

1. Introduction

One Family welcomes the opportunity to make a submission to the Department of Justice on the Review of Civil Legal Aid. One Family has been working with families engaging in the family law system for over 50 years. During this time, we consistently see parents and children struggle and feel let down by the system. One area of particular cause for distress for families is the lack of adequate financial support and independent legal information and advice available to them. Family law queries comprise around one fifth of calls to our *askonefamily* helpline and we work supporting fathers, mothers, children and stepparents to develop sustainable arrangements for their separated families.

Access to justice irrespective of economic or social status is a right protected and endorsed by a range of human rights treaties, documents and bodies, including the European Convention of Human Rights, the EU Charter of Fundamental Rights, the Universal Declaration of Human Rights and the Committee on the Elimination of Discrimination Against Women. Access to legal aid is included in Article 47 of the European Charter of Human Rights in that it should be made available where a person lacks sufficient resources and such aid is "*necessary to ensure effective access to justice.*"¹ However, it is not the case in Ireland that everyone who can't afford to pay for legal remedy has access to legal aid.

One-parent families are at a considerable increased risk of experiencing poverty and deprivation. The latest available data tells us that one in seven one-parent families are living in consistent poverty (compared with one in 29 two-parent families) and almost half are experiencing enforced deprivation. Access to the Civil Legal Aid Scheme for families is an area where the two core policy issues that present in One Family's Services - family law and child poverty collide. This submission is informed by our direct work with one-parent families and our role representing these families at a local and national level over more than 50 years.

2. About One Family

One Family is Ireland's organisation for people parenting alone, sharing parenting, and separating. We were established in 1972 as Cherish and provide specialist parenting, therapeutic and family support services around Ireland. Children are at the core of our work, and we seek to improve their lives by empowering, supporting and up-skilling their parents. We campaign against child poverty, for reform of the family justice system and for the State to recognise and cherish all families equally, regardless of their marital status. More information on One Family can be found at www.onefamily.ie.

¹ Charter of Fundamental Rights of the European Union (2016).

3. Types of Civil Law Cases

There is a shortage of data or research on the scale of the unmet legal need in Ireland; however, international research shows the most common types of issues for which legal aid are sought relate to consumer rights, social protection and other benefits, housing, employment issues, debt relief and family law.² In 2005 the Legal Costs Working Group report stated: *“Access to justice is a particular concern given the nature of proceedings. In this regard, the Group notes that the vast majority of cases supported by legal aid are family law related.”*³

Civil Legal Aid should play its part in ensuring sustainable, child-centred solutions to family disputes. It is likely that legal aid will continue to be required in challenging cases if family law is successfully and fully reformed and therefore it must be readily available to ensure safety in families. Access to justice in the domain of family law must be child-centred, and safety focussed with a view to developing sustainable solutions for a family. There is currently a lack of clarity surrounding how the services of the Legal Aid Board can be availed of by those under 18 years of age or by others on their behalf. Article 42a of the Constitution states that children’s views *“shall be ascertained and given due weight having regard to the age and maturity of the child”* in legal proceedings which affect them.⁴

Children’s access to justice should not be based on the ability of their parent or guardian to pay for legal representation. The Council of Europe Guidelines on Child-Friendly Justice sets out that children should have access to free legal aid, under the same or more lenient conditions as adults.⁵ Children should be able to access civil legal aid in relation to family law proceedings to ensure that their interests are independently represented and they can access justice in proceedings that directly impact their lives.

Currently certain types of civil law cases are excluded from the Civil Legal Aid Scheme, including housing disputes, social welfare appeals, and employment cases. The purpose of civil legal aid and advice, as per the Legal Aid Board, is to provide State-funded services and legal advice and aid in civil cases to people who might not be able to afford to pay for a lawyer themselves. It makes no sense to create a hierarchy of legal need based on the type of civil case a person is in need of assistance with. Everyone should have equal access to legal representation and advice. This is particularly necessary in civil cases where employers, landlords, service providers or public bodies have access to legal representation while those not entitled to legal aid are left to navigate a complex system without legal advice or representation.

Recommendation: Allow all types of civil legal cases to be included in the Civil Legal Aid Scheme including:

² Pleasence, P. Balmer, N. and Sandefur, R. (2013) *Paths to Justice: A Past, Present and Future Road Map*.

³ Legal Costs Working Group, (2005) *Report of the Legal Costs Working Group*.

⁴ Bunreacht na hÉireann, (Constitution of Ireland, enacted in 1937), Article 42a

⁵ Council of Europe, (2010) *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice*.

- Housing and homelessness related cases regardless of whether they are heard before a quasi-judicial body such as the Residential Tenancies Board (RTB) or the Workplace Relations Commission (WRC).
- Social welfare appeals.
- Employment and equality cases regardless of whether they are heard at the WRC.

Recommendation: In line with the Council of Europe Guidelines on Child-Friendly Justice, allow children to access legal aid and advice services of the Legal Aid Board. Develop specific child-friendly legal aid and advice services, information materials and training for staff interacting with children.

4. Jurisdictions Covered by the Scheme

While many family law cases are eligible for legal aid, families often find that issues relating to their family law case or that impact them as a family are not covered by the Civil Legal Aid Scheme. Two of the most common areas where One Family sees families struggle is in relation to homeless and housing issues and social welfare appeals, but also cases relating to certain services such as services for Traveller families, equality and employment law. The barrier is often the type of setting cases are heard in, with quasi-judicial settings such as the WRC, RTB and the Social Welfare Appeals Office (SWAO) falling outside the remit of the Legal Aid Board under the Civil Legal Aid Act 1995. As previously outlined, while these arenas fall outside of the Scheme and prevent those taking a case from accessing State-supported legal representation, employers, service providers, housing organisations and public bodies usually have access to legal representation creating an stark inequality and imbalance in how cases are carried out.

Recommendation: Include proceedings before quasi-judicial settings in the Civil Legal Aid Scheme and under the remit of the Legal Aid Board, including proceedings heard before the WRC, RTB and SWAO.

5. Eligibility

The financial threshold to qualify for legal aid is far too low and should be adjusted as a priority. Many people find themselves on very low incomes but still above the threshold and the Legal Aid Board has no discretionary powers in these cases. For victims of financial abuse, access to legal aid may be limited as a result of their abuse, and there are often no discretionary routes available to them. In order to qualify for legal aid a person must be of "modest means"; however, financial eligibility criteria has not been adjusted since 2006 despite inflation during that time period increasing by 22.3%.⁶⁷ Indeed, the disposable income threshold once allowances are considered is just €18,000 15 per cent lower than the National Minimum Wage. This has essentially whittled away the number of people eligible for the Scheme based on their means and denied them their right to access justice. If the threshold was increased to account for inflation between December 2006 and December 2023 this would bring the threshold to €22,0014. Social Justice Ireland have calculated two more nuanced increases, the first based upon a Living Wage

⁶ Civil Legal Aid Regulations (2006).

⁷ Central Statistics Office, Inflation Calculator comparison December 2006- December 2022. Available at: <https://visual.cso.ie/?body=entity/cpicalculator>.

at €24,476 and the second, based on the increase between the average industrial wage between 2006 and 2023 at €25,920.⁸

It is not just the income threshold which needs to be adjusted, the allowance rates should also be reassessed based on price increases in the intervening period. In particular, the cost of accommodation and childcare have increased exponentially in recent years, as has the cost of raising a child. Households in lower income deciles have been shown to experience a higher rate of inflation than those in other income deciles making them more vulnerable to increases in the cost of living.⁹ One Family supports the submission made by Community Law and Mediation, based on calculations by Social Justice Ireland that the accommodation allowance should be increased to €16,000 and the child care allowance should be increased to €9,000 in recognition of the steep increase in these costs over the last two decades and the high burden these expenditures place on family budgets.¹⁰ The childcare allowance should also be increased to €2,000 in order to reflect inflation.

Recommendation: Adjust the income threshold for Civil Legal Aid to take account of inflation in wages, goods and services, legal costs and a Living Wage.

Recommendation: Reassess allowance rates based on current costs, in particular commit to modifying upward the housing, childcare and dependent child allowance.

We are aware of issues of eligibility arising in relation to domestic abuse cases. One example which arises with parents accessing One Family's support services involves parents who are taken to court for breach of access, where the reason for the breach is domestic abuse. Such parents find themselves ineligible for Civil Legal Aid. Furthermore, in many cases parents in this situation are also asked to contribute to Section 32 reports without a legal aid certificate and often without the means to do so. Another issue relating to the ineligibility of breach of access cases relates to the lack of services providing supervised access as Child Contact Centres.¹¹ Where access is ordered by the court to be supervised, yet there are no supervision services available parents are left with a choice between breaching the access order, for which they will not be eligible for Civil Legal Aid or allowing unsupervised access which has been deemed by the court to be unsafe or not in the child's best interests.

Recommendation: Revise eligibility criteria relating to breach of access cases where domestic abuse is present.

6. Financial Contribution

Civil Legal Aid is not usually provided free of charge. While in certain circumstances the fees charged for legal aid and legal advice are waived, in most cases the amount paid ranges from €30 to €150 for legal advice and from €130 to 25 per cent of the amount of

⁸ Community Law and Mediation, (2023) *Submission on the Review of the Civil Legal Aid Scheme*.

⁹ Central Statistics Office, (2022) *Estimated Inflation by Household Characteristics March 2022*.

¹⁰ Community Law and Mediation, (2023).

¹¹ One Family, (2014) *Child Contact Centres: Key Learning*. Available at: https://www.onefamily.ie/wp-content/uploads/One-Family_Child-Contact-Centre_Key-Learnings.pdf?_gl=1*dmq7ed*_ga*MTY5NTk0NzMzNS4xNjQ2MzAwNTc4*_ga_YZB62WBRM3*MTY3NzU4MjM1MC40LjEuMTY3NzU4MjQxNy4wLjAuMA..&_ga=2.201683281.1312859825.1677512496-1695947335.1646300578

disposable income over €11,500 plus €130 for legal aid. Even in cases where fees are waived, the Legal Aid Board may seek to recover the cost of providing legal services from any settlement the client may receive. In One Family's view Civil Legal Aid should be free to anyone that meets the financial eligibility test and merits test. If fees must be charged, any financial contribution should be based on a person's ability to pay it. There is currently a waiver applying to domestic abuse cases and this should be expanded. Another issue for the parents we work with is the cost of court reports. For example, some parents find themselves having to pay in excess of €7,000 for Section 47 reports. Expiration of Legal Aid Board certificates also have consequences for parents accessing legal advice and aid and can result in clients being left without representation.

Recommendation: Legal Aid Board clients should be exempt from making a financial contribution for legal aid or advice once they satisfy the financial eligibility and merit test.

Recommendation: Retain and expand eligibility for fees waiver in cases of domestic abuse.

Recommendations: Allow those eligible for Civil Legal Aid full financial aid for their contribution to the cost of court reports.

7. Mode of Delivery

The mode of delivery should be informed by an extensive needs assessment, as well as research on service user experience to best meet the needs of service users, particularly those who are vulnerable or marginalised. The Civil Legal Aid system, as with all law systems, should be built around the specific needs of its user and not around existing services, the needs of legal professionals or of public entities. In 2021 One Family made a submission to the Family Justice Oversight Group on the future of family law.¹² This submission outlines how we believe Civil Legal Aid should be an integral part of a wider, integrated family law and domestic abuse legal systems. We envision a system where all cases go through a Child Impact Assessment Framework, including those eligible for Civil Legal Aid. Common rules of engagement between Civil Legal Aid and private practitioners on family law cases are essential. We endorse the Community Law and Mediation position that the Civil Legal Aid Scheme should be restructured in line with the community law centre model that includes a public legal education and law reform function.

Recommendation: Carry out research into the experiences of service users. (See recommendation under future development relating to an assessment of unmet legal need.)

Recommendation: Restructure the Scheme in line with the community law centre model to include a public legal education and law reform function.

8. Accessibility

¹² One Family, (2021) *Submission to the Family Justice Oversight Group*, Available at: <https://onefamily.ie/wp-content/uploads/2021/02/FJOG.-Family-Law-Justice-Reform-Submission.-One-Family.-Feb-2021.pdf>

There is a need for greater targeting of Civil Legal Aid services towards vulnerable groups and marginalised communities. There have been several reports on Civil Legal Aid in Ireland published over the last number of decades, including the Pringle Report and reports by NGOs such as FLAC, Community Law and Mediation and others. All of these reports have pointed to issues contributing to the inaccessibility of legal services to those most in need. These include; a lack of awareness of rights on the law relating to disadvantaged communities among legal professionals and within the communities themselves; people who are vulnerable or marginalised feeling intimidated by the legal system; and delays and waiting times causing reluctance to enter into the legal aid process.

There should be better safeguarding, protection and inclusion of vulnerable people. Legal language and jargon can be inaccessible for many, but particularly those for whom English is a second language, have lower literacy levels or have a particular disability. While triaging of cases does take place, it is insufficient to tackle delays and waiting times to access Civil Legal Aid remain a significant barrier to participation in the Scheme. The parents One Family work with often find it difficult to identify and engage an appropriate solicitor.

Recommendation: Adopt a community law centre model, with physical services located with communities that are accessible to marginalised and vulnerable groups, outreach education programmes, accessible information and with proper resourcing to meaningfully reduce waiting times.

9. Awareness and Assessment of the Current Scheme

There is a lack of awareness of the Civil Legal Aid Scheme and the services that are currently available. Solutions mentioned above including educational outreach and awareness raising, alongside greater physical presence of Legal Aid Centres within the communities most in need of free legal services would help increase awareness. Such awareness raising is particularly important if the recommendations above regarding expanding the remit of the Scheme are adopted and indeed, whatever changes are implemented as a result of this review should be widely communicated over an extended period of time to allow comprehensive awareness raising among communities most affected.

We are aware through our national askonefamily Helpline service that some parents have had unsatisfactory experiences when engaging with the Legal Aid Board. For example, a parent who was entitled to legal aid was left upset by her experience. She received no information from her solicitor in advance of the case and felt unsupported. She attended the District Court about maintenance and access and had no advance notice from her solicitor that she would have to take the stand. This caused considerable distress and the parent reported feeling that she had received sub-par legal services compared to a private client. The Legal Aid Board should do more to quality assure private practitioners; however, the low fee structure means it is currently difficult to recruit practitioners for this work.

Recommendation: Carry out a comprehensive and sustainable awareness campaign about the Civil Legal Aid Scheme (who is eligible, what types of cases are covered, what financial contribution is required, how to access etc.), that includes any changes brought

about by this review and that specifically targets marginalised, disadvantaged and harder-to-reach communities.

Recommendation: Adequately resource the Legal Aid Board so that it can recruit practitioners on a more competitive basis and build in appropriate training and greater quality assurance to a new practitioner fee structure. Also need more funding if income thresholds, jurisdiction, cases are increased etc.

10.Future Developments

The aim of the Civil Legal Aid Scheme should be to give everyone in Ireland equitable access to justice, regardless of their background or means. The current Scheme falls short of this goal and fails to reach targets and reforms recommended by the UN Committee on Economic, Social and Cultural Rights (UNCESCR) and the Universal Periodic Review (UPR) among others. There is a lack of research on Civil Legal Aid in Ireland in general and in particular an absence of data on the scale of the current unmet need. Without an understanding of the scale of the unmet legal need, it is impossible to adequately or accurately plan for service provision or resourcing.

Future developments should include the provision of trauma informed training for all staff, practitioners and volunteers and the development of trauma informed services that can appropriately respond to the needs of communities. As previously mentioned, outreach, awareness raising and education should be central functions of the Legal Aid Board and should be delivered accessibly, in a variety of accessible formats and locations.

Recommendation: Carry out a widescale study into the scale of unmet legal need in Ireland to inform the development of services and determine the appropriate level of funding required.

Recommendation: Ensure service development is trauma informed and all staff, legal practitioners and volunteers receive training on responding to trauma.

Recommendation: Guarantee sufficient, sustainable funding to implement the reforms recommended above and that take account of new income thresholds, changes to jurisdiction and an increase in eligible cases.

Ends.