



FLAC Submission to the Joint Oireachtas Committee on Justice and Equality on Reform of the Family Law System

March 2019

About FLAC

FLAC (Free Legal Advice Centres) is a voluntary independent human rights organisation which exists to promote equal access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights. We work particularly in the areas of the protection of economic, social and cultural rights. We identify and make policy proposals on laws that impact on marginalised and disadvantaged people, with a particular focus on social welfare law, personal debt & credit law and civil legal aid.

FLAC produces policy papers on relevant issues to ensure that Government, decisionmakers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, Government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

You can download/read FLAC's policy papers at

<https://www.flac.ie/publications/>

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Summary of Recommendations

- ***Make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring reforms of the family law system.***
- ***Recognise that access to justice is an essential family support mechanism and ensure that access to justice is included as a core theme in equality and social inclusion strategies going forward***
- ***Ensure that comprehensive and clear reasons for refusal of legal aid are routinely provided in writing by the Legal Aid Board.***
- ***Ensure the annual report of the Legal Aid Board should contain more detailed information about the number of refusals, the reason for the refusal and the outcomes of any appeals and the reasons for them***
- ***Ensure all those who seek legal aid are given comprehensive and accessible information about legal aid provision and are positively assisted to apply***
- ***Conduct an immediate review of the means test rates and amend accordingly***
- ***Require the Legal Aid Board to inform all applicants of the availability of the waiver process on contact with the Board***
- ***Introduce annual reporting requirements for the Department of Justice and Equality to measure financial eligibility criteria against national poverty proofing standards as an interim measure prior to reform of the entire civil legal aid system***
- ***Ensure civil legal aid is made available on the same basis as criminal legal aid in relation to means testing and the payment of financial contributions in order to vindicate the right of a person to representation where it is needed for a fair hearing***
- ***Require the Legal Aid Board to publish annual statistics on the amount of waivers applied for and the number granted.***
- ***Ensure the Legal Aid Board should also have discretion to provide legal aid where the applicant does not meet the means test***
- ***The Courts Service should highlight the work of the Legal Aid Board in all of the documents they publish in order to reach a wider audience.***
- ***The Legal Aid Board should be resourced appropriately in order to decrease wait times and ensure that urgent cases are addressed in an acceptable timeframe***
- ***Increase the visibility and awareness of the civil legal aid scheme***
- ***Establish a better understanding between the Legal Aid Board and the Courts Service so that they are aware of each other's work;***
- ***An out-of-hours Legal Aid Board service should be established***
- ***Adequately resource the courts to deal with the heavy work loads***

- **Access to justice be included as a core principle of reforms of the civil legal aid scheme**
- **Conduct a large scale review and overhaul of the entire civil legal aid scheme**
- **Reconsider the “designated areas” or exclusions under the 1995 Act**
- **Amend the Civil Legal Aid Act to ensure that legal aid is available where people are facing evictions from the family home**
- **Undertake a comprehensive needs analysis on vulnerable and marginalised persons involved in family law processes**
- **Conduct a review of the funding requirements of the Legal Aid Board in order to operate in a way that provides legal aid to all who need it in an appropriate timeframe and allocate funding accordingly**
- **Civil legal aid which is a fundamental part of the administration of justice must be adequately resourced. There needs to be, as a matter of urgency, a root and branch review of the scheme of Civil legal aid and advice including eligibility criteria, means tests, contribution requirements and exclusion of areas of law**
- **Ensure the Courts Services and the Legal Aid Board would work together to ensure that there is clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme available from the Courts Services and staff.**
- **The Legal Aid Board should work with the Courts Service to identify further opportunities for co-location such as the Dolphin House Law Centre and Court Office to maximise the accessibility of legal aid for Court users with limited resources.**
- **Going forward, the present model for delivery of legal aid should be comprehensively and regularly reviewed to ensure that it is meeting the needs of the most vulnerable in society.**
- **Commission research to examine access to justice for litigants in person**
- **Ensure that reforms of the family law system would factor in that many litigants are not represented by lawyers.**
- **FLAC recommends all forms and procedures should be accessible, accurate, precise, clear and reader- friendly in plain English, and be made available in the other languages most frequently used in the State.**
- **FLAC recommends that a liaison person should be available at Court sittings to provide practical information to assist lay litigants and others such as witnesses, not represented by a lawyer.**
- **FLAC recommends simplifying the procedures in the District Court**
- **FLAC suggests the accessibility of the Courts and content of existing website material could be improved by preparing in a range of formats (including video) that are accessible for people with literacy issues or certain disabilities**
 - Ø **guides on matters such as the listing system, call overs, hearing dates etc.**
 - Ø **a “Nutshell” guide for lay litigants.**
 - Ø **a guide on how to represent yourself in court**

- ∅ **guides on the areas of law where there are the most lay litigants, with direct links to printable and downloadable versions of the various forms as well as basic instructions on how they should be filled out.**
 - ∅ **a guide and code of conduct for McKenzie friends explaining the Practice Directions of the High Court and the Court of Appeal.**
 - ∅ **guidance for court staff when dealing with lay litigants.**
 - ∅ **summaries of the judgements of the Superior Courts.**
- **Examine whether unbundled legal services or other means to make private practitioners accessible to impecunious litigants could be introduced in Ireland**
- **Ensure that the Programme for Government commitment to provide accurate measurement for improving accessing to justice through the commission of an annual study on court efficiency and sitting times is implemented**
- **Require the Court Services collect comprehensive data including data on the number of people who are legally aided and the number of litigants who are representing themselves, including in the various types of family law**
- **Ensure the Convention, the provisions of the Equal Status Acts 2010- 2016, and the Disability Act 2005 be core considerations in the Review of the Administration of Justice.**
- **Ensure the Courts Service engage in routine data gathering and monitoring of statistics concerning access to justice for persons with disabilities.**
- **Involve disability groups, the National Disability Authority and the Irish Human Rights and Equality Commission in reform initiatives to identify systems that will best meet the needs of people with disabilities and to improve access to justice.**
- **Give consideration to including Changing Places facilities in new Courts Service building developments.**
- **Ensure accessibility of legal spaces for persons with disabilities include the installation of ramps where necessary, railing height adjustments, accessible parking spaces, visual and auditory alarm systems and braille or raised letter for permanent signage where appropriate**
- **Require the Courts Service provide information online indicating which buildings are accessible and the projected date on which a building will be made accessible if it is a work in progress**
- **Require an Access Officer be available to assist people with disabilities to access the courts.**
- **Court documentation during proceedings should be provided in an accessible format for people with disabilities and information guides and forms on the Courts Service website should be amended so that they can be accessed by people with disabilities**
- **Wi-Fi should be available in all courtrooms**
- **Ensure the Courts Service work with people with disabilities to develop appropriate and accessible technologies to improve access to their website**

- ***Require technological measures designed to open access to the courts also be evaluated for unintended negative side effects for vulnerable groups***
- ***Require websites providing legal services and information undergo periodic accessibility testing for persons with disabilities***
- ***Make all legal and court documents available in accessible formats (including video and audio where necessary) and accompanied by information leaflets giving specific advice in relation to access to the courts for people with disabilities.***
- ***Ensure court buildings have sufficient consultation areas for persons in family law proceedings with separate waiting areas available for applicant and respondent***
- ***Increase funding for court accompaniment by support workers for victims of domestic violence***
- ***Make training available for mediators, legal practitioners and members of the judiciary on domestic violence, including on the nature of emotional and psychological abuse and coercion and the impact it may have on victims including the ways in which traumatic experiences may delay the ability to come forward to make applications immediately***
- ***A feasibility study should be undertaken regarding the need for some provision to address the childcare needs of those attending family law proceedings, whether that is by way of physical crèche facilities within family court buildings or childcare vouchers***
 - ***Engage with the representative groups for the deaf community to assess their needs in accessing the courts***
 - ***Ensure the Courts Service provide on its website an easy to read guide and a video in ISL on how to request ISL interpretation within the courts themselves, and their offices, including the name and contact details of the persons responsible for ensuring requests are processed***
 - ***Introduce accreditation and regulation for legal interpreters***

Introduction

FLAC operates a telephone legal information and referral line and runs a network of legal advice clinics where volunteer lawyers provide basic free legal advice. FLAC also provides specialist legal advice to advisers in MABS and CISs. FLAC works to improve access to justice for marginalised communities. More than 25,800 people received free legal information or advice from FLAC in 2017 from the telephone information line and the network of legal advice clinics at 66 locations around the country.¹ It also operates PILA the Public Interest Law Alliance which operates a Pro Bono Referral Scheme for NGOs, community groups and independent law centres. FLAC is also an independent law centres and engages in litigation in the public interest seeking to achieve outcomes which will have benefit beyond the individual, and which may test and possibly bring about change in law and practice.

The focus on these services as a way of enabling individuals and groups to assert their rights is a fundamental aspect of FLAC's work in promoting access to justice.

FLAC welcomes the opportunity to make a submission to the Joint Oireachtas Committee on Justice and Equality on reform of the family law system. This submission makes recommendations informed by our experience in working on access to justice issues and human rights in Ireland. It highlights the obligations imposed on statutory bodies by section 42 of the Irish Human Rights and Equality Commission Act 2014, to have regard to, in the performance of their functions, the need to eliminate discrimination, promote equality of opportunity and treatment for litigants, potential litigants and staff and to protect the human rights of staff and litigants and potential litigants.

FLAC recommends that the Public Sector Duty be a core consideration in the development of any reforms of the court structure and the family law system. We believe that this would go some way to improving equality in access to the courts, the experiences of service users in engaging with family law matters, and overall access to justice.

¹ FLAC Annual Report 2017

FLAC has made a number of submissions and presentations to the Government and others in the past on issues relevant to family law including regarding the administration of civil justice and the work programme of the Courts Service.²³

We participate in a range of initiatives relevant to family law issues including External Consultative Panel to the Legal Aid Board. We also host specific legal clinics for to provide advice and information on family law in various locations.⁴ In 2017, there were 12,003 callers to the FLAC telephone information line. Over a quarter of these calls related to family law. Just over one-third (38%) of family law calls related to divorce and separation, followed closely by custody/access/ guardianship issues at 31%. Questions about maintenance made up another 20% of family law queries.⁵

PILA (the Public Interest Law Alliance) is a project of FLAC that promotes the use of law in the public interest in Ireland, by engaging the legal community and civil society in using the law to advance positive social change. In 2017, PILA facilitated the establishment of an initiative in which McCann Fitzgerald partnered with Women's Aid in setting up a legal clinic for victims of domestic violence who are representing themselves in family law proceedings.

FLAC is fully supportive of and eager to be involved in any aims to rectify the current difficulties within the family law system. FLAC is happy to meet with again with the Joint Oireachtas Committee on Justice and Equality or the individual members on any of the issues contained in this submission or other matters relevant to our work.

Public Sector Duty

FLAC welcomes the commitment in the Programme for Government to target new measures on family mediation in the Action Plan for Housing.⁶ We also note the Government intention outlined by the Minister for Justice and Equality to introduce proposals on a new approach to family law cases in Ireland at District, Circuit and High Court levels, including legislation to create a new dedicated Family Court within the Circuit and District Courts which will sit with dedicated Family Court judges and deal only with family law business.⁷

² FLAC Submission to the Review of the Administration of Civil Justice 2018 / FLAC Second Submission to the Review of the Civil Administration of Justice 2018.

³ FLAC Submission to the Courts Service Strategy 2018

⁴ Further information on the family law clinics is available here <https://www.flac.ie/help/centres/familylaw/>

⁵ FLAC Annual Report 2017

⁶ Programme for Govt, 2018

⁷ Parliamentary Question [4955/19], 5th February 2019.

Section 42 of the Irish Human Rights and Equality Act 2014, introduced the Public Sector Duty, providing one of the most important national mechanisms for mainstreaming equality and human rights. It imposes a positive obligation on a broad range of statutory and public bodies to have regard to in the performance of their functions, the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services.

The reform of the family law system in Ireland will be a key instances in which the Public Sector Duty will apply. FLAC suggests that initiatives designed to improve the family law system should be underpinned by the Public Sector Duty and be reflected in the subsequent recommendations.

Recommendation

- ***Make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring reforms of the family law system.***

Access to justice

FLAC's focus is on how the law excludes marginalised and disadvantaged people. We propose fair solutions to protect everyone equally.

Our work in offering basic legal information and advice to the public means that we act as a bridge for those who cannot afford to access law, given the desperately underfunded and stretched state services providing assistance. FLAC provides legal information and advice to thousands of people through our clinics and phone line each year where they cannot afford to access legal services otherwise. The large numbers who approach FLAC for guidance in family law issues is a testament to this.⁸

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,⁹ the Charter of Fundamental Rights of the European Union,¹⁰ and the International Covenant on Civil and Political Rights.¹¹ 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

⁸ FLAC Annual Report 2017

⁹ Article 6(1) and Article 13 of the European Convention on Human Rights

¹⁰ Article 47 of the Charter of Fundamental Rights of the European Union.

¹¹ Article 14(1) of the International Covenant on Civil and Political Rights.

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.¹²

Socially excluded groups within the general population are more likely to suffer justiciable problems (meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework)¹³ and the lack of effective and accessible mechanisms for resolving legal disputes prevents individuals from protecting and asserting their rights. Unless the right of access to justice (in all spheres of law) is vindicated, the risk of social and economic exclusion particularly for marginalised or vulnerable communities is greatly increased. Access to justice on a truly equal basis will be signified by equality of outcome regardless of resources.

This is no less true for matters of family law.

Currently, civil litigation within a family law setting is easier navigated by persons with the financial resources to access legal representation. Beyond this, there is a general expectation that the impecunious litigant will either manage with a low level of support through legal aid or become a lay litigant. This is antithetical to access to justice.

Equal access to justice means that everyone should have equal access to the court and legal system alternatives to court as a matter of law, and as a mechanism of social inclusion and cohesion. Access to justice means more than access to civil legal aid and an appointment with a lawyer. It is about meeting equally the legal needs of marginalised communities in Ireland. It is about access to the courts and lawmakers, to service providers and basic information on legal rights and entitlements.

Those who have rights must have a meaningful and effective way of enforcing them. It is a necessary corollary to this right that there be a right to legal aid to implement the fundamental right of access to justice and to an effective remedy. Indeed, previous action plans on social inclusion issued by the UK government gave access to justice a similar priority to health and education, thereby recognising access to justice as a basic right and a vital element in social inclusion policies¹⁴ and FLAC has called on the government here to do the same in the new National Action Plan on Social Inclusion.¹⁵

¹² See United Nations Development Programme website at: <http://bit.ly/204OeWJI>

¹³ A Buck, NJ Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice problems among Vulnerable Groups' (2005) 39 *Journal of Social Policy and Administration*, 302-320.

¹⁴ *ibid.*

¹⁵ FLAC Submission to the Public Consultation Review of the Implementation of the National Action Plan for Social Inclusion, 2019.

Access to justice is also fundamental to democracy. Law, such as the important new provisions in the Domestic Violence Act are only effective if they can be enforced. Access to justice is also about holding the executive or other forms of power such as the HSE or Tusla to account.

Substantial unmet legal need continues to exist and the objective of protecting and promoting the right of access to justice should be at the core of all reforms to the family law system.

Recommendation

- ***Recognise that access to justice is an essential family support mechanism and ensure that access to justice is included as a core theme in equality and social inclusion strategies going forward***

Family Law and Civil Legal Aid

The scope of legal aid

The scope of civil legal aid in Ireland is defined by the Civil Legal Aid Act 1995 and regulations made by the Minister for Justice and Equality. If the right to legal aid is to be respected, a civil legal aid scheme must address unmet legal need. The services of the scheme are administered by the Legal Aid Board which was put on a statutory footing by the Act in 1995. Over half of all legal aid applications relate to family law matters.

Section 5(1) of the Act states that the principal function of the Legal Aid Board is to provide “[...]within the Board’s resources and subject to the other provisions of this Act, legal aid and advice in civil cases to persons who satisfy the requirements of the Act.” Legal aid is defined as “representation by a solicitor of the Board, or a solicitor or barrister engaged by the Board under section 11, in any civil proceedings to which this section applies and includes all such assistance as is usually given by a solicitor and, where appropriate, barrister in contemplation of, ancillary to or in connection with, such proceedings, whether for the purposes of arriving at or giving effect to any settlement in the proceedings or otherwise.”¹⁶ The Minister for Justice and Equality retains the power to issue general directives as to policy concerning legal aid and advice.

Anyone who satisfies the requirements of the Civil Legal Aid Act 1995 has a statutory right to receive civil legal aid.¹⁷ Anyone who fails to advise an applicant of this is

¹⁶ Section 27(1) Civil Legal Aid Act 1995

¹⁷ Regulation 12, Civil Legal Aid Regulation 1996

denying the applicant their entitlement to assistance in accessing justice. Anecdotally, FLAC is aware of situations in which people have been told in Legal Aid Board Law Centres that their situation would not qualify them for legal aid and thus, are discouraged from applying.

Quite apart from the fact that only the Legal Aid Board is entitled to make a decision to refuse legal aid, this leaves the person in a vulnerable position as they have been unofficially denied legal aid without any knowledge of the recourse open to them.

Everyone is entitled to apply for legal aid and should be encouraged to apply to have their eligibility judged as intended by the legislation and to have a refusal subjected to the due process of an appeal if they are so entitled. Where an application for legal aid is refused, the applicant is entitled to reasons for the refusal in writing and to appeal this Decision. The reasons currently given are uninformative and it is not possible to judge from a refusal letter exactly why an application has not been granted. The annual report of the Legal Aid Board should contain more detailed information about the number of refusals, the reason for the refusal and the outcomes of any appeals and the reasons for them. Information about refusals of legal aid are also a valuable resource to understand and respond to unmet legal need including in the area of family law.

Applicants with urgent cases are not always aware of the Private Practitioners Scheme¹⁸ The scheme exists for those who have a court date in the District Court only relating to a family law matter and who cannot get an appointment with the Legal Aid Board before the court date. The scheme deals with barring and protection orders, maintenance, guardianship, custody and access, as well as variation and discharge of these orders.

The lawyers who work at the Legal Aid Board Law Centres operate under substantial pressure on both their time and other resources and they deal with large clients lists. FLAC recognises the dedication and high quality of the advice and services of these lawyers and the committed nature of the staff.

At this juncture, FLAC also acknowledges the politicians and public servants who have supported civil legal aid and the right to legal aid within Irish policy over the years.

Recommendation:

¹⁸ Most civil legal aid work is done by solicitors working in law centres who are employees of the Legal Aid Board. In some cases the Board will refer clients to solicitors in private practice. Usually these are for District Court private family law applications for domestic violence orders, or orders to do with the welfare of children, and for maintenance. Circuit Court judicial separation and divorce.

- ***Ensure that comprehensive and clear reasons for refusal of legal aid are routinely provided in writing by the Legal Aid Board.***
- ***Ensure the annual report of the Legal Aid Board should contain more detailed information about the number of refusals, the reason for the refusal and the outcomes of any appeals and the reasons for them***
- ***Ensure all those who seek legal aid are given comprehensive and accessible information about legal aid provision and are positively assisted to apply***

Costs: Legal aid is not free

Contrary to popular belief, civil legal aid generally is *not free*. In most cases a person accessing civil legal aid will have to make a financial contribution means tested on their disposable income and assets. Unlike criminal legal aid, which is assessed based on the need to access legal services, in order for a person to be deemed eligible to be granted civil legal aid by the Legal Aid Board the client must pass an overarching principle test,¹⁹ a merits test²⁰ and a means test.²¹

The financial test is significant, first because it regulates whether a person is eligible for legal aid at all and secondly because it determines the amount that the person will pay as a contribution to the cost of the service they receive. For the most part, a person's eligibility for civil legal aid will be decided on income but for some, there will also be capital eligibility test.

A person must have a disposable income of less than €18,000 as well as a disposable capital of less than €100,000. Your family home is not considered when assessing disposable capital. Disposable income is total income less deductible expenses including income tax, mortgage repayments, rent, social insurance contributions, interest on loans, child-minding expenses and other items. The Civil Legal Aid Regulations provide that the resources of applicant's spouse or partner may be treated

¹⁹ In terms of the merits test, Section 28(2) Civil Legal Aid Act 1995 lays out the criteria to be considered by the Legal Aid Board in determining eligibility for the merits test for legal aid. They are that there must be: (a) reasonable grounds as a matter of law for instituting or defending proceedings; (b) reasonable grounds of success in the proceedings; (c) reasonableness in granting legal aid having regard to all the circumstances of the case such as probable cost to the Board; and (d) a lack of a more appropriate method than court proceed

²⁰ Law Society of Ireland, Legal Aid Taskforce, Civil Legal Aid in Ireland: Information for the Profession, 2008, pg. 18-26

²¹ The law setting out the means test regulations are SI 273/1996 Civil Legal Aid Regulations 1996, SI 8/2002 Civil Legal Aid Regulations 2002, SI 460/2006 Civil Legal Aid Regulations 2006 and SI 346/2013 Civil Legal Aid Regulations 2013.

as those of the applicant for the purpose of the application for legal aid in certain circumstances. Once the Board has estimated your annual income, it will then seek to calculate your disposable income by deducting the following allowances and expenditure including a deduction of €3,500 if you have a dependant spouse/partner. (The spouse/partner has to be a dependant); deductions of €1,600 for each dependant such as a child or step-child under 18 or over 18 and in full-time education or a dependant relative or other person who lives with the applicant and is supported by them; deductions of child care expenses up to a maximum of €6,000 per child per annum; accommodation costs up to a maximum of €8,000 per year; full PRSI contributions and full income tax payment deductions as well as ex gratia payments of up to €1,040 in total.

This allows €666 for accommodation costs to be deducted per month for the means test calculation. This remains far below the average monthly accommodation costs whether for private rented accommodation or a mortgage property. The average monthly rent in north county Dublin was €1,646 in December 2018, €1,197 per month in Louth, and €1,308 in Kildare.²² Childcare costs can be over €1,000 per month in some areas - twice the rate that the deduction allows for. These figures demonstrate that there are clear issues with the allowances in the means assessment for legal aid and will leave many people excluded even though their disposable income is low. Further, given the disparity in rent and childcare costs across Ireland, there is a geographic inequality whereby some people are unfairly penalised by living in an area where they pay higher rent etc,

Paying for legal aid

While everyone who requires criminal legal aid is entitled to it free of charge and based on a personal means test by the adjudicating judge, civil legal aid in Ireland is not free and except in cases of undue hardship, all Legal Aid Board clients are expected to pay a contribution. This is based on the calculation of their income and assets in the means test. Thus a discrepancy arises between the access to justice available to a person who is tried for a criminal offence and for those who need to use the law for non-criminal matters even where there may be rights protected by the Constitution in the balance. For instance, a person with a civil legal issue who cannot afford legal advice or representation could face a range of serious consequences such as denial of access to one's children

²² The Daft.ie Rental Price Report An analysis of recent trends in the Irish rental market 2018 Q4 Year in Review Accessible here: <https://www.daft.ie/report/2018-Q4-rental-report.pdf>

The contribution for receiving *advice* through legal aid is €30 and depending on income may be as much as €150. If legal aid *representation* is provided a financial contribution of a minimum of €130 is required. However, if a person has disposable income and disposable capital after the various allowances are deducted, then their contribution for legal aid will be calculated on both means and capital and may come to several thousand euro.²³ 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 at all. Given the rate of contribution against the rates of social welfare payment 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.

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 and no statistics are currently available detailing the number of applications made for a waiver on hardship grounds. When people make an application to the Legal Aid Board for legal aid, they are not routinely told that a waiver exists, leading to a situation where a person would already need to be aware of it before entering the process. Information regarding the waiver and how to apply does appear on the Legal Aid Board website under a "contact us" drop-down menu, but again, a person would need to know it existed before they went to look for it. Were this information on the waiver process to be promoted, it would greatly assist those dissuaded from making application for legal aid due to the legal aid contribution costs. Where individuals have been dissuaded from making an application for legal aid, it creates an extra barrier to accessing justice.

Prior to an amendment to the Civil Legal Aid Act in 2008, the Legal Aid Board could provide legal aid or advice without reference to the applicants financial resources or could waive any contribution payable or accept a lower contribution, they can now only do so if a failure to do so would cause "undue hardship" to the applicant and the definition of what constitutes undue hardship is open to the interpretation of the Legal Aid Board. Further, subject to limited exceptions, the Legal Aid Board is entitled to charge the full fees it has incurred in the course of the provision of legal services from monies or property recovered as a result of the legal services.

²³ *"Example Calculation of a contribution for Legal Advice and Legal Aid"*, Legal Aid Board, Accessible here: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/how-much-will-i-have-to-pay-/example-calculation-of-a-contributio.html>

In order to vindicate the right of a person to representation where that is needed for a fair hearing, civil legal aid should be available on the same basis as criminal legal aid. It should be free where necessary. At a minimum, FLAC has previously called for the financial eligibility criteria to be measured annually against national poverty proofing standards and for the publication of the underlying analysis by the Department of Justice and Equality. There are no provisions to index link the allowance or income criteria or to provide for increases in the cost of living or in the cost of legal services. Indeed, the new threshold and allowance figures for means test qualification is in drastic need of review.

FLAC is also aware of cases where people have narrowly failed to meet the means test and face enormous difficulties in obtaining representation. FLAC is aware of a case where a hospital was planning to make an application to the High Court in respect of the care of a very seriously ill-child and the parents did not qualify for legal aid due to narrowly failing to meet the means test . In circumstances like these, the Legal Aid Board should also have discretion to provide legal aid where the applicant does not meet the strict means test

Recommendations:

- ***Conduct an immediate review of the means test rates and amend accordingly***
- ***Require the Legal Aid Board to inform all applicants of the availability of the waiver process on contact with the Board***
- ***Introduce annual reporting requirements for the Department of Justice and Equality to measure financial eligibility criteria against national poverty proofing standards as an interim measure prior to reform of the entire civil legal aid system***
- ***Ensure civil legal aid is made available on the same basis as criminal legal aid in relation to means testing and the payment of financial contributions in order to vindicate the right of a person to representation where it is needed for a fair hearing***
- ***Require the Legal Aid Board to publish annual statistics on the amount of waivers applied for and the number granted.***
- ***Ensure the Legal Aid Board should also have discretion to provide legal aid where the applicant does not meet the means test***

Waiting times for legal aid

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 and is of particular concern where the case may concern matters of guardianship, custody and access in which the State has constitutional obligations to uphold the child's best interests in such matters. Secondly, the applicant may pursue their claim on their own, in which case it may be pursued inefficiently, meaning greater costs for the system and delays for other litigants. Further, long delays in family disputes may permanently damage relationships between parents and children. If both applicant and respondent were provided with sufficient legal aid to secure proper advice and representation throughout, it would reduce the cost long term to the courts and would likely reduce the number of appeals taken.

The Legal Aid Board is hindered in its work by long delays in the provision of a legal aid to prospective clients. In the High Court decision of *O'Donoghue v. The Legal Aid Board, the Minister for Justice Equality and Law Reform & Ors*,²⁴ Kelly J stated that a client should have to wait no longer than two to four months to get an appointment with a solicitor at the Legal Aid Board. Ms. O'Donoghue had been waiting 25 months to get an appointment with a solicitor at the Legal Aid Board. While the situation has improved since *O'Donoghue*, there are still significant waiting periods before a person may have a first consultation with a Legal Aid Board solicitor.

According to the Legal Aid Board statistics, Blanchardstown Law Centre has a waiting period of up to 44 weeks for a consultation. As of January 2019, 147 people were waiting up to 47 weeks for a consultation in Finglas.²⁵ On this same date there were 129 people waiting for up to 33 weeks for a consultation with the Law Centre in Cork (Pope's Quay). Twenty-eight of the 33 on this Cork waiting list have been identified by the Legal Aid Board as needing a priority appointment with a solicitor. Matters that will be given a priority service include domestic violence, childcare, and child abduction. We recognise the Legal Aid Board has introduced a triage system for allocating appointments but the waiting periods are still substantial and can have severe negative impacts for families. In Longford, a person may wait up to 25 weeks for a first consultation with a solicitor

²⁴ *O'Donoghue v. The Legal Aid Board, the Minister for Justice, Equality and Law Reform, Ireland & the Attorney General* [2004] IEHC 413. In this case, while O'Donoghue succeeded against the State, the Legal Aid Board was found not to have been in breach of its statutory duty. The High Court found that the delay in providing legal aid to O'Donoghue was the sole result of the lack of resources made available to the Board by the State. The delay in granting the civil legal aid certificate to O'Donoghue amounted to a breach of her constitutional right of access to the courts and fair procedures.

²⁵ Legal Aid Board Statistical Information, January 2019. Accessible here: <https://www.legalaidboard.ie/en/about-the-board/press-publications/statistics/>

and 22 weeks for a second consultation. Such lengthy delays can discourage potential clients from applying from the outset.

Prolonged delays can place victims of domestic violence at serious risk of harm from an abusive partner where they have ended their relationship. Applications to the District Court under the domestic violence legislation increased by 5% to 15,962 from 15,227 in 2016. There was a 5% increase in applications for safety orders (6,368 as compared to 6,069 in 2016) and a 9% increase in applications for protection orders (5,869 as compared to 5,365 in 2016).²⁶ District Courts have dedicated family law sittings each month and while emergency applications such as Protection Orders are prioritised and are generally listed for hearing at the next court sitting day and barring orders regardless of whether it is a family law sitting, other Barring Order and Safety Order applications are listed for the next *dedicated family law day* in the District Courts. In those cases, the applications will likely be heard within 4 weeks of the application, but this timeframe can cause great difficulties for an applicant experiencing ongoing domestic violence. In other locations, it can be between 2 - 6 weeks from the date of the Barring Order issue to the hearing date. In some cases, a listing may take up to 14 weeks and where an adjournment is requested it is usually granted. Where guardianship and maintenance applications are being heard the waiting time to access the Court can be 6 to 8 weeks.²⁷

Related to this the fact that breaches of barring orders are prosecuted by Gardaí, which can present a difficulty when the accused is represented by an experienced barrister, and the Garda may not have proofs in order leading to a dismissal and promoting the view that the breaches of orders are not taken seriously. This is a clear access to justice issue for a person who has sought a barring order in the first place and while a matter for criminal law has significant implications for family law proceedings.

Applicants are not always informed of the possibility of asking the judge for an adjournment while they are waiting for an appointment with a legal aid solicitor. While there is a mechanism for priority cases, there is little support and information for such applicants and they are still subject to the perils of resource allocation. In cases where two parties to a dispute seek the services of the Board at one law centre, one party will be required to engage with a different law centre, which may be in a neighbouring county.

Judicial practice also varies and not all judges are prepared to wait the length of time required for the applicant to actually access legal aid. There is a need for more

²⁶ Courts Service Annual Report 2017

²⁷ PQ [54775/17] 16 Jan 2018

information for clients of the Legal Aid Board and for all those involved in the administration of justice to understand better both the extent and the limitations of the civil legal aid scheme.

The Courts Service should highlight the work of the Legal Aid Board in all of the documents they publish in order to reach a wider audience. A greater understanding should be developed between the Legal Aid Board and Courts Service so that they are more aware of each other's work. This knowledge can then be shared with the service users of each body.

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, especially in family law. Civil legal aid schemes must be inclusive, comprehensive and well resourced to ensure that people on low incomes can vindicate their socio-economic rights.

Delays are a significant feature of family law in Ireland and have a significant negative impact on children. Access to justice must be efficient to ensure that issues can be resolved quickly and that matters do not escalate. However, it would be remiss to not point out that further delays are caused in cases even where legal aid has been awarded or parties are sufficiently represented, because there are not a sufficient number of District Court judges to deal with the heavy caseloads. There are currently 64 judges in the District Court, when a conservative estimate to manage the workload, would require at least 80.

We understand that many are seeking the establishment of a dedicated family law courts structure. FLAC's view is that whether a distinct family law court structure is established or family remains a feature of the regional district courts (with distinct courts in specific areas) that the courts must be resourced properly to cater for the volume of people using them. Names of the courts can be changed but until appropriate funding is allocated, the state is administering justice on the cheap.

Recommendations:

- ***The Courts Service should highlight the work of the Legal Aid Board in all of the documents they publish in order to reach a wider audience.***
- ***The Legal Aid Board should be resourced appropriately in order to decrease wait times and ensure that urgent cases are addressed in an acceptable timeframe***

- ***Increase the visibility and awareness of the civil legal aid scheme;***
- ***Establish a better understanding between the Legal Aid Board and the Courts Service so that they are aware of each other's work;***
- ***An out-of-hours Legal Aid Board service should be established***
- ***Adequately resource the courts to deal with the heavy work loads***

The impact of legal aid restrictions on areas affecting family law matters

While the current civil legal aid scheme does provide a service which is focused almost exclusively on family law, prolonged delays and lack of resources introduce significant barriers to the right of access to civil legal aid, subsequently resulting in a barrier to the access to justice that is integral for ensuring social inclusion and the adequate and speedy resolution of family law matters. The restrictions on what an individual can access legal aid for can also have an impact on other family law matters. For example, housing issues are in large part excluded from the civil legal aid scheme.²⁸ 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. In 2016, the charity Phoenix Project Ireland who provide assistance to those engaged in repossession proceedings and other debt matters stated that 60% of their clients during 2015 were women who were separated or going through legal separation. Data that analyses the number of people who are simultaneously involved in custody, guardianship and access disputes in one court and repossession or eviction proceedings in another is not available, so there is no way to assess the numbers of people who are litigants on multiple fronts with limited or no legal representation.

On an initial reading this may seem unrelated *per se* to family law, but for those on low incomes, the restrictions on the type of legal aid, and the concentration of limited legal aid resources on family law subsequently has a knock-on effect on the family law system itself. Research published in 2016, showed that 66% of homeless families were headed by lone parents and that there are significant number of homeless women who are categorised as “single” when they are separated from their children.²⁹ One in five

²⁸ 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.

²⁹ Women's Homelessness in Europe, Dr. Paula Mayock, School of Social Work and Social Policy, Trinity College, Dublin and Joanne Bretherton, Centre for Housing Policy, University of York. Palgrave Macmillan, 2016.

people in Ireland live in a lone parent family³⁰ and in 2017, there were 13,728 applications of guardianship or custody or access³¹ and 11,936 maintenance applications³² resolved by the District Court.³³ However, we do not have access to data on the number of homeless persons engaged in family law proceedings.

While local authority evictions are not *per se* an excluded area from legal aid, there is ambiguity around it given the exclusion of disputes pertaining to interest in land or housing. Though the decisions handed down in such housing proceedings are of huge significance - and can have implications for family law proceedings - those affected cannot get legal aid. In addition to the potential 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.³⁴ Difficulties regarding security of tenure and poor housing conditions can have a significant impact on the ability of a parent who is already engaged in a family law dispute to acquire the level of access to their child that may be in the child's best interests. While sufficient safe and affordable housing would obviously be better than having to access the courts, it is an issue that affects family law.

While there must be an increase in the legal aid made available to those accessing the family law system, it cannot be isolated from the broader issues regarding the availability of civil legal aid in its entirety.³⁵

³⁰ Census 2016

³¹ Guardianship means the rights and duties of parents in respect of the upbringing of their children. Custody is the right of a parent to exercise physical care and control in respect of the upbringing of his or her child on a day-to-day basis. Access is contact between a child and its parent or other relative with whom the child does not live. The majority of applications in all three areas are made to the District Court.

³² Maintenance is financial support (money) paid by a person for the benefit of a dependent spouse/civil partner and/or dependent children. Spouses/civil partners are required to maintain each other according to their means and needs. Parents, whether married or not, are responsible for the maintenance of their dependent children. If the parties cannot reach an agreement about maintenance an application can be made to the court for a maintenance order. The majority of applications for maintenance are made to the District Court. Applications for maintenance in the Circuit Court as usually made as part of applications for judicial separation and/or divorce.

³³ Courts Service Annual Report 2017

³⁴ See for instance Section 28(9)(c)(i) of the Civil Legal Aid Act 1995.

³⁵ It is worth nothing that legal aid is also not available for social welfare appeals leaving many individuals at a severe disadvantage when dealing with legally complex issues such as the Habitual Residence Condition and the 'right to reside' clause under EU law. 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

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*,³⁶ 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)³⁷, are incompatible with the protections afforded to the right to a fair hearing guaranteed by the European Convention on Human Rights. FLAC has drafted amendment to the Civil Legal Aid Act which if enacted would ensure that legal aid would be available in housing cases. This amendment has been submitted to the Minister for Justice and Equality for further consideration.

Beyond the operation of the scheme, certain areas of law may not be specifically excluded from the scheme by legislation or regulation, but rather by the operation of the system itself. Civil legal aid concentrates very heavily on family law, reducing the service far below its potential and ignoring substantial areas of legal need. Long waiting lists may make the scheme available only to those who have sufficient time to wait their turn. As a scheme dedicated to ensuring that "persons of insufficient means" have access to legal services, restrictions, cuts and delays disproportionately impact on vulnerable and marginalised groups. According to figures from September 2018, there are delays of up to 42 weeks. In Smithfield, where a person may wait up to 31 weeks for an appointment, 74 out of 166 individuals had been identified as needing a priority appointment with a solicitor. Matters that will be given a priority service include domestic violence, childcare, and child abduction.³⁸

Recommendation

reside' in Ireland until their applications for refugee status or subsidiary protection have been determined. The State has consistently resisted calls to broaden the remit of the Legal Aid Board to include all areas in which a person could benefit from civil legal aid. 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. While FLAC accepts that not all cases before tribunals such as the Social Welfare Appeals Office and Workplace Relations Commission 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.

³⁶ *Steel and Morris v UK* No.68416/01 [2005] 41 EHRR 22 (15 February 2005)

³⁷ See Appendix 1 for the section

³⁸ Legal Aid Board Law Centre Waiting Times and Other Statistical Information Sept 2018.

- **Access to justice be included as a core principle of reforms of the civil legal aid scheme**
- **Conduct a large scale review and overhaul of the entire civil legal aid scheme**
- **Reconsider the “designated areas” or exclusions under the 1995 Act**
- **Amend the Civil Legal Aid Act to ensure that legal aid is available where people are facing evictions from the family home**
- **Undertake a comprehensive needs analysis on vulnerable and marginalised persons involved in family law processes**

Funding the Legal Aid Board

FLAC notes the government’s intent to continue to support the Legal Aid Board in its work.³⁹ We also recognise that funding allocated to the Board has been increased annually since 2015 with €40.275m being allocated in 2018.⁴⁰ However, the number of applications for legal aid has increased from 16,433 in 2014 to 17,103 in 2017 according to the latest available figures.⁴¹ 8,659 of these applications in 2017 pertained to general family law matters, 3,832 concerned divorce separation or nullity and 774 related to cases involving possible State care of children. There are substantial numbers of people entirely dependent on accessing legal aid to address very serious matters in their lives but the level of funding remains insufficient to ensure their legal needs are met.

Clearly, increases in numbers applying and qualifying for legal aid will require corresponding increases in funding allocation. Financial contributions made by those who cannot afford to pay them cannot be used to subsidise the increased running costs of administering civil legal aid. The Legal Aid Board has a critical role in the administration of Justice and rule of law and needs to be adequately resourced.

Recommendation:

- **Conduct a review of the funding requirements of the Legal Aid Board in order to operate in a way that provides legal aid to all who need it in an appropriate timeframe and allocate funding accordingly**

³⁹ Speech Opening of Co-located Kilkenny Family Mediation Centre and Law Centre By Mr. Charlie Flanagan T.D., Minister for Justice and Equality 22 June 2018 Accessible here: <http://justice.ie/en/JELR/Pages/SP18000202>

⁴⁰ Response to Parliamentary Question [44599/18] 6 Nov 2018

⁴¹ Legal Aid Board Annual Report 2017

Access to justice for lay litigants

FLAC welcomed that the Chief Justice has committed to making access to justice a central focus of his tenure and concurred with his comments that there is little point in having a good court system if a great many people find it difficult or even impossible to access that system for practical reasons.⁴² There is a need for a modern, fit for purpose, accessible court service in Ireland.

It is the case that in many cases members of the public have no option but to attempt to represent themselves or allow judgment to be entered in default of a response to a claim. In many other cases, members of the public with good claims will be left with no option but to abandon their rights and leave problems unresolved and potentially worsening where they are not entitled to legal aid. Navigating the court process without representation can be difficult, complicated and emotionally draining on an individual. It can also add significant delay to court hearings. The result is no access to justice for some and compromised access to justice for others. There is a serious disparity of equality of arms when one party is facing into proceedings with no legal representation while the opposing party is flanked by a solicitor.

We know that in the UK in 2014, two-thirds of family law cases where parties had legal representation.⁴³ Unfortunately, there is no readily available data or statistics outlining the number of persons engaged in the family courts as lay litigants, however anecdotal evidence from legal practitioners suggests that the overwhelming majority of individuals - and potentially up to 80% of persons - making family law applications are lay litigants.

While there will be a small cohort of people proceedings as a lay litigant as matter of preference, the majority do so as they cannot access affordable legal representation. We acknowledge that the Minister for Justice has recently indicated that the Department may be in favour of reviewing the eligibility criteria for legal aid, however, in the meantime there are a large number of unrepresented persons still navigating their way through the courts.

In research conducted in the north of Ireland on lay litigants (referred to in the research as litigants in person or LIPs) the reasons given for self-representation are complex and are frequently resulting from an inability to afford legal representation combined sometimes with a distrust of lawyers and the court system or prior negative experience of

⁴² Statement for New Legal Year 2017, The Hon. Mr Justice Frank Clarke Chief Justice of Ireland

⁴³ Appeal court judge 'horrified' at number of litigants without lawyers, The Guardian, Owen Bowcott, 23.11.14

legal professionals including dissatisfaction with the legal services received previously (including lack of progress in their cases or difficulties with how their legal representative had communicated with them). For others, they had applied for and did not qualify for legal aid or had been represented at some stage but stopped when their funds ran out or the costs had reached a certain level without their case having been resolved.⁴⁴ While this research was not confined to lay litigants in family law cases, FLAC's experiences in our phone lines and in clinics suggests that if research were to be undertaken in this jurisdiction on the experiences of lay litigants, it may well reflect the findings in the north of Ireland.

Some of the issues that arise for persons who are lay litigants are a lack of knowledge of legal issues, courts procedures and correct terminology; lack of emotional distance from their case; inaccurate reading of laws, or incorrect or incomplete documents, or misreading procedural issues. Very often they will not know how to address the judge or know what an affidavit is or how to complete forms or lodge an appeal. These difficulties are compounded where lay litigants have limited time or poor literacy or mental health issues or chaotic home lives.

Research within the Australian Federal courts suggests that representation is relevant to the outcome of a case and that negotiated settlements are more likely with representation.⁴⁵ Clearly, this is an access to justice issue. Further, this situation does not save the state money in the long term as there are other costs that are incurred given that the lay litigant will require far more time for their case to be heard than if they were adequately represented by the legal practitioner.

The current court system is planned and administered on the basis that a litigant will be represented by a lawyer. FLAC's information line regularly receives calls from lay litigants who are representing themselves in complex court cases and who are desperately in need of assistance, advice and representation, which FLAC does not have the resources to provide.

In the UK, the Civil Justice Council constituted a Working Group to examine access to justice for "litigants in person". The report of the Group entitled "Access to Justice for Litigants in Person" contains useful recommendations for immediate, medium and long-term. The immediate actions sought to identify practical recommendations that can be introduced without requiring additional financial resources.

⁴⁴ Litigants in Person in Northern Ireland: barriers to legal participation Gráinne McKeever, Lucy Royal-Dawson, John McCord and Eleanor Kirk School of Law, Ulster University, 2017/18

⁴⁵ Australian Law Reform Commission. 2000. Managing Justice: A Review of the Federal Civil Justice System. 12.218, 12, 221

Recommendations

- ***Civil legal aid which is a fundamental part of the administration of justice must be adequately resourced. There needs to be, as a matter of urgency, a root and branch review of the scheme of Civil legal aid and advice including eligibility criteria, means tests, contribution requirements and exclusion of areas of law.***
- ***Ensure the Courts Services and the Legal Aid Board would work together to ensure that there is clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme available from the Courts Services and staff.***
- ***The Legal Aid Board should work with the Courts Service to identify further opportunities for co-location such as the Dolphin House Law Centre and Court Office to maximise the accessibility of legal aid for Court users with limited resources.***
- ***Going forward, the present model for delivery of legal aid should be comprehensively and regularly reviewed to ensure that it is meeting the needs of the most vulnerable in society.***⁴⁶
- ***Commission research to examine access to justice for litigants in person***
- ***Ensure that reforms of the family law system would factor in that many litigants are not represented by lawyers.***

Accessibility and content of Court forms and procedures and website

Court rules and procedures have traditionally been developed for lawyers by lawyers and need to be reconsidered in light of the number of lay litigants now using the Courts, many of whom come from diverse backgrounds and may have language and literacy issues. Many of the forms on the courts website are complex and difficult for lay litigants to fill out without the aid of a legal professional.

Often lay litigants may find it difficult to follow the court's procedures around listing, call overs, adjournments and so on. The Courts Service has a role in this regard to make the procedures more accessible and understandable.

The Courts website would benefit from a simpler more user friendly home page, with each section (guides, news, court fees etc.) set out in a larger font, with drop-down boxes with links directing users to more specific sections of the website (e.g. Guides »» Family Law

⁴⁶ See for instance FLAC, *Access to Justice: a Right or a Privilege, A Blueprint for Civil Legal Aid in Ireland*, 2005.

»» Access) and a search mechanism where a user could enter their location and find their closest Circuit / District Court Office. The Guides should also be in large writing, using clear and simple language, with direct links to downloadable versions of court forms and with relevant forms, declarations and so on grouped thematically. While there are a small number of videos on the Courts Service website that provide information on how the court works, the website itself is difficult to navigate and more video explanatory content is needed.

The procedures that apply at District Court level are more complex and cumbersome than those that apply at Circuit or High Court level. In the High Court, to commence civil proceedings, it is only necessary to have the relevant papers stamped, and filed and served in the appropriate manner on the respondent. Only one visit to the Central Office is involved at the initial stage. Whereas in the District Court for most civil matters, it is necessary to first issue the relevant summons/ notice, then effect service, then prepare a statutory declaration in relation to service, before returning to the Court office to lodge the summons and declaration, and it is only at that point that the matter is listed. All this must be done while observing the various time frames that apply to such services and preparation of the relevant papers to be lodged. Even then, the return date might not be the hearing date, although this may not be clear to the parties concerned. This procedure is unnecessarily cumbersome and the relevant rules and forms are not set out in a format that is accessible or easy to understand.

UK Model

The Gov.uk website provides a simple way to access legal information on navigating the courts.⁴⁷ When you access the “represent yourself” section of the Gov.Uk website it gives a concise overview on how to represent yourself, including links to applying for legal aid, and guides on how to conduct yourself before the court.

It gives advice on what a “McKenzie friend” is, and what they can do with a link to a guidebook providing more information. The home page also has printable guides on family law, debt law, and personal injuries. In these guides, the procedures are outlined in simple language with direct links to printable versions of the forms that need to be filed with the courts, as well as basic instructions on how they should be completed. This website, with simple language and accessible formatting, are useful for assisting lay litigants become familiar with how the courts operate.

Finding judgments can be difficult when using courts.ie as the primary database. Written judgments can often be complex, and while an excellent resource for members of the

⁴⁷ (<https://www.gov.uk/represent-yourself-in-court>)

legal profession, they often prove inaccessible to members of the public. Both the Court Service in the UK and Northern Ireland provide case summaries of judgments from their respective Superior Courts. Further, while many judges in the District Court do engage in the practice of handing down written judgments, the time in which they have to write them up is limited and could only be addressed by increasing the number of members of the District Court bench in order to reduce the caseload per judge.

- ***FLAC recommends all forms and procedures should be accessible, accurate, precise, clear and reader- friendly in plain English, and be made available in the other languages most frequently used in the State.***
- ***FLAC recommends that a liaison person should be available at Court sittings to provide practical information to assist lay litigants and others such as witnesses, not represented by a lawyer.***
- ***FLAC recommends simplifying the procedures in the District Court.***
- ***FLAC suggests the accessibility of the Courts and content of existing website material could be improved by preparing in a range of formats (including video) that are accessible for people with literacy issues or certain disabilities***

- Ø ***guides on matters such as the listing system, call overs, hearing dates etc.***
- Ø ***a “Nutshell” guide for lay litigants.***
- Ø ***a guide on how to represent yourself in court***
- Ø ***guides on the areas of law where there are the most lay litigants, with direct links to printable and downloadable versions of the various forms as well as basic instructions on how they should be filled out.***
- Ø ***a guide and code of conduct for McKenzie friends explaining the Practice Directions of the High Court and the Court of Appeal.***
- Ø ***guidance for court staff when dealing with lay litigants.***
- Ø ***summaries of the judgements of the Superior Courts.***

Unbundled legal services

While FLAC’s preference would be that the legal aid system be resourced so that people only become lay litigants should they absolutely wish to rather than being financially compelled to, the Joint Oireachtas Committee on Justice and Equality may wish to examine initiatives in other jurisdictions that have attempted to provide for lay

litigants. Professor Julie Mc Farlane's research in Canada is instructive in this regard.⁴⁸ In Canada, unbundling legal services, where a lawyer provides legal services for part of a client's legal matter, allows clients to access more affordable legal services. It has the potential to remove barriers to access to justice for people who cannot afford a lawyer's retainer, but need some legal help. Unbundling allows clients and lawyers to decide which tasks are performed by the client and which are performed by the lawyer. For example, the client may complete basic tasks but the lawyer will perform something more complex and in turn reduce the costs.

Unbundled legal services are especially helpful to self-represented litigants, who often are not self-represented by choice, but are unable to afford to retain legal counsel. It remains very difficult for self-represented litigants to find a lawyer who offers unbundled service. While this is not a replacement for proper legally aided legal representation, it is worth examining as an interim measure.

Recommendation:

- ***Examine whether unbundled legal services or other means to make private practitioners accessible to impecunious litigants could be introduced in Ireland***

Efficiency and Collation of Data and Statistics.

The Programme for a Partnership Government under the heading 'Courts and Law Reform' contains a commitment to the commissioning of an annual study on court efficiency and sitting times, benchmarked against international standards, to provide accurate measurements for improving access to justice. Comprehensive data is required in relation to lay litigants and persons in receipt of legal aid, persons facing repossession of their family homes or evictions in order to be able to devise accurate and effective measures for improving access to justice.

Recommendation: -

- ***Ensure that the Programme for Government commitment to provide accurate measurement for improving accessing to justice through the commission of an annual study on court efficiency and sitting times is implemented***

⁴⁸ The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self Represented Litigants Final Report May 2013 Dr Julie Macfarlane

- **Require the Court Services collect comprehensive data including data on the number of people who are legally aided and the number of litigants who are representing themselves, including in the various types of family law**

Barriers to access to justice for people with disabilities

People with disabilities experience higher everyday costs of living because of their disability and also find it more difficult to access systems of justice.⁴⁹ Disability issues are not confined to health services, medical cards or social welfare but impact on all areas of public policy - including the courts and legal system. Almost 600,000 people have a disability in Ireland (13% of the total population) - amounting to 1 in every eight people.⁵⁰

There is a clear lack of statistics and research concerning access to civil justice for persons with disability. While there is a small body of research concerning people with disabilities' experiences with the courts as complainants or witnesses *in criminal complaints*⁵¹ the same does not exist within the civil legal sphere.

This is of major importance considering that we do know that a growing number of adults with intellectual disability are becoming parents and that research undertaken across other jurisdictions shows parents with intellectual disability are over-represented in care proceedings and child custody matters. McConnell, Feldman and Aunos (2010) found approximately 10% of care proceedings in Canada involved a family headed by a parent or parents with intellectual disability. Booth and Booth's (2004) UK study found that 15.3% of care matters involved a parent with intellectual disability. We also know that these parents are often denied procedural fairness and are subject to parenting capacity assessments that are discriminatory and are more likely than any other group, including parents with drug and alcohol issues or mental health problems to have their children placed in out-of-home care, with 40-60% of parents with intellectual disability lose custody of their children before they reach school age.⁵² Again, we do not have sufficient research in Ireland that provides us with a comprehensive picture of the

⁴⁹ CSO (2015) Survey on Income and Living conditions 2014.

⁵⁰ CSO (2012) Census 2011 Profile 8: Our Bill of Health – Health, Disability and Carers in Ireland.

⁵¹ Access to Justice for People with Disabilities as Victims of Crime in Ireland

Claire Edwards, Gillian Harold, and Shane Kilcommins School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law University College Cork 2012

⁵²Frontline Ireland, Parenting with Intellectual Disability: what does it take to make it work? 10.10.16 <https://frontline-ireland.com/parenting-intellectual-disability-take-make-work>

experiences of persons with intellectual disabilities involved in family law proceedings as applicants or respondents or accurate figures, but we do know that many of the same problems exist in this jurisdiction.

Regarding disabilities in general, research undertaken in Canada⁵³ examining experiences of interactions with the legal system identified the following barriers experienced by persons with disabilities because of the attitudes of those that implement the law: (1) heavy judgment and negative assumptions experienced by persons with mental health disabilities, particularly the homeless; (2) lack of support systems, stigma and fear experienced by persons with mental disabilities; (3) reluctance to acknowledge the validity of (and therefore to accommodate) persons with disabilities, particularly those with learning, environmental, and chronic fatigue disabilities; and (4) suspicion and contempt towards persons with disabilities seeking services and supports, which may lead to persons within the legal system interpreting and applying laws in ways that frustrate or deny people's rights to those services and supports.

Groundbreaking research conducted in 1996 established that there were a range of barriers preventing full access to the civil legal system for people with disabilities in Ireland including structural barriers such as access to buildings and procedural barriers that include specific procedures and practices of the legal system.⁵⁴ Many of these barriers still exist today including inaccessible courts, inaccessible offices of legal practitioners, legal documentation being unavailable in accessible formats, and procedural systems being too complex to navigate. There may also be inconsistencies in how legal practitioners and the judiciary respond to people with disabilities.⁵⁵

There is a clear need for further research in this area to be undertaken in Ireland, not only relating to the experiences of persons with disabilities in the court system in general, but in particular in relation to family law.

Human rights and access to justice for persons with disabilities

The right of access to justice is interconnected with the human rights of persons with disabilities, including the right to be treated as equal before the law.⁵⁶ The particular additional provisions relevant to people with disabilities include the UN Convention on

⁵³ Law Commission of Ontario, Persons with Disabilities: Final Report – September 2012

⁵⁴ (Commission on the Status of People with Disabilities 1996: 215)

⁵⁵ Edwards, C; Harold, G; Kilcommins, S (2015) 'Show me a justice system that's open, transparent, accessible and inclusive: barriers to access in the criminal justice system for people with disabilities as victims of crime'. Irish Journal of Legal Studies, 5 (1):86-105

⁵⁶ UN Human Rights Council, Human Rights Council debates access to justice for persons with disabilities 7 March 2018

the Rights of Persons with Disabilities (hereinafter referred to as the Convention) which was ratified by the Irish government in 2018, the Equal Status Acts 2000-2016, and the Disability Act 2005. The Convention recognises the centrality of accessibility to the fulfilment of other rights including accessing public services but also of being fully informed of their rights.

Article 13 of the Convention provides that:-

“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”

Articles 19 and 20, in conjunction with article 9 (accessibility) and 13 (access to justice) indicate that physical accessibility and informational accessibility must be facilitated by the state.⁵⁷The prohibition of discrimination in the provision of goods and services contained in the Equal Status Act 2000-2016 applies to the Courts Services and the administration of justice.⁵⁸Service is defined to include access to and the use of any place. Discrimination⁵⁹on the disability ground is defined as treating a person with a disability less favorably than a person without a disability or a person with a different disability. The definition of disability in the Equal Status Act is very broad.⁶⁰The Equal Status Act 2000-2016 also requires the reasonable accommodation of people with disabilities, subject to exemptions and qualifications.

The Disability Act 2005⁶¹ is a positive action measure designed to support the provision of and improve access to mainstream public services for people with disabilities by accommodating the needs of all citizens in accessing public buildings and facilities such as the Courts.

⁵⁷ General comment on Article 9 of the Convention : accessibility : draft / submitted by the Secretariat
Authors: UN. Committee on the Rights of Persons with Disabilities (10th sess. : 2013 : Geneva)
Agenda information:CRPD/C/10/1

⁵⁸ Section 5 Equal Status Act 2000-2016

⁵⁹ Section 3 Equal Status Act 2000-2016

⁶⁰ Section 2 Equal Status Act 2000-2016

⁶¹ The Disability Act 2005 is part of a framework of Government legislative measures concerning social inclusion. Other elements in the legislative framework are the Employment Equality Act 1998; Equal Status Act 2000; Equality Act 2004; and Education for Persons with Special Educational Needs Act 2004

We note that the National Disability Authority is engaging with An Garda Síochána and with the Courts Service in relation to developing proposals to improve the response of both organisations in interacting with people with disabilities in accessing the justice system⁶² however data concerning specific progress in this regard is currently unavailable. As well as access to public buildings, the legislation requires access to information, and sectoral plans for government Departments requiring that access for people with disabilities becomes an integral part of service planning and provision.

FLAC acknowledges that the Courts Service has appointed a Disability Liaison Officer and disabled access and facilities are included in all court building and refurbishment projects however this work is ongoing and there is no easily accessible information online that indicates which buildings are accessible or not.⁶³

One of the aims of the review should be to ensure that people with a disability can participate fully in the justice system and that disability issues are not considered in isolation, but integrated in all areas of access to justice.

Recommendations:

- ***Ensure the Convention, the provisions of the Equal Status Acts 2010-2016, and the Disability Act 2005 be core considerations in the Review of the Administration of Justice.***
- ***Ensure the Courts Service engage in routine data gathering and monitoring of statistics concerning access to justice for persons with disabilities.***
- ***Involve disability groups, the National Disability Authority and the Irish Human Rights and Equality Commission in reform initiatives to identify systems that will best meet the needs of people with disabilities and to improve access to justice.***
- ***Give consideration to including Changing Places facilities in new Courts Service building developments.***
- ***Ensure accessibility of legal spaces for persons with disabilities include the installation of ramps where necessary, railing height adjustments, accessible parking spaces, visual and auditory alarm systems and braille or raised letter for permanent signage where appropriate***
- ***Require the Courts Service provide information online indicating which buildings are accessible and the projected date on which a building will be made accessible if it is a work in progress***

⁶² National Disability Inclusion Strategy 2017-21 DE

⁶³ Report of the Commission on the Status of People With Disabilities

- ***Require an Access Officer be available to assist people with disabilities to access the courts.***
- ***Court documentation during proceedings should be provided in an accessible format for people with disabilities and information guides and forms on the Courts Service website should be amended so that they can be accessed by people with disabilities.***
- ***Wi-Fi should be available in all courtrooms***

Access to justice using technology

It is essential that the Courts Service develop its website to improve access to persons with disabilities. FLAC recognises that technology may be developed for the Courts Service to allow for conduct of work online, so it is imperative that people with visual impairments or motor impairments who are unable to access a webpage, much less submit or retrieve information are not excluded from these services because they cannot access the technology.⁶⁴

Recommendations:

- ***Ensure the Courts Service work with people with disabilities to develop appropriate and accessible technologies to improve access to their website***
- ***Require technological measures designed to open access to the courts also be evaluated for unintended negative side effects for vulnerable groups***
- ***Require websites providing legal services and information undergo periodic accessibility testing for persons with disabilities***
- ***Make all legal and court documents available in accessible formats (including video and audio where necessary) and accompanied by information leaflets giving specific advice in relation to access to the courts for people with disabilities.***

⁶⁴ Rei-Anderson, Cody and Reynolds, Graham J. and Wood, Jayde and Wood, Natasha, Access to Justice Online: Are Canadian Court Websites Accessible to Users with Visual Impairments? Alberta Law Review, Vol. 55, No. 3, 2018. Available at SSRN: <https://ssrn.com/abstract=3143971>

Court buildings

FLAC has made a range of recommendations regarding the courts in Ireland and access to the Courts for lay litigants and persons participating in family law proceedings.

However, there are very clear problems with the actual physical infrastructure of the family courts in Ireland. Dolphin House deals with business for all the areas within the Dublin Metropolitan Court District - other than Swords area. Hearings on domestic violence, guardianship of children, maintenance, matters pertaining to passport applications and blood tests to determine parentage are heard in Dolphin House. Clearly given the large geographic area that Dolphin House caters to, there is a high volume of traffic in the court building itself however the building itself is simply not equipped for the level of activity that takes place within its walls.

While other persons presenting to the Oireachtas Committee on Justice and Equality have stated outlined concerns regarding Dolphin House, it is worth outlining FLAC's specific concerns in this submission.

FLAC recognises the work of the Courts Service staff and legal practitioners within the court, however it is at capacity. On any given day when an individual enters the building, they will find it filled with people, many of whom are in a vulnerable position and from marginalised communities, engaging in consultations with solicitors in the hall and on the stairs as the few consultation rooms that are available will already have been occupied. Many women who engage the services of the Courts have to bring their children with them due to childcare issues, and when a person enters it is unclear where to go and they must navigate a set of steps to the reception, often with a buggy or a pram, and then return downstairs.

Due to the lack of space people are forced to have consultations with their legal representatives in the hall, often disclosing intimate details about their lives, their physical or mental health, or their experiences of domestic violence within earshot of strangers beside them waiting to meet their own solicitor or enter the court. There is little access to private space. Where there are queues, it is generally unclear who is next in the queue with people crowded into each other. As there is no childcare facility within the court, there are frequently children present, some of whom are bored or distressed. Very often children are left in the care of domestic violence support workers during a hearing, which creates unnecessary risk to that worker and children. There is a clear need for a court facility that has separate waiting areas for applicants and respondents.

It is not uncommon to see persons attending the Court visibly distressed in the waiting areas. Further, where applicants and respondents often have to wait in the same area of the court, which can be particularly distressing for victims of domestic violence and make it difficult when they are attempting to have a consultation with their own legal representative who is very often there as a legal aid practitioner with little time to allocate to the case.

For a person who is a lay litigant, there is no information available concerning the process. The lay litigant is dependent on the courts service staff to explain the basic information on different orders, the requirements needed to apply for the them. The building is cramped and dirty and there is a clear need for a sufficient, purpose designed court building to be made available for persons engaging in family law proceedings.

While this above section outlines the situation in Dolphin House, we understand that the lack of consultation space is an issue that is replicated across the state in other areas and the below recommendations are applicable to many of the court buildings across the state.

Recommendations

- ***Ensure court buildings have sufficient consultation areas for persons in family law proceedings with separate waiting areas available for applicant and respondent***
- ***Increase funding for court accompaniment by support workers for victims of domestic violence***
- ***Make training available for mediators, legal practitioners and members of the judiciary on domestic violence, including on the nature of emotional and psychological abuse and coercion and the impact it may have on victims including the ways in which traumatic experiences may delay the ability to come forward to make applications immediately***
- ***A feasibility study should be undertaken regarding the need for some provision to address the childcare needs of those attending family law proceedings, whether that is by way of physical crèche facilities within family court buildings or childcare vouchers***

Sign Language Interpretation in the Courts

FLAC welcomed the enactment of the Irish Sign Language Act 2017 making Irish Sign Language an official language of the State. This Act placed an obligation on courts to take all reasonable steps to allow persons competent in Irish Sign Language to be heard in ISL as well as a duty on public services to provide free interpretation services when accessing statutory services. However this Act will not come into operation until December 2020.

FLAC also welcomed the provisions in the National Disability Inclusion Strategy 2017-2021 which includes plans to increase the number of sign language interpreters, a registration scheme and quality assurance measures and professional training for sign language interpreters.⁶⁵ These are progressive measures, but we also recognise that the presence of an interpreter can change the dynamic of legal interactions and court proceedings. We further note there is a lack of awareness among many in the justice system about both deaf people and their language and the nature of interpreted interaction and the fact that interpretation services can sometimes create additional barriers for a deaf person to overcome.^{66 67} As such, it is essential that the Courts provide effective ISL interpretation or other appropriate mechanisms to accommodate deaf people where necessary.

Recommendations:

- ***Engage with the representative groups for the deaf community to assess their needs in accessing the courts***
- ***Ensure the Courts Service provide on its website an easy to read guide and a video in ISL on how to request ISL interpretation within the courts themselves, and their offices, including the name and contact details of the persons responsible for ensuring requests are processed***

Translation of other languages in the Courts

The Courts Service regularly provide interpretation services to the courts to facilitate access to justice for those whom English is not their first language. The provision of the interpretation service is outsourced to private operators and kept under ongoing review, however, anecdotal evidence suggests that the quality of interpretation provided can be

⁶⁵ National Disability Inclusion Strategy 2017-2021

⁶⁶ Brennan and Brown 2004

⁶⁷ Jeremy L. Brunson; Your Case Will Now Be Heard: Sign Language Interpreters as Problematic Accommodations in Legal Interactions, *The Journal of Deaf Studies and Deaf Education*, Volume 13, Issue 1, 1 January 2008, Pages 77–91, <https://doi.org/10.1093/deafed/enm032>

patchy. Legal interpretation requires not only the ability to speak in two or more languages, but also familiarity with legal terminology and differences in dialects and vocabulary in the relevant languages, as well as simultaneous interpreting skills.

While there are short courses available in community interpreting, there is currently no accredited training for legal interpreters nor is there testing to ensure standards despite a government report recommending this in 2008.⁶⁸ The Law Society of Ireland have raised the issue that in jurisdictions where interpreters are tested the failure rate is high and in Britain, the pass rate on the Diploma in Public Service Interpreting is 20-30% - *“the assumption in Ireland, where interpreters for the Gardaí and the courts are outsourced, is that anyone who speaks English and another language can be an interpreter.”*⁶⁹

The lack of regulation means that anyone in Ireland can call themselves an interpreter, and the Irish Translators’ and Interpreters’ Association has previously raised this matter with the Department of Justice.⁷⁰ Further, Directive 2010/64/EU on Legal Translation and Interpretation in Criminal Proceedings, states that interpretation in criminal proceedings must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. While there are breaches of civil orders that become criminal matters, it is FLAC’s view that the importance of adequate translation is essential to ensuring access to justice within civil law.

There is a clear need for standards and regulation in this area in order to ensure that those who do not have sufficient fluency in English can still access justice.

Recommendation:

- Introduce accreditation and regulation for legal interpreters

⁶⁸ Developing Quality Cost Effective Interpreting and Translation Services for Government Services Providers in Ireland, 2008, Department of Justice, Equality and Law Reform

⁶⁹ A matter of interpretation: Legal interpretation in Ireland, Mary Phelan, Law Society Gazette 08/05/2017

⁷⁰ Submission to the Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers, Irish Translators’ and Interpreters’ Association March 2015

Appendix 1

Section (9) (a) Subject to any order made under subsection (10) and to the other provisions of this subsection, legal aid shall not be granted by the Board in respect of any of the following matters (referred to in this Act as “designated matters”):

(i) defamation;

(ii) disputes concerning rights and interests in or over land;

(iii) civil matters within the jurisdiction of the District Court (Small Claims Procedure) Rules, 1993;

(iv) licensing;

(v) conveyancing;

(vi) election petitions;

(vii) a matter as respects which the application for legal aid is made in a representative, fiduciary or official capacity and the Board, having regard to any source from which the applicant is or may be entitled to be indemnified in respect of the costs of the proceedings concerned and any resources of the persons who would be likely to benefit from a successful outcome of the proceedings for the applicant, is of opinion that legal aid should not be granted;

(viii) a matter the proceedings as respects which, in the opinion of the Board, are brought or to be brought by the applicant as a member of and by arrangement with a group of persons for the purpose of establishing a precedent in the determination of a point of law, or any other question, in which the members of the group have an interest;

(ix) any other matter as respects which the application for legal aid is made by or on behalf of a person who is a member, and acting on behalf, of a group of persons having the same interest in the proceedings concerned.

(b) The making of a counterclaim for defamation in proceedings for which a legal aid certificate may otherwise be granted by the Board will not of itself disqualify the defendant to the counterclaim from obtaining such a certificate in respect of those proceedings.

(c) Notwithstanding the provisions of paragraph (a) and subject to the other provisions of this Act, legal aid may be granted—

(i) in respect of proceedings under the Landlord and Tenant Acts, 1967 to 1994 (in so far as they relate to residential property), the Married Women's Status Act, 1957, the Rent Restrictions Acts, 1960 and 1967, the Family Home Protection Act, 1976, the Family Law Act, 1981, or proceedings arising out of a dispute between spouses as to the title to or possession of any property;

(ii) in respect of proceedings arising out of a dispute as to the title to or possession of any property—

(I) between two persons as respects whom an agreement to marry one another is in force or who are living together as man and wife but are not married to each other, or

(II) between two persons as respects whom an agreement to marry one another has been terminated or who, having lived together as man and wife without being married to each other, have ceased to live together as man and wife, where either or both of them had title to or possession of the property at a time when the agreement to marry was in force or, as the case may be, they were living together as man and wife;

(iii) where a subject matter of the dispute is the applicant's home (or what would be the applicant's home but for the dispute) and the Board considers that the applicant—

(I) suffers from an infirmity of mind or body due to old age or to other circumstances, or

(II) may have been subjected to duress, undue influence or fraud in the matter,

and that a refusal to grant legal aid would cause hardship to the applicant;

(iv) in connection with the preparation of an assent, if the Board is satisfied that the assent relates to the applicant's home and where—

(I) a grant of representation has been taken out on behalf of the applicant, or

(II) the applicant had taken out a personal grant of representation,

and that a refusal to grant legal aid would cause hardship to the applicant;

(v) in respect of licensing matters, provided that the Board is satisfied that the granting of the licence the subject matter of the dispute would cause hardship to the applicant;

(vi) in respect of a conveyancing matter connected to a matter in which legal aid or advice has already been granted.

(d) An application for a legal aid certificate shall not be refused by reason only of the fact that a successful outcome to the proceedings for the applicant would benefit persons other than the applicant.