



Review of the Administration of Civil Justice

FLAC, June 2018

Summary of Recommendations

- ***FLAC recommends that the Convention, the provisions of the Equal Status Acts 2012- 2016, and the Disability Act 2005 be core considerations in the Review of the Administration of Justice.***
- ***FLAC recommends the Courts Service engage in routine data gathering and monitoring of statistics concerning access to justice for persons with disabilities.***
- ***It also recommends that the Review of the Administration of Civil Justice would involve meeting with disability groups, the National Disability Authority and the Irish Human Rights and Equality Commission to identify systems that will best meet the needs of people with disabilities and to improve access to justice.***
- ***FLAC recommends that consideration be given to including Changing Places facilities in new Courts Service building developments.***
- ***FLAC recommends that 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***
- ***FLAC recommends 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***

- ***FLAC recommends that 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***
- ***FLAC recommends that the Courts Service work with people disabilities to develop appropriate and accessible technologies to improve access to their website***
- ***FLAC recommends that technological measures introduced to open access to the courts also be evaluated for unintended negative side effects for vulnerable groups***
- ***FLAC recommends that websites providing legal services and information undergo periodic accessibility testing for persons with disabilities***
- ***FLAC proposes all legal and court documents be made 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.***
- ***FLAC recommends that the Review of the Administration of Civil Justice engage with the representative groups for the deaf community to assess their needs in accessing the courts***

- ***FLAC recommends that the Courts Service provide on its website an easy to read guide 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***
- ***FLAC recommends that the Courts Service list on its website a clear guide on how to lodge a complaint about difficulty in accessing courts services or court facilities due to a lack of access for persons with disabilities***
- ***FLAC recommends that the Courts Service introduce training for members of the judiciary and courts staff on deaf people and ISL user needs***
- ***FLAC recommends the Courts Service fund ISL interpretation for those who need it in order to access the courts***
- ***FLAC reiterates the recommendation made in the first submission that the current system of first and second- tier quasi- judicial decision making be reviewed for the purposes of establishing a more stream-lined system with common procedures where the focus of the dispute would be on the substantive rights.***

Introduction

FLAC welcomes the opportunity to make a supplementary submission to this Review and welcomes that the review aims resonate with access to justice - a core area of FLAC's work. The first submission from FLAC set out the details of what FLAC does and how it operates. It also highlighted the obligations imposed on statutory bodies such as the Court Services by section 42 of the Irish Human Rights and Equality Commission Act 201, 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 recommended that the Public Sector duty be a core consideration in the Review of the Administration of Justice.

The previous submission focused on reforms to the Administration of Justice which would improve accessibility generally and for lay litigants in particular. This supplemental submission will focus on achieving more effective outcomes for court users, particularly vulnerable court users - specifically people with disabilities. FLAC also made a submission to the Court Service Statement of Strategy 2018-2020 and the recommendations in relation to people with disabilities are reiterated herein. This submission will contain a note in relation to the issue of Judicial Review which was raised in the consultation workshop.

FLAC recognises the need for a modern, fit for purpose, accessible court services and is fully supportive of and eager to be involved in any endeavors to make the court services more accessible and effective.

FLAC is happy to meet with the Review body to expand on any of the issues contained in this submission or the previous one.

Barriers to access to justice for people with disabilities

People with disabilities experience higher everyday costs of living because of their disability¹ and also find it more difficult to access systems of justice. 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.²

There is a clear lack of statistics and recent 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*³, the same does not exist within the civil legal sphere. Research undertaken

¹ CSO (2015) Survey on Income and Living conditions 2014.

² CSO (2012) Census 2011 Profile 8: Our Bill of Health – Health, Disability and Carers in Ireland.

³ 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 February 2012

in Canada⁴ 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.⁵ 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.⁶

⁴ Law Commission of Ontario, *Persons with Disabilities: Final Report* – September 2012

⁵ (Commission on the Status of People with Disabilities 1996: 215)

⁶ 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

There is a clear need for further research in this area to be undertaken in Ireland.

Human rights and access to justice for persons with disabilities

The previous submission dealt with the right of access to the courts. 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.⁷ The particular additional provisions relevant to people with disabilities include the UN Convention on 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.”

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

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.⁸

The 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.⁹ Service is defined to include access to and the use of any place.

Discrimination¹⁰ on 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.¹¹ The Equal Status Act 2000-2016 also requires the reasonable accommodation of people with disabilities, subject to exemptions.

The Disability Act 2005¹² 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.

⁸ 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

⁹ Section 5 Equal Status Act 2000-2016

¹⁰ Section 3 Equal Status Act 2000-2016

¹¹ Section 2 Equal Status Act 2000-2016

¹² 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 are 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 system¹³ 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.¹⁴

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.

- ***FLAC recommends that the Convention, the provisions of the Equal Status Acts 2012- 2016, and the Disability Act 2005 be core considerations in the Review of the Administration of Justice.***

¹³ National Disability Inclusion Strategy 2017-21 DE

¹⁴ Report of the Commission on the Status of People With Disabilities {CORRECT CITATION}

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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 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.¹⁵

¹⁵ 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>

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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 and 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.¹⁶ 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.¹⁷¹⁸ As such, it is essential that the Courts provide effective ISL interpretation *or other appropriate mechanisms* to accommodate deaf people where necessary.

- ***FLAC recommends that the Review of the Administration of Civil Justice engage with the representative groups for the deaf community to assess their needs in accessing the courts***
- ***FLAC recommends that the Courts Service provide on its website an easy to read guide 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***

¹⁶ National Disability Inclusion Strategy 2017-2021

¹⁷ Brennan and Brown 2004

¹⁸ 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>

- ***FLAC recommends that the Courts Service list on its website a clear guide on how to lodge a complaint about difficulty in accessing courts services or court facilities due to a lack of access for persons with disabilities***
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Judicial Review:

It was suggested at the Consultation workshop that one of the matters that was under consideration by the review of the Administration of Civil Justice was the reform of the rules and procedures governing Judicial Review.

FLAC has considerable experience in relation to Judicial Review. It regularly represents individuals who are seeking to challenge decisions of the State, its organs and quasi-judicial bodies. A significant number of potential Judicial Reviews are settled pre leave. On a regular basis, potential respondents accept on foot of correspondence and threat of judicial review proceedings that a particular decision was incorrect and/or unfair and revisit or rescind the particular decision. An even higher percentage of cases are settled post leave. Where the case is settled in favour of the applicant, the case is recorded as struck out with no order. These cases may be incorrectly identified as being unsuccessful.

Further the State regularly insists on absolute confidentiality in relation to a settlement, there is therefore no possibility of these cases being recorded as a success for the applicants concerned.

FLAC would not be alone in this regard and believes that this is a common experience among independent law centres who are providing representation for vulnerable and isolated individual and groups.

In addition, there is already a multi-tier system for judicial review in place with distinct rules applicable in certain areas such as asylum/immigration and planning. In the areas of asylum/immigration the restrictive rules applicable, some of which are legislative in origin, others of which are laid down in rules of court/practice directions, may make access to an effective remedy considerably more onerous than in other contexts.

Judicial review provides a vitally important avenue by which individual citizens and groups of citizens can challenge decisions of the State, its organs and its public bodies. For this reason, it is important that it is accessible as possible to ordinary citizens who may be seriously affected by the decisions of such bodies.

Rules of court should facilitate, rather than inhibit, access to justice for individuals. They should be clear, accessible, foreseeable in their application, etc. Any changes to

the rules on the substantive requirements for judicial review are properly matters for primary legislation, rather than rules of courts and should not provide the State and the organs of the State with an unfair advantage.

Case management measures may assist in streamlining judicial review. However, this needs to be developed with care to ensure that it does not hinder ordinary individuals' access to the courts, including in terms of costs. There is a reluctance on the part of some State respondents/public bodies to settle/resolve matters, at least until a very late stage in proceedings or the hearing itself. It may be that there is scope for developing rules on costs which would encourage respondents to settle at an early stage in cases where there is no good basis on which to defend the proceedings.

The real solution to a perceived problem in relation to judicial review must lie in better quality decision-making at first and second instance in public bodies. The UK tribunals system may provide some guidance in this regard. There are clear rules set out governing their operation, appeals and routes to the higher courts.

- ***FLAC reiterates the recommendation made in the first submission that the current system of first and second- tier quasi- judicial decision making be reviewed for the purposes of establishing a more stream-lined system with***

common procedures where the focus of the dispute would be on the substantive rights.