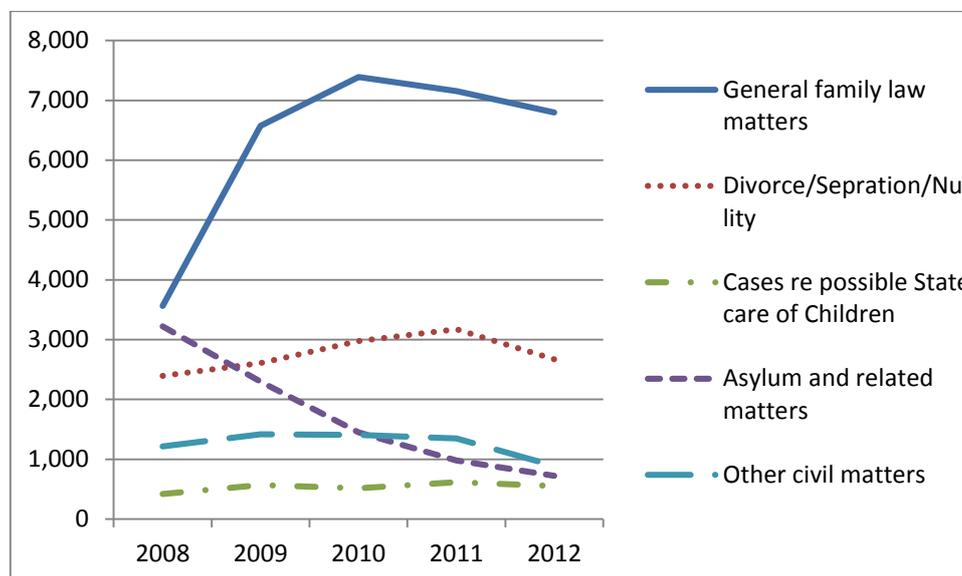


Figure 13 – Initial appointments by subject matter 2008 – 2012¹⁰⁹

The Legal Aid Board has always concentrated to a large degree on family law-related issues. Figure 13 shows that the need for legal services in family law-related matters radically increased in the recessionary period. Asylum and related matters fell sharply between 2008 and 2012 in line with the decrease in people seeking asylum in Ireland.

One noteworthy trend highlighted in Figure 13 is the steady increase in the number of appointments concerning child care cases. In 2007, legal aid was granted in 707 child care cases.¹¹⁰ By 2012, this figure had reached 1178.¹¹¹ FLAC’s understanding is that this increase resulted from a policy shift placing increased focus on the protection of children through the childcare system.

According to the Legal Aid Board itself, child care cases tend to be extremely resource intensive as compared to other types of cases.¹¹² The increased volume of such cases, many of which are complicated and remain active for a considerable period of time, placed additional pressure on the Legal Aid Board during the economic crisis. Despite the importance of this work, which is considered

¹⁰⁸ All data compiled from Legal Aid Board Annual Reports 2007-2012 available at: <http://bit.ly/1WNQoo1> [accessed 29 October 2015]. Relevant figures for 2007 and 2013 are not available.

¹⁰⁹ The Legal Aid Board’s *Annual Report 2013* does not provide actual figures for case type, instead providing percentage applications. The Board received 17,559 applications for legal services in 2013. The percentage application for case type for 2013 was as follows: General family law matters – 52%, Divorce / Separation / Nullity – 28%, Cases re possible State care of children – 5%, Asylum and related matters – 4%, Other civil matters – 11% (Legal Aid Board (2014) *Legal Aid Board Annual Report 2013*, Cahirciveen: LAB, p.15.).

¹¹⁰ Legal Aid Board (2008) *Legal Aid Board Annual Report 2007*, Cahirciveen: LAB, p.14.

¹¹¹ Legal Aid Board (2013) *Legal Aid Board Annual Report 2012*, Cahirciveen: LAB, p.19.

¹¹² Legal Aid Board (2012) *Legal Aid Board Annual Report 2011*, Cahirciveen: LAB, p.10.

a priority issue, extra budgetary and staffing resources were not made available to the Board during the relevant period.

Research undertaken by the Child Care Law Reporting Project (CCLRP) found that the vast majority of parents who are legally represented in child care cases receive representation from solicitors working with the Legal Aid Board.¹¹³ The CCLRP noted that the unavailability of legal representation for respondents in child care cases can cause adjournments and further delay.¹¹⁴

On the reverse side, the Health Service Executive, whose functions in this area have transferred to Tusla, awarded a contract for legal services to Arthur Cox in March 2011.¹¹⁵ In 2012 alone, more than €9 million was provided to Arthur Cox for costs related to child care cases.¹¹⁶

Therefore, while there was recognition that the State needed extra legal capacity to deal with the growing number of child care cases it was involved in, no additional resources were allocated to the Legal Aid Board to deal with the burgeoning number of cases they were allotted.

5.5 Lack of diversity in work undertaken by the Legal Aid Board

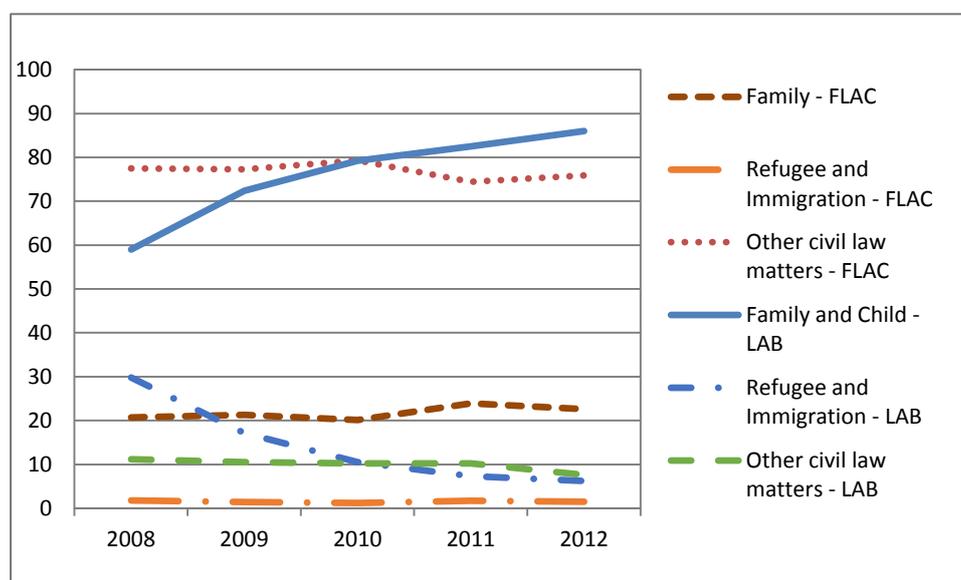


Figure 14¹¹⁷ - Percentage of family & child law, asylum & immigration law and other civil law matters dealt with by Board at initial appointments compared with percentage of calls received by FLAC's telephone and referral line on same areas 2008 - 2012

Figure 14 compares the percentage of family and child law, asylum and immigration law and other civil law matters dealt with by the Board at initial appointments during the period 2008 – 2012 with the percentage of calls received by FLAC's information and referral line related to the same areas of

¹¹³ Child Care Law Reporting Project (2013) *Interim Report*, Dublin: CCLRP, p.4.

¹¹⁴ Child Care Law Reporting Project (2015) *Final Report*, Dublin: CCLRP, p.52.

¹¹⁵ F. Gartland, 'Childcare cases taken by HSE increased by 20 per cent last year, data shows', *Irish Times*, 15 April 2013.

¹¹⁶ F. Gartland, 'Childcare cases taken by HSE increased by 20 per cent last year, data shows', *Irish Times*, 15 April 2013.

¹¹⁷ Data compiled from FLAC's Data Collection Programme and the Legal Aid Board's Annual Reports 2008-2012 available at: <http://bit.ly/1WNQoo1> [accessed 29 October 2015].

the law during the same period. Family law matters include issues such as divorce, separation and nullity proceedings, child care proceedings, as well as guardianship, custody and maintenance issues.

Figure 14 demonstrates that the Legal Aid Board predominantly deals with family law issues in spite of its broader remit. Initial appointments at Law Centres operated by the Legal Aid Board dealing with family and child law issues increased from just under 60% in 2008 to over 85% in 2012. By contrast, only 20 - 25% of the queries received on FLAC's information and referral line over the same period related to family and child law.

Interestingly, Figure 14 also reveals that while other civil law matters accounted for only about 10% of initial appointments at Law Centres, almost 80% of calls to FLAC's information and referral line related to matters other than family and child law and asylum and immigration law. These calls covered diverse topics such as debt, employment, discrimination, social welfare, housing and consumer issues.¹¹⁸

This data confirms that there is a substantial need for access to legal aid and advice in areas other than family and child law. While many of these issues are well within the mandate of the Legal Aid Board, there is either no public awareness of the Board's services in these areas, or some people are informally discouraged from applying for legal assistance in areas other than family law.¹¹⁹

Regarding lack of awareness of the scheme, as an "organ of the State",¹²⁰ the Legal Aid Board is required to perform its functions in a manner compatible with the State's obligations under the European Convention on Human Rights.¹²¹ This includes the promotion of rights enshrined in the Convention, such as the right to access justice. Despite this obligation, the Legal Aid Board does not meaningfully promote awareness of the civil legal aid scheme. Qualitative research undertaken by FLAC during the economic crisis found that public awareness of the civil legal aid scheme was very low.¹²²

Furthermore, there is now a statutory duty on public bodies to have regard to human rights and equality considerations in carrying out their functions.¹²³ To give effect to this duty, statutory bodies, such as the Legal Aid Board, must make an assessment of the equality and human rights concerns of relevance to their functions and purpose, and publicly set out in their strategic statements how those identified issues are to be addressed in their plans, policies and actions.¹²⁴ FLAC submits that, as public awareness of the civil legal aid scheme is vital for people on low incomes in enforcing basic human rights, particularly economic, social and cultural rights, the Legal Aid Board must engage in awareness raising activities and promote its services to comply with this public sector duty.

¹¹⁸ See Free Legal Advice Centre (2014) *FLAC annual report 2013*, Dublin: FLAC, pp.7-9.

¹¹⁹ Free Legal Advice Centres (2009) *Civil Legal Aid in Ireland: Forty Years On*, Dublin: FLAC, p.8.

¹²⁰ Article 1(1) of the European Convention on Human Rights Act 2003.

¹²¹ Article 3(1) of the European Convention on Human Rights Act 2003.

¹²² Free Legal Advice Centres (2009) *Civil Legal Aid in Ireland: Forty Years On*, Dublin: FLAC, pp.21-22.

¹²³ Section 42(1) of the Irish Human Rights and Equality Commission Act 2014.

¹²⁴ Section 42(2) of the Irish Human Rights and Equality Commission Act 2014.

6. Promoting access to justice during times of economic difficulty

Equal access to justice is a fundamental human right. In spite of the enormous challenges posed by economic difficulties, not least to state resources, this right must be upheld. In Ireland, the civil legal aid scheme exists as one of the primary mechanisms by which individuals access justice and enforce their right to an effective remedy. This chapter will explain the need for ensuring an efficient, accessible and sustainable civil legal aid system in times of economic difficulty.

1. Protecting vulnerable groups

The civil legal aid scheme is a vital tool for vulnerable and marginalised groups seeking access to justice. However, such groups often suffer disproportionately in times of economic constraint. As highlighted by the UN Committee on Economic, Social and Cultural Rights, austerity measures have had a particularly significant adverse impact on disadvantaged and marginalised individuals and groups in Ireland.¹²⁵ Therefore, it is of utmost importance that the civil legal aid scheme remains accessible to those who are in most need of it, particularly in difficult economic times.

For instance, civil legal aid schemes provide vital legal support to victims of domestic violence. Those who are at risk of and who are victims of domestic violence are particularly vulnerable during periods of austerity and recession. Support and advocacy groups for victims of domestic violence have reported an increase in financial abuse, a greater inability to escape violent relationships and a higher financial dependency on partners during the recession.¹²⁶ Given that many victims of domestic violence will encounter financial difficulties in accessing state-funded legal services where contributions are required, especially during times of economic constraint, it is imperative that domestic violence cases are prioritised and schemes are accessible.

2. Meeting increased demand

In times of economic difficulty, demand for state-subsidised legal services will inevitably rise as the right to adequate redress assumes even greater importance. People are placed under enormous pressure in times of economic restraint and, inevitably, need information, advice and representation to negotiate new and greater problems, as well as to secure a fair outcome where they have been wronged. However, as legal problems increase during economic downturns, incomes diminish with the consequent effect that more people are unable to afford private legal representation. Where increased demand is not matched by

¹²⁵ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11. The Committee also expressed concern at the increase in the number of people living in consistent poverty or at risk of poverty, particularly among children, single-parent families, older persons, persons with disabilities, migrants, Travellers and Roma (UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.24).

¹²⁶ See Women's Aid website, available at: <http://www.womensaid.ie/media/faqs.html> [accessed 29 October 2015].

increased resources, civil legal aid schemes become inefficient and unsustainable. Consequently, it is vital that the State provides adequate services to all those who are eligible for civil legal aid and maintains funding of civil legal aid schemes to the maximum of its available resources to ensure sustainability, accessibility and efficiency.

For example, civil legal aid schemes provide essential assistance to individuals in family law matters. International experience shows that there is an "inevitable link" between a downturn in the economy and a rise in the number of family law disputes.¹²⁷ Given the increased workload associated with family law cases in recessionary times, the State must ensure that civil legal aid schemes are appropriately resourced.

3. Enforcing socio-economic rights

Civil legal aid plays a vital role in enabling disadvantaged and marginalised individuals and groups to claim their socio-economic rights and obtain appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits.¹²⁸ These rights, such as housing, work and social security, are more likely to be violated in times of economic difficulty due to tightening budgets. As a result, legal need for such issues increases. For instance, this recession highlighted how those at risk of losing their homes had no access at all or, at best, only delayed access to state funded legal advice and representation. Therefore, civil legal aid schemes must be inclusive, comprehensive and well-resourced to ensure that people on low incomes can vindicate their socio-economic rights.

4. Effectively addressing interconnected issues

Issues which come within the remit of civil legal aid schemes are usually interlinked. The former Chief Executive of the Legal Aid Board, Moling Ryan, noted that "problems do not occur in a singular and self-contained fashion".¹²⁹ This is especially true during times of economic constraint. For example, debt problems are linked to family problems; social welfare issues are connected to employment issues; family problems are associated with housing problems; immigration issues are tied to social welfare issues. Thus, failure to provide legal representation, or even timely representation, in a social welfare case may, for instance, lead to greater debt problems. It is vital that problems which require legal support are addressed at an early stage. Thus, the importance of a comprehensive and efficient system of civil legal aid cannot be understated.

¹²⁷ S. Carroll, 'Legal Aid Board predicts case rise during recession', *Irish Times*, 24 July 2008. See also Department of Families, Housing, Community Services and Indigenous Affairs (2009) *Preliminary Report: Survey on the Impact on Families of the Economic Downturn*, Canberra: FaHCSIA.

¹²⁸ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

¹²⁹ M. Ryan (2008) "Ladders or Lawyers? Unmet legal needs and access to justice", *Law Society Gazette*, Vol. 102, Issue 9, November 2008, p.24.

5. Adhering to international human rights law

States voluntarily accede to international human rights instruments and assume international human rights obligations. These obligations exist at all times, even in resource-constrained environments. Access to justice is one of those rights which states commit to protecting. The UN Committee on Economic, Social and Cultural Rights has stated that austerity measures must not be discriminatory and must not disproportionately affect vulnerable and marginalised individuals and groups.¹³⁰ As civil legal aid schemes are one of the main mechanisms by which individuals on low incomes access justice, states must ensure that cuts to civil legal aid schemes do not disproportionately affect those availing of such services. Failure to provide an efficient, accessible and sustainable civil legal aid system may breach international human rights standards and obligations.

6. Avoiding prolonged delays in accessing justice

Long delays in accessing legal services deter individuals from accessing the civil legal aid scheme. Protracted delays can lead to individuals dropping their case due to a sense of futility of purpose or self-representing to their detriment. Furthermore, delays in accessing legal services can affect other parties to the proceedings, lead to court delays and waste already-scarce resources. As delays constitute a significant barrier to accessing justice, it is crucial that state-subsidised legal aid services be provided in a timely fashion.

Furthermore, delays in accessing civil legal aid schemes, which are more common in times of economic restraint, can exacerbate existing problems and have serious long-term costs. For example, long delays in family disputes may permanently damage relationships between parents and children. Similarly, prolonged delays can place victims of domestic violence at serious risk of harm from an abusive partner where they have ended their relationship. Access to justice must be efficient to ensure that issues can be resolved quickly and that matters do not escalate.¹³¹

7. Saving costs

Research conducted by Citizen's Advice in the UK examined how adverse consequences associated with civil justice problems, and the downstream costs for other public services, can be mitigated by early legal advice and aid.¹³² The study shows positive impacts of advice include, *inter alia*, health improvements, a reduction in the likelihood of relationship breakdown and greater housing stability. It illustrated that:

- ★ For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.

¹³⁰ UN Committee on Economic, Social and Cultural Rights (2012) "Letter by the Chairperson of the Committee on austerity measures", Geneva: OHCHR.

¹³¹ Justice for All (2011) *Saving Justice: Where next for legal aid? Views from the responses to the Ministry of Justice Green Paper consultation Reform of Legal Aid in England and Wales*, available at: <http://bit.ly/1PE8sBI> [accessed 28 October 2015].

¹³² Citizens Advice (2010) *Towards a business case for legal aid – Paper to the Legal Services Research Centre's eighth international research conference*, available at: <http://bit.ly/1RNw6Mh> [accessed 28 October 2015].

- ★ For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.
- ★ For every £1 of legal aid expenditure on social welfare advice, the state potentially saves £8.80.
- ★ For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.¹³³

This research indicates that if the State adequately invests in legal aid services, even where resources are scarce, it can ultimately save money down the line. For example, failure to provide early legal advice in mortgage arrears cases can lead to homelessness. Where homelessness occurs, a financial cost is placed on the State through the provision of health services, support services and temporary accommodation as well as lost economic output. Therefore, there is a business case for ensuring that legal aid services are adequately funded.

8. Addressing the shortfall in funding to charities providing legal services

Charities and non-governmental organisations (NGOs) often play a crucial role in providing legal services, especially where state civil legal aid schemes are not comprehensive. For instance, FLAC, through its information line and advice centres around the country run in partnership with Citizens Information Centres, attempts to bridge the gap for individuals between the time that they apply for legal aid and when they get to see a solicitor. However, charities and NGOs are often hit hardest in times of economic constraint and are unable to meet additional demand for services.¹³⁴ It must be stressed that while important, NGO services are not a substitute for an efficient, accessible and sustainable system of civil legal aid funded by the State.

¹³³ Citizens Advice (2010) *Towards a business case for legal aid – Paper to the Legal Services Research Centre’s eighth international research conference*, available at: <http://bit.ly/1RNw6Mh> [accessed 28 October 2015].

¹³⁴ C. McQuinn, ‘Charities suffer €270m funding drop as they count cost of recession’, *Irish Independent*, 18 December 2013.

7. Recommendations

FLAC is committed to the provision of a comprehensive civil legal aid scheme in Ireland which ensures equal access to justice for all. While the civil legal aid scheme has never been comprehensive, the goal of a more efficient, accessible and sustainable system slipped further and further out of reach during the recession.

With this in mind, 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.

Appendix 1: Tables

Table of Legislation and Cases

Constitution

Constitution of Ireland 1937

Acts of the Oireachtas

Child and Family Agency Act 2013

Child Care Act 1991

Civil Law (Miscellaneous Provisions) Act 2008

Civil Legal Aid Act 1995

European Convention on Human Rights Act 2003

Irish Human Rights and Equality Commission Act 2014

Landlord and Tenant Acts, 1967 to 1994

Residential Tenancies Act 2004

Social Welfare and Pensions (No. 2) Act 2009

Social Welfare Consolidation Act 2005

Workplace Relations Act 2015

Statutory Instruments

Civil Legal Aid (Refugee Legal Service) Order 1999 (S.I. No. 74/1999).

Civil Legal Aid Regulations 2006 (SI No. 460/2006)

Civil Legal Aid Regulations 2013 (SI No. 346/2013)

Workplace Relations Act 2015 (Commencement) (No.2) Order 2015 (SI 410/2015).

Other international legal instruments

Charter of Fundamental Rights of the European Union

European Convention on Human Rights

UN International Covenant on Civil and Political Rights

UN International Covenant on Economic, Social and Cultural Rights

Cases

Airey v. Ireland No.6289/73 [1979] 2 EHRR 305 (9 October 1979), [1981] ECHR1 (6 February 1981)

O'Donoghue v. Legal Aid Board, Minister for Justice Equality and Law Reform, Ireland and the Attorney General [2004] IEHC 413, Kelly J.

Steel and Morris v UK No.68416/01 [2005] 41 EHRR 22 (15 February 2005).

Table of Figures

Figure 1: No. of appeals to the Employment Appeals Tribunal 2007 – 2013

Figure 2: No. of appeals to the Social Welfare Appeals Office 2007 – 2013

Figure 3: Total no. of calls to FLAC's telephone service and queries to FLAC centres 2007 – 2013

Figure 4: No. of calls to FLAC's telephone line 2007 – 2013

Figure 5: No. of queries to FLAC centres 2007 – 2013

Figure 6: State funding to the Legal Aid Board 2007 – 2013

Figure 7: Staffing levels in the Legal Aid Board 2007 – 2013

Figure 8: No. of full-time equivalent solicitors & paralegals working with Legal Aid Board 2007 – 2013

Figure 9: No. of legal aid certificates provided to private practitioners 2007 – 2013

Figure 10: No. of applications for legal services 2007 – 2013

Figure 11: No. of people waiting for a first consultation with a solicitor in Law Centres 2007 – 2013

Figure 12: Minimum and maximum waiting times in Law Centres 2007 – 2013 (months)

Figure 13: Initial appointments by subject matter 2008 – 2012

Figure 14: Percentage of family & child law, asylum & immigration law and other civil law matters dealt with by Board at initial appointments compared with percentage of calls received by FLAC's telephone and referral line on same areas 2008 – 2012

Accessing Justice in Hard Times

This FLAC report illustrates how the civil legal aid scheme in Ireland was impacted by the economic crisis, the changes made to the scheme in response to the recession and the consequent effects on those seeking access to justice. In particular, FLAC analyses 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 also explains the need for maintaining funding of civil legal aid services in times of economic crisis and formulates recommendations for improving access to justice.



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