



Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas  
Irish Human Rights and Equality Commission



**IHREC**  
Monitoring Mechanism  
Independent Monitoring Mechanism  
under the United Nations Convention on  
the Rights of Persons with Disabilities

# Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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## Disclaimer

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This report was commissioned by the Irish Human Rights and Equality Commission in late 2023, with data collection and analysis completed by the author, Dr Charles O' Mahony, by early 2024.

Since the research was completed, a number of important developments have occurred:

- › In April 2024, the Law Reform Commission published a significant report and proposed draft legislation regarding a [regulatory framework for adult safeguarding](#).
- › In September 2024, the Government published the [Mental Health Bill 2024](#), which is currently before the Houses of the Oireachtas.
- › In October 2024, the Government [announced its plans to accede to the Optional Protocol](#) to the UN Convention on the Rights of Persons with Disabilities.

These developments are not reflected in the current report. These developments do not alter the findings of the report, nor its recommendations.

## Foreword

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I am pleased to introduce this important and timely report on ‘Access to Justice: Implementation of Article 13 of the UN Convention on the Rights of Persons with Disabilities’, which was commissioned in the context of IHREC’s commitment to promote access to justice, defend the rule of law and challenge institutional and societal ableism. The Commission intends to create momentum for action towards greater respect and recognition in structural and institutional arrangements, practices, policies and cultural norms.

This report is the first Commission publication under our mandate as Independent Monitoring Mechanism for the UN Convention on the Rights of People with Disabilities (‘UNCRPD’). As the Independent Monitoring Mechanism, we build on our established commitment to and defence of the rights disabled people, and we hope to do so with renewed energy as we work with disabled people -including through their representative organisations, and the State to respect, promote, protect, monitor and report on the implementation of the Convention.

This report, informed by the voices and experiences of disabled people regarding access or attempts to access the justice system, presents a picture of barrier layered upon barrier. Despite legislative and policy developments in recent years, and the commitment of many people working in and with the justice system, it remains a system where at times those responsible for implementing justice are unaware of their role and its limits, and where disabled people find themselves unsupported, faced with opaque processes and limited legal representation. In some cases, they are denied justice altogether.

This is due to a range of factors including complex legal systems, inadequate training and professional development for legal professionals, inadequate provision of legal aid and inaccessible infrastructure and processes. Further, identifying the level of unmet need, the causes for this, and proposing solutions is severely hampered by the absence of disaggregated data and comprehensive research.

When assessed against international human rights law, in particular against the ‘[International Principles and Guidelines on Access to Justice for Persons with Disabilities](#)’ and the [indices for assessing implementation of UNCRPD Article 13](#), Ireland falls short.

Urgent steps are needed to correct the systemic failures documented in this report, and we are grateful for the comprehensive recommendations provided within. Implementing Article 13 of the UNCRPD requires action to tackle underlying attitudes and increase awareness, knowledge and skills of legal professionals and the provision of appropriate accessible services and supports throughout the justice system. The involvement of disabled people and their representative organisations is central to this process, and the process should be informed by comprehensive data collection and analysis. Just as the experience of a disabled person is influenced by their intersecting identities and impairments, a robust response to tackling the barriers to access to justice should be designed through the lens of intersectionality, considering the needs and experiences of *all* disabled people, in their diversity. The recommendations provided throughout this research offer a starting point for this process.

We are grateful to Dr Charles O’ Mahony, University of Galway, for delivering this report. On behalf of the Commission, I would like to extend my sincere gratitude to the many unnamed contributors to these research findings, who shared so generously their experience and insight into the Irish justice system and without whom this report would not be possible.

Liam Merrick  
Chief Commissioner

## Executive Summary

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This study sets out to probe the effectiveness of current Irish legislation, policy, provision, and data in realising UN Convention of Rights of Persons with Disabilities Article 13 Access to Justice, the baseline status of rights holders' enjoyment of this right, and priorities for change.

The study has been commissioned by the Irish Human Rights and Equality Commission, in the context of strategic priorities of justice, and respect the recognition, and having regard to IHREC's role as the Independent Monitoring Mechanism (IMM) for CRPD,<sup>1</sup> and the Public Sector Equality and Human Rights Duty.<sup>2</sup> The study is also prepared in the context of the ongoing review of the civil legal aid in Ireland.<sup>3</sup>

The research methodology includes a detailed literature review alongside substantive disability-inclusive qualitative research. The qualitative research includes interviews with key stakeholders in the administration of justice, including Disabled Persons Organisations (DPOs), and disabled people with lived experience of the justice system. The findings were tested against the "International Principles and Guidelines on Access to Justice for Persons with Disabilities" 2020 developed by the UN Special Rapporteur on Disability, in order to determine compliance with Article 13 of the CRPD.

This executive summary provides a detailed synopsis of the findings from this baseline study. It begins by setting the context of the research in Chapter 1. It summarises Chapter 2, the literature review on access to justice, which identifies and analyses the complex barriers that disabled people encounter in accessing justice. Chapter 3 offers insights from the qualitative

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<sup>1</sup> IHREC is Ireland's Independent Monitoring Mechanism designate under Article 33 of the UN Convention on the Rights of Persons with Disabilities. See: <https://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/>

<sup>2</sup> All public bodies in Ireland have responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. This is a legal obligation, called the Public Sector Equality and Human Rights Duty, and it originated in Section 42 of the Irish Human Rights and Equality Act 2014. See: <https://www.ihrec.ie/our-work/public-sector-duty/>

<sup>3</sup> In June 2022, the Minister for Justice Helen McEntee established the Civil Legal Aid Review Group to review the current operation of the Civil Legal Aid Scheme and make recommendations for its future. See: <https://www.gov.ie/en/consultation/79e1d-public-consultation-on-the-review-of-the-civil-legal-aid-scheme/>

part of the study, capturing the experiences and perspectives of key stakeholders including disabled people. Chapter 4 is then summarised, presenting the conclusions based on the insights gathered from the research. This executive summary concludes with an overview of the main recommendations contained in Chapter 4 of the baseline study.

## **Introduction**

Chapter 1 provides a concise introduction to the research, outlining its scope, background, primary objectives, and key ethical considerations. The 2018 ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) by Ireland is crucial for understanding the context of this baseline study. Ratification of the CRPD was a significant milestone toward enhancing access to justice for disabled people and ensuring that Irish law and policy are in line with international human rights standards.

The Irish Human Rights and Equality Commission is the independent monitoring mechanism for the CRPD in Ireland. Article 33 of the CRPD requires the establishment of national structures for effective implementation and monitoring of the CRPD, integrating disabled people's participation through structures like IHREC's Disability Advisory Committee. This research supports IHREC's monitoring role, aiming to enhance the practical application of the CRPD across Ireland. The UN Committee on the Rights of Persons with Disabilities will assess Ireland's compliance with Article 13 (access to justice) of the CRPD. This evaluation is a pivotal aspect of the committee's broader task of monitoring adherence to the CRPD among State Parties, underscoring the importance of this research in addressing and documenting Ireland's efforts and challenges in facilitating access to justice for disabled people.

## **Literature Review, Access to Justice for Disabled People**

The literature review in Chapter 2 identifies key themes and significant barriers that disabled people encounter in accessing justice in Ireland, focusing on the provisions of the CRPD, particularly Article 13. This chapter sets out the fundamental principles and requirements enshrined in Article 13 and examines their implications for various stakeholders within the Irish justice system. It incorporates insights from authoritative sources such as the principles



set out by the UN in the "International Principles and Guidelines on Access to Justice for Persons with Disabilities".<sup>4</sup> These principles will be used to evaluate Ireland's compliance with international human rights standards on access to justice.

Chapter 2 also identifies the complexity of various legal sources as a potential barrier to understanding and effectively realising rights for disabled people in Ireland. It analyses current legislation recognising legal capacity and discusses proposed reforms to mental health legislation, notably highlighting the ongoing disconnect between civil and criminal mental health law.

Public bodies within the Irish justice system have been found to inadequately address the needs of disabled people in their strategic plans, often failing to reflect clear legal obligations designed to facilitate accessibility and prevent discrimination. The literature reveals significant gaps in the availability of training related to disability law and policy for personnel involved in administering justice. Furthermore, there is a marked deficiency in legal aid and legal representation of disabled people, which negatively affects equal access to justice. The literature advocates for comprehensive reforms to the civil legal aid system and emphasises the need for extensive, disability-awareness training for all personnel in the Irish justice system. While the legal framework ostensibly supports access to justice for children, glaring discrepancies with the UN Convention on the Rights of the Child persist. Questions remain about the effectiveness of the Disability Act 2005 for children.

The chapter underscores the ongoing challenges and gaps in existing literature, particularly the lack of comprehensive data collection, despite numerous calls for enhanced data on the experiences of disabled people within the justice system. Chapter 2 also highlights the critical role of equality data in understanding and addressing discrimination against disabled people in Ireland, advocating for the implementation of robust data collection and monitoring mechanisms to support evidence based policy-making and uphold the rights of disabled people. Additionally, Chapter 2 calls for a more comprehensive, cross-cutting approach to

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<sup>4</sup> United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

research and policy development to address the existing data and research gaps, unify perspectives, and reconcile inconsistencies within the Irish legal framework. This approach would significantly enhance compliance with Article 13 of the CRPD and better identify and remove the range of barriers that disabled people encounter in accessing justice in Ireland.

## **Findings from the Qualitative Research**

Chapter 3 provides an in-depth analysis of the key themes that emerged from the qualitative interviews conducted as part of the baseline study on access to justice for disabled people. The insights shared by participants speak to the multifaceted challenges and barriers that disabled people encounter in accessing the Irish justice system (civil and criminal).

To ensure clarity and analysis, the qualitative data has been coded and organised into distinct themes, each representing an important and often inter-connected aspect of the relationship between disability and access to justice. More than thirty distinct themes emerged during the analysis and coding of the interviews. These themes have been organised into five overarching categories, aimed at enhancing comprehension and providing a clear overview of the diverse range of issues. The five cross-cutting and overarching themes are as follows:

### **Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System**

In Ireland, awareness and understanding of the CRPD, particularly Article 13 concerning access to justice, varies considerably across different groups. Disabled persons' organisations and activists have a relatively high awareness, whereas the broader population and key legal stakeholders often lack detailed knowledge of the CRPD's provisions and implications. This knowledge gap significantly hinders the effective implementation of disability rights, as noted in various contexts such as discrimination, rights violations, and the need for procedural accommodations. There is a consensus among participants, including legal professionals and advocates, on the urgent need for enhanced education and targeted training initiatives. These efforts should aim to address the lack of understanding within the legal community and the public. Despite some existing training initiatives, there is a clear

need for more comprehensive, specialised training in human rights and disability awareness for all actors in the justice system. Involving disabled people in the design and delivery of these programmes is crucial for their effectiveness.

## **Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy**

The interviews underscore the unmet legal needs of disabled people in Ireland. Participants highlighted the absence of data on disability and access to justice. The importance of measuring and redirecting legal services to high-need areas like residential disability services was also noted, along with the need for accessible legal representation and resources, particularly in discrimination cases. Participants also discussed the lengthy nature of litigation and its negative impact on disabled people pursuing justice, noting that litigation delays can be strategically used against them. Furthermore, the challenges faced by people with less visible disabilities, such as neurodiversity and mild intellectual disabilities, were emphasised, particularly in care proceedings and the criminal justice system where supports and accommodations are often lacking. The lack of accommodations in the justice system was identified as a significant barrier, with concerns about the responsiveness of courts to such requests. Strengthening laws and policies on accommodation and improving training for justice system stakeholders is urgently needed. Limited access to legal aid was highlighted as a major obstacle, with calls for its expansion to cover all groups protected under anti-discrimination legislation, especially prioritising disabled people. A shortage of solicitors experienced in working with disabled people, and disparities between the criminal and civil justice systems further hinder access to justice, underscoring the need for more robust legal aid provisions to support disabled people in vindicating their rights.

## **Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality**

The discussions in this part of Chapter 3 highlighted significant concerns regarding the access to justice for disabled people. Key issues include the denial of legal capacity, particularly for those in residential disability services, nursing homes, or hospitals. This denial impacts their ability to access justice and advocate for their rights, despite recent commencement of the like the Assisted Decision-Making (Capacity) Acts. Participants stressed the importance of

recognising legal capacity as a fundamental "gatekeeper" right essential for ensuring justice access. However, they also pointed out the lack of awareness about the roles of advocates and principles of the CRPD. Suggestions were made for better training for solicitors and the establishment of more robust independent advocacy to support people whose capacity might be questioned. Issues with the implementation of the Assisted Decision-Making (Capacity) Act were discussed, including overgeneralisation and misinterpretation by disability service providers, and instances of rapid appointment of decision-making representatives, which may not align with the persons will and preferences.

Some participants noted a broad lack of legal services for people living in residential disability services, with some people experiencing restricted access to community and subject to restrictive practices in services where they live. Moreover, the discussions included challenges faced by disabled people from marginalised communities, like migrants and members of the Traveller community, where intersecting identities exacerbate access barriers to justice and essential services. Participants called for reforms and better protection under mental health legislation, stressing the need for an independent complaints mechanism and greater advocate involvement in tribunal hearings under the Mental Health Act 2001. It was suggested that the discriminatory use of mental health history in legal proceedings reflects systemic biases in the justice system.

## **Inaccessible Justice, Lack of Data, and Complex Legal Frameworks**

Participants identified multiple significant barriers for disabled people seeking access to justice, emphasising that communication barriers, particularly, pose significant obstacles. A lack of accessible information on reporting crimes and the deficits in legal professionals' communication skills further exacerbate these issues, especially for non-verbal people and children with intellectual disabilities. Further concerns were raised about physical access to court buildings and the availability of information in accessible formats. Older court buildings often present accessibility challenges, and there is a noted inconsistency in providing accessible information, impacting people with intellectual disabilities' understanding and engagement in legal proceedings.

Participants also highlighted the inadequacy of data on access to justice for disabled people in Ireland. The lack of comprehensive data restricts identification of gaps, informing public policy, and raising awareness about the challenges facing disabled people. Specific gaps noted included the absence of disaggregated data for children with disabilities and disabled parents in child care proceedings. To address these challenges, participants called for a comprehensive review of existing legislation and public policy, emphasising the need for alignment with international standards, such as the CRPD. Recommendations included improving laws, strengthening reasonable accommodation measures, addressing discrimination, and updating the Disability Act 2005. The under-implementation or non-commencement of essential legislation was also identified as a barrier to facilitating access to justice.

## **Barriers for Certain Groups and Allied Issues**

The discussions in this part of Chapter 3 were wide ranging. They addressed the diverse barriers faced by disabled people when accessing justice in Ireland. Some participants highlighted the nuanced challenges faced by disabled people, particularly those with mental health issues who may struggle with the legal system due to the stress of litigation, intense cross-examinations, and the costs involved in taking cases. To mitigate these challenges, there was a call for making the enforcement of rights more accessible. Significant obstacles include the inaccessibility of the justice system for people with low literacy, emphasising the need for initiatives that enable people with intellectual disabilities to effectively participate in legal processes. It was suggested that legal professionals should engage directly with clients who have intellectual disabilities, taking instructions directly rather than through third parties like carers or family members.

Participants identified systemic issues within the criminal justice system that disproportionately affect people with intellectual disabilities. These include the non-prosecution of offences, particularly violence and sexual violence, due to perceived vulnerabilities and credibility issues. Exploitation through online fraud, patronising attitudes during legal proceedings, and restrictions imposed by some disability service providers were also highlighted as significant concerns. The need for enhanced training for legal

professionals and Gardaí on effective communication with disabled people was emphasised, alongside the importance of using intermediaries to facilitate better understanding and participation. Despite these challenges, there have been instances where personnel in the justice system has shown sensitivity and support. Some participants suggested an increasing willingness by the Office of the Director of Public Prosecutions to prosecute in cases involving victims with intellectual disabilities.

The participants stressed the importance of systemic reforms, increased disability awareness, and training to ensure equal access and the provision of accommodation within the justice system, highlighting a broad spectrum of interconnected and cross-cutting issues that need addressing to enhance access to justice.

## **Findings and Recommendations**

Chapter 4 seeks to synthesise the findings in the baseline study examining access to justice for disabled people in Ireland. It draws on the literature review (Chapter 2) and qualitative research (Chapter 3) to evaluate how well Ireland aligns with the UN's "International Principles and Guidelines on Access to Justice for Persons with Disabilities" and assesses compliance with Article 13 of the CRPD. The findings indicate that while Ireland has made progress towards improving access to justice for disabled people, substantial barriers persist. The baseline study concludes that there is a need for Government to make concerted efforts to bring its legal and policy frameworks into conformity with international best practices as required by the CRPD.

Chapter 4 contains recommendations stemming from the research conducted for this baseline study. To facilitate comprehension, these recommendations are categorised under the five overarching themes outlined in Chapter 3, which disabled people encounter when seeking access to the justice system. The recommendations seek not only to address specific categories but also intersect with and reinforce recommendations presented under different thematic areas. The detailed recommendations contained in Chapter 4 can be summarised as following under the five cross-cutting and overarching themes that are set out in Chapter 3.

## **Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System**

### **Awareness and Education Initiatives**

Launch comprehensive education and awareness programmes targeting disabled people, the broader population, key stakeholders in the administration of justice, and the legal community to bridge gaps in knowledge and promote effective implementation of disability rights.

### **Ratification of the Optional Protocol**

Urgently proceed with the ratification of the Optional Protocol to the CRPD to strengthen the framework for addressing disability rights and access to justice.

### **Training for Justice System Personnel**

Establish mandatory, comprehensive training programmes for all key stakeholders within the justice system, including judges, solicitors, barristers, Gardaí, DPP personnel, Legal Aid Board staff, prison officers, and personnel in relevant public bodies.

### **Diversity in Legal Professions and Judiciary**

Increase diversity within the legal professions and judiciary by implementing support schemes that offer financial assistance and mentorship to legal professionals with disabilities, thus facilitating their entry into the professions.

## **Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy**

### **Unmet Legal Need**

The government should prioritise gathering data on unmet legal needs and raise awareness about available legal remedies.

### **Expedite Litigation**

To mitigate the impact of lengthy litigation processes on disabled people, Ireland should fast-track disability-related cases.

### **Awareness for Less Visible Disabilities**

There should be a focused effort on raising awareness and understanding of neurodiversity, intellectual disabilities, and other less visible disabilities among legal professionals, service providers, and personnel across the criminal justice system.

### **Providing Accommodations**

Ireland needs to enhance responsiveness to requests for accommodations within the justice system, and review and strengthen relevant laws and policies.

### **Expanding Legal Aid**

Legal aid should be expanded to include all groups protected under anti-discrimination legislation, focusing particularly on disabled people.



## **Enhancing Advocacy Services**

Adequate funding should be prioritised for advocacy services to address current limitations, such as waiting lists. Consideration should also be given to introducing a statutory right to independent advocacy to ensure consistent and tailored support for all disabled people seeking an advocate, and should include children.

## **Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality**

### **Deprivation of Liberty**

Ireland needs to align its domestic law with the CRPD to address significant concerns about the deprivation of liberty.

### **Denial of Legal Capacity**

To combat the denial of legal capacity, particularly for people in residential disability services, Ireland should acknowledge and reinforce recognition of legal capacity. This requires public and stakeholder education about the role of advocates and CRPD principles, establishing independent advocacy services, and enhancing the accessibility of legal services.

## **Access to Justice in Residential Disability Services**

Addressing barriers in residential disability services includes providing legal services, independent advocacy, and adequate legal representation.

## **Intersectionality and Access to Justice**

To tackle intersectional challenges, a holistic approach is needed that considers the compounded barriers faced by disabled people with intersecting identities, such as migrants, members of the Traveller community, and other protected groups.

## **Inaccessible Justice, Lack of Data, and Complex Legal Frameworks**

### **Communication Training**

Legal professionals should receive enhanced training in effective communication techniques, especially for interacting with non-verbal clients.

### **Accessibility Improvements**

Prioritise the revision of the Disability Act 2005 to remove physical and informational barriers within the justice system.

### **Data Collection Enhancement**

Address the inadequacy of data on access to justice for disabled people by prioritising comprehensive and accurate data collection. Expedite the implementation of the National Equality Data Strategy announced in 2022, which should include funding for a sustainable, long-term Access to Justice Data Collection Project.

### **Review of the Legal Framework**

Conduct a comprehensive review of existing legislation and public policy in order to consolidate and align fragmented legal frameworks with international standards, particularly the CRPD.

## **Barriers for Certain Groups and Allied Issues**

### **Support for People with Mental Health Problems**

Introduce measures to ensure that people with mental health problems have accessible avenues to enforce their rights, reduce litigation stress, and mitigate risks associated with legal proceedings.

### **Support for People with Low Literacy**

Provide funding for initiatives aimed at making the justice system more accessible to people with low literacy, especially those with intellectual disabilities.

### **Addressing Non-Prosecution and Exploitation**

Adopt measures to tackle the non-prosecution of offences involving people with intellectual disabilities, particularly focusing on the credibility issues faced by women and the exploitation of disabled people through online fraud.

### **Prison Reform**

Raise awareness, improve accessibility, and enhance support for prisoners with disabilities. Develop an accessible complaint mechanisms within the prison system.

### **Support for the Deaf Community**

Ensure seamless access to sign language interpreters, raise awareness about remote hearings, and provide comprehensive training for legal professionals to effectively serve the needs of the Deaf community.

## **Family Court Accommodations**

Streamline access to disability services for parents of disabled children, address issues of invisibility and lack of accommodations in family courts, and establish dedicated advocacy services for children.

## **Public Sector Duty**

Reinforce the public sector duty, expand it to include legal professionals, address time limits for initiating litigation, and implement systemic reforms to ensure equal access to justice.

## **Concluding Remarks**

This research finds that disabled people often have the greatest legal need; however, they encounter the most significant obstacles when attempting to access the Irish justice system. Despite the introduction of legislation and public policy aimed at improving access to justice for disabled people, significant challenges persist. The research highlights many challenges which includes a critical issue of misalignment between Irish law and international human rights standards, particularly the CRPD. Additionally, the interplay between different legal frameworks within the Irish Justice System was found to be complex. There is fragmented research and a lack of comprehensive data collection on access to justice for disabled people in Ireland and their experiences. This deficiency inhibits understanding the full scope of barriers and hinders evidence-based policymaking.

Addressing these inconsistencies and ensuring a harmonised legal framework that respects the rights and dignity of disabled people is essential. As well as comprehensive training in human rights, disability awareness, equality, diversity, and inclusion, the involvement of disabled people and their representative organisations, is urgently needed to bridge this knowledge gap. To ensure continuous improvements in this area, prioritising comprehensive data collection and research efforts is essential. The research identified unmet legal needs, delays in legal proceedings, and access to legal as significant barriers. To overcome this

barrier, legal aid must be expanded to include all groups protected under Irish anti-discrimination legislation, with a specific focus on disabled people. To further address these gaps, it is necessary to advocate for increased funding, better training for advocates, and a statutory right to independent advocacy. In the current landscape, there are many areas for improvement to ensure Ireland complies with its obligations in implementing Article 13, Access to Justice, under the Convention on the Rights of Persons with Disabilities. The findings in this report are crucial for IHREC as it mandates the Public Sector Duty, is the Independent Monitoring Mechanism for the CRPD, and has a strategic priority on Justice, Research and Recognition, including ableism; this report is important for its ongoing work in this area. Furthermore, it is essential policymakers, legal professionals, and all stakeholders work collaboratively to remove barriers and ensure accessing justice is a reality for disabled people.

# Chapter 1: Introduction



## Overview

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This chapter provides a short introduction to this research, setting out its scope, the background to the research, its overarching objectives, and a brief overview of the ethical considerations relating to this research project. Chapter 2 contains a literature review on access to justice, identifying and analysing the range barriers that disabled people encounter when seeking justice. Chapter 3, presents the findings from the qualitative part of the research, offering insights into the experiences and perspectives of key stakeholders including people with lived experience seeking access to the justice system. Chapter 4, sets out the conclusions and makes recommendations informed by the findings in the preceding chapters.

## Background and Context of this Research

The Report of the Commission on the Status of People with Disabilities, published nearly 30 years ago, remains pertinent to this baseline study on access to justice for disabled people in Ireland.<sup>5</sup> Many of the issues raised in the report regarding access to justice persist today, highlighting the failure to remove barriers restricting access to the Irish justice system.

Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2018 provides important context for this research. Ratification of the CRPD underscores Ireland's commitment to improving access to justice for disabled people. The CRPD and its Optional Protocol were adopted on December 13, 2006, at the United Nations in New York. They were made available for signature on the 30<sup>th</sup> of March 2007. On its opening day, the CRPD had 82 signatories, while its Optional Protocol had 44 signatories. This represented the highest number of signatories ever recorded for a UN Convention on its initial day. The CRPD was the first comprehensive human rights treaty of the 21st century and the first human rights convention that regional integration organisations (e.g. the European Union) could sign. The

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<sup>5</sup> Commission on the Status of People with Disabilities, A Strategy for Equality (Dublin: Commission on the Status of People with Disabilities, 1996), Chapter 15.

Convention officially came into force on the 3<sup>rd</sup> of May 2008, and had been driving a worldwide law reform programme since, with State Parties, including Ireland seeking to bring their domestic law into compliance.

The CRPD represents the culmination of the disability rights movement which has challenged prejudicial and discriminatory perceptions of disabled people. The CRPD effectively requires a paradigm shift from considering disabled people as objects of charity to rights holders. The CRPD requires “... extending the benefits of ‘the rule of law’ to all and not just to some or indeed to most. Most importantly, it has to do with treating disabled people as ‘subjects’ with full legal personhood as distinct from ‘objects’ to be managed and cared for”.<sup>6</sup>

The Irish Human Rights and Equality Commission (IHREC) is an independent statutory body established in November 2014 under the Irish Human Rights and Equality Commission Act 2014. IHREC serves as Ireland's National Human Rights Institution and National Equality Body, with a mandate to protect and promote human rights and equality. Article 33 of the CRPD represents a significant innovation in the monitoring of human rights treaties, aiming to enhance the implementation of human rights. Article 33 requires State Parties to establish national structures to effectively implement, coordinate, and oversee compliance with the rights in the Convention.<sup>7</sup> This requirement, a first in a United Nations human rights treaty, calls for the integration of a monitoring mechanism directly into the treaty, rather than through an additional Optional Protocol. This approach seeks to transform the broad principles of the Convention into specific, actionable domestic reforms. The formulation of Article 33 was significantly influenced by the active involvement of disabled people, their representative organisations, and National Human Rights Institutions during the drafting of the CRPD in the early 2000s.

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<sup>6</sup> Gerard Quinn and Charles O'Mahony, 'Disability and Human Rights: A New Field in the United Nations' in *International Protection of Human Rights: A Textbook* (Åbo Akademi University Institute for Human Rights, Turku, 2012), at page 266.

<sup>7</sup> See University of Galway, *Establishing a Monitoring Framework in Ireland for the United Nations Convention on the Rights of Persons with Disabilities* (Irish Human Rights and Equality Commission 2016).



To comply with Article 33, states must establish a designated national focal point within the government, and an independent monitoring mechanism. The Irish Human Rights and Equality Commission is the independent monitoring mechanism for CRPD in Ireland, and it works with the National Disability Authority in fulfilling this role. The Department of Children, Equality, Disability, Integration and Youth, is the national focal point and is responsible for co-ordinating disability policy across government. Article 33 also requires that disabled people must be part of the monitoring process. As such IHREC has established a Disability Advisory Committee, which is composed of a diverse group of people with lived experience of disability. The role of the Committee is to ensure the direct participation of disabled people and the organisations representing them in monitoring how the CRPD is implemented in Ireland. This research seeks to provide an evidence base that facilitates IHREC in fulfilling its role as the independent monitoring mechanism.

The study's central research questions probe the effectiveness of current Irish legislation, policy, provision, and data in realising CRPD Article 13 Access to Justice, the baseline status of rights holders' enjoyment of this right, and priorities for change. The study explores various aspects, including the CRPD's position on Article 13, and Irish legislation and policy.

The Public Sector Duty also forms part of the background and context for this research. This duty, established by Section 42 of the Irish Human Rights and Equality Commission Act 2014, mandates public bodies to consider discrimination elimination, equality promotion, and human rights protection in their operations. This involves public bodies assessing, addressing, and reporting on equality and human rights in their strategic plans and annual reports, making these developments accessible to the public. The duty applies to a wide range of public bodies including government departments, local authorities, educational institutions, and others, extending also to public services delivered through third-party providers. The duty seeks to ensure that equality and human rights considerations are integral to the functioning of public bodies, fostering a more inclusive, and accessible public service environment. It is crucial for enhancing access to justice for disabled people by ensuring that public bodies actively eliminate discrimination and promote equality, thereby

creating a more inclusive and accessible legal system. Therefore, this study seeks to understand how public bodies involved in the administration of justice are fulfilling this duty.

The timing of this research also coincides with the ongoing review of the Civil Legal Aid in Ireland. The Review of Civil Legal Aid commissioned by the Minister for Justice Helen McEntee in 2022, is seeking input on the effectiveness and future direction of civil legal aid.

## **Methodology and Inclusive Research Design**

The research methodology employed in this study on access to justice for disabled people in Ireland involves a literature review and qualitative research. A comprehensive literature review was conducted, analysing relevant laws, policies, and previous research both domestically and internationally. This review sought to identify gaps in existing knowledge, and has informed the qualitative research component of the study. In the qualitative phase, interviews with key stakeholders, including disabled people with lived experience within the justice system, were conducted to gather insights into their perceptions and experiences. This process was guided by the principles set out in the UN's "International Principles and Guidelines on Access to Justice for Persons with Disabilities", aiming to evaluate Ireland's compliance with international standards.<sup>8</sup> Ethical approval was secured from the University of Galway Research Ethics Committee, and research protocols were carefully designed to ensure confidentiality of participants. The study was designed inclusively, with significant consideration given to the accessibility of research materials and procedures. See **Appendix 1** for a detailed outline of the methodology and details of inclusive research design.

### **Note on Terminology**

In this report, the term 'disabled people' is used, as it is the preferred term among the majority of representative organisations for disabled people in Ireland.

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<sup>8</sup> United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

# **Chapter 2: Literature Review, Access to Justice for Disabled People**



## Introduction

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This chapter, provides an overview of the UN Convention on the Rights of Persons with Disabilities (CRPD) and its specific provisions relating to access to justice, as outlined in Article 13 of the CRPD. To begin, an introductory overview of the CRPD is provided to establish an understanding of the CRPD and Article 13. The leading statements on Article 13 are set out, which provide insights into its interpretation and application. The chapter then examines the literature relating to access to justice. Throughout this review, there is reference to relevant international literature. The aim is to provide an informative, and well-structured review that enriches comprehension of the CRPD, and informs the conclusions and recommendations in Chapter 4. As will be seen the literature on access to justice has developed significantly in Ireland since Ireland signed the CRPD in 2007. However, the literature has tended to explore access to justice from different perspectives, e.g. disability and victims of crime, prisoners with disability, and children with disability. As a result, this fragmented approach has left gaps in our understanding of access to justice in Ireland.

# **The UN Convention on the Rights of Persons with Disabilities and Access to Justice**

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## **An Overview of the CRPD**

The CRPD provides clear instructions to State Parties on how different categories of rights relate to disabled people. The rights contained in the CRPD are set out in Articles 9-30. The rights can be loosely categorised as follows: (i) rights that protect the person; (ii) rights that restore autonomy, choice and independence; (iii) rights of access and participation; (iv) liberty rights; and (v) economic, social and cultural rights.<sup>9</sup> Article 13 falls into the third category as a right of access and participation. Essentially, Article 13 of the Convention complements the access rights of disabled people, which include Article 9 (general right of access), Article 29 (participation in political and public life), and Article 30 (participation in cultural life, recreation, leisure and sport). Article 13 animates the right of access within the context of the justice system.<sup>10</sup> This holds significant importance as it empowers disabled people to assert their rights through the legal system. The CRPD was the first international human rights instrument to include an explicit right to access to justice.

## **The Right of Access to Justice Under International Human Rights Law**

In the 2018 "Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General," the significance of

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<sup>9</sup> Gerard Quinn and Charles O'Mahony, 'Disability and Human Rights: A New Field in the United Nations' in *International Protection of Human Rights: A Textbook* (Åbo Akademi University Institute for Human Rights, Turku, 2012), at page 282.

<sup>10</sup> *Ibid*, at page 291.

the right to access to justice under Article 13 of the CRPD was considered.<sup>11</sup> The report emphasised that access to justice represents a foundational component of the rule of law and serves as a fundamental right, essential for safeguarding and advancing all other human rights. This encompasses fair trial rights, including equitable access to and equality before the courts, as well as the pursuit and attainment of just and timely remedies for violations of rights. The Report also highlighted that access to justice holds critical importance for democratic governance, the rule of law, and the battle against social and economic marginalisation.<sup>12</sup> Notably, existing literature has consistently pointed out that disabled people encounter substantial impediments when attempting to access justice within both the civil and criminal justice systems. These barriers “include denial of their legal standing and due process guarantees and the inaccessibility of the physical and communication environments during proceedings”.<sup>13</sup> Furthermore, the Report emphasised that national legislation frequently contains provisions that undermine the equal treatment of disabled people before courts and other judicial bodies.

The Report provided a useful clarification as to the obligation to offer procedural accommodations under Article 13 of the CRPD. It was noted that this requirement comes from civil and political rights, and is firmly rooted in the principle of non-discrimination, and is not subject to “progressive realisation”.<sup>14</sup> It was noted that during the drafting of Article 13 of the Convention, there was a debate over whether the language should include “procedural accommodation” or “reasonable accommodation.” Ultimately, it was decided to exclude the term “reasonable”.<sup>15</sup> This deliberate exclusion of “reasonable” highlights the distinction between procedural accommodation and reasonable accommodation. Unlike reasonable accommodation, procedural accommodation does not undergo a proportionality

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<sup>11</sup> Office of the United Nations High Commissioner for Human Rights, “Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, Report of the Office of the United Nations High Commissioner for Human Rights,” A/HRC/37/25, 27 December 2017.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, at page 3.

<sup>14</sup> Ibid, at page 7.

<sup>15</sup> Ibid, at pages 7-8.

assessment. Therefore, failing to provide procedural accommodation when required by a disabled people constitutes a form of discrimination based on disability in relation to the right to access to justice.

The 2018 Report specifically discussed the right to a fair trial for disabled people, encompassing equal access to legal proceedings and the maintenance of legal standing. It noted the intersection between equal recognition before the law (Article 12) and access to justice (Article 13), emphasising the need for states to reform any laws that hinder the full and equal participation of disabled people in exercising their legal capacity in legal processes.<sup>16</sup> Moreover, it noted that states are urged to ensure that essential information required to defend one's rights is accessible, and they should provide free or affordable legal assistance across all areas of law. The Report further highlighted that discriminatory laws and practices present significant barriers for disabled people seeking justice within legal systems. In addition, the right to an effective remedy obliges states to conduct thorough investigations, prosecute wrongdoers, and impose penalties, while also offering redress and reparations tailored to the specific circumstances of individuals with disabilities. This approach seeks to address systemic change and promote legal and public policy reform. The report emphasised that states should facilitate the active involvement of disabled people in various capacities within the justice system, including roles as witnesses, jurors, experts, judges, lawyers, and other stakeholders. This inclusivity extends to professionals such as judges, legal practitioners, forensic experts, prison staff, and police personnel etc. The Report noted the importance of states collecting and analysing disaggregated data concerning human rights violations against disabled people and their access to justice within the justice system.<sup>17</sup> This data-driven approach is essential in identifying and removing barriers in accessing justice.

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<sup>16</sup> Ibid, at page 10.

<sup>17</sup> Ibid, at page 12.

## Jurisprudence of the Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities have developed important jurisprudence on the scope of Article and what it means for State Parties.<sup>18</sup> The CRPD Committee's jurisprudence on Article 13 of the CRPD emphasises several key aspects to ensure access to justice for disabled people. Key themes that emerge in the Committee's Concluding Observations to State Parties. These include recommendations around the removal of physical barriers that restrict access, providing accessible information about the justice system and its proceedings, continuous training for people working within the justice system, equal access to legal representation for disabled people (including free or affordable legal aid, particularly those residing in institutional settings), providing effective remedies in cases involving discrimination, deprivation of liberty, torture, education, and abuse or violence against disabled people. Other consistent recommendations have centred upon the availability and accessibility of independent formal complaint mechanisms, removal of barriers to enter the legal professions for disabled people, and the importance of collecting data that is disaggregated by disability, age, gender, location, and ethnicity within the criminal justice system. This data collection is deemed essential for understanding disparities and for ensuring access to justice for individuals with disabilities.

The Committee's jurisprudence on Article 13 is typified in its Concluding Observations on the United Kingdom's compliance.<sup>19</sup> The Committee's main concerns included a low level of awareness among the judiciary and police about the human rights of disabled people.<sup>20</sup> This lack of awareness raised issues about the proper treatment and understanding of the rights of disabled people within the legal system. The Committee highlighted reports of people with

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<sup>18</sup> For detailed analysis of the Committee on the Rights of Persons with Disabilities jurisprudence on Article 13 see Eilíonóir Flynn, Catríona Moloney, Janos Fiala-Butora, and Irene Vicente Echevarria, *Final Report: Access to Justice of Persons with Disabilities* (Centre for Disability Law and Policy, December 2019).

<sup>19</sup> See Committee on the Rights of Persons with Disabilities, "Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland," United Nations CRPD/C/GBR/CO/1, 3 October 2017, at pages 6-7.

<sup>20</sup> Ibid.



psychosocial and/or intellectual disabilities not receiving appropriate support in exercising their legal capacity and accessing justice. This indicates a gap in providing necessary assistance and support. Concern was also expressed about the barriers in accessing civil legal aid, as well as the introduction of fees for employment tribunals in the UK. These barriers restrict access to legal services and representation. A further concern related to regulations that exclude people with hearing impairments from participating in jury proceedings, and personal assistants/interpreters are not considered as procedural accommodations. In response to these concerns, the Committee recommended several actions.<sup>21</sup> These included developing capacity-building programmes for judiciary and police personnel, establishing a decision-making regime that respects the will and preferences of disabled people, providing free or affordable legal aid, ensuring adequate procedural accommodations within the justice system, and taking measures to empower disabled people to work within the justice system.

## **International Principles and Guidelines on Access to Justice for Persons with Disabilities**

The literature identifies that many States are still grappling with the challenge of implementing measures to give effect to Article 13.<sup>22</sup> To address the implementation gap the International Principles and Guidelines on Access to Justice for Persons with Disabilities, initiated by the Special Rapporteur on the rights of persons with disabilities, were published in 2020.<sup>23</sup> These principles and guidelines serve as a practical tool to assist States in designing and ensuring that justice systems provide equal access to justice for disabled people, aligning with international human rights standards, in particular Article 13 of the CRPD. These principles and guidelines evolved through extensive consultations and collaborations with experts in disability rights, UN bodies, Disabled Persons Organisations, States, academics, and other

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<sup>21</sup> Ibid.

<sup>22</sup> See Eliona Gjeca, Anna Lawson, Rannveig Traustadóttir, and James Gordon Rice, 'We Got Lucky with the Judge': Access to Justice for Disabled Women in Iceland (2023) Laws 12, 21.

<sup>23</sup> United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

stakeholders. The development process included expert group meetings and the commissioning of a study to identify essential principles and strategies for achieving effective access to justice for disabled people on an equal footing with others. These guidelines provide a comprehensive framework to support States and stakeholders in fulfilling their international obligations concerning access to justice for disabled people. These principles are regarded as international best practice in understanding State compliance with Article 13 of the CRPD. As discussed in Chapter 1 these principles will be used to analyse Ireland's compliance with Article 13 of the CRPD based on the literature review and findings from the qualitative part of this research. This analysis will be included in Chapter 4, Conclusions and Recommendations.

The following are the principles essential to achieving access to justice for disabled people.

**Principle 1** provides that all disabled people have **legal capacity** and, therefore, no one shall be denied access to justice based on disability.

**Principle 2** provides that **facilities** and **services** must be **universally accessible** to ensure equal access to justice without discrimination of disabled people.

**Principle 3** provides that disabled people, including children with disabilities, have the right to appropriate procedural accommodations.

**Principle 4** provides that disabled people have the right to **access** legal notices and **information** in a timely and accessible manner on an equal basis with others.

**Principle 5** provides that disabled people are entitled to all **substantive** and **procedural safeguards** recognised in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

**Principle 6** provides that disabled people have the **right to free or affordable legal assistance**.

**Principle 7** provides that disabled people have the **right to participate** in the **administration of justice** on an equal basis with others.

**Principle 8** provides that disabled people have the **rights to report complaints** and **initiate legal proceedings** concerning human rights violations and crimes, have their complaints investigated and be afforded **effective remedies**.

**Principle 9** provides for **effective** and **robust monitoring mechanisms** as they play a **critical role** in supporting access to justice for disabled people.

**Principle 10** provides that **all those working** in the **justice system** must be provided with **awareness-raising** and **training programmes** addressing the rights of disabled people, in the context of access to justice.

## Ireland and the CRPD

Ireland signed the CRPD in 2007 and officially ratified it in 2018 but decided to defer ratifying the Optional Protocol (OP).<sup>24</sup> Ireland follows the common law tradition of refraining from ratifying international treaties until it believes that its domestic laws are largely in line with the treaty's provisions. This practice has been used by the State to explain the delayed ratification of the CRPD and the decision not to ratify the OP. In 2018, when Ireland ratified the CRPD, it issued a Declaration and Reservation regarding Article 12.<sup>25</sup> Subsequently, the Irish Government's submitted its initial Report to the Committee on the Rights of Persons with

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<sup>24</sup> The protocol allows for complaints to be submitted directly to the CRPD Committee, which is a UN body of independent experts which monitors implementation of the CRPD by countries that have become party to it. A person can make a complaint alleging the violation of CRPD rights if the State has ratified the optional protocol.

<sup>25</sup> United Nations, Ireland's 'Declaration: Articles 12 and 14' (20 March 2018). This declaration stated that Ireland acknowledges that disabled people have legal capacity equal to others in all aspects of life. However, Ireland also asserted its interpretation of the CRPD, allows for both supported and substitute decision-making arrangements as long as they are accompanied by appropriate and effective safeguards. Furthermore, Ireland indicated that it reserves the right to permit substitute decision-making arrangements in certain situations, even if Article 12 might be interpreted as requiring their elimination, but only with the appropriate safeguards. This interpretation of Article 12 is in clear contrast with the well-established views of the CRPD Committee (see UN Committee on the Rights of Persons with Disabilities, General Comment No. 1: Equal Recognition Before the Law (Article 12) (Geneva, 11 April 2014).

Disabilities, published on the 10<sup>th</sup> of November 2021, by Minister of State with Special Responsibility for Disability, Anne Rabbitte.<sup>26</sup> The section of the Report dealing with Article 13 provides an overview of the steps being taken to comply with the requirements of access to justice for disabled people.<sup>27</sup> However, the report offers only a skeletal overview of law, policy and practices relating to facilitating access to justice. It does not address the barriers that hinder disabled people in accessing justice.

The Government identified that the Legal Aid Board provides civil and criminal legal aid to eligible persons, including disabled people, noting that an Access Officer has been appointed in accordance with the Disability Act to facilitate this. They reported on the Courts Service's initiatives to improve court accessibility for disabled people. This includes induction loops for hearing aids, Braille signage, wheelchair ramps, and the possibility for wheelchair users to give evidence beside the witness box. The Report highlighted that refurbished courthouses now have facilities for "vulnerable witnesses and victims of crime".<sup>28</sup> In addition, the Government's Infrastructure and Capital Investment Plan 2016-2021, a large-scale construction and refurbishment project of regional courthouses was highlighted as enhancing accessibility. The Irish Sign Language Act 2017 was referenced, which mandates courts to facilitate people competent in Irish Sign Language (ISL) who cannot hear or understand English or Irish as facilitating access to justice. The facilitation of people with sensory disabilities was also mentioned and the fact that in 2020, a Deaf juror served with the assistance of ISL interpreters as a juror for the first time in Ireland. The Government also referenced the commencement of the Assisted Decision-Making Capacity Act as facilitating access to justice. The recommendations of the 2020 Review of Protections for Vulnerable Witnesses was noted, which have been accepted by the Government and progressing with implementation of including the use of intermediaries for people with communication

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<sup>26</sup> "Initial Report under the Convention on the Rights of Persons with Disabilities Ireland" Committee on the Rights of Persons with Disabilities, 2021.

<sup>27</sup> Ibid, at pages 30-31.

<sup>28</sup> Ibid, at page 30.

difficulties in the criminal justice system. The National Disability Inclusion Strategy, which emphasises the need for enhanced access to justice for disabled people was also highlighted by the Government in its Report.<sup>29</sup> Despite these initiatives, the report does not comprehensively address the barriers that disabled people still encounter in accessing justice in Ireland.

## **Access to Justice and Other Sources of Law**

### **Overview of this Section**

This section builds on the discussion of the CRPD above and outlines other relevant sources of law as they relate to access to justice. This includes a brief discussion of the Irish Constitution, European Convention for the Protection of Human Rights, and the UN Convention on the Rights of the Child.

### **The Irish Constitution**

Article 40.1 of the Irish Constitution enshrines a right for all citizens. Article 40.1 of the Irish Constitution establishes the right of equality “be held equal before the law”. However, the equality provision permits the State to take into account variations in capacity, both physical and moral, as well as differences in social roles when creating its laws. The *habeas corpus* procedure serves as a legal safeguard, preventing people from being unlawfully imprisoned or detained. In Ireland, the superior courts are entrusted with the task of reviewing the legality of a person’s detention. *Habeas corpus*, originally rooted in common law, was formally codified through the Habeas Corpus Act of 1781. The Irish Constitution establishes a specific

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<sup>29</sup> The Department of Children, Equality, Disability, Integration, and Youth is currently leading efforts across Government to formulate a new National Disability Strategy, which will be the successor to the National Disability Inclusion Strategy (2017-2021). This new strategy will seek to progress compliance to the CRPD. See Department of Children, Equality, Disability, Integration and Youth, 'Upcoming Consultation – Have Your Say' (gov.ie, 31 August 2023) see <https://www.gov.ie/en/publication/c223d-upcoming-consultation-have-your-say/#thank-you-national-disability-strategy-consultations>

mechanism for review. Article 40(1)1° of the Constitution explicitly states that "[n]o citizen shall be deprived of his personal liberty save in accordance with law". When a person alleges that they are being held in unlawful detention, the High Court is obligated to promptly investigate their claim. The High Court has the jurisdiction to summon the detained person, requiring them to appear before the court, and demand an explanation from the body responsible for their detention. In certain circumstances, the court may grant release to the detained person while the legality of their confinement is under scrutiny. The High Court will only allow the detention to continue if it is determined to be in accordance with the law.<sup>30</sup> This provision plays a pivotal role in safeguarding the rights to liberty and access to justice, particularly for disabled people who may find themselves subjected to involuntary detention. However, as observed by Keys, this procedure proved to be ineffective for persons detained under the Mental Treatment Act 1945, noting its limitations and infrequent use.<sup>31</sup>

## **The European Convention on Human Rights**

The European Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), serves as the cornerstone of the European human rights framework.<sup>32</sup> The European Convention on Human Rights Act of 2003 incorporates the European Convention on Human Rights into domestic legislation, enabling Irish Courts to take ECHR rights into account. However, in situations of ambiguity or conflict, the Irish Constitution takes precedence over the ECHR Act, with the Constitution prevailing. The European Court of Human Rights (ECtHR) serves as a permanent institution

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<sup>30</sup> If, however, the underlying law is found to be unconstitutional, the High Court has the discretion to refer the matter to the Court of Appeal for a comprehensive review. Before the establishment of the Court of Appeal in 2014, this role was carried out by the Supreme Court.

<sup>31</sup> Mary Keys, "Challenging the Lawfulness of Psychiatric Detention under Habeas Corpus in Ireland" (2002) 24 DULJ 26.

<sup>32</sup> Initially crafted by the Council of Europe in 1950 in the shadow of World War II, it came into effect in 1953 and marked the pioneering regional treaty aimed at safeguarding human rights, democracy, and the principles of the rule of law. All 47 member states of the Council of Europe have endorsed this Convention.

tasked with addressing individual cases.<sup>33</sup> The ECtHR has developed a substantial body of case law relating to disabled people, with a recurring theme of access to justice in many of the cases.<sup>34</sup> This jurisprudence is an important source of law, and the principles can be argued before the Irish courts.<sup>35</sup>

## **Ireland, Children, Access to Justice and Rights**

In Ireland access to the courts is protected as an implied personal right under article 40.3.1 of the Irish Constitution. Article 42A of the Constitution guarantees a child's right to voice their opinions and have those opinions considered appropriately in relation to their age and maturity, specifically in cases concerning their care. This right applies to cases involving guardianship, custody, and adoption, as well as in situations initiated due to concerns about the child's welfare. However, this is not in full alignment with Article 12 of the CRC. The CRC explicitly states that a child's right to express their views should apply to "all matters affecting the child". This broader interpretation is further emphasised by the Committee on the Rights of the Child in its General Comment No. 12.<sup>36</sup> Section 42A of the Constitution restricts the right to be heard to "any child capable of forming their own opinion". The application of this

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<sup>33</sup> It rules on matters brought forward by persons whose Convention rights have been violated, after they have exhausted all available avenues for resolving their claims at the domestic level, including the High Court and the Supreme Court. It is incumbent upon states to comply with judgments rendered against them by the European Court of Human Rights. In the context of cases involving Ireland, the European Court of Human Rights has issued over 30 judgments where Ireland was a party. The ECtHR frequently deliberates on cases against other countries that revolve around issues relevant to Ireland including access to justice for disabled people. This ongoing case law keeps the Convention relevant and responsive to contemporary circumstances.

<sup>34</sup> For an overview of the case law see the European Court of Human Rights, 'Factsheet – Detention and Mental Health' (January 2022) and European Court of Human Rights, 'Persons with Disabilities and the European Convention on Human Rights' (April 2023).

<sup>35</sup> The ECtHR jurisprudence addresses a spectrum of fundamental human rights, including the Right to Life (Article 2), the Prohibition of Inhuman or Degrading Treatment (Article 3), the Prohibition of Forced Labour (Article 4), the Right to Liberty and Security (Article 5), the Right to a Fair Trial (Article 6), the Right to Respect for Private and Family Life (Article 8), and the Prohibition of Discrimination (Article 14).

<sup>36</sup> See UN Committee on the Rights of the Child, General Comment No. 12 (2009): The Rights of the Child to be Heard (CRC/C/GC/12).

clause to children with disabilities, who may be perceived as unable to form or express an independent opinion, remains ambiguous.<sup>37</sup> This is at odds with the CRPD, which removed such capability prerequisites and mandates that children with disabilities be aided in voicing their opinions. A significant obstacle for children in obtaining justice, as highlighted by the research, is the inability to initiate legal actions independently. Children are not permitted to initiate legal proceedings on their own.<sup>38</sup> If a child wants to pursue a case to uphold their rights, they must proceed through their “next friend”.<sup>39</sup> A next friend usually refers to a parent, guardian, or an adult third party designated to represent the child. In these situations, a solicitor is regarded as representing the next friend rather than the child directly.<sup>40</sup>

IHREC has also identified other barriers facing children in accessing justice. IHREC in a 2022 report raised concerns about children’s access to the courts in cases of domestic violence. The Commission noted that “[t]he requirement that applicants for safety and protection orders are over the age of 18 is not in line with the rights and evolving capacities of children. The Commission recommends that the Domestic Violence Act 2018 is amended to allow children to make safety and protection orders in their own right”.<sup>41</sup> IHREC has also voiced repeated concerns about Ireland’s citizenship laws, including regarding their impact on children’s rights. The application process for children’s citizenship requires the involvement of a parent, guardian, or person acting in *loco parentis*, raising concerns about its feasibility for children without a supportive family environment, particularly those in care.<sup>42</sup> IHREC has

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<sup>37</sup> Catriona Moloney, Clíona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, “Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland” (Centre for Disability Law and Policy, NUI Galway, 2021), at page 104.

<sup>38</sup> Ibid.

<sup>39</sup> See Rules of the Superior Courts, Order 15.

<sup>40</sup> See Children’s Rights Alliance, ‘Chapter 2: Access to Justice and Decision Making’ in ‘Making Rights Real: A Children’s Rights Audit of Irish Law’ (Dublin, 2015), at page 28.

<sup>41</sup> Irish Human Rights and Equality Commission, Ireland and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (December 2022), at page 99.

<sup>42</sup> See Irish Human Rights and Equality Commission, Submission to the Committee on the Rights of the Child on Ireland’s Combined Fifth and Sixth Periodic Reports (August 2022), at page 27.



highlighted the importance of implementing all nationality laws fairly and non-discriminatorily to safeguard every child's right to nationality.<sup>43</sup> This concern also applied to children who might have a disability who are in care and without the support to apply for citizenship.

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<sup>43</sup> Ibid.

## **The Literature on Access to Justice in Ireland**

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### **Introduction**

This section considers the complex landscape of access to justice for disabled people in Ireland (adults and children). The chapter discusses the various aspects of access to justice, including legislation, victims of crime, prisoners with disabilities, the public sector duty, training, and access to legal aid, and allied issues. This discussion also covers the role of Irish Sign Language, eligibility of disabled people for jury service, the training of justice personnel, and the importance of intersectionality in understanding access barriers and allied issues. This section highlights the gaps in the existing literature, emphasising the challenges faced by disabled people in accessing justice. As will be seen below the number of pieces of legislation relating to access to justice is extensive. The sheer volume and dispersed nature of these legislative provisions render the legal framework complex and difficult to navigate. This complexity, in and of itself, inadvertently creates an additional barrier to access to justice. People, including disabled people, may encounter challenges in fully understanding and effectively realising their legal rights. This complexity can act as a deterrent, inhibiting people from pursuing their legal claims or seeking redress for injustices they have experienced.

It is not possible to have a substantive discussion of all relevant legislation. The reasons for prioritising certain pieces of legislation in the literature review are threefold: first, these laws have attracted commentary and research; second, they are currently under review or have been reviewed recently; and third, they are directly related to the issues identified in the qualitative research presented in Chapter 3 below.

### **Background and Context on Access to Justice in Ireland**

The background provided by the Report of the Commission on the Status of People with Disabilities from nearly 30 years ago is still important for this report on access to justice for

disabled people in Ireland.<sup>44</sup> It highlights the historical perspective on the challenges and barriers faced by disabled people in accessing the legal system, shedding light on the persistent issues that continue to restrict access to justice. This historical context also highlights the need for comprehensive and creative reforms and solutions to ensure equal access to justice for disabled people. Chapter 15 of the Report of the Commission on the Status of People with Disabilities explored the law and the legal system. It discussed the importance of access to the legal system for disabled people in Ireland, a right it identified that was provided under the Irish Constitution, the European Convention on Human Rights, and international law. At that time the Commission discussed the barriers that hindered full access to the legal system for people with disabilities in Ireland. Barriers included physical barriers like inaccessible buildings, barriers to accessing information, and specific procedures and practices within the legal system. The Commission recommended a number of measures to ensure equal access to the legal system, including making all court buildings accessible, providing legal documents in various formats (such as large print, braille, and computer disc), and ensuring court staff were trained and aware of disability issues. The Commission also emphasised the importance of providing legal services to disabled people, and emphasised significant unmet legal need. It also highlighted challenges that disabled people face when providing evidence in court, such as Deaf community members who require interpretation services, and people with intellectual disabilities.<sup>45</sup> The Commission essentially identified barriers hindering equal access to the legal system for disabled people and made recommendations to address these barriers. As will be seen in Chapter 3 many of the concerns and barriers identified by the Commission three decades ago still remain today.

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<sup>44</sup> Commission on the Status of People with Disabilities, *A Strategy for Equality* (Dublin: Commission on the Status of People with Disabilities, 1996), Chapter 15.

<sup>45</sup> The Commission also called for further research exploring the experiences of disabled people within the criminal justice system. Concerns were also expressed about the overrepresentation of disabled people in the prison population.

## Children and Access to Justice in Ireland

This section considers the existing literature on access to justice for children with disabilities in Ireland. Compared to other areas or identities, the literature concerning access to justice for children, including disabled children, in Ireland has received increased consideration in recent years. This increased attention is perhaps due in part to the Ireland's obligations under the UN CRC, and CRPD.

### Access to Justice and Children and Human Rights

It is well established that children with disabilities face barriers in accessing justice, making it difficult to have their voices heard, assert their rights, challenge discrimination, or hold those in power responsible.<sup>46</sup> Under Article 13 of the CRPD and Articles 12, 39, and 40 of the UN Convention on the Rights of the Child (CRC), children with disabilities are entitled to the right on an equal basis with others. As discussed above Article 13 of the CRPD specifically addresses access to justice, encompassing both those directly involved in legal proceedings (such as plaintiffs or defendants) and those indirectly involved (like witnesses). This provision is comprehensive, obligating State Parties to guarantee equal and effective involvement of disabled people in all stages of legal processes.

Article 13 is equally applicable to children with disabilities. Article 13(1) underscores the necessity of “procedural and age-appropriate accommodations” to facilitate effective access to justice. State Parties are required to ensure that external parties, like families and legal representatives, do not impede the rights safeguarded by Article 13. Furthermore, they are obligated to implement training within the relevant sectors to support these rights. As mentioned above Principle 3 of the International Principles and Guidelines on Access to

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<sup>46</sup> EU Agency for Fundamental Rights, *Access to Justice: An Overview of Challenges and Opportunities* (EU Agency for Fundamental Rights, 2011).

Justice for Persons with Disabilities relates to children.<sup>47</sup> It states that disabled people, including children with disabilities, have the right to appropriate procedural accommodations. The guidance places a premium upon individualised procedural accommodations, communication supports, procedural accommodations, and information on the availability of accommodations.<sup>48</sup>

## Children in Care Proceedings

Upon being appointed, judges receive a bench book titled “The Equal Treatment of Persons in Court”, which offers legal guidance on accommodating disabled people and children. This book is only available to members of the judiciary, and contains sections on disabled people, children, physical disability, and interpreters.<sup>49</sup> Under section 25 of the Child Care Act 1991, during family law cases, the Court has the authority to include a child as a party in the proceedings. This decision is based on an assessment of the child's age, understanding, wishes, and the case's particular circumstances, with the aim of ensuring the child's best interests and justice. Additionally, when a child is designated as a party, the Court has the option to assign legal representation for the child.<sup>50</sup> In accordance with section 26 of the Care Act 1991, the Court has the authority to assign a Guardian ad litem (GAL) for a child, provided it deems this action essential for the child's welfare and for justice.<sup>51</sup> However, apart from the criteria for appointing a GAL, there is a noticeable lack of regulatory oversight regarding their responsibilities, the qualifications they need, and the guidance available for assisting children

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<sup>47</sup> United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

<sup>48</sup> Ibid, at pages 15-17.

<sup>49</sup> Department of Children, Equality, Disability, Integration and Youth, *Draft Initial Report under the Convention on the Rights of Persons with Disabilities: Ireland* (Dublin: December 2020).

<sup>50</sup> See Children's Acts Advisory Board, "Giving a voice to children's wishes, feelings and interests: Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Children in Proceedings under the Child Care Act, 1991" (2009).

<sup>51</sup> See Claire Hamilton and Ann McWilliams (2010) "There isn't Anything like a GAL': The Guardian ad litem Service in Ireland'. *Irish Journal of Applied Social Studies*, 10 (1):31-39.

with disabilities. In Ireland, the number of GALs is limited, and their services are offered by various voluntary organisations and groups of individuals.<sup>52</sup>

The Child Care (Amendment) Act 2022 has recently extended the law in relation to GALs appointed under the Child Care Act 1991. It amended several pieces of legislation including the Mental Health Act 2001. A welcome provision is that GALs can now be appointed where proceedings before the District Court relate to a child. The legislation provides that that a GAL must be appointed and that they are entitled to both legal advice and legal representation.<sup>53</sup> IHREC has recommended the establishment of a statutory Guardian ad Litem system to enable the fulfilment of children's rights to have their views heard and best interests considered in child care proceedings.<sup>54</sup> The Commission recommended that sufficient resources be allocated for the immediate and complete implementation of the Child Care (Amendment) Act 2022.<sup>55</sup> This is to ensure the creation of a Guardian ad litem service that is independent, child-focused, rights-based, accessible, and sustainable, and to guarantee that the perspectives and best interests of children are thoroughly taken into account in child care proceedings.<sup>56</sup>

Section 28(1) of the Children Act 1997 states that in civil proceedings, a child under 14 years of age can give evidence without taking an oath or affirmation, provided the court believes the child can present a clear and relevant account of the events in question. Section 28(3) states that subsection 1 is applicable to children over 14 years old with "mental disabilities" in the same way it applies to children under that age. Although the Act does not provide a specific

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<sup>52</sup> See Catriona Moloney, Clíona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 105.

<sup>53</sup> Section 10 of the Child Care (Amendment) Act 2022 amends section 25 of the section 25 of the Mental Health Act 2001.

<sup>54</sup> Irish Human Rights and Equality Commission, Submission to the Committee on the Rights of the Child on Ireland's Combined Fifth and Sixth Periodic Reports (August 2022), at pages 53-54.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

definition for “mental disability”, it is understood as encompassing intellectual disability, acquired brain injury, autism, and could possibly include mental health also.<sup>57</sup> Hence, children with such disabilities are allowed to testify in court only if the court deems them "capable of giving an intelligible account of events". Sections 22 and 21 of the 1997 Act mention provisions and video evidence, respectively. Yet, as Moloney and others have pointed out, the legislation lacks specific provisions for extra support that these children might need to effectively communicate their experiences to the court.<sup>58</sup>

## **Children in Criminal Proceedings**

The Irish Constitution's approach to criminal procedure is similar to that of continental European constitutions in that it includes only a few specific guarantees.<sup>59</sup> These include the requirement for public trials and jury trials for major offences as required in Article 38. One of the main differences between civil and criminal proceedings involving children, is that a child accused of a crime is automatically involved in the proceedings and has a right to legal representation. The Children's Court, established under the Children Act 2001, is designated as the forum for hearing criminal cases involving children. Additionally, Section 72 of the Children Act 2001 mandates that judges receive specialised training before presiding over cases in the Children's Court. Nonetheless, a lack of formal training in youth justice for the judiciary is noted in the literature, and there is no specified information regarding the nature or content of the training that is required.<sup>60</sup> It has been suggested that this situation has resulted

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<sup>57</sup> Catriona Moloney, Cliona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilionóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 105.

<sup>58</sup> Ibid, at page 105-106.

<sup>59</sup> Michael Forde and David Leonard, *Constitutional Law of Ireland*, 3rd edition (Bloomsbury, 2013), at page 441.

<sup>60</sup> See John O' Connor, 'Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System' (2019) 3 *Irish Judicial Studies Journal* 19 – 39.

in variability in decision-making throughout the court system and the employment of terminology or structures that make it difficult for children to understand proceedings.<sup>61</sup>

Kline and Flynn published a report in 2013 titled "Access to Justice for Children with Cognitive Disabilities: Ireland Country Report".<sup>62</sup> They researched the barriers within Irish law and policy affecting children with cognitive disabilities in three pivotal aspects of their lives: education, living arrangements, and juvenile justice proceedings. Key findings highlighted the significant challenges, notably the absence of comprehensive data collection, which hinders a full understanding of children's access to justice. The requirement for a "next friend" for children to initiate legal proceedings was identified as a barrier to participation, and existing laws inconsistently accommodate the voices of children with disabilities. Interviews with parents revealed the difficulties they face in securing essential services for their children, and they reported retaliatory actions when they made complaints.<sup>63</sup> The need for comprehensive training for professionals to support the voice of the child in various legal proceedings, extending beyond care issues to encompass education and healthcare decisions for children with cognitive disabilities. These findings identified the urgency of removing barriers to ensure the rights of children with children with disabilities are upheld

## **Children, the Court and Accessibility**

Sections 25 and 26 of the Disability Act 2005 respectively place a statutory obligation on public bodies to make buildings and information accessible. This includes key stakeholders in the administration of justice in Ireland including the Court Service of Ireland, the Office of the Director of Public Prosecutions, the Legal Aid Board and An Garda Síochana etc. Essentially section 25 emphasises the importance of accessibility in public buildings for disabled people, outlining how codes of practice should be developed and implemented, and setting clear guidelines for compliance and potential exemptions. Similarly, section 26

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<sup>61</sup> Ibid.

<sup>62</sup> Jennifer Kline and Eilionóir Flynn, Access to Justice for Children with Cognitive Disabilities: Ireland Country Report (Centre for Disability Law and Policy, National University of Ireland Galway, 2013).

<sup>63</sup> Ibid.



emphasises the importance of making public services accessible to disabled people. It mandates the integration of service access, provision of necessary assistance, and engagement of expertise to guide accessibility efforts. The appointment of Access Officers in each public body is a key part of this approach, ensuring that there is a dedicated role responsible for overseeing and facilitating accessibility. The effectiveness sections 25 and 26 of the Disability Act 2005 in making buildings and information accessible for children accessing the justice system has been underexplored in the literature.

## **Lack of representation in family law and other proceedings**

Despite the legal provision for children to participate in family law cases, commentators have pointed out a notable gap in research exploring the practical application and its effects on children. The Children's Rights Alliance observes that these laws are significantly underutilised.<sup>64</sup> Furthermore, the discretionary power given to courts in appointing a Guardian ad Litem (GALs) is reported to result in inconsistent practices across different courts. Contrasting this, in some regions, a Guardian is automatically assigned unless deemed unnecessary.<sup>65</sup> Additionally, there is a notable absence of clear guidelines regarding the role, status, or required qualifications for a GAL.<sup>66</sup> Presently, a GAL is only assigned if the child is not a direct party to the proceedings. Consequently, this arrangement does not ensure that children, especially those with disabilities who might require more assistance, have access to an advocate who can simplify court procedures for them in an understandable way.<sup>67</sup>

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<sup>64</sup> Children's Rights Alliance, 'Report Card 2020' (Dublin, 2020) at page 86.

<sup>65</sup> Carol Coulter, 'Interim Report of the Child Care Law Reporting Project' (Dublin, 2013) 14.

<sup>66</sup> Catriona Moloney, Cliona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilionóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 107.

<sup>67</sup> Ibid.

## **Insufficient supports for victims and witnesses**

There is a notable absence of information and data regarding the treatment of child witnesses and victims with disabilities within the Irish criminal justice system. Despite legislation that outlines the rights of victims and mandates the provision of support, there is also a dearth of organisations specifically dedicated to assisting adults or children with disabilities who have experienced or witnessed a crime.<sup>68</sup> As Moloney et al. have highlighted it remains uncertain whether existing organisations have received training or guidance on how to provide support to children with disabilities in these situations.<sup>69</sup>

## **Initiating Legal Proceedings and Making Proceedings Accessible**

As mentioned above some commentators have pointed out that the absence of provisions enabling a child to initiate legal proceedings independently, without the requirement of a “next friend”, is a substantial barrier to ensuring access to justice under Irish law.<sup>70</sup> This issue is especially concerning in situations involving conflicts of interest between parents and children or when children are separated from their parents, such as within the asylum system.<sup>71</sup> Children with disabilities may find themselves particularly vulnerable in this context. This may act as a barrier to pursuing legal avenues to uphold their fundamental rights, especially if they reside in institutions or outside of a family environment.<sup>72</sup>

A child’s ability to provide instructions or direct their legal representatives in litigation is an issue that also emerges in the literature. It has been suggested that the ability to provide instructions is often restricted, not only because of legal limitations but also due to societal attitudes that have been shaped to view children as having limited decision-making ability.

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<sup>68</sup> Ibid, at pages 107-108.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

These attitudinal barriers might be more pronounced in respect of children with disabilities.<sup>73</sup> The introduction of legislative provisions that stipulate children above a specified age can initiate legal proceedings independently, without the need for parental or next friend representation could address these concerns. Some commentators have observed that other jurisdictions allow children who possess the necessary age and maturity to commence legal actions and express their perspectives in court.<sup>74</sup> In Ireland, addressing this issue could involve amending existing legislation related to children and the courts or the development of a new piece of legislation focused on children's rights.<sup>75</sup> These provisions should include robust safeguards and support mechanisms for children with disabilities and should refrain from engaging in discriminatory capacity assessments based on disability.<sup>76</sup> To align with international human rights standards it has been suggested that greater acknowledgment of the accessibility needs of children with disabilities is needed, when they are parties to a case or serve as witnesses.<sup>77</sup> This reform proposal could result in greater access to justice for children with disabilities.

Allowing children of sufficient age and maturity to take legal action on their own empowers them to exercise their rights and participate directly in the justice system aligning with the international principles discussed above and the requirements of Article 13 of the CRPD. Removing the need for parental or next friend involvement could also expedite the legal process, ensuring that children with disabilities receive timely consideration of the rights

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<sup>73</sup> Ann Skelton Nolan, 'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice' (2022) 22(4) Human Rights Law Review, at page 15.

<sup>74</sup> Catriona Moloney, Clíona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 108.

<sup>75</sup> Children Act 1997, Children Act 2001.

<sup>76</sup> Catriona Moloney, Clíona de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 108 and Irish Human Rights and Equality Commission, *Submission to the Committee on the Rights of the Child on Ireland's Combined Fifth and Sixth Periodic Reports* (August 2022).

<sup>77</sup> Ibid.

issue at stake. Recognising children's capacity to act independently respects their autonomy and decision-making abilities, regardless of their disability status. It also aligns with the general principles set out in the CRPD to

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“[r]espect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities”.<sup>78</sup>

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The literature also notes that these reforms could reduce the dependence of children with disabilities on parents or guardians, thereby mitigating potential conflicts of interest and ensuring that their voices and interests are core in legal proceedings.<sup>79</sup> By explicitly prohibiting discriminatory capacity assessments of children with disabilities in the amending legislation, the risk that children with disabilities are treated unfairly in being denied access to justice would be reduced.<sup>80</sup>

The literature also recognises the need to amend legislation requiring the provision of easy read versions of legal documents associated with litigation.<sup>81</sup> This would significantly enhance understanding for all stakeholders involved in legal proceedings. Providing easy read versions of court documents ensures that legal information is accessible to a broader audience, including children with disabilities, and would simply find complex, inaccessible legal language. Easy read documents simplify legal language, making court proceedings more transparent and comprehensible for the parties, witnesses, and other stakeholders. This benefits not only children with disabilities but also promotes overall efficiency and fairness within the legal system.<sup>82</sup> Access to easy read documents empowers children, including those with disabilities, to make informed decisions about their case. It ensures that all parties

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<sup>78</sup> CRPD, Article 3(8).

<sup>79</sup> Catriona Moloney, Clóna de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilionóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021).

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

fully understand the implications of the proceedings, which is fundamental in accessing justice.

The CRPD places a significant emphasis on the importance of accessible information and active participation in legal processes. For instance, Article 9(1)(b) of the CRPD, which focuses on the right to accessibility, mandates that information, communications, electronic services, and even emergency services must be made accessible. Additionally, Article 9(2)(f) requires State Parties to the Convention to implement measures aimed at promoting various forms of assistance and support for disabled people, thereby ensuring their access to information. As discussed above Article 13 specifically requires “procedural and age-appropriate accommodations” to ensure effective access to justice. A further benefit flowing from the provision of accessible easy read documents is that it makes the legal system more accessible and transparent, which in turn augments public trust.

## **Victims of Crime, Disability and Irish Law and Policy**

### **Overview of this Section**

In comparison to other aspects of the right to access to justice for disabled people, where there is little research there is significantly more attention paid to disabled people as victims of crime. This section considers the relevant law relating to victims of crime in Ireland. It considers the EU Victims’ Rights Directive and the relevant Irish legislation, research on victims and recent law reform reviews and processes.

### **European Union and Irish Law**

The EU Victims’ Rights Directive came into force in November 2015 and introduced significant changes to the way victims of crime must be treated across the European Union. Effectively the Directive establishes a set of legally mandated rights for victims, and EU Member States, including Ireland. Member States are obligated to guarantee the availability of these rights. In Ireland, these rights were incorporated into law through the enactment of the Criminal Justice (Victims of Crime) Act, 2017. The other important piece of legislation is the Criminal Evidence

Act 1992. The 1992 Act provides for important support measures for witnesses for certain offences under Part III of the Act. These support measures include; the use of live video link for vulnerable witnesses, the use of intermediaries, and the use of recorded testimony. In addition, victims have available to them the optional use of court accompaniment through victim support services, a Garda liaison officer, and use of the witness suite within the Criminal Courts of Justice.

The EU's Victims' Rights Directive establishes fundamental standards for the protection, assistance, and well-being of people who are victims of criminal acts.<sup>83</sup> This directive signifies a significant milestone in advancing the rights of victims throughout the European Union, ensuring comprehensive support services, robust protection against further harm, and detailed regulations on how Member States are to achieve this.<sup>84</sup> The Directive highlights the importance of addressing decisions concerning a victim's civil claims within the context of criminal proceedings. The European Union Agency for Fundamental Rights has identified that the implementation of this directive in practice has proven to be a complex and challenging undertaking.<sup>85</sup> EU Member States, including Ireland, were obligated to incorporate its provisions into their legal systems by November 16, 2015.<sup>86</sup> Ireland faced infringement proceedings due to its failure to effectively communicate and implement the Directive, raising concerns about its commitment to upholding the rights of crime victims.<sup>87</sup>

To avoid further legal action, the Criminal Justice (Victims of Crime) Act 2017 was enacted and commenced in November 2017. The literature on the Criminal Justice (Victims of Crime) Act 2017 recognises that it represents a significant development in prioritising victims within

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<sup>83</sup> Directive 2012/29/EU.

<sup>84</sup> See European Union Agency for Fundamental Rights, 'Underpinning victims' rights: support services, reporting and protection' (2023), and Maria McDonald, "Guide for Lawyers to the Victims Directive and the Criminal Justice (Victims of Crime) Act 2017" (Irish Council for Civil Liberties, 2018).

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> See Maria McDonald, "Guide for Lawyers to the Victims Directive and the Criminal Justice (Victims of Crime) Act 2017" (Irish Council for Civil Liberties, 2018).

the Irish criminal justice system, and its importance for disabled people who experience crime.<sup>88</sup> The Act goes to great lengths to specify the legal rights of victims, offering several examples of these entitlements. These rights encompass the right to receive clear and easily comprehensible information about the criminal justice system and their role within it, the right to access information regarding available services and entitlements, and the right to receive a written acknowledgment of their complaint. Furthermore, victims have the right to stay informed about the progress of investigations and any court proceedings related to their case.<sup>89</sup>

The Department of Justice developed an updated and expanded version of the Victims Charter.<sup>90</sup> This revised Charter takes into account the provisions of the Criminal Justice (Victims of Crime) Act 2017. Its primary objective is to assist these victims in accessing the available support services. The Department of Justice collaborated with various state agencies, including An Garda Síochána, the Courts Service, and the DPP, as well as numerous non-governmental organisations and victim advocacy groups, during the development of this Charter. There is not much literature exploring the updated Victims Charter. However, it serves as a useful guide outlining the rights of victims at various stages of the criminal justice process, commencing from the moment a crime is reported. It offers detailed information about the services provided by each relevant agency, explaining what victims can anticipate from these services, including the assistance offered and the expected treatment.

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<sup>88</sup> Ibid.

<sup>89</sup> They are entitled to be informed about the decision to prosecute or not prosecute the offense committed against them, with the additional right to request a review of that decision. Victims also have the right to be informed about the release, temporary release, or escape of persons serving prison sentences for offenses against them, as well as the right to interpretation and translation services when necessary to ensure effective communication during the criminal justice process. Importantly the 2017 Act requires that victims' individual needs be assessed, allowing for the consideration of specific protections or support measures tailored to their circumstances.

<sup>90</sup> *Victims Charter* (Government of Ireland, 2020) <https://www.victimscharter.ie>

Additionally, it provides guidance on recourse options in case a service falls short of meeting the victim's expectations.

## **The Literature on Victims of Crime with Disabilities in Ireland**

The literature has not sufficiently explored the impact of the 2017 Act on the rights of disabled people. The international literature has identified that law that can effectively prevent and prosecute acts of violence against disabled people, and in particular women with disabilities are inadequate throughout the world.<sup>91</sup>

The Irish research reflects this and indicates that disabled people face significant barriers in accessing justice. One of the most comprehensive examinations of rights of disabled people was undertaken in 2013.<sup>92</sup> The research examined the challenges disabled people encounter within the Irish criminal justice system, noting their heightened risk of victimisation and the underreporting and lack of prosecution of crimes. It addressed the gaps in understanding how Ireland responds to disabled people when victims. The study explored barriers to reporting crimes, compared legislative frameworks across jurisdictions, analysed policies and practices, and proposed reforms to enhance the system's response to disabled victims.

The research identified three main barriers faced by crime victims with disabilities: structural, procedural, and attitudinal. Structural barriers arise from poor communication and unclear roles within the criminal justice system. Procedural barriers involve complex, inaccessible legal processes including crime reporting and evidence provision. Attitudinal barriers include prejudiced assumptions about disabled peoples' capabilities, affecting their credibility as witnesses. The study noted Ireland's unique challenges compared to other common law countries, particularly the lack of comprehensive data on disabled victims' experiences, which hampers understanding and providing accessibility. It also examined various legal

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<sup>91</sup> See Eliona Gjeczaj, Anna Lawson, Rannveig Traustadóttir, and James Gordon Rice, 'We Got Lucky with the Judge': Access to Justice for Disabled Women in Iceland (2023) Laws 12, 21.

<sup>92</sup> See Kilcommmins S, Edwards C, O'Sullivan T, 'An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime' (December 2013) Irish Council of Civil Liberties.



frameworks, including criminal law and anti-discrimination legislation, highlighting inconsistencies that may restrict access to justice for disabled people.

The study highlighted that key Irish criminal justice agencies lack strategic recognition of disabled people as distinct victims. Research participants stressed the need for tailored support and raised concerns about Gardaí's knowledge, capacity challenges, and judicial attitudes. Recommendations included developing a research strategy, recognising disabled victims at the policy level, creating communication forums, improving information access, providing individual support, monitoring special measures, and aligning legislation for consistent treatment. The study also recommended training for criminal justice professionals on working with disabled people.

While the available Irish research has not sufficiently explored the impact of the Criminal Justice (Victims of Crime) Act, 2017 on the rights of disabled people, the findings from the qualitative part of this research (see Chapter 3) indicate that the barriers identified internationally and domestically by Kilcommins et al have not been addressed by recent law reform and other initiatives.

## **Recent Review, Reform and Other Initiatives**

The law relating to vulnerable witnesses in the investigation and prosecution of sexual offences has undergone recent review. A Working Group was appointed to address concerns about the treatment of vulnerable witnesses in criminal proceedings for sexual offenses. The Minister for Justice and Equality tasked the Group with examining various aspects of the criminal justice process concerning vulnerable witnesses and suggesting ways to improve their treatment.<sup>93</sup> Its report discussed the constitutional framework and progressive statutory

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<sup>93</sup> The Group included representatives from key agencies involved in the investigation, prosecution, and trial of sexual offenses, such as the Garda Síochána, the Director of Public Prosecutions, the Courts Service, and the Probation Service. The leading expert in this areas Tom O'Malley chaired the Group.

measures introduced to assist victims of sexual crimes, along with making general recommendations related to public awareness of victims' rights legislation, education about consent, inter-agency cooperation, and service delivery consistency.<sup>94</sup> The Report considered investigating, prosecuting, and trial of sexual offenses, addressing topics such as the use of intermediaries, preliminary hearings, information for victims, and reducing trial process delays. It was noteworthy that many of its recommendations can be implemented without statutory changes, particularly those related to intermediaries, training, and victim information. However, the Report did recommend some statutory changes, including conferring anonymity on accused persons in sexual assault cases and restricting public access to such trials.

Following on from the Report the Minister for Justice recently launched a new programme at the University of Limerick aimed at training intermediaries to assist people who are victims of sexual abuse and children, when they provide testimony within the justice system.<sup>95</sup> This initiative seeks to equip professionals, typically with backgrounds in speech and language therapy or related fields, with the necessary skills to support witnesses who face communication challenges when presenting their evidence in court. This is a one-year programme, a part-time Professional Diploma in Intermediary Studies. Upon graduation students become eligible for placement on a panel to work within the Irish justice system. The role of Registered Intermediaries will involve facilitating effective communication, whether between legal professionals and witnesses during trials or during interviews conducted by the Garda Síochána earlier in the legal process. This initiative emerged from the O'Malley Review regarding the recruitment and registration of appropriately qualified intermediaries. It is envisaged that intermediaries will play an important role in assessing the communication

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<sup>94</sup> Thomas O'Malley, "Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences" (Department of Justice, 2020).

<sup>95</sup> See "Minister launches University of Limerick programme to train intermediaries for work in justice system" (May 4, 2022). Available at: <https://www.ul.ie/news/minister-launches-university-of-limerick-programme-to-train-intermediaries-for-work-in-justice>

needs of witnesses with additional needs and provide guidance to the Gardaí, legal professionals, and the court on how best to assist witnesses in providing their testimony.

## **Access to Legal Aid and Legal Representation**

### **Access to Justice and Access to Legal Aid**

As discussed earlier in this chapter the provision of legal aid and legal representation to disabled people is a requirement under international human rights including the CRPD. Since the CRPD opened for signature there has been greater attention given to the issue of legal aid and access to legal representation for disabled people in Ireland and internationally. It is important to note that the CRPD does not explicitly mention the right to legal representation in Article 13 or elsewhere. However, the right to equality before the law and a fair and public hearing is a key provision in regional and international human rights law, which has been interpreted as encompassing the right to legal representation. Principle 6 of the “International Principles and Guidelines on Access to Justice for Persons with Disabilities” relates to the right to free or affordable legal assistance for disabled people and has clarified the position of legal aid and representation in respect of disabled people.<sup>96</sup> Specifically, Principle 6 underscores the right of disabled people to access free or affordable legal assistance, particularly in legal matters involving human rights violations, personal integrity, property, housing, decision-making autonomy, and family integrity etc.<sup>97</sup> This legal representation must be competent and timely to ensure that disabled people can fully engage in legal proceedings. States must enact and enforce laws, regulations, policies, and practices that guarantee the right to legal assistance in all judicial and quasi-judicial proceedings, irrespective of the role of disabled people or potential outcomes.<sup>98</sup> Governments are also required to create and allocate resources for legal assistance programmes aimed at providing

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<sup>96</sup> See United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

free legal representation to people who lack the financial means to secure legal representation. This legal aid should encompass various issues, including cases related to loss of life or liberty, housing, property, and situations where disabled people may face communication challenges during legal processes. Moreover, the principle highlights the importance of providing free legal representation to disabled people that is offered on terms that are no less favourable than those available to people who are not disabled. Additionally, tailored, individualised assistance must be made available when needed.

Furthermore, Principle 6 requires that legal advice should be accessible through various means, such as telephone or digital services, paralegal support, and online legal help, with the use of assistive technology when necessary. To remove barriers to accessing legal assistance, states should eliminate administrative, communication, and physical obstacles that may hinder access. Specialised support services for victims, including gender-based violence units, should be equally accessible to disabled people. In addition, procedural accommodations, including interpreters, assistive technology, intermediaries, and facilitators, should be made available to lawyers to ensure effective communication with clients, witnesses, and other individuals with disabilities during legal proceedings. Legal regulations applicable to lawyers should be amended as necessary to require them to respect and advocate for the will and preferences of their clients with disabilities, following their expressed instructions. Any conflicting laws, regulations, policies, guidelines, or practices should be repealed or amended. Moreover, laws, regulations, policies, guidelines, and practices that endorse substituted decision-making in legal proceedings or decisions based on the "best interests" of disabled people, against their will and preferences, should be repealed or amended according to the guidance. Finally, Principle 6 requires that states should offer free legal assistance and support to all disabled people who have experienced violence, with a particular focus on women and girls with disabilities. This support encompasses professional victim support, legal rights advice, and assistance in reporting crimes and initiating legal actions.

As discussed above Article 13 of the CRPD focuses on non-discrimination and equality through accommodations. The CRPD Committee in its jurisprudence has emphasised that

disabled people must have equal access to legal representation. The Committee also views legal aid as essential for enabling disabled people to participate in legal proceedings and to access justice. While the Committee has primarily recommended legal aid for cases related to living independently in the community and challenging infringements on legal capacity, there is a growing trend in their recommendations, extending legal aid to other areas.<sup>99</sup> This includes recommendations for free or affordable legal aid for those residing in institutions. Key barriers identified in the literature include the lack of free legal aid and concerns about the quality of representation, which may disproportionately affect disabled people. The literature has also emphasises the importance of legal aid in criminal cases, as it can reduce detention times, prevent crime, and ensure fairness in the justice system. In civil and administrative matters, access to legal aid is often restricted by means and merits tests, limiting its availability and often justified on the basis of limited resources. As Flynn et al has pointed out this disproportionately affects women and women with disabilities, particularly in family law matters.<sup>100</sup> The literature also identifies that the recognition of "litigation capacity" and the ability to instruct counsel can also create barriers to accessing legal representation for disabled people. In some jurisdictions, lawyers may refuse to represent disabled people based on misconceptions about cognitive or mental disabilities.<sup>101</sup> The literature also identifies that third-party support and assistance can address communication barriers between lawyers and clients with disabilities. It is also clear from the jurisprudence of the Committee in the Rights of Persons with Disabilities that accessing independent legal information, advice, and representation can be especially difficult for disabled people living in institutions or other settings where freedom is monitored or controlled. Therefore, the Committee has highlighted the importance of support people, including advocacy services as

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<sup>99</sup> For a discussion on this see Eilíonóir Flynn, Catríona Moloney, Janos Fiala-Butora, and Irene Vicente Echevarria, *Final Report: Access to Justice of Persons with Disabilities* (Centre for Disability Law and Policy, December 2019).

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

essential to bridge this gap by providing information and connecting people to legal services.<sup>102</sup>

## Legal Aid in Ireland

The role of the Legal Aid Board in Ireland underwent a significant change in 2010 when the Government transferred the administration of five Criminal Legal Aid Schemes from the Department of Justice and Equality to the Legal Aid Board.<sup>103</sup> The Legal Aid - Custody Issues Scheme (LA-CIS) offers financial support for legal representation in the High Court, Court of Appeal, and Supreme Court, specifically for certain categories of cases that fall outside the scope of Civil Legal Aid or the Criminal Legal Aid Schemes. These encompass applications related to Habeas Corpus (Article 40.4.2), motions for bail in the High, Appeal, and Supreme Courts, specific types of Judicial Review cases, as well as applications concerning Extradition and European Arrest Warrants. This scheme is particularly important for disabled people who might be experiencing detention and want a review of their detention (*Habeas Corpus*). The literature on the criminal legal aid schemes in Ireland is relatively sparse and the experience of disabled people in accessing the different schemes is under-explored.

The insufficiency of civil legal aid, both in general and specifically for disabled people, has come under scrutiny from various human rights and public interest organisations in Ireland, including the Irish Human Rights and Equality Commission, FLAC, and the National Disability Authority. For example, the National Disability Authority has identified the limitations of legal aid in respect of disabled people.<sup>104</sup> It has noted that when disabled people believe they have

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<sup>102</sup> Ibid.

<sup>103</sup> To facilitate this transfer, the Criminal Legal Aid Section within the Legal Aid Board was established, and currently oversees three non-statutory Criminal Legal Aid Schemes; the Garda Station Legal Advice Revised Scheme, the Legal Aid – Custody Issues Scheme, and the Criminal Assets Bureau Ad-hoc Legal Aid Scheme. However, it is important to note that the Criminal Legal Aid Scheme and the District Court Counsel Scheme remain under the purview of the Criminal Operations - Criminal Legal Aid Unit within the Department of Justice and Equality.

<sup>104</sup> National Disability Authority, "Overview of UNCRPD Article 13 in Ireland: Access to Justice" (October 2022).

faced discrimination under either the Equal Status Acts or the Employment Equality Acts, they have the option to file a complaint with the Workplace Relations Commission. Nevertheless, despite the often intricate nature of the law, the seriousness of the complaints filed, and the fact that respondents to these complaints frequently have legal representation at their disposal, there is no provision for legal aid in cases of discrimination submitted to the WRC.<sup>105</sup> The National Disability Authority identified this as a barrier to accessing justice. Furthermore, the United Nations Committee on Economic, Social and Cultural Rights has criticised the inadequacies within the legal aid system. In 2015 the Committee expressed deep concern regarding the absence of accessible free legal aid services, which effectively hinders "especially disadvantaged and marginalized individuals and groups from asserting their rights and seeking appropriate redress, notably in the realms of employment, housing, forced evictions, and social welfare benefits".<sup>106</sup> Consequently, the Committee has issued a recommendation urging Ireland to ensure the provision of free legal aid services across a wide spectrum of areas, including the expansion of the scope of the Civil Legal Aid Scheme.<sup>107</sup>

## **Access to Justice and Review of Legal Aid**

Access to justice has become an increasingly prominent issue in Ireland. In January 2021, the then Chief Justice Frank Clarke established the "Chief Justice's Working Group on Access to Justice" with the primary aim of enhancing access to justice.<sup>108</sup> Chief Justice Donal O'Donnell continued this work after becoming Chief Justice in 2021, indicating a momentum and

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<sup>105</sup> Ibid, at pages 26-27.

<sup>106</sup> Committee on Economic, Social and Cultural Rights, "Concluding observations on the third periodic report of Ireland," E/C.12/IRL/CO/3 (2015), at para 8.

<sup>107</sup> Ibid.

<sup>108</sup> The initial composition of the group included Chief Justice Frank Clarke, Mr. Philip O'Leary, Ms. Eilis Barry, Mr. Joseph O'Sullivan BL, Ms. Attracta O'Regan, and Mr. Justice John MacMenamin.

commitment to improving access to justice. In October 2021, the Working Group organised a conference to explore the different aspects of access to justice that required attention.<sup>109</sup>

In February 2023, a second conference focused on civil legal aid, coinciding with the establishment of the Civil Legal Aid Review Group. This review represents an important milestone, being the first of its kind in four decades, and is currently conducting a public consultation.<sup>110</sup> As referenced above the Civil Legal Aid Review Group, was set up in June 2022, by the Minister for Justice Helen McEntee. This seems to signal the Government's interest in addressing the accessibility issues within the Civil Legal Aid Scheme. This scheme, overseen by the Legal Aid Board, is designed to offer legal assistance and guidance to people who meet specific eligibility criteria. However, there has been an increasing awareness of the inadequacy of the system, including barriers preventing disabled people disabilities from effectively accessing these essential legal services. The Civil Legal Aid Review Group conducted a public consultation exercise in 2023. An examination of the submissions made by respondents has revealed a multitude of barriers encountered by disabled people. For example, St. Vincent de Paul identified the challenges faced by disabled people. They emphasised that approximately 70% of their calls come from households with children, with single-parent families being particularly disadvantaged.<sup>111</sup> They reported that a substantial

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<sup>109</sup> The Chief Justice's Working Group on Access to Justice, "Conference Report: Chief Justice's Working Group on Access to Justice," (2021) 1-2 October 2021.

<sup>110</sup> The February 2023 conference, through various panel discussions, addressed the current state of the civil legal aid system, drew insights from international experiences, and aimed to bridge the gap between the existing system and a better model for the future. The issue of insufficient funding for legal aid is a well-documented concern within the Irish literature. At this conference Eilis Barry highlighted FLAC's perspective, advocating for the establishment of community law centres in disadvantaged communities and specialised law centres to support vulnerable communities. However, she emphasised the pressing need for improved resources to empower these centres to employ essential support personnel, such as social workers and disability liaison officers. It was noted that FLAC's limited network of independent law centres operates with limited resources, heavily relying on pro bono contributions from barristers and other individuals, which restricts access to justice for disabled people.

<sup>111</sup> Society of St Vincent de Paul, 'Civil Legal Aid Review' (Communication to Civil Legal Aid Review Group, February 2023).



portion of these households includes family members who have long-term illnesses or disabilities. These disabilities introduce additional barriers, both visible and invisible, which hinder access to legal aid. In its submission the Citizens Information Board acknowledged that people struggling with debt, victims of domestic violence, and parents with intellectual disabilities or mental health challenges often require additional support to access legal protections.<sup>112</sup> This supplementary support is often not available under the Civil Legal Aid Scheme, leaving disabled people without the essential assistance they need to navigate the complex legal system. Similarly, the Free Legal Advice Centre (FLAC) in its submission presented a comprehensive critique of the civil legal aid system.<sup>113</sup> Their submission emphasised that accessibility is a fundamental right for people seeking justice, highlighting the importance of addressing language barriers, particularly for asylum-seekers, disabled people and migrant workers. FLAC also noted the necessity of accommodating the specific support needs of disabled people, emphasising that the failure to provide reasonable accommodation amounts to discrimination.

The Irish Human Rights and Equality Commission also highlighted in its submission the accessibility challenges faced by disabled people in the context of civil legal aid.<sup>114</sup> IHREC set out how disabled people have diverse and sometimes overlapping accessibility needs. These may include visual impairments, low literacy, hearing impairments, and limited access to the internet, etc. IHREC expressed particular concerns about the concentration of resources in the Legal Aid Board, with the Access Officer based solely in Dublin, leaving people living outside the capital at a potential disadvantage. To address these substantial concerns and enhance accessibility, IHREC included a number of recommendations in its submission. They call for the implementation of regular training on disability and reasonable accommodation for Legal Aid Board staff to ensure they are well-informed about the specific

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<sup>112</sup> Citizens Information Board, 'Review of the Civil Legal Aid Scheme' (Submission, February 2023).

<sup>113</sup> FLAC, 'Stakeholder Submission to the Civil Legal Aid Review' (Stakeholder Submission to the Review of the Civil Legal Aid Scheme, February 2023).

<sup>114</sup> Irish Human Rights and Equality Commission, 'Submission to the Independent Review of Civil Legal Aid Scheme' (March 2023).

needs of disabled people. Additionally, IHREC recommended a comprehensive review of Legal Aid Board services, aimed at identifying and eliminating barriers that obstruct effective access to justice for disabled people. It is hoped that the review of legal aid will identify ways to remove barriers faced by disabled people in accessing justice, and its recommendations will align with Article 13 of the UN Convention on the Rights of Persons with Disabilities and international human rights standards.

## Legislation Recognising Legal Capacity and Access to Justice

There has been a significant amount of literature exploring the right to exercise legal capacity in Ireland in recent years.<sup>115</sup> The literature has identified the Ward of Court system, which permitted restricting a person's legal capacity, as a major impediment to the right to access to justice and completely at odds with the CRPD. The Ward of Court system was a type of plenary guardianship operating under antiquated legislation, the Lunacy Regulation (Ireland) Act 1871. It was replaced by the Assisted Decision-Making (Capacity) Act 2015, which was commended in 2023. However, the literature recognises that the new legislation brings Ireland into closer compliance with the CRPD, through retention of provisions on substitute decision-making. The 2015 Act provides for substitute decision-making but also includes several provisions that support people to make legally effective decisions. While the provisions on substitute decision-making in the Assisted Decision-Making (Capacity) Act 2015 are at odds with the CRPD, there is explicit recognition in the guiding principles of the centrality of respecting the will and preferences of the person.<sup>116</sup> This inclusion in the guiding

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<sup>115</sup> Mary Keys, 'Legal Capacity Law Reform in Europe: An Urgent Challenge' in *Quinn and Waddington (eds), European Yearbook of Disability Law* (Intersentia, Volume 1, 2009) 59, Law Reform Commission *Consultation Paper on Vulnerable Adults and the Law: Capacity* (LRC (37) 2005), Irish Human Rights Commission, 'Observations on the Assisted Decision-Making (Capacity) Bill 2013' (Dublin: Irish Human Rights Commission, March 2014), 'Decision-making capacity in mental health: Exploratory research into the views of people with personal experience' (Dublin: Amnesty International, December 2009) and 'A Citizen's Jury on Legal Capacity Law' (Dublin: Amnesty International, October 2012).

<sup>116</sup> See section 8(7)(b) of the ADMCA 2015.

principles reflects the paradigm shift in thinking around legal capacity required by Article 12 of the CRPD. In that regard it is important to recognise that the guiding principles do not contain the “best interests” principle. This is a positive development that commentators believe will facilitate interpretation of the legislation in a manner that recognises the person’s legal capacity and defend against attempts to interfere with a person’s decision-making.<sup>117</sup> The provisions in the 2015 Act on supported decision-making have the potential to support the exercise of legal capacity where a person’s mental capacity has been called into question.<sup>118</sup> As mentioned above, the 2015 Act articulates the guiding principles underpinning the legislation in a manner that aligns with Article 12 of the CRPD. The literature also suggests the assumption in the legislation that everyone has capacity coupled with provisions for support will ensure greater access to justice for disabled people.<sup>119</sup> The framework contained in the 2015 Act is more flexible and provides a functional definition of capacity than the ward of court system.<sup>120</sup> The legislation provides that capacity is assessed only in relation to the matter in question and only at the time in question. If a person is found to lack decision-making capacity in relation to one matter, this will not necessarily mean that they lack capacity in another decision-making area. The legislation recognises that a person’s mental capacity can fluctuate.

Given that the legislation is only recently commenced there is not sufficient literature or research that has assessed the impact of the new legislation. However, as will be seen in Chapter 3, a number of the participants in the research have highlighted concerns regarding the operation of the legislation. Another concern expressed is that there is a lack of awareness of the legislation. A RED C survey from 2023 found that 67% of adults in Ireland

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<sup>117</sup> Mary Donnelly, 'The Assisted Decision-Making (Capacity) Act 2015: Implications for Healthcare Decision-making' (2016) 22(2) *Medico-Legal Journal of Ireland* 65-77.

<sup>118</sup> Charles O'Mahony and Aisling de Paor, 'Implementation of the UN Convention Art. 12 on the Rights of Persons with Disabilities in Ireland (Failure to Reform: Ireland's Compliance with Article 12 of the UN Convention on the Rights of Persons with Disabilities)' in *Models of Implementation of Article 12 of the CRPD* (Routledge 2023).

<sup>119</sup> *Ibid.*

<sup>120</sup> See section 3 of the 2015 Act.

are unaware of the new Assisted Decision-making legislation.<sup>121</sup> Despite its importance, only 33% of adults are aware of the law, and half of these people lacked a clear understanding of its implications. The research found that awareness of the legislation is greater amongst adults aged over 65 and more advantaged economic and social groups. Only 4% of respondents reported having a good understanding of legislation.

## **Mental Health Law and Policy and Access to Justice**

### **Overview of this section**

This section explores the ongoing revision of the Mental Health Act 2001, focusing on the implications for both adults and children as specified by the law. The inclusion of this discussion is critical because mental health legislation raises complex human rights issues, particularly for Ireland as a State Party to the CRPD. Furthermore, mental health laws pose substantial challenges regarding access to justice. This discussion aims to highlight and address these access to justice concerns, reflecting on how the current legislative framework and reform proposals facilitates access.

### **Mental Health Law and Advocacy**

There has been an extensive ongoing review of the Mental Health Act 2001, resulting in the publication of the Heads of Bill in 2021. There has been a burgeoning body of research, policy papers, and consultation submissions etc. that have explored a range of human rights issues including access to justice for disabled people. A significant access to justice issue identified in the literature is that the 2001 Act does not currently provide a right to advocacy services for

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<sup>121</sup> See “67% of adults have not heard of new Assisted-decision Making legislation” Safeguarding Ireland, May 2023. Available at: <https://www.safeguardingireland.org/67-of-adults-have-not-heard-of-new-assisted-decision-making-legislation/>

persons using inpatient mental health services. The need to provide advocacy services has been a policy goal for many years. The national mental health policy “A Vision for Change” acknowledged that where a person is experiencing a period of severe emotional distress, they may not be resourced to advocate for themselves. As such it stated, “advocacy should be available as a right to all service users in all mental health services i.e., including hospitals, day centres, training centres, clinics, or elsewhere in all parts of the country”.<sup>122</sup>

As discussed above Article 12 of the CRPD is closely connected to Article 13 and requires State Parties to “take appropriate measures to provide access by disabled people to the support they may require in exercising their legal capacity”. This is key for persons who come under the scope of the proposed intermediate category and involuntary categories. The National Advocacy Service for People with Disabilities (NAS) provides an existing framework for a professional representative advocacy service. It has been noted in the literature that the advocacy services are under resourced and not sufficiently available to persons subject to the 2001 Act and to others seeking advocacy. NAS is funded and supported by the Citizens Information Board, which has a mandate under the Citizens Information Act 2007 and the Comhairle Act 2000 to provide advocacy for disabled people. It has been recommended by research commissioned by Mental Health Reform that the remit of the NAS could be expanded to fulfil the role and align with international best practice.<sup>123</sup> To better protect the rights of disabled people it was recommended that the Heads of Bill should put the right to an advocate on a statutory footing for voluntary, intermediate, and involuntary persons and that the advocacy service should be independent of the Health Service Executive, Mental Health Commission and the Decision Support Service and this should be specified in the legislation.<sup>124</sup> It was further recommended that an advocacy service should be peer led and

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<sup>122</sup> “A Vision for Change” (Dublin: Stationery Office, 2006), at page 26. “A Vision for Change” further recommended that the advocate should be a peer who has personal experience of using the mental health services and has received recognised advocacy training.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

advocates should have personal experience of using the mental health services and peer advocates should be provided with appropriate supports and reasonable accommodations to undertake this work.<sup>125</sup> It was also recommended that advocates should receive ongoing training on human rights, mental health legislation and the capacity legislation.<sup>126</sup> The inadequacy of independent advocacy for children under the Mental Health Act 2001 is discussed below.

## **Mental Health Legislation and Complaint Mechanisms**

Another access to justice issue that emerged in the literature is around complaints for persons subject to the 2001 Act. It has been noted that the Heads of Bill does not include provisions to support persons in raising complaints based on their experiences with mental health services.<sup>127</sup> A significant human rights concern is the absence of a dedicated independent complaints mechanism in the 2001 Act. Currently, complaints must go through the HSE's internal mechanism, "Your Service, Your Say," with potential referral to the Ombudsman if dissatisfied. Although the Act allows communication with the Inspector and annual inspections, it falls short in addressing individual complaints. Additionally, it has been noted that the Inspector only assesses service provision and lack oversight of clinical decisions, limiting its effectiveness as an oversight mechanism. There is also no specific complaints mechanism for tribunals or tribunal members.<sup>128</sup> It has been suggested that establishing an effective complaints mechanism is essential to safeguard the human rights of persons receiving mental health services, including the right of access to justice.

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid. See also Irish Human Rights and Equality Commission, 'Commission Raises Concern Over Rights of Wards of Court in Proposed Assisted Decision-Making Law' (16 February 2022) <https://www.ihrec.ie/commission-raises-concern-over-rights-of-wards-of-court-in-proposed-assisted-decision-making-law/>

<sup>127</sup> "A Vision for Change" (Dublin: Stationery Office, 2006), at page 26.

<sup>128</sup> Ibid.

## **Mental Health Law Reform the Civil and Criminal Divide**

As discussed above, there has been an extensive ongoing review of the Mental Health Act 2001, resulting in the publication of the Heads of Bill. These proposed changes to the legislation represent a shift seeking to enhance protection of the rights of persons subject to the 2001 Act. However, the Criminal Law (Insanity) Act 2006 is not part of this review process. The rights and experiences of persons in the criminal system have not been reflected in research and policy submissions prepared by civil society and other stakeholders. Instead, the focus has primarily been on the experiences of those receiving mental health services in the civil system. The ongoing review of the Mental Health Act 2001 and the enactment of the Assisted Decision-Making (Capacity) Act 2015 have generated a substantial body of literature highlighting various deficiencies in the law from a human rights perspective. However, these law reform processes have occurred in isolation, with little effort to address the issues faced by disabled people within the criminal justice system.<sup>129</sup>

The ongoing review of the Mental Health Act 2001 primarily entails a substantive review of the legislation, as mandated by Section 75 of the Act. In 2022, the Irish Penal Reform Trust conducted a scoping exercise to investigate the rights of people in forensic mental health services in Ireland.<sup>130</sup> This research was an initial exploration in this area, aiming to align the legislation with Ireland's obligations under the CRPD to eliminate involuntary detention and treatment of disabled people, including those with “mental disorders”. The report set out recommendations to support the overarching goal of ending involuntary detention and treatment and reducing the harm experienced by persons currently detained. One notable issue highlighted by the researchers is the absence of the voices of persons detained in

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<sup>129</sup> Charles O'Mahony, 'Responding to Defendants and Offenders with Mental Health Problems in Ireland: The Need for Reform' (2017) 27 Irish Criminal Law Journal 2.

<sup>130</sup> Irish Penal Reform Trust, "Access to Rights for People Detained in Secure Forensic Mental Health Facilities in Ireland" (October 2022).

forensic settings in the research, leading to gaps in data related to those subject to the 2006 Act.<sup>131</sup>

The disconnect between civil mental health law (the 2001 Act) and criminal mental health law (the 2006 Act) undermines the potential for cohesive law reform that safeguards the rights of persons within both civil and criminal systems.<sup>132</sup> The 2006 Act encompasses provisions related to admission to the Central Mental Hospital and forensic mental health services in Ireland. It addresses scenarios such as findings of unfitness to stand trial, not guilty by reason of insanity, and transfers from prison. Similarly, the Mental Health Act 2001 contains relevant provisions and the enhanced human rights protections proposed in the Heads of Bill will not apply. The lack of data and the specific nature of these provisions warrant further examination from a human rights perspective. From an access to justice perspective, disabled people involved in the criminal justice system can access legal aid if they meet the criteria for the different schemes. This might suggest that the right to access justice is being realised. However, as detailed in Chapter 3, the research has identified several access to justice issues. These issues are potentially exacerbated by the lack of research in this area and the absence of the voices of disabled people within the criminal justice system in the existing body of research.

## **Mental Health Law, Children and Young People and Access to Justice**

As mentioned above the ongoing review of the Mental Health Act 2001 has resulted in commentary that has scrutinised the rights of children subject to the Act.<sup>133</sup> The review process culminated in the publication of a Heads of Bill in 2021. Part 8 in the Heads of Bill deals exclusively with the admission of children to approved inpatient facilities under the Act,

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<sup>131</sup> Ibid.

<sup>132</sup> Charles O'Mahony and Catriona Moloney, 'The Impact of International Human Rights Law on Irish Mental Health and Mental Capacity Law Reform' (2017) *Medico-Legal Journal of Ireland*.

<sup>133</sup> See Charles O'Mahony and Fiona Morrissey, 'A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001' (Mental Health Reform 2021).



which if enacted will make improvements in respect of access to justice and the protection of children. The creation of Part 8 should address the disjointed approach and make the legislation more accessible for children subject to the act, their parents and/or guardians, mental health professionals and other stakeholders.<sup>134</sup> However, there are a number of areas where the rights of the child can be strengthened in the amending legislation and where access to justice issues remain. In order to understand the challenges, the following section discusses the relevant human rights law as it relates to children and young people. The following sections discuss the specific human rights issues that have emerged in the literature and commentary on the Heads of Bill.

## **Children Mental Health and International Human Rights Law**

The UN Committee on the Rights of the Child (CRC Committee) have been critical of the lack of comprehensive legislation on children's consent to and refusal of medical treatment, in particular mental health-care services.<sup>135</sup> The provisions regulating the admission and treatment of children have been criticised for failing to safeguard their human rights, including the right of access to justice.<sup>136</sup> On this basis the CRC Committee has recommended that Ireland introduce legislation that explicitly and comprehensively provides for children's consent to and refusal of medical treatment and ensure that the legislation is in line with the objectives of the CRC and encompasses clear recognition of the evolving capacities of

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<sup>134</sup> Ibid.

<sup>135</sup> CRC Committee, "Concluding observations on the combined third and fourth periodic reports of Ireland" (Geneva: CRC/C/IRL/CO/3-4, 1<sup>st</sup> pf March 2016), at para 53.

<sup>136</sup> Catriona Moloney, "Time for Change in the Mental Health Act 2001: The Law Must Recognise Children's Capacities to Consent to and Refuse Medical Treatment" (Medico-Legal Journal of Ireland 2017, 23(1), 8-17), Law Reform Commission, "Report on Children and the Law: Medical Treatment" (Dublin: LRC 103-2011); Geoffrey Shannon, "Annual Report of the Special Rapporteur on Child Protection" (Dublin: 2010), at page 51; Children's Mental Health Coalition, "Submission to the Department of Health on the Review of the Mental Health Act 2001" (Dublin: 2011).

children.<sup>137</sup> The Committee has further recommended that Ireland undertake measures to improve the capacity and quality of its mental health-care services for children and adolescents.<sup>138</sup>

The 2001 Act as it currently operates prohibits children from exercising their legal capacity in making decisions around their treatment, vesting the decision-making power instead in adults who act as substitute decision-makers. The inclusion of rights-based principles to guide the interpretation of the 2001 act as they relate to children have been welcomed in the Heads of Bill.<sup>139</sup> The Irish courts have interpreted the principles in the 2001 Act in a paternalistic manner, which has resulted in a failure to comply with regional and international human rights law. General Comment No 1 on Article 12 (legal capacity) of the CRPD Committee states “equality before the law is a basic general principle of human rights protection and is indispensable for the exercise of other human rights”.<sup>140</sup> However, children who experience mental illness are at increased risk of having their right to legal capacity denied or restricted by way of substitute decision-making and mental health laws, which raises access to justice issues. The law in the area of mental health and capacity is extremely complex, as the legislation seeks to achieve a number of goals. The situation is even more challenging in respect of children who experience mental illness as they are often regarded as unable to make decisions for themselves.<sup>141</sup> In this regard the CRPD provides useful guidance in Article 12, requiring State Parties to respect the person’s right to make legally effective decisions.

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<sup>137</sup> CRC Committee, “Concluding observations on the combined third and fourth periodic reports of Ireland”(Geneva: CRC/C/IRL/CO/3-4, 1<sup>st</sup> of March 2016), at para 54.

<sup>138</sup> Ibid.

<sup>139</sup> See Charles O’Mahony and Fiona Morrissey, ‘A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001’ (Mental Health Reform 2021).

<sup>140</sup> CRPD Committee “General Comment No. 1: Equal Recognition Before the Law (article 12)” (Geneva: Eleventh session, 31 March–11 April 2014).

<sup>141</sup> Catriona Moloney, “Time for Change in the Mental Health Act 2001: The Law Must Recognise Children’s Capacities to Consent to and Refuse Medical Treatment” (Medico-Legal Journal of Ireland 2017, 23(1), 8-17), at page 9.

## **A Human Rights Analysis of the Provisions Relating to Children and Young People**

The creation of the standalone Part of the legislation relating to the admission of children and young people has been welcomed as it should make the legislation more easily understood.<sup>142</sup> The inclusion in the Heads of Bill the presumption of capacity to consent to and refuse admission and treatment for those aged 16 and 17 years is to be welcomed. This recognition has been advocated for by a range of commentators including the Law Reform Commission and Amnesty International Ireland and when enacted will bring Irish law in this area into greater compliance with international human rights law.<sup>143</sup> There has been a consensus that the current provisions in the 2001 Act that relate to children are wholly inadequate in safeguarding their rights. The admission of a child under Part 4 of the 2001 Act either on a voluntary or involuntary basis will decide what rights apply in respect of the child. However, admission regardless of the status of voluntary or involuntary has no bearing on the child's right to consent or refuse treatment as the legislation as it currently stands does not provide for such a right. The legislation therefore is at odds with Ireland's obligations under international human rights law, specifically the CRC and the CRPD, which as discussed above requires respect for the evolving capacity of the child and their right to participate in decision-making. The current legal position means that children subject to the 2001 Act are not provided with sufficient procedural and due process rights and a failure to provide adequate support for children to exercise their legal capacity.<sup>144</sup> However, the discussion below will highlight a number of areas where the human rights of children and young people subject to the legislation can be better safeguarded in the amending legislation and facilitate greater access to justice.

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<sup>142</sup> Ibid.

<sup>143</sup> See Amnesty International Ireland, "Mental Health Act 2001: A Review" (Dublin: Amnesty International, 2011), at page 181 and Law Reform Commission, "Consultation Paper: Children and the Law: Medical Treatment" (Dublin: LRC CP59, 2009).

<sup>144</sup> Catriona Moloney, "Time for Change in the Mental Health Act 2001: The Law Must Recognise Children's Capacities to Consent to and Refuse Medical Treatment" (Medico-Legal Journal of Ireland 2017, 23(1), 8-17), at page 9.

## Analysis of the Guiding Principles Relating to Children and Younger People

When implemented it is hoped that the amended guiding principles in the 2001 Act as they apply to children and young people will serve to embed the paradigm shift in thinking required by the CRPD within mental health services. In particular, it is hoped that the guiding principles will remove the legislative and attitudinal barriers that have curtailed the participation of children in decision-making relating to their treatment. Some commentators have suggested that the Heads of Bill needs to better ensure that adequate supports are provided to ensure that the child can form and make choices in relation to their treatment.<sup>145</sup>

S.84 of the Heads of Bill provides that in making any decision under the Act concerning the care or treatment of a child due regard shall be given to the "guiding principles for children". S.84(a) provides that the best interests and the welfare of the child, will be the primary consideration. S.84(b) provides that every child should have access to health services that have as the aim of those services, the delivery of the highest attainable standard of mental health for children. Irish mental health law adopts a welfare-oriented approach to decision-making, where the views of mental health professional prevail in an environment where children are perceived as "incompetent and dependent rather than as social actors and agents capable of holding and exercising rights".<sup>146</sup> In the Heads of Bill, the guiding principles in respect of children are then split into two categories; young people aged 16 and over and children aged under 16 years. S.84(1)(c)(i) provides in the case of a child who is aged 16 years or older, it will be assumed that the child has the necessary maturity and capacity to make decisions affecting themselves in relation to their care and treatment. The views and will and preferences of the parents of the child, or either of them, or people acting in *loco parentis* must be recorded.

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<sup>145</sup> See Charles O'Mahony and Fiona Morrissey, 'A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001' (Mental Health Reform 2021).

<sup>146</sup> Catriona Moloney, "Time for Change in the Mental Health Act 2001: The Law Must Recognise Children's Capacities to Consent to and Refuse Medical Treatment" (Medico-Legal Journal of Ireland 2017, 23(1), 8-17), at page 13.

## **People Aged 16 and Under**

While the Heads of Bill recognise the legal capacity to consent to and refuse admission and treatment for young people aged 16 and 17 years the same does not apply for children under 16 years. This approach reflects the view of the Expert Review Group that there should be no automatic presumption of capacity for children under the age of 16. Based on the discussion above on the relevant international human rights law there is concern that this approach does not comply with the non-restrictive approach required by Article 12 of the CRC, which extends to the child irrespective of their age. The CRC Committee have been clear that Article 12 requires State Parties “to assess the capacity of the child to form an autonomous opinion to the greatest extent possible.”<sup>147</sup>

It has been suggested that a procedure should be put in place to ensure that a systematic approach is taken to facilitate the child's right to express their view and will and preferences.<sup>148</sup> In this regard the role of an independent advocate is important in supporting the child in participating meaningfully in the process and ensuring that their views and will and preferences are given due weight in practice. The need for independent advocacy services will be discussed below.

## **Children Aged 16 and Older**

As mentioned above the existing definition in the 2001 Act of a child as a person under the age of 18 has resulted in the restriction of the legal capacity of 16- and 17-year-olds whose rights have been curtailed when compared to 16- and 17-year-olds who have been permitted to consent to treatment in general health care. The differential treatment appears to have been justified on the basis that young persons’ subject to the 2001 Act have a disability. This position is clearly discriminatory and at odds with Ireland’s international human rights

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<sup>147</sup> CRC Committee, “General Comment No.12: The right of the child to be heard” (Geneva: CRC/C/GC/12, 20<sup>th</sup> July 2009), at para. 20.

<sup>148</sup> Charles O’Mahony and Fiona Morrissey, 'A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001' (Mental Health Reform 2021).

obligations. The recognition in s.84 of the Heads of Bill that a person aged 16 or older is assumed to have the necessary maturity and capacity to make decisions affecting their care and treatment is a significant development that should bring the relevant law closer to compliance with international human rights law. This improves upon the current legal position which vests parents and not the child (16 or older) with the right to consent to in-patient mental health care and treatment. The current position while arguably in line with the constitutional rights of parents has failed to give adequate recognition of the evolving capacities of the child and their ability to exercise their legal capacity.<sup>149</sup>

The definition of capacity as it relates to children under the act and the guiding principles refers to the “maturity and capacity” of the child. S.89(iv) also provides that in the case of a child who lacks the necessary maturity and capacity to consent to his or her admission, following the making of reasonable enquiries by the Health Service Executive, the parents of the child, or either of them, or a person acting in loco parentis cannot be found, the HSE can make an application to a court in the district where the child concerned resides, or is located, for an order authorising the detention of the child in an approved inpatient facility. There is concern about the lack of detail regarding the meaning of “maturity and capacity” in the amending legislation. To ensure that the legal capacity of children under the Act is respected a definition of “maturity and capacity” that aligns with the relevant international human rights law should be provided for in the legislation.

There is also a concern that the Heads of Bill are insufficient in safeguarding the decision-making of persons aged 16 and older. A clear deficit is that the ADMCA 2015 does not apply to children or young people thus creating a deficit for children's rights. This undermines the requirement to respect the evolving capacity of the child as the supported decision-making provisions in the 2015 Act do not apply. The Heads of Bill should provide for detail on the

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<sup>149</sup> Catriona Moloney, “Time for Change in the Mental Health Act 2001: The Law Must Recognise Children's Capacities to Consent to and Refuse Medical Treatment” (Medico-Legal Journal of Ireland 2017, 23(1), 8-17), at page 13.

supported decision-making provisions for 16- and 17-year-olds subject to the mental health legislation.

### **Independent Advocacy for Children under the Mental Health Act 2001**

The lack of advocacy services for children with disabilities is an issue that emerged in the qualitative part of this research (see Chapter 3). The literature also captures concern about the lack of advocacy for children with disabilities as a barrier to accessing justice.<sup>150</sup> This has been a particular concern in respect of children subject to the Mental Health Act 2001. The CRC Committee have been critical of the lack of a child-focused advocacy and information services for children who experience mental health difficulties in Ireland. In its most recent concluding observations to Ireland it recommended that consideration should be given to the creation of a dedicated mental health advocacy and information service for children, which would be accessible and child-friendly. Similarly, the Expert Review Group recognised that children and young people detained under the 2001 Act are in a particularly vulnerable situation and that it would be appropriate if they were given every support including advocacy services for both children and young people and their families / guardians.<sup>151</sup>

The Heads of Bill recognises the need for advocacy and provides a definition of an advocate in s.2 as an “individual, acting independently of the approved inpatient facility, on behalf of a person receiving treatment in an approved inpatient facility, with the expressed consent of the person concerned”. In Part 8 of the Heads of Bill s.91 provides that children admitted either on a voluntary or involuntary basis should be informed that they are entitled to engage an advocate by themselves or with their parents / person acting in *loco parentis*.<sup>152</sup> S.91(4) also provides that where the child consents, information of a general nature on the care and

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<sup>150</sup> Catriona Moloney, Clóna de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilionóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 105.

<sup>151</sup> Department of Health, "Report of the Expert Group on the Review of the Mental Health Act 2001" (Dublin: 2015), at page 72.

<sup>152</sup> See s.91(1)(f) and s.91(2)(h) of the Heads of Bill.

treatment of the child may be provided to the child's advocate, or another person nominated by the child.

While the Heads of Bill recognises that an advocate can support a child and their family it does not make provision for independent advocacy services. Both Amnesty International Ireland and the Law Reform Commission have recommended that all children and young people admitted and treated under the 2001 Act should have access to an independent advocate.<sup>153</sup> The availability of professional, independent, and adequately resourced advocacy service is seen as essential to ensure that the voice of children and young people will be heard and will move towards greater compliance with international human rights obligations set out in the CRC and the CRPD.

### **Access to Justice and Review of the Admission of Children**

This literature is concerned as to whether the District Court is the appropriate forum to make and review admission decisions in respect of children and young people. The Law Reform Commission in its work on children and consent to medical treatment considered the appropriate forum to make decisions in relation to admission, concluding that a less formal venue than the District Court would with an age-appropriate focus would be more fitting.<sup>154</sup> As such it recommended that the District Court make the initial decision on admission of children and young people as involuntary for the purposes of the 2001 Act, but that a Mental Health Tribunal (with an age-appropriate focus) rather than the District Court should review admission. This approach would be more effective in ensuring the child had sufficient the opportunity to express their views and give them due weight in accordance with their age and maturity. However, the Expert Review Group when considering the issue of circumstances where a 16 or 17 year objected to admission, recommended that the case be referred to a

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<sup>153</sup> Amnesty International Ireland, "Mental Health Act 2001: A Review" (Dublin: Amnesty International, 2011), at page 181 and Law Reform Commission, "Consultation Paper: Children and the Law: Medical Treatment" (Dublin: LRC CP59, 2009), at recommendation 7.15.

<sup>154</sup> Law Reform Commission, "Report: Children and the Law: Medical Treatment" (Dublin: LRC-103, 2011), at pages 136-137.



District Family Law Court, which would determine whether the child has the necessary maturity or capacity to make an informed decision. It recommended that where the Court determines that the child has the necessary maturity and capacity, the admission may only proceed on an involuntary basis by order of the Court. Where the Court determines that the child does not have the necessary maturity and capacity then voluntary admission may proceed with the consent of the parents or person as required acting in *loco parentis*. The Heads of Bill have opted for this approach as recommended by the Expert Review Group in 2015.

The General Comment of the CRC Committee provides useful guidance on the environment for any judicial or administrative proceedings affecting the child or young person.<sup>155</sup> The Committee highlighted that for a child to be effectively heard, the environment must not be intimidating or age-inappropriate.<sup>156</sup> They stressed the need for accessible proceedings, child-friendly information, support for self-advocacy, and well-trained staff. The Law Reform Commission's approach is more aligned with Ireland's international human rights obligations.

## **Review of Detention of Children**

Concerns have been raised about the proposed changes in the Heads of Bill regarding the involuntary admission and detention of children for mental health treatment.<sup>157</sup> It has been suggested that extending the maximum detention period from 21 days to three months may not comply with international human rights standards, specifically Article 37(b) of the CRC, which mandates that child detention be a last resort and for the shortest possible time.<sup>158</sup> Furthermore, the current proposals lack robust mechanisms for reviewing detentions, falling

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<sup>155</sup> CRC Committee, "General Comment No.12: The right of the child to be heard" (Geneva: CRC/C/GC/12, 20<sup>th</sup> July 2009), at para. 34.

<sup>156</sup> *Ibid.*

<sup>157</sup> See Charles O'Mahony and Fiona Morrissey, 'A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001' (Mental Health Reform 2021).

<sup>158</sup> *Ibid.*

short of the safeguards available to adults and potentially violating Article 37(d) of the CRC, which emphasises the right of detained children to challenge their detention promptly.

## Eligibility of Disabled People for Jury Service

The eligibility of disabled people in Ireland to serve on juries has been a contentious issue in Ireland over recent years. The exclusion of disabled people from jury service raises important rights issues, as can be seen from the jurisprudence of the CRPD Committee. In 2016 the CRPD Committee, acting under Article 5 of the Optional Protocol, determined in a case against Australia. It found that Australia has failed to fulfil its obligations under the CRPD through the exclusion of Deaf people from jury service.<sup>159</sup>

In the case of *De Burca and Anderson v Attorney General*<sup>160</sup>, Henchy J. emphasised the importance of having juries that represent the broader community, stating that the jury pool should reflect the diversity of the community to ensure fair and widely acceptable verdicts.<sup>161</sup> However, the Jury Act of 1976, Schedule 1 Part 1, included a section titled "incapable persons," which excluded people who were unfit to serve on a jury due to factors such as "insufficient reading capacity", "deafness", or other "permanent infirmities". This provision was challenged in 2006 by Joan Clarke, a member of the Deaf community who was excluded from jury service. In 2010, the High Court, O'Keffee J in a reserved judgment ruled that there was no blanket ban on Deaf people serving on juries. It appeared that the judge ruled against

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<sup>159</sup> See *Beasley v Australia* Committee on the Rights of Persons with Disabilities, CRPD/C/15/11/2013, (2016) and *Lockrey v Australia* Committee on the Rights of Persons with Disabilities, CRPD/C/15/D/13/2013, (2016). Specifically, the Committee determined that the exclusion was in breach of Articles 5 (1) and (3) (Equality and non-discrimination), 9 (1) (Accessibility), 13 (1)(Access to justice) read alone and in conjunction with articles 3 (General principles), 5 (1) and 29 (b) (Participation in political and public life), and 21 (b) (Freedom of expression and opinion, and access to information) read alone and in conjunction with articles 2 (Definitions), 4 (General obligations) and 5 (1) and (3) of the Convention.

<sup>160</sup> [1976] IR 38, at 57.

<sup>161</sup> He also acknowledged that the specific criteria for this broad representation should be determined by the legislature, with the aim of forming competent, impartial, and representative juries.

allowing sign language interpreters during juror deliberations.<sup>162</sup> In September 2020, Patricia Heffernan became the first Deaf person to participate in jury deliberations after a criminal trial in the Criminal Courts of Justice in Dublin.

There was amendment to the 1976 Act in 2008 but this did not substantially address the discrimination that litigated by Joan Clarke.<sup>163</sup> The Assisted Decision-Making (Capacity) (Amendment) Act 2022 has now amended the Juries Act 1976 and clarified the position. The 2022 Act explicitly states, "(2) A person who is deaf shall not be ineligible for jury service by reason only of his or her requiring the services of a sign language interpreter for the purpose of enabling him or her to perform the duties of a juror effectively". This amendment provided much-needed clarity regarding the eligibility of Deaf people for jury service in Ireland. However, another amendment under the heading "Other persons" in Part I of the First Schedule of the 1976 Act substituted the text that excluded people with "mental illness or mental disability" with the following text: "[a] person who does not, in the opinion of the court, have sufficient mental or intellectual capacity to serve as a juror." While the language is less offensive, it essentially maintains the exclusion of people perceived to have a mental or intellectual disability from serving on juries, without a requirement to assess appropriate accommodations to support their participation.

The recent amendment has clarified the eligibility of people who use sign language for jury service. However, a thorough review of the Irish statute book is necessary to ensure that disabled people have equal opportunities to participate in jury service, aligning with Article 13 of the CRPD.

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<sup>162</sup> Nevertheless, there were attempts to include Deaf persons on juries following this judgment, Damien Owens and Senan Dunne being summoned for jury service in 2010. However, they were not selected for jury service. Subsequently in December 2017 Judge Sinéad Ní Chúlacháin included the first Deaf juror in an Irish trial, although the trial did not proceed to verdict as the accused pleaded guilty.

<sup>163</sup> Section 64 of the Civil Law (Miscellaneous Provisions) Act 2008 amended the First Schedule of the Juries Act of 1976 in light of criticism of the exclusion of Deaf persons from jury service. However, this amendment did not substantially address the discriminatory nature of the Act.

## Relevant Criminal Legislation and Regulations

Several pieces of criminal justice legislation, though not explicitly focused on disabled people, contain provisions relevant to access to justice issues. The Criminal Law (Sexual Offences) Act 2017 includes provisions related to disability. Under Part 3 of this Act, additional protections are provided for people considered to have mental or intellectual disabilities. However, limited research has explored the discourse on sexuality and disability in Ireland, with a particular focus on issues of protection and the denial of sexual exploration and enjoyment for disabled people. A report from the Irish Family Planning Association explored this area, aiming to promote sexual identity and access to sexual and reproductive health services for disabled people.<sup>164</sup> The report emphasised the multifaceted nature of sexuality, influenced by different factors, and highlighted the evolving understanding of disability, shifting from the medical model to a social model. A significant concern raised in the report relates to Section 5 of the Criminal Law (Sexual Offences) Act 1993, which was amended by the 2017 Act. Section 5 of the 1993 Act was criticised by disabled people for criminalising consensual sexual relationships. However, the extent to which the 2017 amendment addresses these concerns and its impact has not been thoroughly explored in existing literature.

The literature on hate crime and the experiences of disabled people is underexplored in Ireland. However, the international literature has increasingly recognised disability hate crime and violence experienced by disabled people.<sup>165</sup> It has been suggested that disability-related hate crimes are on the rise and the concept of "mate crime" has emerged where disabled people are befriended and exploited. The literature notes the complex nature of disability hate crimes and access to justice issues such as barriers in reporting crimes, and poor police

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<sup>164</sup> Irish Family Planning Association. (2007). Disability and Sexuality Briefing Report.

<sup>165</sup> Alan Roulstone, Hannah Mason-Bish, eds, *Disability, Hate Crime and Violence* (Routledge, 2012).

practices and healthcare responses.<sup>166</sup> Some researchers have identified the underrepresentation of disability-related hate crimes in criminological scholarship, which tends to focus on racist or homophobic crimes.<sup>167</sup> It highlights the need for a comprehensive analysis of disability hate crime, considering its intersectionality with other identities.<sup>168</sup> The General Scheme of the Criminal Justice (Hate Crime) Bill received Cabinet approval and was made public in April 2021. Subsequently, the Bill underwent pre-legislative scrutiny by the Oireachtas Joint Committee on Justice in November 2021, with the Committee's report being published in April 2022. Despite the limited research on disability-related hate crimes and the lack of available data, it is significant to highlight that the proposed legislation is committed to incorporating disability as a protected characteristic.

Section 6 of the Criminal Procedure Act of 2021 introduced a provision on preliminary trial hearings, specifically when they are deemed advantageous for the swift and effective management of legal proceedings. The National Disability Authority noted that in jurisdictions with a well-established intermediary system preliminary trial hearings processes have been effective in facilitating access to justice.<sup>169</sup> In such cases, preliminary trial hearings assume an important role in facilitating effective communication to advise the presiding judge and other legal professionals of the needs and accommodations required by the defendant. There is a lack of research that has systematically evaluated the impact of this provision on the overall experience of disabled people since it was introduced.

The Domestic Violence Act of 2018, is considered to be a significant development. The 2018 Act replaced both the Domestic Violence Act of 1996 and the Domestic Violence (Amendment) Act of 2002, effectively consolidating and modernising the legal framework

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<sup>166</sup> Ibid.

<sup>167</sup> Stephen J. Macdonald, Catherine Donovan and John Clayton, 'I may be left with no choice but to end my torment': disability and intersectionalities of hate crime [2023] 38(1) Disability and Society 127,

<sup>168</sup> Ibid.

<sup>169</sup> National Disability Authority, "Overview of UNCPRD Article 13 in Ireland: Access to Justice" (October 2022).

governing domestic violence in Ireland.<sup>170</sup> The legislation enhances safeguards and support systems available to victims but also introduces provisions that address evolving societal concerns. It recognises coercive control as an offense, acknowledging the subtle yet menacing forms of abuse that victims may experience. Furthermore, the 2018 Act recognises forced marriage as an offense, aligning Ireland's legal framework with international human standards.

The 2018 Act allows victims to provide their testimony via video link in select cases, recognising the potential challenges they may face in a traditional courtroom setting. Additionally, victims have the right to be accompanied in court by a chosen person, which may include a support worker. This provision acknowledges the importance of emotional and practical support for victims, including disabled people, during the legal proceedings. The National Disability Authority has identified various concerns with the 2018 Act from an access to justice perspective.<sup>171</sup>

The primary focus of the 2018 Act is on addressing violence perpetrated by intimate partners, and it provides only limited legal protections for people who may be experiencing abuse or coercive control from extended family members or friends. Specifically, the Act confines the application of safety orders to situations involving a spouse or civil partner, a parent, or someone cohabiting with the victim. Non-dependent children of the victims, siblings, extended family members, and non-family persons are not eligible for safety orders unless they share a residence with the victim. Additionally, people residing with the victim under a contractual arrangement are exempt from being subject to a safety order. The limitations of the Domestic Violence Act of 2018, could be potentially offset by Part 4 of the Criminal Justice (Miscellaneous Provisions) Act 2023, which introduces the offense of stalking, and revises

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<sup>170</sup> See National Disability Authority, "Overview of UNCPRD Article 16 in Ireland: Freedom from Exploitation, Violence and Abuse" (April 2022).

<sup>171</sup> National Disability Authority, "Overview of UNCPRD Article 13 in Ireland: Access to Justice" (October 2022).

harassment laws. Part 5 of the 2023 Act contains provisions concerning restraining orders. The 2023 Act includes emergency restraining orders, lasting eight days and obtainable through *ex parte* applications, for situations involving an immediate threat to the applicant's safety and well-being.<sup>172</sup> Significantly these provisions offer protection to people who have not been involved in intimate relationships with the alleged perpetrators. However, as these provisions have only recently been enacted there is no literature exploring their use generally or specifically by applicants with disabilities.

The Custody Regulations address the provision of support for people who are considered vulnerable due to their age, either being under 18 or over 18 and having suspected mental disabilities.<sup>173</sup> This assistance is offered by another person, referred to in various terms within the Custody Regulations, such as “adult”, “responsible adult”, or “appropriate adult”. The term “appropriate adult” is specifically mentioned in two sections of the Custody Regulations. Regulation 12(8) mandates obtaining written consent from an “appropriate adult” before interviewing a Deaf person under the age of 18 without an interpreter. Additionally, Regulation 22 extends the applicability of the regulations designed for children to persons of any age who are either confirmed or suspected to be “mentally handicapped”. This regulation further specifies that the responsible adult mentioned in Regulation 13 should ideally possess experience in dealing with individuals with mental disabilities. The National Disability Authority have highlighted that these provisions within the Custody Regulations, which group children and disabled people together, do not align with the CRPD.<sup>174</sup> As discussed above Article 13 of the CRPD explicitly emphasises the need for “age-appropriate” accommodations to ensure equal access to justice. The National Disability Authority also

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<sup>172</sup> *Ex parte* applications are a type of legal proceeding where a request is made to the court by one party without the other party being present to oppose the application.

<sup>173</sup> Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, S.I. No. 119/1987.

<sup>174</sup> National Disability Authority, "Overview of UNCRPD Article 13 in Ireland: Access to Justice" (October 2022).

<sup>174</sup> *Ibid.*

criticised that this legislation uses outdated terminology, specifically the phrase “mentally handicapped”.<sup>175</sup>

## **Irish Sign Language and Access to Justice**

The Irish Sign Language Act 2017, commonly known as the ISL Act, is a piece of legislation that officially recognises Irish Sign Language's status and outlines the obligations of public institutions throughout Ireland in providing ISL interpretation services.<sup>176</sup> This law not only reaffirms ISL as an official language but also firmly upholds the rights of the ISL community to use, protect, and promote their language. Under this act, public bodies are mandated to take reasonable measures to ensure that persons lacking proficiency in English or Irish, especially when accessing statutory entitlements or services, receive free ISL interpretation.

Furthermore, the legislation guarantees the use of ISL within the justice system. It places a corresponding responsibility on the courts to ensure equitable access for persons who cannot understand English or Irish, thereby facilitating effective communication in ISL without any disadvantages. To achieve this, the Act requires all public bodies and courts to engage ISL interpreters accredited through the Register of Irish Sign Language Interpreters scheme. The ISL Act also imposes specific duties on the Minister for Education, such as establishing programmes aimed at providing ISL classes to parents, siblings, grandparents, and guardians of Deaf children. It mandates the initiation of ISL support initiatives for students in recognised schools where ISL is the primary language. Additionally, the Act seeks to create opportunities for higher education, offering ISL training for teachers working with Deaf students in recognised schools, while also setting minimum qualifications for teachers.

Section 4 of the Act provides a right to use Irish Sign Language in court proceedings. It obliges every court to take all reasonable steps to ensure that anyone appearing in court or giving evidence may choose to communicate in Irish Sign Language. The court is responsible for

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<sup>175</sup> Ibid.

<sup>176</sup> See National Disability Authority, 'Report on the Operation of the Irish Sign Language Act 2017' (December 2021).



providing the necessary facilities for the simultaneous or consecutive interpretation of proceedings into Irish Sign Language. Although there is limited literature exploring the impact of this legislation on facilitating greater access to justice for members of the Deaf community, Chapter 3 of the research highlights numerous barriers identified by participants that continue to impede access to justice.

## **Prisoners with Disabilities**

The literature on the imprisonment of disabled people in Ireland is limited. The absence of literature exploring this topic is noteworthy, especially when considering the evidence highlighting the significant overrepresentation of people with serious mental health problems within Ireland's prison population.<sup>177</sup> A number of international and regional human rights instruments relate to prisoners, including those with disabilities. These encompass the European Convention on Human Rights (ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Additionally, the Council of Europe's prison rules and the national Prison Rules 2007-2020 are also significant.

The Irish Penal Reform Trust commissioned research on the rights and lived experiences of disabled people within Irish prisons in 2020, which sought to address the gap in research.<sup>178</sup> The research involved 31 semi-structured interviews across diverse stakeholder groups, including prisoners with different disabilities, representatives of disability advocacy organisations, prison officers, civil servants, public officials within the justice and prison system, and prison reform advocates. The main findings of the Report highlighted that

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<sup>177</sup> Dearbhla Duffy et al, "Psychiatric Morbidity in the Male Sentenced Irish Prison Population" (Irish Journal of Psychological Medicine, 2006) 23(2) 54, Conor O'Neill et al, "Prison Inreach and Court Liaison Services in Ireland" (National Disability Authority, 2007), and Sally Linehan et al, "Psychiatric Morbidity in a Cross-Sectional Sample of Male Remanded Prisoners" (Irish Journal of Psychological Medicine, 2005) 22(4) 128.

<sup>178</sup> Irish Penal Reform Trust, 'Making Rights Real for People with Disabilities in Prison' (2020).

prisoners with disabilities encountered significant difficulties in navigating prison environments, which posed physical and sensory accessibility challenges, especially in overcrowded cells. Inaccessible prison layouts sometimes led to prisoners being effectively confined to their cells, exacerbating isolation.<sup>179</sup> Some prisoners reported being denied specific accessibility aids, like white canes for visually impaired people, while Deaf prisoners had extremely limited access to sign language interpretation, hindering communication with both prison staff and fellow prisoners.<sup>180</sup> Inadequate provision of accessible information formats (e.g., easy-to-read, plain language, audio, large print, braille) within prisons created difficulties for prisoners in understanding their rights, navigating prison routines, and accessing essential services, including healthcare and education. Many prisoners lacked awareness of their disability-related rights, such as reasonable accommodation under equality legislation. Inaccessibility of education and employment programs within prisons further hindered their participation.

Several prisoners refrained from lodging complaints due to concerns about potential repercussions from staff or fellow inmates, including complaints of disability discrimination. Stakeholders and prisoners expressed concerns about the right to health for incarcerated disabled people, citing issues related to medication management, access to ancillary medical treatments (e.g., physiotherapy), mental health care, forced treatment, and transfers to forensic psychiatric facilities. Informal peer support among prisoners and occasionally positive relationships with prison staff provided some support, but instances of bullying and inappropriate staff behaviour were reported.<sup>181</sup> Privacy concerns were also raised regarding the unauthorised disclosure of disabilities to prison staff and the reliance on other prisoners for support due to the lack of professional assistance. The incentivised regime within Irish prisons was criticised for punishing disability-related behaviours, restricting access to rewards, and lacking accessibility. Transitioning out of prison also posed challenges, with limited support for reintegration.

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<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

The report made recommendations to address these barriers, including embedding the principle of imprisonment as a last resort in legislation, implementing the Public Sector Equality and Human Rights Duty, providing accessible information, conducting human rights-based disability assessments, and delivering disability training to prison staff.<sup>182</sup> Further recommendations included ensuring non-discrimination and equal access, prohibiting solitary confinement, offering non-medical supports, maintaining continuity of care between community and prison, and facilitating non-psychiatric responses for mental health issues. The Report also recommended planning for the implementation of the Assisted Decision-Making (Capacity) Act 2015, and enhancing the accessibility of the complaints system while safeguarding privacy.<sup>183</sup> The Report also highlighted the need for continued research, especially regarding pre-prison and post-release experiences of disabled people and their specific circumstances in other settings like youth detention campuses and forensic psychiatric facilities.

## **Public Sector Duty and Action Plans**

In Ireland, the Public Sector Equality and Human Rights Duty (Public Sector Duty), set out in Section 42 of the Irish Human Rights and Equality Act 2014, places a significant legal obligation on public bodies. This obligation requires them to actively promote fairness, prevent discrimination, and safeguard the human rights of employees, clients, service recipients, and all other persons impacted by their policies. While these obligations are clear, the extent to which public bodies are addressing the needs of disabled people in their strategic plans is of concern. Analysis of the strategic plans and public sector duty action of key stakeholders in the justice system from the perspective of the access to justice of disabled people is underexplored in the literature.

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<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

A review of the strategic plans of the key public bodies within the justice system reveals an absence of specific provisions addressing access to justice for disabled people. For instance, the Court Service's 2021-2022 action plan contains minimal references to disability, primarily focusing on raising awareness and understanding within the workplace.<sup>184</sup> Similarly, the Legal Aid Board's strategic plan for 2021-2023 lacks any mention of disabled people or the barriers they encounter in accessing justice.<sup>185</sup> The Garda Síochána's human rights strategy for 2022-2024, while recognising the importance of training, does not commit to training related to disability.<sup>186</sup> Moreover, the Garda Síochána Inspectorate's strategy for the same period makes no reference to disability.<sup>187</sup> Similarly, the Office of the Director of Public Prosecutions' Strategy Statement for 2022-2024 does not mention disabled people.<sup>188</sup> The Irish Prison Service, while acknowledging the need to develop collaboration with health services in respect of prisoners with mental health needs, does not detail measures in respect of prisoners with disabilities in its strategic plan.<sup>189</sup> Similarly, the Probation Service's Public Sector Duty Action Plan for 2022-23 does not explicitly address the needs of disabled people.<sup>190</sup>

The strategic plans of key stakeholders in Ireland's justice system are deficient in their consideration of disabled people and the associated challenges in accessing justice. While there is acknowledgment of the need to promote diversity and respect for human rights in various plans, there is an evident gap in addressing the specific requirements of disabled people. To fulfil their legal obligations and promote a more inclusive and accessible justice

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<sup>184</sup> Court Service, Public Sector Duty Action Plan 2021-2022 (2021).

<sup>185</sup> Legal Aid Board, Statement of Strategy 2021-2023 (2021).

<sup>186</sup> An Garda Síochána, 'An Garda Síochána Human Rights Strategy 2022 – 2024' (An Garda Síochána 2022).

<sup>187</sup> Garda Síochána Inspectorate, 'Garda Síochána Inspectorate Statement of Strategy 2022-2024' (Garda Síochána Inspectorate, 2022).

<sup>188</sup> Office of the Director of Public Prosecutions, 'Strategy Statement 2022 - 2024' (Office of the Director of Public Prosecutions 2022).

<sup>189</sup> Irish Prison Service, *Strategic Plan 2019 – 2022* (Irish Prison Service 2019).

<sup>190</sup> Probation Service, 'Public Sector Duty Action Plan 2022-23' (Probation Service 2022).

system, it is evident that public bodies need to prioritise measures to facilitate access to justice for disabled people in future strategic planning efforts.

## **Training of Personnel in the Administration of Justice in Ireland**

The Committee on the Rights of Persons with Disabilities made it clear in General Comment No 7 that State Parties should enhance the ability of disability organisations to engage actively in all stages of policy formation.<sup>191</sup> The Committee noted that this can be achieved by providing capacity-building and training centered on the human rights model of disability, including the allocation of independent funding.<sup>192</sup> Moreover, States should assist disabled people and their representative organisations in cultivating the competencies, knowledge, and skills necessary to advocate autonomously for their complete and meaningful integration into society. This entails fostering a deeper understanding of democratic governance principles such as upholding human rights, adhering to the rule of law, promoting transparency, ensuring accountability, encouraging diversity, and fostering participation.<sup>193</sup> It is not clear from the literature that this has been achieved in Ireland. In fact, it has been difficult to build a complete and detailed overview of the training provided to the range of stakeholders involved in the administration of justice in Ireland. When conducting interviews with key stakeholders and public bodies working within the justice system, conflicting, and incomplete information was provided as to the training delivered on equality, human rights, and disability awareness and disability rights. There is evidence that training is developing within public bodies involved in the administration of justice. For example in 2020, An Garda

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<sup>191</sup> “General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention” Committee on the Rights of Persons with Disabilities, CRPD/C/GC/7, 9 November 2018, at page 15.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

Síochána collaborated with the University of Limerick to create a specialised Certificate in Policing and Human Rights Law in Ireland.<sup>194</sup>

It is not clear from the literature the extent to which human rights law and disability law and policy is embedded in professional legal education. For example, the Law Society's (sole education provider in Ireland to qualify as a solicitor) in its brochure for May-June/July 2023 Professional Practice Course disability is listed as a potential advanced elective.<sup>195</sup> It is not clear if this module ran or whether there is any other disability content delivered as part of the professional practice courses run by the Law Society of Ireland. In 2021, the Courts Service, in collaboration with the Irish Prison Service and the Dublin Coroners Court, secured €25,000 in funding from the Public Service Innovation Fund for the JAM (Just a Minute) Card project.<sup>196</sup>

## Judicial Training

In Ireland, the requirement for judicial education and training was established in 1995. According to section 19 of the Courts and Court Officers Act 1995, judges appointed through the Judicial Appointments Advisory Board process are obligated to undergo any training mandated by the relevant Court President. Subsequently, the enactment of the Judicial Council Act in 2019 imposed a duty on the Council to provide judicial training, further strengthening the requirement for training for the judiciary. Section 7 of the 2019 Act specifies that one of the functions of the Council is to oversee the continuing education of members of the judiciary. The Judicial Studies Committee was established under section 17 of the 2019

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<sup>194</sup> For a discussion on this see National Disability Authority, "Overview of UNCRPD Article 13 in Ireland: Access to Justice" (October 2022), at pages 28.29. This 8-week programme, accredited at Level 8 on the National Framework of Qualifications, features lectures delivered by both University of Limerick's School of Law staff and senior personnel from An Garda Síochána. The primary goal of the course is to provide participants with an understanding of the European Convention on Human Rights, particularly in the context of policing in Ireland. It also covers relevant Irish case law and jurisprudence across various areas, such as human rights, equality, stop and search procedures, arrest and detention, surveillance, privacy, evidence gathering, use of force, victims' rights, and the treatment of vulnerable witnesses and suspects.

<sup>195</sup> Law Society, 'Professional Practice Course 2022: Bespoke Training for Future Legal Leaders' (Law Society 2022).

<sup>196</sup> This initiative aims to assist people with learning difficulties, autism, or communication barriers by providing them with a discreet and straightforward way to communicate their need for a brief pause or assistance.

Act, with the purpose of facilitating ongoing education and training for judges in relation to their judicial responsibilities. The Judicial Studies Committee is responsible for delivering judicial education and training programmes as directed by the Judicial Council. These training programmes offered by the Judicial Studies Committee encompass a range of topics, including Judicial Conduct and Ethics, Avoiding Re-traumatisation, Addressing Unconscious Bias, and dealing with Vulnerable Witnesses. Additionally, they cover areas such as Induction, Mentoring, the new Assisted Decision-Making legislation, and the Training of Judicial Trainers.

The Judicial Studies Committee Work Plan was published in May 2023.<sup>197</sup> This plan marks the start of the next stage of the development of judicial training in Ireland. The Committee commenced its statutory tasks as the Covid Pandemic began. It drafted up protocols to appoint a judge as Director of Judicial Studies, which concluded with the appointment, after a competitive process, of Ms. Justice Mary Rose Gearty. Induction training, mentoring, training judicial trainers and developing and delivering essential courses such as ethics were the primary focus of the Committee and the Director. The Judicial Studies Committee Work Plan 2023-2026 does not specifically mention training in the area of disability, however since mid-2020 a wide range of education and training programmes have been developed and delivered.<sup>198</sup> Clearly the training on the Assisted Decision-Making and Capacity legislation and on unconscious bias, and vulnerable witnesses relates to training on disability.

The Bangalore Principles of Judicial Conduct identify six core values for the judiciary, including Independence, Impartiality, Integrity, Propriety, Equality, Competence, and Diligence. These principles set ethical standards for judges and serve as guidance in their judicial roles. They also offer a framework for regulating judicial conduct and promoting understanding of the judiciary's role among various stakeholders, including the public. Value 5 of the Bangalore Principles emphasises equality and requires judges to be aware of and

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<sup>197</sup> See The Judicial Council, Judicial Studies Committee Work Plan 2023-2026 (9 May 2023).

<sup>198</sup> According to the Council by the end of 2022, approximately 87% of Irish judges across all jurisdictions had engaged in at least one programme.

understand diversity in society, including differences related to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status, and similar factors.

The Judicial Studies Committee Work Plan for 2023-2026, published in May 2023, marks a significant step in the development of judicial training in Ireland. While the plan does not explicitly mention disability training, it's reported that since mid-2020, various education and training programs have been developed and delivered, covering topics such as Judicial Conduct and Ethics, Avoiding Re-traumatisation, Unconscious Bias, Vulnerable Witnesses, Induction, Mentoring, Assisted Decision-Making, Personal Insolvency, Coercive Control, and Training of Judicial Trainers. Approximately 87% of Irish judges across all jurisdictions engaged in at least one of these programs by the end of 2022.

A recent ICCL Report assessed the implementation of the Judicial Council Act 2019 in Ireland, noting that while Ireland is known for having an independent judiciary, it has not fully met international standards in terms of judicial education, training, and conduct.<sup>199</sup> The report highlighted the importance of following best practices in training, addressing bias and prejudice, considering emotional well-being in the courtroom, and allocating adequate judicial resources for training. Specific recommendations were made for committees and government actions to improve the judicial conduct and education framework in Ireland. However, there is limited information available on the extent of disability awareness training within the judiciary. While there has been a growing body of literature on judicial training in Ireland, much of the research has focused on the new capacity legislation (2015 Act) and has not substantially considered access to justice for disabled people.<sup>200</sup>

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<sup>199</sup> Laura Cahillane, Rónán Kennedy, Saoirse Enright, and Doireann Ansbro, 'Towards Best Practice: A Report on the New Judicial Council in Ireland' (Irish Council of Civil Liberties, 2022).

<sup>200</sup> See Laura Cahillane and David Kenny, 'Lessons from Ireland's 2020 Judicial Conduct Controversy' (2022) CLWR 3, 21, Laura Cahillane, Rónán Kennedy, Saoirse Enright, and Doireann Ansbro, 'Towards Best Practice: A Report on the New Judicial Council in Ireland' (Irish Council of Civil Liberties, 2022).



## Judicial Training, Children and Young People

As discussed above the lack of information in the public domain on training of judges means has been the subject of criticism in the literature. It has been indicated that the problem of insufficient training for judges might result in the inability of judges to handle or give due consideration to the various aspects of a child's life, such as disability and/or mental health problems.<sup>201</sup> Moloney suggests that the lack of training is a major obstacle that needs to be addressed.<sup>202</sup> With others suggested a greater need for the requirements of each child to be evaluated individually, with tailored assessments based on the unique context of each case.<sup>203</sup>

The Criminal Evidence Act 1992, as amended by the Criminal Justice (Victims of Crime) Act 2017, incorporates special measures to support witnesses considered to be vulnerable, including children and those with “mental handicap”, when giving evidence in court. These measures encompass the use of intermediaries during court proceedings, the removal of wigs and gowns, and the utilisation of video links for testimony. The "Victims Charter and Guide to the Criminal Justice System" issued by the Department of Justice and Law Reform underscores the importance of the Gardaí considering the "special needs or requirements" of disabled people, aligning with section 55 of the Children Act 2001, which requires the Gardaí to treat children with respect, dignity, and consideration of any special needs they may have.

<sup>204</sup> Despite these legal provisions, there is a noticeable lack of research focusing on the

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<sup>201</sup> See Claire Edwards, Gillian Harold, and Shane Kilcommins, ‘Access to Justice for People with Disabilities as Victims of Crime in Ireland’ (Cork: School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law, University College Cork, February 2012).

<sup>202</sup> Catriona Moloney, Clóna de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 107.

<sup>203</sup> See John O’ Connor, ‘Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System’ (2019) 3 Irish Judicial Studies Journal 19 – 39.

<sup>204</sup> Department of Justice and Law Reform, *Victims Charter and guide to the criminal justice system* (2010) at page 17.

support provided to child witnesses and victims with cognitive disabilities within Ireland's criminal justice system.<sup>205</sup> However, reports from the media suggest that criminal cases involving children with disabilities are seldom brought to prosecution.<sup>206</sup>

## Data collection

The collection of equality data is essential for policymakers and the public to understand the extent and nature of discrimination faced by marginalised groups, supporting the development, and evaluation of anti-discrimination policies. The European Handbook on Equality Data underscores the significance of such data in assessing the state of equality across EU Member States.<sup>207</sup> These gaps result from the lack of standardised methodologies and the varied approaches of Member States, some of which avoid data collection altogether. This inconsistency obstructs the effective monitoring of anti-discrimination laws and policies.

Particularly for disabled people in Ireland, comprehensive equality data is crucial for understanding access to justice. The CRPD, specifically Article 31, emphasises the need for data. It requires States Parties to collect necessary information, including statistical and research data, to craft policies supporting the convention's goals. This data collection must adhere to data protection laws, respect the privacy and confidentiality of disabled people, and align with international human rights standards. Moreover, the data collected should be detailed and utilised to assess the effectiveness of the CRPD's implementation and to pinpoint challenges faced by disabled people in exercising their rights. It is also important that States Parties ensure that this data is distributed and made accessible to disabled people and the broader public. This transparency is key to facilitating an informed and

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<sup>205</sup> Catriona Moloney, Clóna de Bhailís, Danielle Kennan, Carmen Kealy, Shivaun Quinlivan, Eilíonóir Flynn and Jacqueline Phiri, "Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland" (Centre for Disability Law and Policy, NUI Galway, 2021), at page 105-106.

<sup>206</sup> *Ibid.*

<sup>207</sup> European Commission, *European Handbook on Equality Data, 2016 Revision* (Directorate-General for Justice and Consumers, Directorate D – Equality, Unit JUST/D1, Brussels 2016). Despite a robust EU legal framework promoting equality, which all EU Member States have adopted into national laws, often exceeding the standards of directives like the Racial Equality and Employment Equality Directives, the EU has identified significant gaps in equality data.

inclusive dialogue on the rights of disabled people and the barriers they face, particularly in accessing justice. This kind of data-driven approach is crucial for identifying and removing the systemic barriers that impede the full participation of disabled people in society.

The literature review underscores the significant lack of comprehensive data concerning disabled people in the Irish justice system (adults and children), whether they are parties to legal proceedings, victims, witnesses, or involved in family law cases. This data gap poses a substantial challenge to achieving effective access to justice. To address this issue, prioritising the collection and analysis of relevant data is important, as required by the “International Principles and Guidelines on Access to Justice for Persons with Disabilities” and Article 31 of the CRPD.<sup>208</sup> Principle 9 emphasises the importance of robust monitoring mechanisms for supporting access to justice for disabled people. This principle obliges States to empower independent monitoring bodies to gather and publicly report data on human rights violations, including barriers to accessing justice. Furthermore, in line with Principle 7, which affirms that disabled people have the right to participate in the administration of justice on an equal footing with others. This requires governments, legislatures, and relevant authorities, including judicial councils and legal professional bodies, to take specific actions, which include data collection. This specifically involves collecting disaggregated data on the involvement of disabled people in the justice system and utilising this data to formulate and implement strategies for reforming policies, practices, and laws, ensuring equitable access to justice.

In 2022 Minister Roderic O’Gorman announced the National Equality Data Strategy, which aims to improve the collection and use of equality data.<sup>209</sup> This strategy is to be developed by the Central Statistics Office and the Department of Children, Equality, Disability, Integration, and Youth. It will seek to identify data gaps and standardise data practices, which will

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<sup>208</sup> United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

<sup>209</sup> Department of Children, Equality, Disability, Integration and Youth, 'Minister O’Gorman Announces the Development of a National Equality Data Strategy' (21 March 2022) <https://www.gov.ie/en/press-release/5a7f4-minister-ogorman-announces-the-development-of-a-national-equality-data-strategy/>

hopefully go some way to addressing the gaps in data on access to justice for disabled people.

## Intersectionality and Access to Justice

Disability is often omitted from research exploring intersectionality, which tends to concentrate on race and gender, and only sometimes broaden to include additional identities such as disability.<sup>210</sup> Furthermore, it has been recognised that significant gaps exist within the international literature on intersectionality as it relates to access to justice for disabled people.<sup>211</sup> The Committee on the Rights of Persons with Disabilities in its General Comment on Equality and Non-discrimination (Article 5) noted that the expansion of anti-discrimination laws and human rights frameworks has improved protections for disabled people in many countries.<sup>212</sup> However, these laws and policies are frequently flawed, either being incomplete, ineffective, or based on a limited understanding of the human rights model of disability. The Committee also noted that national legislation typically overlooks multiple and intersectional forms of discrimination, including discrimination by association, and fail to recognise the denial of reasonable accommodations as a form of discrimination.<sup>213</sup>

The Committee further noted that discrimination may stem from a single attribute like disability or gender, or it can arise from multiple and intersecting characteristics.<sup>214</sup> Therefore, intersectional discrimination involves the compounded effects of various biases, disability, combined with, colour, sex, language, religion, ethnic, gender or other status etc. This form of

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<sup>210</sup> See Mary Wickenden, 'Disability and Other Identities? - How Do They Intersect?' (2023) 4 Front Rehabil.

<sup>211</sup> See Eilionóir Flynn, Catriona Moloney, Janos Fiala-Butora, and Irene Vicente Echevarria, *Final Report: Access to Justice of Persons with Disabilities* (Centre for Disability Law and Policy, December 2019) and Kseniya Kirichenko and Agnieszka Król, 'Intersectionality and the CRPD: An Analysis of the CRPD Committee's Discourse and Civil Society Advocacy at the Intersections of Disability and LGBTI' (2022) 17 Global Public Health 3224.

<sup>212</sup> Committee on the Rights of Persons with Disabilities, 'General Comment No 6 (2018) on Equality and Non-Discrimination' CRPD/C/GC/6 (26 April 2018), at para 3.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid, at para 19.

discrimination can manifest as direct or indirect discrimination, the denial of reasonable accommodations, or harassment.<sup>215</sup> The Committee has emphasised that State Parties to the CRPD must recognise and address these complex layers of discrimination, where multiple factors may amplify or intertwine, making them inseparable and leading to distinct disadvantages.<sup>216</sup> The Committee in General Comment No 1 acknowledged that women with disabilities can experience various forms of discrimination that intersect based on their gender and disability.<sup>217</sup> The Committee noted that disabled women often face disproportionately high instances of forced sterilisation and are frequently deprived of autonomy over their reproductive health and choices, under the presumption that they lack the capacity to consent to sex.<sup>218</sup>

The existing Irish literature on access to justice has not substantially engaged with intersectionality.<sup>219</sup> This is despite the fact that the intersectionality framework holds significant potential to enhance research in different areas on the interconnected relationships of race, class, disability, gender, and sex within Irish literature.<sup>220</sup> This gap in research highlights a critical need for developing intersectionality as a theoretical framework to better understand and address the complex realities faced by disabled people who are members of other minority groups. In this context, Professor Clements' work on "clustered injustice" becomes particularly relevant. He has developed this concept to describe the complex and interconnected legal problems faced by persons experiencing disadvantage,

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<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> See CRPD Committee "General Comment No. 1: Equal Recognition Before the Law (article 12)" (Geneva: Eleventh session, 31 March–11 April 2014), at para 35.

<sup>218</sup> Ibid.

<sup>219</sup> Claire Edwards, Gillian Harold, and Shane Kilcommins, 'Access to Justice for People with Disabilities as Victims of Crime in Ireland' (Cork: School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law, University College Cork, February 2012).

<sup>220</sup> Anna Hickey-Moody, "Just what is intersectionality – and what does it mean from an Irish perspective?" *RTE Brainstorm* (22 September 2023) <https://www.rte.ie/brainstorm/2023/0922/1406579-intersectionality-ireland-history-definition/>

including disabled people, carers, persons experiencing homelessness, people with low incomes, people affected by immigration law, and others.<sup>221</sup> He has noted that people with these identities often experience multiple and simultaneous legal issues that are interlinked and sequential, rather than isolated and single problems. The traditional approach of addressing legal issues one at a time, as if they were separate and unrelated, is not well-suited to the reality of their lives.<sup>222</sup> The concept of clustered injustice recognises that persons facing these challenges are in a constant and intrusive interaction with the legal system. He highlights that legal problems do not come in discrete packages, like a personal injury claim or a divorce, but rather as a series of interconnected issues, with another problem arising as another is resolved.<sup>223</sup> Essentially, clustered injustice reflects the idea that people who are disadvantaged face a multitude of legal challenges that are deeply interconnected and require a more holistic and systemic approach to address effectively.

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<sup>221</sup> Luke Clements, *Clustered Injustice and the Level Green* (Legal Action Group 2020).

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

## Conclusions

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The literature review highlights several key themes and significant barriers that disabled people face when accessing justice in Ireland. This chapter considered the obligations provided for by the CRPD, in particular the provisions relating to access to justice in Article 13. It not only outlines the fundamental principles and requirements enshrined in Article 13 but also examines their implications for various stakeholders within the Irish justice system. To provide a deeper understanding of Article 13, the chapter explored guidance from authoritative sources, including the Office of the High Commissioner for Human Rights, insights from the UN Special Rapporteur on Disability, and interpretations from the jurisprudence of the Committee on the Rights of Persons with Disabilities and the Committee on the Rights of the Child. There was also discussion of the Irish Constitution, and the ECHR as it relates to access to justice.

The complexity of the different sources of law was identified as a potential barrier to understanding and realising rights for disabled people. This section considered legislation recognising legal capacity and the transition from the Ward of Court system to the Assisted Decision-Making (Capacity) Act 2015, which aligns more closely with the CRPD by emphasising the will and preferences of the person. The section also discussed the mental health legislation, touching on the ongoing review of the Mental Health Act 2001 and the need for advocacy services and a dedicated complaints mechanism. It raises concerns about the disconnect between civil and criminal mental health law.

Public bodies within the Irish justice system have been found to have inadequately addressed the needs of disabled people in their strategic plans. While there are clear legal obligations to promote fairness and prevent discrimination, the literature suggests that these obligations are often not reflected in the strategic priorities of these bodies. There is limited information available regarding the extent and content of training related to disability law and policy for personnel involved in the administration of justice. While some initiatives have been developed, it remains unclear how extensively and effectively disability-related training is integrated into professional legal education. This knowledge gap indicates a potential lack of

awareness and preparedness among justice personnel to address the specific needs of disabled people.

Access to legal aid and legal representation for disabled people is essential for ensuring equal access to justice. However, the literature reveals significant shortcomings in the availability and adequacy of legal aid services for this group. Discrimination complaints under various acts may not be covered by legal aid, leaving disabled people without essential support in navigating complex legal processes. While there have been some efforts to provide training and education for justice personnel, there remains a lack of comprehensive disability-aware training. This gap can result in misconceptions about disabled people. The literature has called for comprehensive reform of the civil legal aid system, increased funding, and expanded scope to accommodate the specific support needs of disabled people. Training programmes for justice personnel should incorporate disability awareness, and resources should be allocated to bridge existing gaps.

In Ireland, while the legal framework under the Irish Constitution and various pieces of legislation aims to facilitate access to justice for children, discrepancies persist between Irish law and the UN Convention on the Rights of the Child, especially regarding the rights of disabled children to express their views. Despite provisions allowing participation in family and civil proceedings, there is limited support specifically tailored for children with disabilities, and concerns about the consistency of judicial training and decision-making in legal proceedings involving children. The Disability Act 2005 mandates accessibility in the justice system for disabled people, yet its effectiveness for children remains uncertain. Additionally, the Criminal Evidence Act 1992 supports child witnesses and victims, but implementation and research are lacking, contributing to underutilisation in family law cases and highlighting a significant data gap regarding the experiences of children with disabilities in the justice system. Further concerns arise with the proposed amendments to the Mental Health Act 2001, which, despite aiming to align with the CRC and CRPD, may retain a paternalistic approach that undermines children's rights to participate in decisions affecting them.



This chapter has identified several persistent challenges and gaps in the existing literature. One major issue is the ongoing deficiency in comprehensive data collection, despite numerous calls for improved data on the experiences of disabled people within the justice system. The crucial role of equality data in understanding and addressing discrimination against disabled people in Ireland, cannot be overstated. Comprehensive equality data not only informs policymakers but also facilitates public understanding of the barriers these groups face, particularly in accessing justice. To bridge the significant data gaps identified, it is imperative to implement robust data collection and monitoring mechanisms. This approach aligns with the “International Principles and Guidelines on Access to Justice for Persons with Disabilities” and Article 31 of the CRPD, which require detailed, accessible data to support effective policy-making and uphold the rights of disabled people. Implementation of the National Equality Data Strategy as announced in 2022 is essential. This strategy should focus on standardising data practices across Ireland and specifically target the collection of disaggregated data related to disabled people in the legal system. Furthermore, it is essential that independent monitoring bodies are empowered to collect, analyse, and publicly report this data. Such measures will ensure that the data collected serves as a foundation for identifying and removing barriers on access to justice.

The literature in Ireland, although valuable, has often taken a fragmented approach by primarily focusing on specific areas, such as victims of crime, prisoners, or children, without providing a unified and comprehensive perspective. This fragmented approach has limited the ability to grasp the overarching barriers that disabled people encounter within the justice system. This discussion in this chapter also highlights the complex interplay of policy and legislative frameworks within the Irish justice system. While anti-discrimination legislation aims to advance the rights of disabled people and recognises the multifaceted nature of disability, criminal law can often portray disability as a lens of vulnerability and incapacity. The lack of consideration of the experiences of disabled people in the criminal justice system presents additional challenges to achieving access to justice. There is a pressing need for a more comprehensive, cross-cutting approach to research and policy development in this area. Addressing the existing data and research gaps, unifying perspectives, and reconciling

inconsistencies within the legal framework are essential steps in greater compliance with Article 13 of the CRPD.

There is also a need to integrate an intersectional framework in Irish legal scholarship and policy-making. The existing laws often overlook the complex, intersecting forms of discrimination that disabled people face, particularly when combined with other marginalised identities. The lack of research exploring the multi-layered challenges faced by disabled people does not capture the range of barriers they encounter in seeking to access justice.

# Chapter 3: Findings from the Qualitative Research



## Introduction

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This chapter provides an in-depth analysis of the key themes that emerged from the qualitative interviews conducted as part of the baseline study on access to justice for disabled people. The insights shared by participants speak to the multifaceted challenges and barriers that disabled people encounter in accessing the Irish justice system (civil and criminal). To ensure clarity and analysis, the qualitative data has been coded and organised into distinct themes, each representing an important and often inter-connected aspect of the relationship between disability and access to justice. These themes not only provide valuable insights but also serve as the foundation of this baseline study, informing the understanding of the complexities and barriers faced by disabled people in seeking to access to justice in Ireland.

More than thirty distinct themes emerged during the comprehensive analysis and coding of the interviews. These themes have been organised into five overarching categories, aimed at enhancing comprehension and providing a clear overview of the diverse range of issues. The themes that emerged align with the barriers identified in Chapter 2 Literature Review. These themes are cross-cutting and multifaceted, demonstrating the complex range of barriers faced by disabled people in accessing justice. The five cross-cutting and overarching themes are as follows:

### **Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System**

This first set of cross-cutting and overarching themes begins with an examination of the understanding and availability of access to justice for disabled people. It also assesses the participant's awareness of the CRPD, and specifically Article 13. Additionally, this section discusses the significance of Ireland's failure to ratify the Optional Protocol of the CRPD, the insufficiency of training for key stakeholders within the justice system, and the lack of diversity within the legal professions and judiciary.

## **Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy**

The second set of themes discusses the prevalent issue of unmet legal need and identifies the lengthy litigation process as a significant obstacle. The invisibility of disability in the justice system is explored, alongside the challenges posed by a lack of accommodations for disabled people. The inadequacy of legal aid is identified by participants as a major hurdle, undermining access to justice for many. Finally, the need for enhanced advocacy services to better facilitate access to justice for disabled people is discussed.

## **Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality**

The third set of themes include disability and deprivation of liberty, and its impact on access to justice. Next, it explores the denial of legal capacity as a barrier, which prevents disabled people from fully participating in legal processes. The section also covers the specific challenges faced by people living in residential disability services in accessing justice, as well as the issues encountered by people subject to mental health legislation. Finally, it discusses the concept of intersectionality, examining how various forms of discrimination overlap and affect access to justice for disabled people with other minority identities.

## **Inaccessible Justice, Lack of Data, and Complex Legal Frameworks**

The fourth set of cross-cutting and overarching themes focuses on several obstacles to accessing justice. It begins with an examination of communication barriers, which significantly hinder the ability of disabled people to engage effectively with the justice system. This section then explores issues related to accessibility, including the need for greater accessible information. It also addresses the challenges and opportunities presented by conducting legal proceedings online, which can be both an enabler and a barrier depending on the context. Furthermore, the inadequacy of data concerning access to justice in Ireland is highlighted, underscoring the difficulty in identifying and removing barriers. Finally, the

complexity of legal frameworks is discussed, illustrating how the complexity of the Irish statute book and legal system can further restrict access to justice.

## **Barriers for Certain Groups and Allied Issues**

The final set of themes explores the diverse range of barriers to justice identified by participants in the research. It sets out the challenges that people with intellectual disabilities encounter when interacting with the criminal justice system. It also considers the access issues for disabled people within Irish prisons. The section also identifies specific barriers faced by members of the Deaf community. It examines the justice-related difficulties encountered by children and parents with disabilities. Furthermore, the public sector duty as it relates to access to justice is evaluated, along with the need to develop community mental health services. Transportation issues that impede access to justice are also considered. Finally, the impact of time limits on the ability to litigate is discussed, noting how procedural constraints can further restrict justice for disabled people.

The themes that emerged from these interviews have informed the recommendations outlined in Chapter 4 (Conclusions and Recommendations). These recommendations seek to guide law and public policy reform, with the ultimate goal of achieving a more equal, accessible and meaningful justice system for disabled people.

## **Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System**

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### **Understanding, Knowledge and Awareness of the UNCRPD and Access to Justice and Disability in Ireland**

All persons interviewed as part of the qualitative component of this research highlighted the lack of awareness of the CRPD and specifically of Article 12 of the Convention (regarding legal recognition) as a major issue. Participants highlighted a general lack of awareness about disability and the legal rights of disabled people. As will be seen from the discussions below this gap in understanding extends to both the public at large, disabled people, and key stakeholders working within the Irish justice system. A number of participants identified that Article 13 of the CRPD is not well understood by key stakeholders in the justice system in Ireland and disabled people who need legal services.

The majority of participants in this research reported a mixed level of awareness and understanding of the CRPD, especially Article 13, among different groups. Understanding the rights in the CRPD, particularly Article 13, is crucial because it directly influences how rights are implemented and protected. Awareness of these rights ensures that disabled people, can actively seek remedies in instances of injustice or discrimination. Moreover, awareness of the CRPD holds public bodies involved in the administration of justice accountable. The lack of awareness can lead to non-compliance, undermining the intent of the CRPD and perpetuating barriers that exclude disabled people from full participation in society. Therefore, clarifying both the entitlements of disabled people and the obligations of public bodies under the CRPD can help address systemic issues of inequality and injustice.

While disabled persons' organisations and activists were considered to have increased awareness, there was a strong view that there was less knowledge and awareness about the specific provisions and their implications among the broader population, and other key stakeholders in the administration of justice in Ireland. This perspective is illustrated by this participant in the following terms.

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“Awareness of the CRPD is increasing, particularly among disabled persons' organisations and activist groups. However, understanding the specific provisions behind each article varies greatly, often depending on people's backgrounds, experiences, and access to information. Areas such as education and health are more commonly addressed, sometimes overshadowing the equally crucial area of access to justice. For legal professionals, the concept of access to justice is more familiar, but for others, fully understanding its scope and implications can be challenging.”

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**Researcher, Expert on Children's Rights and Disability Law**

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This participant articulated Article 13 as extending beyond the typical legal framework of victim and perpetrator. Rather it encompasses a wider range of issues, including discrimination, rights violations, and procedural accommodations in various contexts like employment, education, and service provision.

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“It's like a massive article in scope and something that seems to be the confusion is people just think you are either victim or a perpetrator of certain crimes... If you have been discriminated or your rights have been violated, people often don't know how to access justice.”

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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Another participant suggested a limited awareness in courts regarding the CRPD, particularly concerning the right of access to justice.

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“In over 10 years of observing child care proceedings I've never once heard the CRPD explicitly mentioned... More often, rights are referenced in the broader context of the European Convention on Human Rights. However, when it comes to the specific rights of people with disabilities concerning access to justice, there appears to me to be a significant lack of awareness”.

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**Researcher, Expert on Children's Rights and Family Law**

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Solicitors interviewed noted a low awareness and understanding of the CRPD and Article 13 specifically. One solicitor who litigates in this area identified that when taking cases to the Superior Courts it is important to explicitly reference the CRPD in submissions to ensure its consideration.

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“I have mentioned UNCRPD kind of extensively in our submissions. We weren't convinced that it would be present in the courts thinking otherwise that's no criticism or disrespect to the courts”.

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**Solicitor, Statutory Stakeholder, Expert on Disability 1.**

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A number of interviewees discussed Ireland's delayed ratification of the CRPD. Some suggested that the delayed ratification could partially explain the lack of awareness among various stakeholders, including legal professionals, financial institutions, and others, about the principles and obligations outlined in the Convention as a major issue.

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"Certainly, the lawyers, and I, I'm more acutely aware, say, of the Law Society, have not provided adequate training at all... there isn't comprehensive and in-depth training ongoing. I know that this issue has recently come to light. For instance, when you examine the legal department within financial institutions or banks, you'll find that their staff isn't adequately trained. These are the individuals who have to assist frontline staff in providing information to people seeking access to financial services, for instance, and informing them about the UNCRPD and the rights related to accessing courts... Frankly, I'm quite amazed at how reminiscent it is of the era of wardship. People are entering legal proceedings without the court being sufficiently prepared.”

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**Solicitor, Expert on Disability and Older Persons**

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Some participants noted the limited awareness and understanding of the CRPD and of Article 13, among disability service providers and within the justice system, particularly regarding issues related to capacity and accessibility beyond physical accommodations.

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“Within the justice arena, there's also a lack of widespread knowledge about the Convention, particularly Article 13, and how to implement it effectively. While there is increasing focus on accessibility, it tends to be limited to physical aspects like ramps and accommodations for disabled people to serve on juries. Awareness about capacity, the ADMCA, and other issues is growing, but a comprehensive understanding of what accessibility truly means remains lacking.”

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### **Independent Advocate working with Disabled People**

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Participants noted that despite awareness campaigns, there is a need for increased public knowledge regarding the rights of disabled people and human rights in general. A number of participants identified that disabled people may not recognise that their negative experiences at work or accessing services could be instances of discrimination. Even in circumstances where people identify the discrimination participants reported seeking a remedy through the legal system is problematical.

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“When it comes to discrimination and equality law people are a little bit more vague on it and they might not necessarily understand that what they've experienced in work you know the reason that they're feeling bad is because they've experienced discrimination and even if they do understand that it requires education ... and the confidence to be able to step forward over to a lawyer and say look I've had this experience and I want to take a case.”

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### **Solicitor, Statutory Stakeholder, Expert on Disability 1**

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## **Summary of Key Points**

The awareness and understanding of the CRPD, particularly Article 13, vary significantly among different groups in Ireland, but across the board, there appears to be widespread lack of awareness and understanding regarding the CRPD. Disabled persons' organisations and activists generally have higher awareness levels, while broader population and key stakeholders in the administration of justice often lack specific knowledge about the provisions and implications of the CRPD. The participants, including legal professionals and

advocates, emphasised the low awareness levels not only among the general public but also within the Irish justice system. They noted that awareness-raising efforts, including recent campaigns, have not effectively addressed this gap in understanding. This lack of awareness was seen as a significant barrier in accessing justice. Participants stressed the need for more comprehensive education and awareness initiatives to promote a better understanding of CRPD principles and their impact on the lives of disabled people. Article 13 extends beyond the traditional legal framework and encompasses issues like discrimination, rights violations, and procedural accommodations in various contexts but its scope is not fully understood. This underscores the importance of bridging the knowledge gap to ensure the effective implementation of disability rights in Ireland.

## **The Failure to Ratify the Optional Protocol**

A number of participants discussed Ireland's failure to ratify the optional protocol as restricting access to justice. This view is captured by this perspective.

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"There is a critical need to ratify the CRPD's Optional Protocol. This step is paramount. As a State, we must enhance and diversify our approaches to facilitate inclusive participation, especially for children with disabilities. It's essential to create an environment that fosters equitable opportunities for all. How can you have that when the State doesn't ratify the Optional Protocol."

**Statutory Stakeholder, Expert on Disability 3**

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## **The Inadequacy of Training for Key Stakeholders in the Justice System**

One of the most significant themes that emerged from the research is the glaring inadequacy of training for key stakeholders involved in the administration of justice in Ireland. This concern was unanimously echoed by all participants, who provided numerous instances where access to justice was impeded by key stakeholders lacking a proper understanding of disability and obligations such as reasonable accommodation. This section sets out views

and examples provided by participants to illustrate the inadequacy of training. In undertaking this research there were significant challenges in gathering information concerning the training offered to judges, solicitors, and barristers. Furthermore, obtaining information about the who is responsible for disability-related training within public bodies such as the Legal Aid Board, the Court Service, and the Office of the Director of Public Prosecutions etc. was equally unclear even when interviewing representatives from public bodies. Conflicting and contradictory accounts were given by some participants regarding the nature of the training, its providers, the mandatory audience, the frequency of offerings, and the involvement of disabled people in the trainings. Despite the existence of training initiatives, the consensus among all participants was that current training is inadequate.

The need to provide training specifically to the legal professions on access to justice and the rights of disabled people was a recurring theme throughout the interviews.

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"Well, I just feel that currently, people with disabilities and older persons don't really have full access to justice... the Chief Justice is doing a review... And I think there's a move to improve the situation, but a lot has to be done, particularly to educate the lawyers, especially about including people with disabilities and the whole question of representation. The requirement to provide representation and the requirement to give legal advice to people with disabilities, so that's really important, I think."

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#### **Solicitor, Expert on Disability and Older Persons**

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The need to improve the quality of training was also addressed, including by one Barrister who called for "better equality training for solicitors and barristers in the Law Society and Kings Inns" and by this participant, who elaborated by emphasising the necessity of a top-down approach, with the state and legal professions leading the way to ensure equal access to justice, and not placing the sole responsibility upon disabled people and their advocates.

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"It's about changing culture, really. But I would start with a significant push within the professions. Instead of trying to approach it from the grassroots, I believe it has to come from the top down, with a strong recognition that this change is necessary, and

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that the state has an obligation to lead it. We can't just leave it to advocates for people with disabilities or the individuals themselves...”

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**Solicitor, Expert on Disability and Older Persons**

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The need for continuous, ongoing training and education in human rights and disability awareness was identified for judges, police, the legal profession and other stakeholders in the justice system to improve the experience of disabled people interacting with the justice system. The need for comprehensive training in these areas to improve interactions and understandings of peoples diverse needs and experiences.

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“Misunderstanding. Lack of communication. Lack of reporting. Lack of training. There's a lot of gaps. It's like a three dimensional conversation between you, your lawyer, and the legal system. Anyway, disabled people aren't a one size fits all category. We're we are all different and even people who have one type of impairment they might have different needs...”

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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"Within the criminal justice system, I believe we need to incorporate training on diversity and human rights into the standard legal education. This training should be a fundamental part of the curriculum at both the Law Society and the King's Inns.... It's too common for legal professionals to be set in their own perspectives, often overlooking the diversity of individuals they might encounter in their roles as solicitors or barristers. As for judicial training, it would be fantastic if it included similar content. Awareness among judges of the different needs and backgrounds of people appearing before them would significantly influence the justice system. If we start embedding this understanding at the foundational level of legal training, it will eventually percolate through...”

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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This participant also identified the need for enhanced training specifically for judges.

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“When I have spoken to judges about access to justice and disabilities they have confided that they and their colleagues need more training, and not just on a once basis, but regularly.”

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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Several participants highlighted specific instances where enhanced training could have significantly improved the response of key stakeholders in the justice system to requests for reasonable accommodations. The examples given underscored a recurring theme; well-informed people in the justice system is essential in ensuring that the system is accessible and responsive to disabled people. The lack of adequate training often led to missed opportunities for providing necessary accommodations, directly impacting the ability of litigants with disabilities to fully participate. The example provided here illustrates the need for enhanced and effective training:

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“I had an experience a couple of years back where a number of clients of mine who ... had mobility issues... They had their WRC hearings listed in Dublin at very short notice. All my clients were living outside of Dublin... when I contacted the WRC to explain the difficulties this posed for our clients, who were seriously restricted in their mobility. It's not an option for them to attend let alone at short notice the WRC. The WRC dug their heels in and refused to postpone the matter. We had to argue strongly for them to change the date.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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Some participants emphasised the need for enhanced education and training within the broader justice system, particularly for those working with people with intellectual disabilities. Participants stressed the importance of making legal information accessible and easily understandable to ensure that people are aware of their rights. This participant pointed out the necessity for comprehensive training for all Gardaí, not just specialised persons, in interacting and supporting disabled people.

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“One of the top things that needs to happen is more and better education for people in the justice system and the provision of easy read accessible information. If people don't know about their rights, then what's the point.... Then there needs to be education in the justice system. They need to understand how to interact and support people with intellectual disability. There is need for education for Gardaí. There is a perception to some Gardaí being specialised in working with people with disability is all that is needed. That is not enough. All Gardaí need training and it needs to be ongoing.”

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**Disability Service Provider, Head of Quality and Advocacy**

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Regarding human rights training in the Irish Prison Service this participant pointed out a notable gap in human rights training.

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“Turning to the Irish Prison Service, I believe they do their best with the training they provide. However, there is certainly a gap in human rights training. For instance, the training programme for prison officers, despite being intense and comprehensive in many areas, tends to side-line human rights training.... It's not just about covering the practical skills and knowledge; it's about fostering a deeper understanding of human rights across the board.”

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**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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The lack of disability training of the legal aid board was specifically highlighted by a number of participants in the research. In this example the interviewee was speaking about proceedings under the Assisted Decision Making (Capacity) Act 2015.

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“Regarding the legal aid board ... the legislation was amended to include provisions for lawyers within the legal aid board to offer both legal representation and aid to individuals for various purposes, such as applications under the Act or entering into enduring powers of attorney, or other arrangements. However, in my experience, the legal aid board's training has been insufficient.”

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**Solicitor, Expert on Disability and Older Persons**

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Some participants identified the gap in human rights training for mental health professionals and other health professionals, stressing the lengthy process required to integrate new principles and practices into professional training curriculum. This was identified as undermining the requirements to respect the rights of people who have involvement with mental health services.

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“Human rights and disability issues are not yet sufficiently integrated into the agenda for mental health training... It's incredibly challenging to modify the nature of training. If we aim to shift the balance in the relationship between clinicians and service users, patients, doctors, therapists, clients... so that it's more equal and collaborative, it will require significant effort and time.”

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**Psychiatrist, Statutory Stakeholder, Expert on Mental Health**

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Another participant in the research highlighted to make training meaningful and not just a check box exercise.

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“Training involves understanding that it's not a mere checkbox exercise but an active engagement with people regarding their access needs. We also need to consider altering some existing procedural steps to make the system naturally more accessible...”

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**Researcher, Expert on Children's Rights and Disability Law**

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The alignment of data collection on access to justice and the involvement of disabled people and disabled persons' organisations in delivering the training was identified as essential in ensuring access to justice.

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“Those involved in the justice system need training that stems from direct lived experiences of people with disabilities. This will ensure a deeper and more genuine understanding of the barriers faced by disabled individuals. This then would align with our obligations under the CRPD, which is essential if we are to create a more inclusive and accessible justice system.”

**Researcher, Expert on Access to Justice, Expert by Experience 1**

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## **Summary of Key Points**

One of the main themes emerging in the interviews for this baseline study was the glaring inadequacy of training for key stakeholders in the justice system. All participants unanimously expressed concern about this issue, some citing examples of how the lack of proper training hindered access to justice for disabled people. Despite the existence of training initiatives, it was widely agreed that the current trainings fall short of meeting the needs. Participants stressed the importance of providing specialised training to the legal professions. There was also a recurring theme of insufficient awareness and understanding of disability rights, particularly the CRPD, among legal professionals. This highlights the need for comprehensive training in various areas, such as human rights, disability awareness, and diversity, for all key stakeholders within the justice system, including judges, solicitors, barristers, Gardaí, prison officers and personnel working in relevant public bodies. Participants also underscored the importance of involving disabled people and their representative organisations in the design and delivery of training, to make them more effective and relevant.

## **Lack of diversity in the legal professions and judiciary**

The research underscored a significant concern about diversity within the legal professions and judiciary, particularly in terms of representation from marginalised groups. This participant highlighted the lack of diversity by posing questions.

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"When will we see the first judge from the Traveller community, or the first judge belonging to the Deaf community?"

### **Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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This participant identified barriers for members of the Deaf community in joining the legal profession.

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"While many members of the Deaf community have an interest in studying law, there are complications when it comes to dealing with interpreters. When I first entered the legal profession, I found myself playing a dual role, part lawyer and part interpreter coordinator... As a professional, this was incredibly frustrating. I've voiced my concerns to the Court Service, suggesting the recruitment of regular interpreters on a contractual basis to ensure smoother access. Unfortunately, that idea was rejected. I'm hopeful that it may be reconsidered in the future."

### **Member of the Deaf Community**

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The challenges faced by legal professionals with sensory disabilities also emerged in the research. One participant spoke about the lack of specific support in the form of personal assistance, and its impact on one's ability to establish a career in law, especially for those with disabilities. Financial barriers were another critical issue, particularly for aspiring barristers with sensory or significant disabilities. The cost of qualifying as a barrister, compounded by the additional expense of necessary support for disabled people, was described as nearly prohibitive. This participant emphasised that proactive measures, such as schemes providing personal assistance, are important to mitigate barriers and facilitate the inclusion of disabled people in the legal professions.

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"It's already challenging to earn a living as a barrister. For people with disabilities who require paid support, this challenge is magnified, making it almost impossible. There's a need for positive action, particularly in supporting legal professionals in the early stages of their careers, to make a meaningful impact."

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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## **Summary of Key Points**

The main themes in this section is significant concerns about the lack of diversity within the legal professions and judiciary, notably the underrepresentation of people from minority groups, and the specific challenges that disabled legal professionals encounter in entering and working in the legal professions. Participants highlighted the effectiveness of government schemes in other jurisdictions, including a fund for interpreters for employed and self-employed Deaf people, advocating for a similar initiative in Ireland to facilitate Deaf people joining the legal professions.

## Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy

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### Unmet Legal Need

A number of participants highlighted unmet legal need as a major obstacle for disabled people in accessing justice. They also identified a significant gap in measuring unmet legal need. They stressed the importance of identifying and addressing these needs to ensure equal access to justice.

This participant highlighted significant unmet legal need for disabled people. They noted that disabled people who experience multiple disadvantages are at a particular disadvantage in accessing legal information and the justice system.

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“Surprisingly, disability-related issues aren't prevalent in the queries that the free legal advice centres and community law centres receive... [p]eople facing various forms of disadvantage, and disability can encounter multiple legal problems. They navigate the harsh realities of the law in different aspects of their lives. A significant challenge is that many people do not even realise that their situation has legal implications. It's as if they're dealing with so many issues that they don't consider the law as a potential solution. We need to measure unmet legal needs...”

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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They also highlighted that the lack of data masks unmet legal need.

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“Unfortunately, Ireland doesn't track this, making it difficult to assess the extent of unmet legal needs among people with disabilities. There is huge unmet legal need. It isn't measured, it needs to be measured.”

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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A solicitor who has handled many cases related to disability discrimination under the Employment Equality Acts and Equal Status Acts emphasised the importance of ensuring that

clients have both access to legal representation and the means to overcome barriers when pursuing cases before the Workplace Relations Commission. They explained that clients must either possess the necessary financial resources or be assisted in obtaining them to effectively address the discrimination they have encountered. They called for access to “highly trained, highly specialised teams of lawyers, without temporal or financial limitation”. One participant described a situation in which they believed they had been discriminated against and consequently penalised financially by their employer, but did not pursue legal justice due to uncertainty about where to seek assistance.

A highly experienced independent advocate identified the unmet legal need across different areas both civil and criminal, and the lack of disability awareness.

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"I have major concerns about people's ability to access appropriate support, especially in pre-trial situations. There are a lot of issues and significant unmet needs in these areas. There is also a considerable deficit of knowledge among legal practitioners, Gardaí, prison services, and disability service providers..."

### **Independent Advocate working with Disabled People**

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## **Summary of Key Points**

The interviews highlight the issue of unmet legal need amongst disabled people. Participants stressed the lack of data on unmet legal need and the importance of identifying and addressing them to ensure equal access to justice. One participant pointed out that disability-related issues are surprisingly rare in queries received by community / free legal advice providers, indicating a significant gap in awareness of legal remedies. Another participant emphasised the need to measure unmet legal needs in Ireland and redirect legal services to areas with high unmet needs, such as residential disability services. The importance of providing clients with access to legal representation and resources to overcome barriers when pursuing discrimination cases also emerged. A participant shared their personal experience of discrimination, which spoke to unmet legal need and the lack of

information on rights. This was a clear example how unmet legal need restricts access to the justice system and legal remedies.

## **The Length of Litigation as a Barrier**

This section presents the views of one participant regarding the lengthy nature of litigation as a barrier for disabled people, a concern shared by other participants. They highlighted concerns about protracted litigation processes, which can span several years and may adversely affect the mental health of litigants. While lengthy litigation poses a challenge for many, it was suggested that it disproportionately impacts disabled people, adding significant stress and logistical complications that compounds marginalisation and access to justice.

This participant identified the lengthy nature of litigation as a barrier, specifically for disabled people in accessing justice.

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“Litigation can take anywhere between two and four to five years ... that ... itself coupled with some of the other problems represents what I would see as a difficulty kind of almost unique to disabled people. In other words, a lot of the other groups that I represent may be able to typically access justice in a quicker and more efficient way than disabled people.”

### **Solicitor, Statutory Stakeholder, Expert on Disability 1**

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They went on to elaborate on their concern about delays affecting the mental health of clients with disabilities and leading to access to justice issues.

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“It's concerning to me that [delays in the court system] might take a toll on the person's mental health and that by virtue of the delays the system in itself can lead to an access to justice issues for people with particular disabilities. It is also concerning to me that if people on the other side were going to be cynical about it, they would... dig their heels and delay, delay, delay as long as they possibly can and there's at least a sporting chance that this person might drop the proceedings because of risk to their health. Whether or not that's being done intentionally or unintentionally I cannot say

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for sure but I can certainly say that in a couple of proceedings that I've been involved with over the last couple of years it has happened that my client has ultimately said I can't proceed with this because my health is more important than these proceedings and I simply cannot go on without a risk of damage to my health, that's very concerning.”

### **Solicitor, Statutory Stakeholder, Expert on Disability 1**

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The length of litigation can therefore be “a deterrent to people taking these kind of cases coming forward.”

## **Summary of Key Points**

Several participants in the research discussed the lengthy nature of litigation as a barrier posed for disabled people in accessing the justice system. Litigation can often take several years to reach resolution, leading to concerns about the impact on mental health. The participant voiced concerns regarding the possibility of delays in the legal system discouraging people from pursuing cases, and they also raised the issue of opposing counsel or respondents potentially using such delays as a strategic tactic, which could compound the challenges faced by disabled people in accessing justice.

## **Invisibility and Disability in Accessing Justice**

This section considers the challenges associated with less visible disabilities and their impact on access to justice. Some participants highlighted concerns related to neurodiversity, mild to moderate intellectual disabilities, and other less apparent disabilities. They suggested that the lack of awareness and understanding was a barrier, particularly in care proceedings and within the criminal justice system.

This participant also highlighted issues arising in care proceedings arising from a lack of understanding of disability and in particular less visible disabilities.

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“There is a significant issue with the invisibility of individuals with mild or moderate intellectual disabilities, particularly in care cases. In these situations, parents may exhibit signs of having a disability, but they often go unassessed. TUSLA and social workers avoid conducting assessments as it could complicate their cases and require reasonable accommodations for people if they have a recognised disability. Many social workers and even the courts lack proper training to deal with neurodiversity or intellectual disability. Even the experts brought in for parental capacity or attachment assessments in care cases may lack the necessary training in disability-related matters.”

**Barrister, General Practice**

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“Another significant area of concern is neurodiversity. It's a complex issue, and we're just beginning to understand its impact on access to justice.”

**Independent Advocate working with Disabled People**

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A number of participants suggested that some disabled people might not have visible disabilities and that can result in barriers to accessing justice.

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"[I]t is not clear to me that the court system, the court service, and tribunals properly understand, or fully understand, or understand at all that not only are disabled people entitled to access justice in the court system, but they're also entitled to reasonable accommodation themselves. Let me give you an example: if a Deaf person comes to court, they should be provided with an ISL interpreter by the court service."

**Solicitor, Statutory Stakeholder, Expert on Disability**

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This theme was picked up by another participant in the research who identified that different barriers exist within the civil and criminal justice systems. It was suggested that while in the civil system, people might have some support, in the criminal system, many people with



disabilities may not have been assessed or identified with specific needs, thereby starting from a more disadvantaged position.

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"In both the civil and criminal systems, there are barriers, but I think they differ in nature. Within the civil system, there's at least some hope that people might have support, either from the health system or from organisations advocating on their behalf. However, in the criminal side of things, the situation is different. Often, people have never been assessed for their specific needs or issues, placing them at a disadvantage right from the start. They do receive criminal legal aid, but that's just the most basic support in response to the criminal charges against them. When these people end up in the prison population, that might be the first time they're assessed, and that's if they're lucky. The prison system is plagued with long waiting lists and significant problems in providing psychological services. Overcrowding makes these issues worse, making it difficult for people with disabilities within the prison population to access basic healthcare services."

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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This participant also identified that invisible disabilities, such as mental health issues or neurodiversity, may face scepticism and a lack of accommodation within the justice system.

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"Certainly, the more visible a disability is, the greater the likelihood that it will be taken into account. However, when it comes to invisible disabilities or neurodiversity, scepticism often prevails. Many people with neurodiverse conditions may find themselves in legal trouble... Unfortunately, very little accommodation or understanding is extended to them in such cases."

**Barrister, General Practice**

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## Summary of Key Points

A number of participants discussed the challenges associated with less visible disabilities and their impact on access to justice. Participants highlighted concerns regarding

neurodiversity, mild to moderate intellectual disabilities, and other less apparent disabilities, indicating that a lack of awareness and understanding as significant barriers. These issues were especially prevalent in care proceedings and within the criminal justice system, where people with less visible disabilities often face difficulties in receiving proper assessments and accommodations. The participants highlighted the need to raise awareness and provide appropriate support to all people with less visible disabilities.

## **Lack of Accommodations as a Barrier**

Connected to the last section on invisibility is the lack of accommodations for disabled people when seeking access to justice. A number of participants in this research highlighted an unwillingness amongst the Court Service, Courts and quasi-judicial tribunals to provide reasonable accommodations to litigants with disabilities.

This participant shared their concerns about the responsiveness of court and tribunal offices to requests for reasonable accommodations, emphasising how this can restrict access to justice.

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"We have raised it specifically with the court, and we have said, 'This is an issue, and our client should be given reasonable accommodation to facilitate them, you know, things like, let's say, for example, evidence being given on affidavit, you know, this kind of thing.' Even when we raised it, I am not necessarily convinced that the court office, the court, but also tribunal offices are receptive. I am not convinced that they properly took on board the need to accommodate the person's disability, and that's certainly an access to justice issue."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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This participant discussed the importance of both reviewing and strengthening laws and policies related to reasonable accommodation. They also highlighted the importance of improved training for people engaged in the justice system, demonstrating the interconnected nature of the issues described here and above.

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“Well, I think it's a multi-pronged approach. First, we need to review our laws and policies, particularly reinforcing and strengthening the reasonable accommodation provisions across various areas. But it's not just about that; it's also about ensuring that the individuals implementing these changes on the ground, whether they are lawyers, judges, complaints officers, advocates, court services staff, or others involved in the justice system, receive proper and comprehensive training.”

**Researcher, Expert on Children’s Rights and Disability Law**

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## **Summary of Key Points**

The participants discussed the lack of reasonable accommodation for disabled people in the justice system and how this is a significant barrier in accessing justice. Participants shared their concerns about the responsiveness of court and tribunal offices to requests for reasonable accommodations. Participants also emphasised that reviewing and strengthening law and policy related to reasonable accommodation, along with better training for stakeholders in the justice system.

## **Inadequate Legal Aid as a Major Barrier to Accessing Justice**

Participants in this research shared their views on the challenges faced in obtaining legal representation for disabled people. Participant’s noted that adequate legal aid is key in accessing the Irish justice system, yet its limited availability poses significant barriers for disabled people.

Most participants in the study underscored the limited access to legal aid as a major impediment for disabled people in exercising their legal rights. They unanimously agreed that legal aid should be made more widely available, encompassing all groups protected under anti-discrimination legislation. Some participants put forth an argument that considering the substantial hurdles that disabled people face in accessing justice, there might be a strong case for prioritising the expansion of legal aid to this group first. This participant suggested that this approach could serve as a strategic step towards ensuring equitable access to justice, while addressing the needs of those encountering the greatest barriers.

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“I think in terms of legislation probably the number one change that should come in my view is legal aid. Legal aid for disability complaints would be an absolute game changer. Legal aid for equality claims generally would be an absolute game changer but I think there's a very particular case for making legal aid available to disabled people in particular because of course it would be an accommodation in and of itself. It's an accommodation that would allow people to have access to justice. It would have the effect of... making it more available but making it known to disabled people. Disabled persons need greater access to legal representation, there is limited choice or availability now.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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This participant discussed the limited availability of solicitors to disabled people and the lack of accommodations necessary for accessing effective legal services.

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“Taking cases is simply not for everybody. I think the lack of solicitors who are available to people is a huge barrier to justice. The delays definitely discourage people stepping forward. There's the actual accommodation you know that allows them to go to court or tribunal or whatever. Is there the accommodation that allows them to access the lawyer service?”

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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The lack of legal aid was also highlighted as a barrier for disabled people seeking to challenge discrimination before the Workplace Relations Commission.

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"As you're aware, the idea of the WRC certainly is that it's kind of set up so that you don't need a lawyer to go to it, you know, that's its ambition at least, that you should be able to turn up to the WRC, argue your case yourself, and then, you know, go home afterward. The practical reality of it is quite different. In fact, you do need to have not only lawyers on board but highly trained lawyers who know this system... It would strongly suggest that the mechanisms in place in the WRC, for example, are not equal to the task of ensuring that disabled people have effective access to justice."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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This participant also highlighted the challenges at the WRC and the disadvantages that disabled people encounter when bringing a case there. They pointed out that advocates are often hesitant to assist people at the WRC due to the presence of legal representation on the opposing side.

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"I would also like to address the limitations of the civil legal aid scheme, which covers only certain aspects of the law and doesn't extend to equality cases. While some argue that you don't need legal representation when appearing before the Workplace Relations Commission, the reality is different. A lot of advocates won't go to WRC hearings. Typically, the other side is represented by barristers and solicitors, while the complainant rarely has legal representation, unless they can secure pro bono assistance."

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**Independent Advocate working with Disabled People**

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Disparities between access to legal aid in the criminal and civil justice systems in terms of access and awareness of disability rights was identified by this participant.

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"Yeah, there may be more awareness on the civil side, but less access. For example, you can bring a discrimination claim to the WRC, but it's not funded by the Legal Aid Board. I just can't comprehend that. So, in my view, the knowledge might be less on the criminal side, and I believe that's linked to training."

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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Another participant highlighted the need for reform to legal aid to facilitate access to justice for parents with disabilities and children with disabilities.

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"There's an ongoing review of civil legal aid, which is essential since the system is inadequate in various aspects... There is a lack of specialised training in representing people with disabilities. They often need advocates' assistance to effectively communicate with and understand the needs of their clients, especially when clients struggle to articulate their desires.... While children's proceedings are prioritised, there isn't automatic access to legal aid for children, with or without disabilities. The review of the legal aid system underway is a critical step, and I hope it will address these issues..."

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**Researcher, Expert on Children's Rights and Family Law**

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A number of participants also identified that the financial position of disabled people, particularly those who primarily rely on social welfare payments as their main source of income, puts them at a disadvantage when seeking access to the legal system.

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"The lack of legal aid is definitely a barrier when coupled with the cost of disability and the type of payments that people are receiving and then the delays in accessing any of these things as well."

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**Researcher, Expert on Children's Rights and Disability Law**

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This participant emphasised the shortcomings of the legal aid system, which result in disabled people being denied equal access to justice in matters related to property, housing, wills, and trusts.

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“I believe it's essential to begin with the training of lawyers, ensuring they have a deep understanding of the rights of people with disabilities... The current legal aid scheme has limitations, excluding certain matters such as property issues, where people with disabilities may require legal aid and representation. This includes situations where individuals with disabilities are excluded from provisions under wills or trusts. The legal framework, particularly under property and affairs, may need further development to explicitly identify the ability to initiate claims on behalf of these individuals.”

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**Solicitor, Expert on Disability and Older People**

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This issue was also identified by another participant who highlighted the difficulties in making wills for disabled people and also realising inheritances.

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“Another issue I want to highlight is inheritance and wills. There's a significant gap in this area, both for people when deciding where they want their assets to go and also the with their inheritance rights. People often struggle to get proper legal advice, especially from solicitors who are more focused on protecting assets than advocating for their clients' rights.”

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**Independent Advocate working with Disabled People**

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The need to expand the availability of civil legal aid to disabled people was articulated by this interviewee.

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“People who are involuntarily detained obviously have access to legal representatives, and the fact that this is enshrined in the legal aid scheme is crucial. Unless something is in a statute, it's harder to hold someone accountable.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant highlighted another facet of legal aid, specifically how it imposes financial obstacles, particularly in situations involving disabled people in need of specialised reports funded by legal aid. Legal aid funding limits are often too low to cover these reports. This

example relates to a family law case where a client could not access a report needed to pursue a case for nullity.

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"So another example I would come across is in family law, and it's actually appalling. So if you have a client who may fit into the category for a nullity, for example, for a nullity of their marriage... if they're legally aided, you would have to get the report of a consultant psychiatrist before you could even proceed. The legal aid funding limit for those reports is very low... No psychiatrist will do the report for the available rate.... No professional worth their salt will provide a report to court for the small amount provided through legal aid."

**Barrister, General Practice**

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## **Summary of Key Points**

Participants in this research highlighted limited access to legal aid as a major obstacle for disabled people in exercising and vindicating their rights. They unanimously called for the expansion of legal aid to encompass all groups protected under anti-discrimination legislation, with a specific emphasis on prioritising this expansion for disabled people. Delays in legal proceedings, a shortage of solicitors, and disparities between the criminal and civil justice systems further impede access to justice. They suggested that financial constraints, especially for those reliant on social welfare payments, were identified as significant barriers. Inadequate legal aid not only hinders people from pursuing their rights with particular disparities in areas like property, housing, and inheritance. Participants reported that the lack of legal aid, coupled with resource constraints and delays, creates a significant barrier to justice for disabled people.

## **The Need for Greater Advocacy Services to Facilitate Access to Justice**

This section considers participants' views on role of advocacy services in facilitating access to justice for disabled people. All participants recognised the importance of advocacy



ensuring active participation of disabled people in legal proceedings, and also in accessing necessary services and support. Despite acknowledging the positive impact of advocacy, concerns were raised by participants regarding its limitations, such as long waiting lists and underfunding. A number of participants suggested a statutory right to independent advocacy to address these issues and promote awareness of rights.

This participant discussed the importance of advocacy in ensuring that peoples' voices are heard, they actively participate in proceedings, and access to services and support.

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"Advocacy is vital, I suppose, in ensuring that we don't always have to resort to very specific court mechanisms. While I understand that access to justice is much broader and encompasses various aspects, it also plays a vital role in making sure that their voice is heard, that they are actively involved in proceedings, and that they are aware of how to access different services and supports. Advocates have a wide range of tools and tasks at their disposal that can be immensely helpful."

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**Researcher, Expert on Children's Rights and Disability Law**

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Participants noted that advocates can have a highly positive impact, achieving favourable outcomes for people. Furthermore, they elaborated that advocates are vital in highlighting and addressing legal issues, benefiting their clients and the broader community.

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"I'm thinking about reform of law, court-type stuff, and you know, initially, the people that brought those cases, some of those cases, to our attention were advocates... They help bring issues to light and highlight important issues not only for their own client but for disabled people more generally."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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Participants highlighted the underfunding of advocacy and supports the idea of increased funding to ensure that everyone who needs an advocate can have one. A number of participants suggested that a right to independent advocacy should be provided for in legislation, with one highlighting the importance of:

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“a legally recognised right to an independent advocate, not a peer or service advocate, as medical professionals and lawyers often act in advocacy roles but may have conflicts of interest. We need a statutory right to an independent advocate”.

**Solicitor, Expert on Disability and Older People.**

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"I'm well aware, of course, that the advocate organisations... don't have anything like the amount of funding or resources that they should have. Absolutely... independent advocacy should be on a statutory footing, it's going to have to be kind of properly funded. Every single person in the country who needs one is going to have one. Then all of a sudden, I think that opens up probably very effectively access to justice."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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“The introduction of a statutory right for persons with disabilities to access independent advocacy is needed. I think this could make access to justice meaningful. That would ensure irrespective of their family support, that we all have a consistent point of support.”

**Researcher, Expert on Access to Justice, Expert by Experience 1**

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In discussing access to advocacy for disabled people, this participant highlighted shortcomings with the National Advocacy Service, such as long waiting times and strict acceptance criteria. They noted their organisation's use of internal advocacy councils to support users, but stressed the necessity for independent advocates in complex legal scenarios, a need often unmet due to their scarcity.

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“There's a national advocacy service, but it's really difficult to access that as well... There's waiting lists for that, you know, and again, they can be very prescriptive over what cases that they will and won't take on. As an organisation I think we are quite good at trying to support people in accessing advocacy if they require it. We also have structures in place through our own advocacy councils. However, if someone we support through our services was involved in a civil case or any criminal case, then they definitely would need an independent advocate for that. However, that might not be readily available.”

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**Disability Service Provider, Head of Quality and Advocacy**

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A number of interviewees highlighted the need for advocacy, especially for children with intellectual disabilities. While acknowledging the National Advocacy Service's positive role for adults, one participant pointed out its limitations for children, and noted that this issue hasn't been well documented or researched to date. Resourcing challenges were also highlighted by participants.

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“The National Advocacy Service is the main advocacy service for people with disabilities, but there's a significant waiting list, and I have some criticisms regarding its activity. I believe that resources are often misallocated in various areas, resulting in a circular problem-solving approach. If people had access to an advocate from the beginning, many of these issues might not arise, or at least there would be better access to services and support.”

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**Solicitor, Expert on Disability and Older People**

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“There's the National Advocacy Service in place, but it has been severely underfunded and lacks the necessary resources. I haven't seen any significant increase in their funding and resources since their establishment, so that's an area that definitely requires attention. It's important, especially during moments of extreme stress and trauma when people are trying to access justice, to have an independent advocate

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who understands you, your unique communication style, preferences, and more, and can work alongside you over time."

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**Non-Governmental Organisation, Expert on Disability**

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It was noted too that children with disabilities do not have a guaranteed right to advocacy services, which:

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"means that children with disabilities often do not have adequate access to justice. This limits their rights and access to the courts."

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**Non-Governmental Organisation, Expert on Disability**

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This participant discussed about the need for independent advocacy for involuntary and voluntary people under the Mental Health Act 2001. They emphasised the need to have adequate resources for services for both adults and children and that the right to advocacy should be placed on a statutory footing.

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"Advocates should be made available to people detained under the Mental Health Act and who are voluntary, but it's equally important to ensure that there are sufficient services and funding for those services. It's not enough to simply state that all voluntary individuals in mental health services, whether they are adults or children, are entitled to access advocacy.... The key issue with any legislation or provision is that it must be prescriptive. It should state that a person, if requested, shall be given access to an advocate, and that advocate will be funded by the state."

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant emphasised the necessity for advocacy standards to prevent a paternalistic approach and ensure the advocate works in line with their client's will and preferences.

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“There [is] a need to examine the independence of advocacy. In some cases, advocates are being hired who lack independence. There are instances where guardians ad litem are appointed for adults who don’t know about will and preference work but follow best interest models. The lack of a framework for what a guardian ad litem is for an adult, beyond being appointed by a judge, is concerning. There's a need for standards in advocacy.”

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### **Independent Advocate working with Disabled People**

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The importance of ensuring that the role of the advocate is comprehended by all parties, including legal professionals and others, was also noted, particularly with reference to the Decision Support Service’s code of practice for independent advocates.

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“We've seen the Decision Support Service publish a code of practice for independent advocates around the ADM. We probably need similar codes of practice for advocates in civil and criminal law. It's important to understand that advocates are not substitutes for the reasonable accommodations that solicitors and legal advocates should provide. There are times when legal practitioners assume that having an advocate means they don't need to communicate with their clients. Our role is to support people in their communication with others, aid in decision-making, and provide access to information. We're not substitute decision-makers, social workers, psychologists, or counsellors.”

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### **Independent Advocate working with Disabled People**

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This participant highlighted the challenges faced by advocates when legal professionals assume they don't need to visit clients in prison or prepare adequately for hearings involving clients with specific communication needs.

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“I’ve seen many times where solicitors think they don’t need to visit clients in prison or have meetings before or after a hearing when clients have specific communication needs. They need to be prepared and gather information before a hearing, and advocates are not a substitute for that. We need clarity on who advocates are, who they report to, and their funding. More funding and a better service are needed.”

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### **Independent Advocate working with Disabled People**

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This participant also mentioned that the advocacy service can be ad hoc, with different advocates assigned on different days. This inconsistency can hinder the development of trust with their advocate.

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“The advocacy service, in my experience, can be somewhat ad hoc. You might have one advocate today and a different one tomorrow. In these situations, it’s important to establish a relationship of trust with the person... [A]n advocate’s role requires consistency, and it’s not feasible to switch between advocates from one day to the next. Unfortunately, currently there is inconsistency. I believe that many more people within both the criminal justice system and the civil justice system could benefit from having advocates, but the necessary infrastructure for this is lacking.”

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### **Barrister, General Practice**

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## **Summary of Key Points**

Participants unanimously reported the significance of advocacy in navigating the complexities of the justice system, and ensuring that the voices of disabled people were heard. The view was this was essential in facilitating active involvement in legal proceedings. Advocates were seen as indispensable in supporting comprehension of their rights and access vital services and support. Many participants shared concrete instances where advocacy had a very positive impact. They cited cases where advocates not only assisted clients in achieving good legal outcomes but also played a pivotal role in effecting broader systemic changes. These successes underscored the effectiveness of advocacy in addressing the needs and challenges faced by disabled people in accessing justice.

Despite the evident need for advocacy services, participants raised concerns about their current limitations. They pointed out issues such as long waiting lists and criteria for accepting cases by the National Advocacy Service, which often delayed much-needed assistance. Underfunding and resource constraints emerged as recurring themes. Participants stressed the need for increased funding to ensure that advocacy services could reach everyone requiring them. More resources were seen as essential for providing better training to advocates, ultimately enhancing their capacity to support disabled people effectively. Many of the participants suggested the introduction of a statutory right to independent advocacy. It was suggested that such a legislative provision would guarantee access to advocacy services for all disabled people. This proposal was viewed as a means to raise awareness about rights and provide consistent, tailored support.

The need for advocacy services specifically tailored for children with intellectual disabilities was also highlighted by some participants. While the National Advocacy Service has been effective for adults, it was deemed insufficient in addressing the unique needs of children. Some participants stressed the importance of establishing clear standards for advocacy to prevent a paternalistic approach in their practice. Advocates were seen as complementary to the role of legal professionals, supporting communication, decision-making, and access to information. Inconsistencies in advocacy services, such as the assignment of different advocates on different days, were resulted in a lack of consistency and frustration for clients. These variations curtailed the development of trust between advocates and disabled people, reinforcing the need for greater consistency and reliability in advocacy services.

## Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality

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### Deprivation of Liberty

The issue of deprivation of liberty, was discussed by some participants. They stressed particular concerns in relation to nursing homes, hospitals, mental health services, and residential disability services.

This participant discussed the role of legal professionals and the HSE, criticising them for not challenging the ward of court system, which had been the sole and exclusive mechanism in place for generations. They emphasised the importance of addressing deprivation of liberty issues, especially within nursing homes and residential disability services and expressed the concern that this was not being done.

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“For many years, we had the wardship system in place, with numerous court applications being made without any legal representation for the people whose fundamental rights were at stake. Nobody raised concerns. This issue also applies to the HSE, which made many court applications to place people under wardship without legal representation. We're now seeing similar issues with the deprivation of liberty... we need a deeper understanding of people's human rights. We often rush to assess capacity without considering the person's needs and providing support.”

#### **Solicitor, Expert on Disability and Older People**

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This participant highlighted a common situation where people in nursing homes, while considered to lack mental capacity for managing daily affairs, still possess the capacity to express their desire to leave the nursing home.



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"I'm thinking in particular, let's say, of people in nursing homes, for example, where there are very real human rights and equality issues coming up there, time and time again. I am aware that very often what might happen is that, you know, a family friend or somebody will contact, you know, the local solicitor and say, 'Well, look, this person has been lying in his nursing home bed there for the last ten years. He doesn't have any capacity, but I feel that he doesn't want to be there. Maybe he doesn't have the capacity to manage their day-to-day affairs, but they certainly have the capacity to say, 'I don't want to be here. Get me out of here.' The person may have the capacity enough to say to a solicitor, 'I don't want to be here. Get me out.'"

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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## **Summary of Key Points**

These concerns of participants raise issues under the Irish Constitution, the ECHR, and the CRPD. Each of these legal instruments enshrines the fundamental rights and freedoms, emphasising the right to liberty, legal capacity and autonomy. The issues highlighted potentially contravene the rights set out in these sources of law but also highlight a critical gap in the protection and realisation of the rights of disabled people in accessing justice to challenge potential deprivations of liberty.

## **Denial of Legal Capacity as a Barrier in Accessing Justice**

Despite the commencement of the Assisted Decision-Making (Capacity) Acts, the failure to recognise the capacity of disabled people remains a significant concern among the participants in this research. Participants expressed their concerns about the denial of legal capacity as a persistent and significant barrier in accessing justice. This issue, as highlighted by the participants, particularly affects those in vulnerable situations, such as people in residential disability services, nursing homes or acute hospital wards, where the question of capacity often arises.

This participant discussed the importance of capacity to instruct a solicitor in ensuring access to justice for disabled people. They also highlighted the connected issues of the lack of awareness of the role of advocates and knowledge of the CRPD.

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"One of the most effective things, to guarantee access to justice for people straight away, is recognising people's legal capacity. There is a very interesting thing around capacity and capacity to instruct... in particular around the Assisted Decision-Making (Capacity) Act and how that's being rolled out. It's being dealt with by colleagues across the board, and there is of course the perpetual solicitor's concern there; well, what happens if your client doesn't have the capacity to instruct you? Does that mean you kind of have to wash your hands of the person and send them off and never see them again?"

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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They emphasised the need for a more robust system of independent advocacy and suggested it was an essential measure in ensuring that an individual's legal capacity is both recognised and vindicated.

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"I very much like the idea of advocates being put on a statutory footing. I think that would do an awful lot of work. I think it could potentially take care of that capacity issue as well, which would be very powerful."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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The adequacy of legal aid for people subject to proceedings under the ADMCA was also highlighted by a number of participants. One participant noted that while free legal aid is available to people who are making applications in relation to assisted decision-making, they do not have access to barristers by way of free legal aid. The need for greater training for solicitors on representing clients who have been assessed as lacking mental capacity was also highlighted.

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"There is confusion still for solicitors where a person is assessed as lacking capacity. I think that some clarification, for both the person in question and for the solicitors in question, around what's to be done for people in those situations. The use of advocates needs development, and that would be extremely helpful."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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Some participants in the research identified accessing legal services for people with intellectual disability as a recurring challenge, due to inadequate support and resources to facilitate their access to justice. This participant highlighted the specific difficulties faced by people with intellectual disabilities in navigating what should be a straight forward legal process, drafting a will.

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"The legislation has evolved over time, yet the actual ability of people to access justice remains limited without appropriate support. Particularly, people with intellectual disabilities face many obstacles in accessing legal services, including financial barriers. For instance, a significant number of the people we support do not have a will. This is partly because there's a hesitation in assisting them to draft one. That comes from concerns about their mental capacity to make one and potential legal complications. Also, finding a solicitor experienced in working with people with intellectual disabilities is challenging..."

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**Disability Service Provider, Head of Quality and Advocacy**

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The need for a comprehensive collection of data relating to the ADMCA was highlighted by a number of participants. The suggestion was that the lack of a proper mechanism to monitor practice and procedure in the Circuit Court means that access to justice and human rights issues arising in the cases lack visibility and scrutiny.

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“The Child Care Law Reporting project has been extremely valuable from a children's perspective, touching on various aspects of disability. However, it hasn't been exclusively focused on disabilities. There is a need to capture the data and statistics on the ADMCA. The lack of reporting on the new legislation is a problem. We need data on that.”

**Researcher, Expert on Children’s Rights and Disability Law**

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“The court service is talking about improving their data collection in a broader context, but it would be highly beneficial in the specific area of UNCRPD compliance and reporting if there were a focused effort to collect data on cases under the Assisted Decision-Making Capacity Act.”

**Solicitor, Expert on Disability and Older People**

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It was also observed by one participant that applications under the ADMCA to the Circuit Court involving the Health Service Executive often lack adequate preparation for representing disabled people. In response, judges might occasionally adjourn cases to ensure the person's voice is heard, reflecting a commitment to upholding the principles of the CRPD in practice. However, concern was also raised about people’s voice not always heard in court proceedings.

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“The situation I've observed is ... where the judge is highly aware of the UNCRPD and the importance of the person's voice being present. Even in cases involving the HSE, applications are often made without proper preparation for the person's representation or ensuring that their voice is heard in court. The judge has, in some instances, adjourned cases to ensure the person's voice is heard.”

**Solicitor, Expert on Disability and Older People**

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“I remain critical of lawyers who continue to make applications without ensuring the person's voice is heard in court or facilitating their presence through alternative

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means. Some courts have been open to hearing from people via video or other methods, which can quickly reveal their ability to communicate and answer questions. This is pivotal, and the state has an obligation to ensure the person's voice is represented separately, especially when the HSE is making an application.”

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### **Solicitor, Expert on Disability and Older People**

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This participant discussed the ADMCA and suggested the need to focus on the need for better understanding and implementation of the Act's principles, particularly regarding communication and understanding of the person's will and preference.

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"I believe that certain issues are starting to surface, although it's still early days. There needs to be a significant amount of reviewing and reflection. Anecdotally, from what we're hearing is a lack of understanding about the Act persists, particularly among disability service providers who struggle with understanding their roles and responsibilities. Similar to when GDPR was introduced, there's a tendency to overgeneralise and overinterpret the legislation, lacking the necessary nuance... That will allow people to operate from first principles.”

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### **Non-Governmental Organisation, Expert on Disability**

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This participant discussed the rapid appointment of decision-making representatives under the ADMCA, and the use of functional assessment as potential issues that deny the rights of disabled people. The participant highlighted the need to respect the persons will and preferences of disabled people subject to these proceedings.

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“I've also come across anecdotes concerning the rapid appointment of decision-making representatives, which raises questions from a human rights perspective about whether the person's will and preferences is genuinely considered. Also, there have been challenges reported regarding finances and banking... As we transition away from the Ward of Court system, we need to embed the principles and spirit of the Act. But, we are concerned about a rush towards functional assessments of capacity, which we hope can be minimised. It's really important to stick with the fundamental principles of understanding will and preferences.”

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**Non-Governmental Organisation, Expert on Disability**

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This participant discussed the provision for a court friend under the ADMCA. They expressed the view that an independent advocate might better support in ensuring access to justice for person's subject to a case under the ADMCA, which accords with the findings on advocacy presented earlier in this chapter.

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“Regarding the 2015 Act, there's a concept of a ‘court friend’ under that Act. There has been some tension because we believe it's important... to have access to a legal representative. However, the idea of a court friend has been introduced, and there is a debate about whether the court friend should be converted into an advocate... While I don't want to undermine the efforts put into the concept of court friends, I believe that having advocates alongside legal representatives may be a better approach. ”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant also shared concerns about misconceptions about the role of decision-representatives under the ADMCA.

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“There are also misconceptions about the role of decision-making representatives, who sometimes wrongly assume the authority to restrict individuals' rights, including their freedom of movement. This is not in line with the intent of the Decision-Making Act. I've heard of cases where broad powers were granted through this process, which may require judicial review. Unfortunately, people's rights continue to be violated without any legislative basis.”

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### **Independent Advocate working with Disabled People**

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The need for enhanced training for legal professionals involved in cases under the ADMCA was highlighted by this participant.

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“I must also express my disappointment with the court rules. The court rules could have been more comprehensive, particularly with provisions addressing these issues. The lack of consistency across the country is another concern. While I've provided insights into what I've observed in Dublin, I wonder about the various circuits across the country. Even among lawyers, you'll find only small pockets of individuals who truly understand these matters. Much work still needs to be done in terms of training.”

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### **Solicitor, Expert on Disability and Older People**

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## **Summary of Key Points**

The participants identified the denial of legal capacity as a barrier in accessing justice, despite the recent commencement of the Assisted Decision-Making (Capacity) Acts. A recurring concern among participants is the persistent denial of legal capacity to disabled people. This issue has a particularly negative impact on people living in residential disability services, nursing homes, or hospital wards, where questions surrounding capacity often arise.

Participants have expressed a strong consensus on the importance of recognising legal capacity in ensuring access to justice, essentially identifying it as a gatekeeper right. Participants also emphasised the interconnected issues of the lack of awareness regarding

the role of advocates and a general unfamiliarity with the principles outlined in the CRPD.

Some participants mentioned the necessity of establishing a better independent advocacy to support the exercise of legal capacity. They suggested this could play an important role in overcoming the challenges faced by people whose mental capacity is called into question. One participants highlighted their concerns regarding the adequacy of legal aid for people subject to proceedings under the ADMCA. While free legal aid is available for solicitors, access to barristers appears to be restricted, which places considerable pressure on solicitors and could affects the quality of representation.

Some participants also suggested a pressing need for better training for solicitors to effectively represent clients who have been assessed as lacking mental capacity. Confusion persists among solicitors in these cases. It was also suggested that people with intellectual disabilities encounter difficulties in accessing legal services, mainly due to the lack of adequate support and resources. The example of drafting a will, which should be straightforward, becomes a significant challenge. Data collection and reporting mechanisms for cases under the ADMCA also emerged as an issue. Some participants discussed the importance of appropriate data collection to monitor access to justice and human rights issues effectively. The absence of a consistent reporting mechanisms across different regions was a concern for some participants.

Some participants believe that understanding and implementing the ADMCA remains a challenge for disability service providers, with a tendency to overgeneralise and misinterpret the legislation. The need for a better grasp of the Act's principles and values was seen as essential to improve its application. Concerns have also arisen about the rapid appointment of decision-making representatives, potentially disregarding the individual's will and preferences. The need to avoid a rush towards functional assessments of capacity and to adhere to the fundamental principles of understanding will and preferences was also discussed. Misconceptions surrounding the role of decision-making representatives was raised, with a risk of this leading to unwarranted restrictions on persons' rights.



## **Access to Justice for People Living in Residential Disability Services**

This section considers the challenges surrounding access to justice for people living in residential disability services as identified by a number of participants. Participants spoke to the often unheard voices of people living in residential disability services, who are subject to significant restrictions.<sup>224</sup> The impact of these restrictions impact on the rights and compounded by the lack of legal services for people living in residential disability services. This section picks up on the theme of deprivation of liberty as discussed above.

Participants, including self-advocates with first-hand experience, and independent advocates, paint a vivid picture of life in residential disability services.

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"People living in services can really get the short end of the stick... It's like our lives are watched, kitchens locked, front door locked, no internet. Because of "health and safety". Let's be honest, it's control, you can't decide for yourself. They're taking away freedom. That's not okay, that's not human rights."

### **Self-Advocate, Receiving Residential Disability Services 2, Expert by Experience**

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"A lot of us are sick of the rules and restrictions, but the truth is, you don't know where to start to complain. We don't have lawyers, you know?... There's also the worry... if you speak up, you'll just get in hot water. So, what then? Most of us just stay quiet, feeling like we've got no choice but to go along with it."

### **Self-Advocate, Working with People in Receipt of Residential Disability Services 3, Expert by Experience**

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<sup>224</sup> HIQA define restrictive practices as measures that intentionally restrict a person's movement or behaviour. See Health Information and Quality Authority (HIQA), "Guidance on Promoting a Care Environment that is Free from Restrictive Practice - Disability Services," effective June 2023.

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"We're witnessing a multitude of concerning situations. Some people are locked in rooms or enclosures deemed necessary for their safety, often at the request of family members who have considerable influence.... On the other hand, there are situations where nobody is quite sure what's happening, yet rights restriction committees or psychiatrists have signed off on extensive limitations in people's lives, including locked doors, restrictions on leaving the community, social interactions, and staffing arrangements, all of which persist for years on end."

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### **Independent Advocate working with Disabled People**

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Another participant shared an example of people living in residential disability services not being permitted to have or even be interested in intimate relationships.

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"Don't even get me started about relationships. It's like they think we shouldn't have any. Like, boyfriends or girlfriends are a big no. Anything to do with sex is a no. Show a bit of interest, and you're weird.... Big problem. This girl I know. She liked a man in her house.... Big problem. They made it into a big thing. There was a psychologist. She was treated like a criminal. Rules were brought in. She was so sad... so embarrassed. She couldn't talk about it. She should complain, but how?"

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### **Self-Advocate, Working with People in Receipt of Residential Disability Services 2, Expert by Experience**

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One participant identified cases where people living in residential disability services may face significant restrictions on their rights, including issues related to historical allegations against them, and restrictions placed on them in accessing the community, and another participant highlighted the significant human rights concern related to the use of chemical restraints among the clients they have advocated for.

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"I've encountered instances where people have been on medication for over 20 years to restrict them. These cases often involve allegations of sexual assault or concerns related to their sexual interests, including minors. Because of that, they were placed on highly restrictive medications that they continue to take, often without a clear understanding of why or any opportunities for the medications to be reviewed. These people live in residential settings 24/7."

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### **Independent Advocate working with Disabled People**

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The participant further elaborated on significant rights restrictions in residential disability services and that people subject to these restrictions do not have access to adequate legal representation or independent advocacy.

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"We should discuss the broader issue of deprivation of liberty as well. We find ourselves in a situation where individuals, who are not wards of court, have had their liberty restricted through safeguarding plans, behaviour plans, or similar mechanisms. Information gets passed down among staff teams, and decisions are made that curtail people's rights. Now, there is a growing realisation that these practices are no longer acceptable. If they wish to continue, people must go to the High Court to seek inherent jurisdiction applications."

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### **Independent Advocate working with Disabled People**

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## **Summary of Key Points**

Several participants identified issues surrounding access to justice for people living in residential disability services. Some participants noted the glaring absence of legal services available to people living in residential disability services, leaving them with limited options to challenge restrictions and exercise their rights. A recurring theme that emerged is the feeling of being voiceless among people in residential settings and the imposition of significant restrictions in their daily lives. In terms of personal autonomy and relationships, it was suggested people encounter discouragement when it comes to pursuing intimate relationships. Another recurring theme was the prevalence of rights restrictions in these

residential services. Some participants have example of the impositions of substantial limitations on persons' rights, including access to the community. Significant restrictions are often imposed based on historical allegations and apply indefinitely.

Participants raised serious concerns regarding deprivation of liberty. One participant identified the use of long-term medication as a form of restraint, suggesting that this raises serious concerns. People may find themselves placed on highly restrictive medications without a clear understanding of the reasons behind them or opportunities for review. It was suggested that there is a lack of access to adequate legal representation or independent advocacy for people subjected to rights restrictions within residential disability services. Other forms of deprivation of liberty also emerged as a significant concern, with examples of some people having their freedom curtailed outside of the justice system and without adequate oversight. A range of concerning situations were identified, encompassing people locked in rooms for safety reasons. Instances where significant limitations are imposed without clear justification, were discussed, including locked doors, and restricted community access.

## **Access to Justice to People Subject to the Mental Health Legislation and Allied Access Issues**

A number of participants identified access to justice issues for persons subject to the Mental Health Act 2001 and other access issues for people with mental health problems. The main themes that emerged include gaps in the legislation regarding access to justice, resistance to shifting away from paternalistic approaches, challenges in accessing personal information, the absence of an independent complaints mechanism, the role of advocates in mental health tribunal hearings, and the impact of mental health history on legal proceedings.

The quote from the psychiatrist points out a significant gap in the current legislation concerning access to justice for people using mental health services. While the law focuses on procedures like appeals against detentions and establishing tribunals, it falls short of addressing broader justice issues within mental health settings. The role of the Inspector of Mental Health Services is primarily regulatory, inspecting centres against standards without

encompassing the person's broader rights to justice. The psychiatrist calls for a more modern approach that includes direct communication and addressing concerns within services to ensure access to justice.

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"I understand that access to justice is an important human right, particularly for those with disabilities. However, the intersection of this right with the role of the Inspector of Mental Health Services is quite limited as defined under the current act. The Act doesn't explicitly mention the access to justice for individuals in approved centres or under mental health care, apart from the sections dealing with appeals to detentions and the establishment of tribunals. This is a significant advance from the previous act, but there's still a long way to go."

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**Psychiatrist, Statutory Stakeholder, Expert on Mental Health**

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Resistance amongst mental health professionals in moving away from a paternalistic approach to persons receiving mental health services was identified a number of interviewees. This participant articulated the problem in the following way.

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"In my experience, when it comes to considering the rights of people using mental health services, the focus has often been more on what is deemed to be in their best interests rather than what aligns with their will and preferences. There's a significant shift needed here. This is a big part of the work ahead."

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**Psychiatrist, Statutory Stakeholder, Expert on Mental Health**

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The difficulties disabled people, in particular people subject to the mental health legislation, face in accessing information about themselves was also identified as a barrier to accessing justice.

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"A core principle in disability rights is, "nothing about me, without me." This principle is a key guideline. Yet, it's uncertain if people with disabilities can always be sure that there's nothing about them being done or decided without their involvement. This is very true for people using mental health services. Often, the only tools available to access such information are blunt instruments like the Freedom of Information or the Data Protection Act. It's extremely challenging to discover if there's anything happening about you without your knowledge."

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**Psychiatrist, Statutory Stakeholder, Expert on Mental Health**

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This participant suggested that the lack of an adequate and independent complaints mechanism for people receiving mental health services was a barrier to accessing justice.

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"There are bodies like the Ombudsman for Children and other statutory bodies that receive and address complaints. Similarly, there's an Irish advocacy network, supported and recognised by legislation, which is a good body that could be expanded."

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**Psychiatrist, Statutory Stakeholder, Expert on Mental Health**

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Participants suggested the need for greater advocacy support for people involved in mental health tribunal hearings, highlighting deficits in effective communication and the benefits of having advocates involved in these processes. One self-advocate expressed concern regarding limitations in meaningful communication with solicitors and the value in having support to prepare for hearings, noting it was "immensely beneficial."

This participant highlighted the challenges the impact of the involvement of the Gardaí in involuntarily detaining people under the Mental Health Act 2001.

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"The dynamics change significantly when it's related to mental health. People often speak powerfully about how degrading it can be to be brought into the mental health system through the guard process".

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**Independent Advocate for Disabled People**

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This participant identified deficits with Mental Health Tribunals in reviewing the detention of people who are subject to deprivation of liberty, and raised issues regarding the protection of the rights of people detailed under the Mental Health Act 2001.

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"In terms of how justice is applied or how mental health tribunals make their decisions, it often seems arbitrary. The outcome can be influenced by factors like the treating consultants' perspectives and the attitudes of the lay people on the tribunal... [I]f you have a progressive psychiatrist or tribunal member who questions the biomedical model, you might have a better outcome at a mental health tribunal. On the other hand, if you don't have someone like that, your chances are small... The awareness and attitudes of tribunal members, as well as the availability of family or community supports, can also shape decisions. The criteria for determining whether someone fits the mental health condition can be influenced by how someone presents themselves. Stereotypes about mental illness affect decisions. In my experience the application of justice in mental health tribunals and other disability-related court cases can be arbitrary, heavily dependent on the perspectives of psychiatrists. Also, financial resources and access to good legal support and advocates can impact the outcomes of these cases."

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#### **Researcher in Mental Health and Human Rights, Expert by Experience**

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The adequacy of the training of legal representatives who represent people at the Mental Health Tribunals was called into question. This participant described the problem in the following way.

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"There are still definite barriers in the legal representation provided to people before tribunals. While everyone is entitled to their own legal representative, the quality of that representation varies a lot. It depends on the commitment of the legal representative to support the person. Many people have told me not having enough time with their legal representative and only meeting them shortly before the hearing. It also hinges on the representative's knowledge of mental health critiques, awareness of the CRPD. Also, understanding of the power dynamics at play for the person detained. A well-informed legal representative can better advocate for the person. That makes them feel heard and respected."

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### **Researcher in Mental Health and Human Rights, Expert by Experience**

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One participant discussed how people with marginalised identities or intersectional experiences, particularly in the context of mental health, often encounter prejudicial attitudes and discrimination when seeking justice, and in particular the limited credibility that is afforded to people who have had a mental health diagnosis. They elaborated by sharing their personal experience of pursuing litigation against a religious order and how their mental health history became a factor that pressured them into settling outside of court.



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"It was my experience where I was trying to get compensation from a religious order but because... of the difficult trauma I experienced, I had a mental health history, which I was seeking compensation for. I was in a double bind because I was told, well, you can't actually go into court. It's not in your interest to go into court to fight the case, because I was told that the opposing side would use my mental health history against me, and that I should take a settlement out of court. ... Because I was told if I go into court, well, then my mental health history will be brought up in court, and I would lose credibility, and the chances were that I wouldn't get what I was being offered outside court. ... In my case my mental health was taken as the reason why I wouldn't be a strong witness. Not that I wouldn't be a strong witness, but the advice was it was too risky to go into court because they could use that against me. So it was settled before court, outside the Four Courts, various people discussing it upstairs, while I was in the basement. ... The other thing was I had to do is sign a non-disclosure agreement, which meant I wasn't supposed to do anything else about it or even talk about it anymore. It does leave a bad taste in my mouth about a lot of that."

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### **Researcher in Mental Health and Human Rights, Expert by Experience**

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## **Summary of Key Points**

Participants shared their perspectives on the need for reforms and enhanced protection of the rights of individuals subject to mental health legislation. Gaps in the current legal framework, in conjunction with resistance to transitioning away from the medical model, hinder access to justice for people with mental health problems. Issues surrounding information access, the absence of an independent complaints mechanism, and the need for a greater role for advocates in tribunal hearings was discussed. The discriminatory use of mental health history as a credibility factor within legal proceedings reflects systemic biases in the justice system.

## Intersectionality and Access to Justice

The analysis in this section underscores that intersectionality is a critical, cross-cutting theme that has emerged across all five thematic areas discussed in this chapter. This emphasises the complex layers of discrimination faced by disabled people with intersecting identities, which can further restrict their access to justice.

A number of participants in the research identified additional barriers in accessing justice for disabled people who are members of one or more other protected groups under the Irish anti-discrimination law. This section discusses how these intersecting identities can compound barriers to accessing justice and essential services, citing examples provided by participants. Participants highlighted the lack of comprehensive data collection, which obscures the challenges faced by people with intersecting minority identities.

One participant highlighted the intersectional challenges faced by disabled people, particularly when seeking accessible housing within marginalised communities, such as migrants or members of the Traveller community. This participant discussed disabled people in the Traveller community who experience additional barriers in accessing services and justice.

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"People from the Traveller community who also have a disability often face compounded stigma.... I know that people with intersecting identities face additional barriers in accessing disability services. We work to prevent discrimination, but the broader societal context presents challenges."

**Disability Service Provider, Head of Quality and Advocacy**

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Participants suggested that prisoners with multiple identities such as a disability combined with belonging to an ethnic minority or membership of the Traveller community face compounded challenges in accessing justice, and that that a person with specific disability or disabilities, when coupled with intersecting identities such as race, gender, and socioeconomic status, can intensify the obstacles in accessing the justice system.

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“When people, especially those without disabilities, face challenges in accessing their rights or seeking justice, either through the legal system or internal complaint mechanisms, it's clear there are barriers. Now, if you add disabilities into the mix, those barriers must be even more significant. For instance, consider someone from the Traveller community who also has a disability and is in prison... There are people in the prison system for whom English is not their first language. They struggle with understanding their rights because the information isn't readily accessible... It's not just a physical disability; issues on the neurodivergent spectrum, for instance, can greatly complicate understanding and asserting your rights.”

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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“[I]f you're a disabled person living in direct provision, or ... a disabled Traveller, or part of any of these other groups, you undoubtedly encounter additional hurdles in various aspects. This includes simply accessing the necessary information to begin with or finding representation at different stages of the process”.

**Researcher, Expert on Children's Rights and Disability Law**

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In the context of child care proceedings this participant suggested that disability can intersect with other minority identities, like being a Traveller or a migrant, which adds complexity to providing adequate care and support. They suggested that the lack of data masks access to justice issues for people with intersecting identities in the context of care proceedings.

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"Absolutely, there's a significant gap in data collection by Tusla, particularly regarding important and relevant issues. For instance, there's a lack of data on the number of Travellers, as well as other ethnic minorities and people with disabilities, all of whom are disproportionately represented in care proceedings.”

**Researcher, Expert on Children's Rights and Family Law**

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This participant discussed the experiences of disabled people living in the direct provision system and the additional barriers in accessing justice.

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"[Colleagues have] highlighted the challenges in even asking questions for research and the myriad issues some individuals within these settings face. Identifying as disabled within such an environment can be a complex and possibly even risky... given the dynamics of who you're sharing your living space with and other circumstances."

**Researcher, Expert on Children's Rights and Disability Law**

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## Summary of Key Points

Participants emphasised the intersectional challenges faced by disabled people, particularly when they belong to marginalised communities, such as migrants, members of the Traveller community, or other protected groups under Irish equality legislation. Participants suggested that intersecting identities often compound the barriers to accessing justice and essential services. Participants cited examples like the struggle to secure accessible housing for disabled people in these communities, the compounded stigma faced by members of the Traveller community with disabilities, and the challenges encountered by prisoners who belong to multiple marginalised groups, who have disability. In child care proceedings, disability can intersect with identities like being a Traveller or migrant, making the system more complex. Data collection gaps were identified as masking access to justice issues for people with intersecting identities, and participants stressed that additional factors, such as race, gender, and socioeconomic status, can add barriers to accessing the justice system, including for people living in direct provision centres.

## Inaccessible Justice, Lack of Data, and Complex Legal Frameworks

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### Communication as a Barrier to Accessing Justice

A number of participants identified communication as a barrier to accessing justice. This section discusses the problematic labelling of disabled people as "vulnerable", which can have legal implications and can affect their treatment within the justice system. The lack of accessible information on how to report crimes was also identified. Some participants also discussed how legal professionals often lack adequate communication skills, even when operating under the ADMCA. Participants also noted that children with intellectual disabilities also face significant communication barriers in seeking justice.

A number of participants in the research highlighted the problematic labelling of disabled individuals as "vulnerable," a term that can carry legal implications and potentially influence how they are treated within the justice system. The quote below emphasises the lack of information available to disabled people regarding where and how to report crimes.

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“Using the term vulnerable is loaded and problematical. And then I would say lack of information on behalf of the disabled people or where to go, where to report, and of course the communication methodologies and everybody communicates differently and not necessarily say the police or the first responders appear know sign language for example or have skills and training on how to effectively communicate with people with different communication needs.”

#### **Researcher, Expert on Access to Justice, Expert by Experience 1**

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The shortcomings of legal professionals to engage in effective communication with disabled people was a recurring theme. This participant highlighted that this deficiency persisted even in the context of cases under the ADMCA, despite the requirement in the Act to facilitate communication through support and alternative means.

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“Another concern is the lack of communication skills. The Act itself allows for communication by other means or with support, but I don't see a clear understanding of this among professionals, particularly lawyers involved in court applications.”

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**Solicitor, Expert on Disability and Older People**

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Participants discussing the problems facing people who are non-verbal and highlighted that the lack of understanding of non-verbal people and people who use alternative forms of communication, which can hinder their ability to engage with the justice system effectively.

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“Non-verbal communication and decision-making abilities are often overlooked, and people are immediately dismissed as incapable of making decisions. I've recently spoken to advocates who have reported cases where people clearly possess decision-making capacity but are denied the support they need, especially if they have disabilities that affect their communication, whether verbal or non-verbal... So it's crucial to identify and advocate more prominently for people who might need accommodations to communicate.”

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**Solicitor, Expert on Disability and Older People**

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" At times, people with intellectual disabilities encounter unique barriers. What I've learned from my interactions, as well as their families and supporters, is that communication poses the biggest challenge. The information provided within the criminal justice system often lacks accessibility, and people struggle to understand how to communicate with people who use alternative forms of communication.”

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**Barrister, General Practice**

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The particular challenges for children with intellectual disabilities in accessing justice was also highlighted.

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“This communication barrier is especially pronounced in cases involving children. For instance, if a non-speaking or non-verbal child is a victim of alleged abuse or a crime, it becomes really difficult for both the child and their family to seek justice effectively.”

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### **Independent Advocate working with Disabled People**

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This participant emphasised the challenges that adults with intellectual disabilities encounter when seeking justice within the criminal justice system, primarily due to the communication barriers they face.

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“There is a general lack of awareness regarding how people interact and communicate, as well as an insufficient understanding of the specific needs and potential distress levels of adults when they engage with the criminal justice system. These issues, coming from communication barriers and more, make this a difficult but important problem to solve.”

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### **Non-Governmental Organisation, Expert on Disability**

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## **Summary of Key Points**

Participants identified communication barriers as significant barriers for disabled people seeking access to justice. The label of "vulnerable" is a loaded term and carries unintended consequences that disadvantage them within the justice system. A lack of accessible information on reporting crimes deepens less favourable treatment, while the deficits of legal professionals in effective communication is a problem. Non-verbal people, are disadvantaged. Participants noted that children with intellectual disabilities face significant barriers in seeking justice. To promote a fair and inclusive justice system, it is suggested communication barriers need to be removed, raising awareness and providing necessary support to ensure equal access to justice.

## **Accessibility, Accessible information and Access to Justice**

Participants discussed the challenges surrounding accessibility, accessible information, and access to justice within the legal system. They highlighted the issues related to physical access to court buildings and the availability of information in accessible formats, as well as the broader barriers faced by disabled people in navigating legal proceedings.

This participant highlighted that physical accessibility remains a significant issue within the justice system, with many court buildings being inaccessible.

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“Believe it or not accessibility is still a major issue. A lot of court buildings are not accessible. Some courts are historic buildings, and this is the justification why the accessibility problems cannot be fixed.”

**Researcher, Expert on Access to Justice, Expert by Experience 1**

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"Although honestly, the court, the Court's building in Galway is incredibly inaccessible. I mean, you can get into it, but there's no consultation room downstairs that you can use if you're a wheelchair user, for example. An awful lot of solicitors' offices are upstairs, and you'd be hard-pressed to find a spot that you could meet comfortably as a wheelchair user that isn't very public in Galway actually. Accessibility is appalling.”

**Barrister, General Practice**

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This participant then provided an example of inadequate court facilities and buildings that are inaccessible to wheelchair users, and the challenges this poses.



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“So I did a case involving a client of mine who two is a wheelchair user last week. ... the lift broke on the day that we were there. Now, to be fair, the court manager immediately called for the lift to be serviced. ... It was fixed by the next day. ... but again, there was no place that was accessible that I could have brought that man for a consultation. ...if I had, say, a family law client who was a wheelchair user, conversations would have to be had either outside... in the hallway, or in the stairwell, because there are no other places that you could bring them.”

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**Barrister, General Practice**

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They elaborated people with intellectual disabilities experience inconsistent and inadequate provision of accessible information, and that courts and court systems lack accessibility for people with cognitive disabilities.

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“Of course for people with intellectual disability the lack of accessible information is a barrier. Sometimes, an easy to read format might be given, but this is not done consistently or well.”

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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“The courts made significant strides in accessibility for people with physical disability with the revamp of court buildings. However, cognitive disabilities are less understood and acknowledged.”

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**Researcher, Expert on Children’s Rights and Family Law**

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The need for greater accessibility at the pre and post-trial phases was also identified.

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“Regarding the courts, they have made significant progress in terms of accessibility, such as quieter courtrooms and alternative communication methods. Judges seem to understand these needs when properly explained. However, our main concerns lie in the pre-trial and post-trial phases.”

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### **Independent Advocate working with Disabled People**

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This participant identified multiple barriers, including lack of accessible legal information, physical accessibility issues, insufficient awareness among legal professionals, and procedural challenges. They noted that these barriers are often interconnected and vary depending on the person’s impairment.

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“There are multifaceted barriers in terms of even understanding where to take a complaint, and how to access legal information or advice from the beginning. This understanding is needed to determine if a case can be challenged and how to do so. Unfortunately, we lack comprehensive information in several areas, especially regarding the provision of accessible information, easy-to-read materials, and alternative formats across Irish society. This lack of accessibility is common with legal information, which is not as commonplace as it should be.”

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### **Researcher, Expert on Children’s Rights and Family Law**

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This participant emphasised the importance of making information accessible in different formats, such as easy-to-read materials, videos, and in multiple languages. They noted that this would not only enhance understanding of rights but also demonstrates a commitment to respecting people.

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“There is a problem with making information on the law and rights accessible. It’s not done well. Public bodies from the Court Service to the Gardaí need to develop easy-to-read guides, translated materials into multiple languages, and get started on creating video clips. We understand that people with mental health issues have different needs and abilities. For example, if a person speaks Ukrainian, receiving information in their language can make a huge difference. It's a sign that someone is trying to help them in a way that respects their background and language.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant recommended the need for legislation to include specific requirements regarding this obligation.

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“In our own work we now recognise the importance of video clips, especially for people with learning difficulties. We try to accommodate the diverse needs of people, even if it means going beyond budgetary constraints because it's the right thing to do. Ultimately, I believe that legislation needs to have explicit provisions to make information accessible.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant identified that adults and children with different capacities may face barriers in court proceedings, including limited support and insufficient consideration of reasonable accommodation, particularly in cases involving guardianship, custody, and access.

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“...[b]arriers arise when people, including children, come before the courts. Their ability to give an intelligible account of events or statements might be underestimated, leading to limited support under existing acts and insufficient focus on reasonable accommodation. There is a concern that people's views and wishes are not adequately taken into account... Our laws and policies have entrenched certain limitations. For instance, the Constitution includes provisions about being 'capable of forming a view', which can restrict children's involvement in proceedings or having their involvement side-lined. This issue of capacity can be tricky for guardianship, custody, and access cases.”

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**Researcher, Expert on Children's Rights and Disability Law**

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Barriers to accessible information were also discussed. One participant noted barriers for people who are blind or experience sight loss, noting that that accessing information on mental health is “really difficult”. Another participant described limitations in procedural accommodations.

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“Physical accessibility of buildings, especially older ones, also presents a challenge. We need to focus on making processes and procedures accessible within these spaces. However, there is also a lack of awareness among legal professionals, such as judges and lawyers, about disability issues. This lack of awareness involves understanding how to make information accessible, and what their duties are in interacting with people with disabilities and providing reasonable accommodation beyond just statutory requirements. This gap in knowledge and practice shows how interconnected these barriers are.”

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**Researcher, Expert on Children's Rights and Family Law**

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This participant discussing accessible information for people using mental health services identified the need for more accessible information and in other languages.

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“I'd like to highlight the need for translation services and accessibility in various languages. People with disabilities who speak languages other than English should have equal access to services and information.... For people who come from other countries and have disabilities but limited English, accessing information and services can be a... challenge, most websites and resources are in English. It's key to address these issues and ensure that everyone... has equal access to information and services. We need the data on the most needed languages and the accessible materials needs to follow the numbers.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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This participant suggested improving interactions and accessibility, in addition to making the built environment accessible.

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“Now, when it comes to issues like accessible information, buildings, and reasonable accommodations, all of these formal aspects need attention. It's almost as if the standard for these things is not up to par. You might go to a court and find that you can't access the toilet or that there are barriers like steps. But what truly matters are the interactions and a lot of the time the information and accessibility isn't there.”

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**Independent Advocate for Disabled People 2**

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One participant discussed the assumption made by public bodies that everyone can access information online, and noted that not everyone has access to broadband or the necessary equipment. It was suggested that this poses challenges in accessing justice, and “takes for granted that everyone has access to broadband at home and the necessary equipment, like a smartphone.”

## **Summary of Key Points**

Participants highlight a broad range of significant accessibility problems. These problems relate to physical access to court buildings and the availability of information in accessible formats, both of which serve as major barriers for disabled people. Participants explained

how persistent issues of inaccessibility in many court buildings, particularly those of historical significance continue. Inconsistent and inadequate provision of accessible information was noted as a major barrier for people with intellectual disabilities, affecting their ability to understand and effectively engage with legal proceedings. The lack of accessibility in courts and information affects people with intellectual disabilities, who as a result were less understood and acknowledged in the legal system. Participants identified a pressing need to address multiple cross-cutting barriers, including limited disability awareness among legal professionals, procedural complexities, and the variation in challenges faced by people with different disabilities. Participants emphasised the need to make legal information accessible in different formats, languages, and through videos, in order to enhance understanding of rights and demonstrate respect for person's backgrounds and languages. One participant suggested the introduction of legislation to safeguard accessibility within the justice system.

## **The Inadequacy of data on access to justice in Ireland**

Most of the participants in the research highlighted the lack of data on disabled people in accessing justice as a major issue. This section discusses the participants' views on inadequacy of data on access to justice. The theme that emerged was the dearth of comprehensive data regarding disabled people accessing justice, which participants suggested negatively impacts public policy, awareness raising, and effective planning among key stakeholders and public bodies.

### **Importance of Data Collection**

This participant highlighted the potential impact of accurate data collection on revealing the challenges disabled people face when accessing justice in Ireland, and in identifying gaps and inform guidance, training, and public policy to improve access to justice.

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"My own sense of it is that if the data were properly collated, properly gathered, and got out there, what it would show unquestionably is that disabled people have a real issue in accessing justice in Ireland. I wouldn't doubt that for a single second ... if it was done so, there would be an outcry about it."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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"The data can inform, among other things, guidance and training for professionals. The data tells us the problems the barriers and helps us make better policy. So there definitely is a huge gap there. The lack of data is a big part of the problem."

**Statutory Stakeholder, Expert on Disability 3**

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Another participant highlighted the poor quality of data collection by the Courts Service, especially regarding cases involving disabled people.

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"The data the courts collect is really poor in terms of the cases that are brought. But you're not going to get information on how many... cases are taken by persons with disabilities. There's a huge data gap, and so that's something that needs to be addressed."

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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Participants emphasised the importance of first-hand personal perspectives, highlighting a significant gap in the data regarding the lived experiences of disabled people within the Irish justice system.

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"The data and reports on the experiences of disability in the justice system has lots of gaps. I'm a researcher and I think the foundation of understanding needs to come from our voices and experiences. Nothing About Us Without Us. There is a need for more comprehensive research that tells our stories. ... that gives a better, truthful picture of how we interact with the justice system. This lack of this type of research means invisibility... means our needs, our rights are not met."

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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"The real value is in capturing people's stories and documenting them. There have been a few high-profile cases where people subsequently shared their experiences throughout the entire process, but these are still just a handful of cases... So, you know, documenting people's lived experiences of accessing justice or failing to access justice is fundamental."

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**Researcher, Expert on Children's Rights and Disability Law**

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They elaborated providing the example of the lack of data collection on children with disabilities and the legal system and the need for more information on the role of guardians ad litem, including "how many of these roles exist, how often they are employed, and whether there is a consistent process across the country." This researcher identified an absence of comprehensive equality data collection regarding disabled people in the justice system, particularly in child protection cases. This includes a lack of data on the representation of Travellers, other ethnic minorities, and disabled people.



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"There's a significant gap in data collection. As far as I'm aware, Tusla isn't collecting data on key areas, including the number of Travellers, members of other ethnic minorities, and people with disabilities. The available research suggests that these three groups are disproportionately represented in care proceedings. This is especially relevant in cases involving children with disabilities. Often, families lacking adequate support, especially for children with serious behavioural issues, are forced to turn to state care. This isn't a matter of parents unwilling or unable to care for their children under better circumstances. It's a clear indication of the lack of necessary supports, which is a critical area that needs attention."

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**Researcher, Expert on Children's Rights and Family Law**

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This participant identified a lack of sufficient disaggregated data on the experiences of children with disabilities in accessing justice.

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"There are significant issues that need to be addressed such as the invisibility of children with disabilities in data collection. Data across the board is not disaggregated enough to make them visible. Data should be collected on the experiences of children with disabilities in accessing justice, whether as parties, victims, witnesses, etc. This could inform guidance and training for professionals. So, there's definitely a significant data gap. It's also about understanding children's experiences through primary research to strengthen opportunities for inclusive participation."

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**Statutory Stakeholder, Expert on Disability 3**

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This participant highlighted an issue with data availability and its impact on addressing abuse, using the example of the Domestic Violence Act.

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“When considering the Domestic Violence Act and the applications for protection orders or safety orders, I became concerned about the lack of data on older individuals who might be facing abuse from their children or family members. Several years ago I attempted to get statistics on this issue, but there was no comprehensive dataset available. A manual survey conducted by court staff did reveal that roughly 27% of applicants fell into this category at that time. However, this highlighted a broader problem, the absence of data to inform policy and legislation. I am currently trying to establish evidence of abuse levels across various demographic groups. Unfortunately, there is no national database to support this work.”

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**Solicitor, Expert on Disability and Older People**

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This participant also highlighted the lack of comprehensive statistics on older persons facing abuse from family members in the community.

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“While the HSE does collect some limited data, it primarily focuses on older people and disability services, with a stronger emphasis on residential care rather than community-based situations. The scarcity of data across the spectrum is a significant challenge.”

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**Solicitor, Expert on Disability and Older People**

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In discussing effective responses to abuse of disabled people and older people, this participant also emphasised that the absence of data hinders progress in addressing these issues through effective planning, policy development, and legislation.

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“To effectively plan, create policies, and shape legislation, we rely on data. Regrettably, I don't see a strong push at the moment to address this issue. Currently, there is no mechanism to identify potential cases of abuse or raise red flags effectively.”

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**Solicitor, Expert on Disability and Older People**

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This participant suggested that the gaps in data on access to justice could be addressed by requiring all public bodies to collate and share data on disability and access to justice.

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"I wonder if there's a way to improve the data collection process within the public service. Could there be a broader and more standardised approach to collecting data? ... It's perplexing that this data seems to be not collected or when it is it is confined within organisation and isn't being shared more widely. There should be a mechanism for collecting and collating this data from all public bodies."

**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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## **Summary of Key Points**

The participants highlighted several key issues related to the inadequacy of data on access to justice in Ireland. Participants overwhelmingly emphasised the absence of comprehensive data concerning disabled people accessing justice, viewing accurate data collection as a means to shed light on the limited access to the justice system. They emphasised that this data is essential in identifying gaps, informing public policy, and raising awareness of the experiences of disabled people. An absence of comprehensive equality data collection regarding disabled parents in the context of child protection cases was identified. Concerns were raised about the poor quality of existing data, the lack of data on lived experiences, and the absence of disaggregated data for children with disabilities. These gaps in data were seen as blocks to addressing issues such as the abuse and effective planning and the development of public policy. Participants also suggested strengthening the obligation for data collection within public bodies as a solution to address the gaps and facilitate data sharing among key stakeholders in the justice system.

## **Complex Legal Frameworks**

A number of participants suggested a need for comprehensive review of existing legislation and public policy related to access to justice. They highlighted the complexity of current legislation in both civil and criminal systems and suggested streamlining to enhance

accessibility. They identified the need for law reform in order to comply with international human rights obligations, particularly the CRPD, as illustrated by this participant.

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“I think it would be beneficial to consolidate various provisions scattered across different acts into one central piece of legislation, especially for criminal procedures. This would streamline the process and make it easier for people to find relevant information... On the civil side, it's a bit more challenging due to the complexity and diversity of legislation. However, it might be helpful to consider creating a comprehensive legislative framework... that covers various aspects related to disability, employment, and equality. Collaboration between government departments is essential to achieve this...”

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**Solicitor, Statutory Stakeholder, Expert on Disability 2**

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A recurring theme was the need to review existing legislation to ensure alignment with international standards, especially the CRPD.

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"With the state reporting under the UNCRPD for the first time, I think there is merit in considering a review of all relevant legislation. For instance, I've advocated for a review of the Disability Act, specifically focusing on provisions relating to children and assessments of need. This may not directly address access to justice, it plays a big role in the broader context. This review would identify gaps, shortfalls, and inconsistencies between our national legislation and the requirements of the UNCRPD.”

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**Statutory Stakeholder, Expert on Disability 3**

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Several participants emphasised the need for a comprehensive overhaul of the Disability Act 2005, including this participant.

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"The Disability Act is outdated and urgently needs reform to align with the economic, cultural, and political context of Ireland today. It should be revised to reflect the principles and rights of the CRPD. The Act as it stands is often the first point of

reference for addressing challenges. [I]t falls short in its current form, particularly in ensuring accessible information, and offering effective remedies when we encounter obstacles in the system. The updated Act needs to address the gaps, it should provide guidance but also practical, enforceable rights..."

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**Researcher, Expert on Access to Justice, Expert by Experience 1**

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This participant suggested that there is room for improvement in existing legislation, such as the Criminal Evidence Act of 1992, with specific attention to sections 13 and 14. They called for more involvement of disability organisations in the legislative process.

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"I believe there is room for development in the criminal justice system, particularly with the Criminal Evidence Act of 1992, specifically in sections 13 and 14 ... I think there's a definite need for modernisation in this area... it's important that disability organisations are actively engaged in this process."

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**Solicitor, Statutory Stakeholder, Expert on Disability 3**

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The participant highlighted the necessity of strengthening reasonable accommodation measures, especially within the Employment Equality Act, to provide clarity and ensure greater inclusivity for disabled people.

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"Reasonable accommodation needs to be strengthened up for sure. There is no doubt about that, both as a matter of law in terms of legislation and also in terms of policy. After the Nano Nagle case, there's still quite a bit of uncertainty about what an employer's obligations are. There's still quite a bit of uncertainty about just how far-reaching that judgment is. Again, I think a strengthening up of reasonable accommodation measures... particularly in the Employment Equality Act, would be very helpful."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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## Summary of Key Points

Participants emphasised the need for a comprehensive review of existing legislation and public policy concerning access to justice. The complexity and fragmentation of current legal frameworks in both civil and criminal systems was identified. Participants called for consolidation and alignment with international standards, particularly Ireland's obligations under the CRPD. Participants made a number of recommendations including improving existing laws, strengthening reasonable accommodation measures, addressing discrimination, and updating and strengthening the Disability Act 2005. The under-implementation or non-commencement of legislation also emerged as a significant barrier to facilitating access to justice.

## Barriers for Certain Groups and Allied Issues

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### Barriers to Accessing Justice for People with Specific Disabilities

A diverse range of perspectives emerged among participants regarding the presence of additional barriers faced by people with specific disabilities when attempting to access justice. This overarching theme sets out these perspectives, including the challenges faced by people with intellectual disabilities within the criminal justice system, the issues related to access to justice for members of the Deaf community, the experiences of children and parents with disabilities, the implications of the Public Sector Duty on access to justice, the need for community mental health services, and the need for accessible transportation in ensuring access to justice.

The participant highlighted that this is a nuanced issue when considering access to justice for disabled people. They identified potential variations in obstacles faced by people with different types of disabilities.

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"[P]eople with certain kinds of physical disabilities might be able to access justice a bit more readily than people with intellectual disabilities... people with particular disabilities may face more obstacles."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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A number of participants in the research highlighted that people who experience mental health problems face additional barriers in accessing the justice system.

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"I have had the experience a number of times now; there are people with, let's say, general anxiety disorder or an anxiety disorder, or who are maybe recovering from a recent psychotic episode or other serious illnesses. You know, a person is kind of hospitalised on a recurring basis almost. I have certainly had situations where those clients have had a very, very difficult time indeed in accessing justice."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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They elaborated that overcoming the challenges of seeking legal representation and deciding to pursue a complaint, disabled people may face intense cross-examination in court, often without adequate consideration of their disability.

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"So, having gotten over the hurdle of approaching a solicitor and talking to a solicitor about their problem, having taken the difficult decision to refer a complaint or seek a legal remedy, after having jumped over those hurdles, to be then subjected to, let's say, rigorous cross-examination unchecked by a decision-maker who maybe should have thought, 'Hang on a minute, you know, this person is here because they have a specific vulnerability or they are here because they have been treated this specific way because of their disability.' Judges should ask lawyers on the other side to ease off on the old cross-examination. I've seen the situation where the exacting rigour of the legal process and the delays inherent in it ... have had an impact on that person's ability to continue with their complaint or their appeal or their case."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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The participant elaborated further by discussing the sometimes immense stress and barriers people with anxiety disorders face when navigating the Irish legal system. This underscores how the legal process, including costs and potential property loss, can pose serious health risks for disabled people, which affects their decisions to proceed with litigation.

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"If a person with an anxiety disorder is put through the rigours of the Irish legal system, you know, the stress of talking to a lawyer in and of itself, even if they're on their side. The stress of making the decision about whether to go for the complaint, and then there's cross-examination, and then there's submissions, and then there's the appeal. Then there's, 'Oh my God, am I going to lose my house?'... The cost of legal proceedings.... [I]f somebody happens to own a house... then they realise if I go to the High Court, I might lose the house. That's an impediment, obviously, there's no question about that."

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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This perspective was shared with another participant.

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"To take a case to the High Court is a huge decision; that's a huge burden in and of itself, especially for parents who may have a house that they're putting on the line. It's a major issue. You know, there should be an easier way to enforce your rights in terms of disability rather than bringing constitutional actions, which will be very difficult to win and have a very high risk if you lose."

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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This participant highlighted the significant issue of the inaccessibility of the justice system for people who lack literacy skills, emphasising that literacy appears to be a prerequisite for accessing justice effectively.

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"Unfortunately, in Ireland, most of our systems don't fully comprehend how disabled people, particularly those with intellectual disabilities, communicate. Without literacy, it becomes extremely challenging to access justice. So there is a pressing need for big efforts and initiatives to address these issues and improve access to justice."

**Non-Governmental Organisation, Expert on Disability**

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This participant emphasised the importance of ensuring that people with intellectual disabilities have their voices heard and their problems addressed effectively within the legal system. They highlighted the need to ensure that carers and advocates do not speak over the client who have an intellectual disability.

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"In terms of an intellectual disability, you sometimes find yourself in a position where you end up having a consultation with their carer or the advocate more than with the person themselves. You have to push back and make sure you are instructed by your client. I don't think solicitors and barristers do that enough."

**Barrister, General Practice**

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## **Summary of Key Points**

This section of the report presents a range of perspectives on the barriers that people with specific disabilities encounter when accessing justice in Ireland. Participants acknowledged the nuanced nature of this issue and identified the different obstacles faced by persons with different types of disabilities. Participants pointed out that people experiencing mental health problems, might encounter significant challenges in navigating the legal system. These challenges include the stress of litigation, rigorous cross-examinations, and the potential risk of losing property as a result of taking legal proceedings. It was suggested that enforcing rights for disabled people should be made more accessible, as constitutional actions can be difficult to win and carry high risks. In addition, the inaccessibility of the justice system for people with low literacy skills was highlighted, emphasising the need for initiatives to address this issue and ensure that people with intellectual disabilities have their voices heard within the legal process. The importance of solicitors and barristers engaging directly with clients who have intellectual disabilities, ensuring they take instructions from the clients themselves rather than from carers or family members, was highlighted.

## **The Experience of People with Intellectual Disabilities in Accessing the Criminal Justice System**

Some participants shared their experiences and concerns regarding people with intellectual disabilities navigating the criminal justice system as both victims and suspects. They highlighted issues such as non-prosecution in cases of violence, challenges faced by women with intellectual disabilities, and exploitation through online fraud. The need for legal advice, support, and training for key stakeholders and legal professionals was discussed, along with the importance of independent advocacy.

This participant identified issues around treating disabled people as children or patronising them in the context of making statements to the Gardaí in the criminal justice context.

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“There’s still a tendency to infantilise or patronise disabled people, assuming they don’t know their own minds or can’t provide statements or information. People are often referred to as ‘vulnerable’ or the need for ‘appropriate adults’ without a clear understanding of what these terms entail. Many lack knowledge about what an ‘appropriate adult’ actually is. It’s challenging to get social workers or advocates involved in situations where people need support during interviews.”

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### **Independent Advocate working with Disabled People**

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This participant identified barriers faced by people with intellectual and cognitive disabilities, who are often seen as unreliable witnesses due to misconceptions about their abilities. They also refer to cases where victims with disabilities are discouraged from pursuing justice by Gardaí.

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“I believe we need to start by addressing the barriers faced by people with intellectual and cognitive disabilities who often aren't considered reliable witnesses.

Unfortunately, we haven't made substantial progress in developing support systems to enable them to provide evidence and be recognised as credible witnesses... What’s prevalent is that people assume that people with intellectual disabilities who are victims won't see charges filed against the accused because of the likelihood of successful prosecution. I've encountered cases where substantial sums of money were stolen from people with disabilities, and even when there's clear evidence of the theft, Gardaí have discouraged them from pursuing it, telling them it might strain their family relationships.”

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### **Independent Advocate working with Disabled People**

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This participant highlighted instances of violence and sexual violence among service users in residential disability services, which they note may be linked to concerns about their vulnerability in the prison system. Instead, they receive one-to-one staffing and restricted community access.

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“Within our organisations and within other organisation providing disability services over the year’s situations have arisen where you had service users experiencing violence and sexual violence at the hands of other service users. None of them (alleged perpetrators) ever were prosecuted. You know that none of them ever were.... If there were prosecutions, then.... they go to prison. And you know if they did go to prison that would be a problem. The way it kind of operates is that people who were perpetrators remain within service but with one-to-one staffing at all times. So, they can't freely access the community. So, it's like kind of they have a life sentence, they never have free access to the community again. But like some people they age out. Their risk diminishes as they get older. My feeling on that is if they had entered the prison system, the damage, they would be very vulnerable in a system like that. The way this has been dealt with has pros and cons... If there were to be in a prison setting, they would need a very bespoke kind of service... Because there would be hugely, highly vulnerable.”

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**Disability Service Provider, Head of Quality and Advocacy**

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A number of participants highlighted significant challenges faced by women with intellectual disabilities, when victims of sexual violence in accessing justice. This participant shared their experiences where they saw women with intellectual disability making allegations, often struggle to be seen as credible witnesses. This perception can lead to investigations being stalled or not pursued, as their testimony is seen as unreliable.

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“A woman receiving services from us made allegations against a couple of men in the community. She was living in the community. But again, the investigation never went anywhere because she wasn't seen as a credible witness, you know. You know to go so far and then to go to the DPP's office and they just come back and say, you know we're not going to prosecute... She's not seen as a credible witness. You know, it's so demoralising for her. On two occasions that she's gone and made these complaints and gone to the sexual assault unit and, you know, been interviewed by the Gardaí and then at the end of it, it comes back that there's no prosecution... So she's of the mindset now, like, well, look, if it happens again or whatever, what's the point of me making a complaint. What's the point to me pursuing it?”

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**Disability Service Provider, Head of Quality and Advocacy**

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This participant also identified the exploitation of people with intellectual disabilities through online fraud as a growing concern. Despite reports to the Gardaí, cases involving victims with intellectual disabilities often remain unresolved, leading to a sense of scepticism about the ability of disabled people to access justice.

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“You know, the other thing I think that's coming up a lot is, fraud of people online. I know it's a very difficult one, but also, you're being vulnerable and giving money to people who are exploiting you... Sometimes you hear that the perpetrators are being pursued by the guards and they are brought to the courts. But with any of the people that we support, you know, it's been reported to the Gardaí, but it's never been resolved or never really gone anywhere...”

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**Disability Service Provider, Head of Quality and Advocacy**

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This participant suggested that disability service providers could block access to justice, especially in civil cases, and often only sought the involvement of advocates when issues arose relating to the criminal justice system.

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“There's also a general lack of understanding about disability and the various impairments and how they might affect communication, and the exercise of rights. Disability services often avoid getting involved in supporting people in accessing their rights, and they may only seek our involvement when it becomes a clear [criminal] justice issue.”

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### **Independent Advocate working with Disabled People**

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They also highlighted the need for legal advice before arrests or charges. They expressed concern about cases where the Gardaí seek information on their mental capacity and medical records without the provision of legal representation.

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“There's a real need for access to legal advice before potential arrests or charges. The Gardaí sometimes seek information regarding someone's capacity and medical records in cases involving disabled people, who may be targets of investigations or potential offenses. Without access to legal aid in advance, people have no right to a solicitor to advise them on consenting to the release of these records or assessments of capacity. This is an area of great concern for advocates, as we've seen several cases where Gardaí are attempting to gather information without people having legal representation.”

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### **Independent Advocate working with Disabled People**

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The need for greater support for victims of crime with disabilities was also identified by this participant.

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“there's a pressing need for training for both the police and legal professionals on effective communication with people with disabilities. While intermediaries have been developed to support victims and vulnerable witnesses, there's also a requirement for intermediaries to assist disabled individuals who may be accused of offenses but communicate differently.”

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### **Independent Advocate working with Disabled People**

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This participant highlighted an example of what they considered to be good practice by Gardai trying to support a woman who experienced domestic violence.

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"I've had some positive experiences with the guards, especially those who have shown a bit more attention to people with disabilities. I was reminded today when I saw a woman I worked with a long time ago. She got significant disabilities due to domestic violence and chose not to pursue the matter, despite the injuries she suffered, including an acquired brain injury. What stuck with me was how two guards asked if they could meet her in a neutral place. They did this to encourage her to exercise her rights to access the criminal justice system as a victim. Unfortunately, she couldn't bring herself to do it, but I remember their sensitivity."

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### **Independent Advocate for Disabled People**

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This interviewee highlighted various challenges faced by disabled people in accessing justice, particularly when it comes to making statements or providing evidence in criminal cases. These challenges may include difficulties with communication, sign language interpretation, and a lack of awareness of the assistance available.

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"[W]e've made some progress. For instance, prosecuting cases involving members of the Deaf community who use sign language has been challenging. Sometimes people don't follow standard sign language; they might have their own informal sign language, especially if they have an intellectual disability. But in these situations, the DPP has enlisted the help of sign language interpreters and intermediaries. Intermediaries have been particularly valuable for cases involving people with intellectual disabilities. Depending on the severity of the disability, cases are now being successfully prosecuted and that would have been unthinkable in the past. This approach also reduces trauma and victimisation for these people, and I've seen the positive impact first-hand."

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### **Solicitor, Statutory Stakeholder, Expert on Disability 3**

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This participant emphasised the need to extend intermediary support, including children and people with intellectual disabilities, from the start of their involvement in the legal process. They suggested this is crucial for ensuring they can provide their best possible evidence, which is essential for meeting the rigorous standards of criminal prosecution.

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"Intermediaries are only available after a witness has given their statement. What I believe we need to do is extend the use of intermediaries... For example, if I have a child with Down Syndrome making a serious allegation when they come to give their statement, they should have access to an intermediary... to help them provide their best evidence. Because if we can't achieve this... we might not have enough evidence to meet the criminal standards required for prosecution. We must give people the opportunity to provide their best evidence. Intermediaries should be available to any child or person with an intellectual disability..."

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**Solicitor, Statutory Stakeholder, Expert on Disability 3**

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Several participants in the research emphasised the significance of independent advocacy for people with intellectual disabilities who are involved in criminal proceedings. In particular, it was suggested court advocates could play a role in safeguarding the rights of people with disabilities throughout the legal process.

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"In Northern Ireland I know they have advocates and court advocates, especially for the most vulnerable.... But what might be more appropriate is an advocate for them. The intermediary interprets questions for the person with an intellectual disability, but they aren't really there for their rights or obligations to the court, not to the witness. There should be more court assistance and advocacy available because advocates can make their voice heard."

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**Solicitor, Statutory Stakeholder, Expert on Disability 3**

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This participant identified the challenges in getting funding for expert reports in respect of clients with disabilities. This was identified as a barrier for disabled people in accessing services and supports.



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“There is a need for more funding for specialist reports and legal aid, civil and criminal, is a huge barrier. It's a huge barrier, like if you have a client that you think might have mental illness or intellectual disability, you have a battle to find one psychiatrist in the country who will do the report, and the criminal legal aid rates are way better than civil, so you'll find somebody eventually.”

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**Barrister, General Practice**

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This participant identified that disabled people receiving residential or other services from a disability provider can be disadvantaged when involved in criminal cases. It was suggested that service provider refuses to provide the person with letters of support clarifying service provision or details about their disability.

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"Then the other issue that arises, and it doesn't just apply to people with disabilities, but it's incredibly more difficult for people with disabilities. Say, if you're in the criminal courts, but you have support from one of the mental health organisations, or you have support from, for example, a homeless organisation... but you need a letter for court to say this, that, and the other, most of those organisations won't provide the letter. It's only if you have private funds and private access to private health services that your doctor will provide the letter for you. But in an awful lot of situations, those people just don't have that extra funds to do that. And those services, while they might be able to provide the service, won't go the extra step, and the person with the disability will be at a significant disadvantage there."

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**Barrister, General Practice**

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## **Summary of Key Points**

The participants identified a range of interconnected themes that restrict the rights of people with intellectual disabilities within the criminal justice system. One overarching theme related to the non-prosecution of offences, particularly in cases of violence and sexual violence against disabled people. Concerns about the ‘vulnerability’ of suspects with intellectual disability within the prison system have led to non-prosecution. Another theme

relates to the perceived credibility of people with intellectual disabilities as victims, including women who experience sexual violence. Participants discussed examples where victims were frequently not seen as credible witnesses, resulting in investigations being stalled or abandoned.

Participants highlighted the exploitation of disabled people through online fraud, with cases often left unresolved, calling into question equal and effective access to justice. Another concern that emerged relates to the tendency to infantilise or patronise disabled people during legal proceedings, potentially hindering their ability to provide statements or information. It was suggested that some disability service providers might restrict people they support accessing justice, particularly in relation to civil law issues. This raises questions about their role in supporting disabled people in accessing their rights. Issues related to legal representation were also prominent, including the need for legal advice before arrests or charges. Examples were given of Gardaí seeking information on mental capacity and medical records without providing legal representation, which raises concerns about privacy and consent. Support, training, and accessibility within the criminal justice system were themes that emerged. Participants suggested a pressing need for more and better training for Gardaí and legal professionals on effective communication with disabled people, along with a call for greater use of intermediaries.

People with intellectual and cognitive disabilities were seen as unreliable witnesses due to misconceptions about their abilities. Similarly, examples of victims with disabilities being discouraged from pursuing justice by Gardaí was identified, suggesting systemic biases. Despite these challenges, some participants noted instances of positive experiences where Gardaí have shown sensitivity and support and a greater willingness by the Director of Public Prosecutions to prosecute cases where the victim has an intellectual disability. Participants identified independent advocacy as important in vindicating the rights of people with intellectual disabilities during legal proceedings. The challenges in securing expert reports for some disabled people in the criminal justice system was identified, due to the inadequacy of legal aid. These cross-cutting and multifaceted themes demonstrated the complex range of barriers faced by people with intellectual disabilities in accessing justice. Participants

emphasised the need for reform, heightened disability awareness raising, training and a commitment to ensuring equal access, and provision of accommodations.

## **Access to Justice, Disabled People and Prisons**

Participants discussed significant challenges faced by prisoners with disabilities.

Participants, highlighted the need for systemic improvements in awareness, accessibility, and services. These issues include complex complaint mechanisms in prison, low awareness of disability rights, inaccessibility in the built environment, the need for better health services, better data on disability in prisons, access to housing, and diversion of people with mental health problems from the criminal justice system.

This participant identified that disabled people encounter significant challenges within the criminal justice system, particularly in prisons, where their needs are not adequately addressed, leading to a significant disadvantage compared to others.

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"Well people with disabilities face more fundamental issues within the criminal justice system, especially within the prison system. Their core fundamental needs are not being adequately met or addressed, putting them at a greater disadvantage compared to others."

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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They also highlighted serious issues concerning prison conditions and the effectiveness of complaint mechanisms for prisoners with disabilities.

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"There are challenges in accessing justice... From our perspective, there are serious concerns around the mechanisms for lodging complaints, especially within the prison system. This issue has been a recurring concern of the Office of the Inspector of Prisons. The problem is ensuring that prisoners feel their voices are heard regarding their grievances about prison conditions. For prisoners with disabilities, these challenges are even more pronounced. The complexity of the current complaint structures in prisons, coupled with the potential fear of retaliation for filing complaints, adds to the difficulty."

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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In addition, they emphasised the difficulty prisoners face in making their voices heard regarding complaints about prison conditions.

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"Additionally, there's a significant gap in ensuring that information about how to make complaints and how existing mechanisms work is accessible. This includes considerations for language simplicity and addressing literacy issues. For people with sensory disabilities or those on the neurodivergent spectrum, the barriers are significantly heightened.... So the overarching issue is that prisoners, particularly those with disabilities, face considerable hurdles in accessing even the most basic support needed to navigate these legal processes effectively."

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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This participant discussed the lack of awareness about rights and the CRPD, particularly within the prison system.

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"When it comes to accessing justice, a clear example can be seen in our prison population with the overrepresentation of disabled people. This situation tells us how unsuitable the current system is for accommodating their needs, and it reflects the... low level of understanding of human rights."

**Non-Governmental Organisation, Expert on Disability**

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It was suggested that even at a basic level, prisoners are often unaware of their rights and the mechanisms available to them and this lack of awareness is more for prisoners with disabilities. Accessibility within the built environment of Irish prisons was also highlighted as a problem for prisoners with disabilities.

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“For people with physical impairments, such as mobility issues or those who require wheelchair access, the challenges are compounded. Many prison facilities, like Mountjoy, are quite old, though some, like Limerick Prison, have been modernised. Even so, accessibility remains a significant issue in many places.”

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**Non-Governmental Organisation, Expert on Disability**

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A number of reform proposals were recommended to address the barriers facing prisoners with disabilities. This included practical recommendations like information on prisoners’ rights more accessible and ensuring prisons are fully accessible, and improving the health assessment process in prisons.

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“At a very practical level, one thing that could be significantly improved is making copies of the 'Know Your Rights' booklet more widely accessible. This booklet, in plain English, outlines the prison rules and sets out what inmates can expect regarding basic core accommodations and services. However, it's currently not very accessible. Making the English language version of this booklet more readily accessible would be a step forward. Additionally, there's a need to provide this information in other key languages spoken by significant minority groups within the prison population... There's a gap in making information about prisoners’ rights accessible for people with visual or hearing impairments. We're far from achieving this level of accessibility for such essential information.”

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**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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This participant emphasised the lack of data regarding disability and imprisonment, pointing to our limited understanding of the extent to which people with disabilities are

overrepresented in the criminal justice system and their experiences in seeking access to justice.

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"When you consider the prison population, it's challenging to find accurate data on the number of disabled people incarcerated. ... There's a need for comprehensive data collection and analysis in this area, as we currently lack the full picture."

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**Non-Governmental Organisation, Expert on Disability**

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This participant highlighted the challenges and barriers encountered by disabled people particularly those who are neurodivergent and may not be immediately recognisable within the criminal justice system as requiring support. Additionally, they emphasised that people who depend on residential disability services may encounter difficulties in gaining access to these services or may be unfairly stigmatised with a "forensic" label after a conviction.

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"There's a substantial number of disabled people in prisons, many of whom are neurodivergent. They often don't get appropriate support, both before and after serving their sentences. When they're released, they face discrimination, as some disability services refuse to support anyone with criminal histories or forensic needs. This is a significant area of concern for me."

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**Independent Advocate working with Disabled People**

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This participant also highlighted cases where a person is not able to get bail because there is no housing option outside of the residential disability service where the alleged offence took place.

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"I've seen cases where disabled people have been arrested and charged, and they're not able to get bail because they lack suitable accommodation outside of their disability residential housing. This creates a barrier to justice and discrimination."

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**Independent Advocate working with Disabled People**

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This participant highlighted the need for a multi-agency approach to meeting the needs of people with, for example, acquired brain injuries, who have recurrent encounters with the criminal justice system.

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“Additionally, acquired brain injuries pose a substantial challenge, particularly when they affect people's memory or their ability to comprehend what has happened. ...There's a revolving door effect for these people, and we haven't adopted a multi-agency approach to provide them with appropriate support.”

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**Non-Governmental Organisation, Expert on Disability**

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This participant also identified cases where clients were turned away from mental health services and approved centres, which resulted in clients facing criminal charges. They suggested that this was a waste of resources and not in the lack of public interest to prosecute.

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"Well... I think if more money was spent on diversion for anyone who ever comes into the criminal justice system, in particular in terms of mental health...You don't have the data, but I can tell you from personal experience, you have an awful lot of people who end up in court for assault or public order charges arising from being turned away from mental health services. So diversion... Definitely before you ever go near the Garda station or just have the community mental health services.”

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**Barrister, General Practice**

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## **Summary of Key Points**

Participants identified a broad range of challenges faced by prisoners with disabilities within the criminal justice system. The overarching theme was the need for improvements to include increased awareness-raising, improved accessibility, and enhanced support for disabled people in prison settings. Other issues identified include the failure to meet prisoners' fundamental needs, the complexity of prison complaint mechanisms, a lack of awareness regarding disability rights and the CRPD, accessibility concerns in the built

environment, and the need for better health and mental health services. The lack of comprehensive data on disability in the prison population is an obstacle to addressing barriers. Stigmatisation and challenges in accessing housing upon release was further exacerbate discrimination. Some participants discussed the importance of diversion of people with mental health problems to prevent unnecessary involvement in the criminal justice system.

## **Barriers Facing Members of the Deaf Community**

This section discusses the barriers encountered by members of the Deaf community when seeking access to justice. Participants perspectives highlight a range of challenges, encompassing issues related to communication, the scarcity of interpretation resources, and the general accessibility of the legal system for members of the Deaf community. Additionally, it considers other barriers faced by members of the Deaf community throughout their pursuit of justice.

This participant highlighted the difficulties and challenges faced by Deaf people when seeking access to justice.

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"Hearing individuals have access to solicitors and barristers, so why shouldn't we? Our cases, involves the use of an interpreter. It's about breaking down communication barriers I've witnessed many people facing life issues related to attitudes, resource shortages, and the terrible state of access to justice. People often start the legal process but withdraw midway because it's not accessible, and they're emotionally drained. It's especially challenging because we, as Deaf individuals, have less access to information compared to the hearing community. Overall, access to justice for Deaf people is nothing short of terrible."

### **Member of the Deaf Community**

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The risk of Deaf people being misinterpreted was highlighted by this participant, and other highlighted problems in accessing ISL services.



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“Also, the way Deaf people communicate, the legal language, and the interpretation process are all very different from how hearing people communicate. There's a danger in misinterpretation due to the nuances of language and perspective.”

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**Member of the Deaf Community**

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“I have had other experiences where for example ISL interpreters either you know don't show up at all for hearings or you know an ISL interpreter doesn't have adequate ISL capabilities turned up. I've had the experience where by the WRC doesn't necessarily understand that members of the Deaf community like to work with particular ISL interpreters. There is a good reason for that, if we bring along an ISL interpreter that knows you and has worked with you before you know them and that is positive... In fact the ISL interpreter that person knows will simply give voice to their to their experience and their words more effectively than someone they've never worked with before.”

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**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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One participant did speak to the impact of the Irish Sign Language Act 2017 but highlighted that issues remain in accessing justice. This example highlighted the unwillingness of some the Court Service offices to book sign language interpreters for Circuit Court proceedings.

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“The implementation of the ISL Act in 2017 did provide some protection, but it's far from perfect. The Act requires free interpretation for court proceedings, which looks wonderful on paper. However, the reality is quite different. Some Circuit Court offices, while they accept the interpretation... won't take the responsibility for organising interpreters. Public bodies are legally obligated to provide interpreter bookings and payments, but it's often left to us to arrange.”

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**Non-Governmental Organisation, Member of the Deaf Community**

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This participant highlighted access to justice issues for members of the Deaf community in the context of online hearings.

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“Awareness of access to remote hearings is poor. The software for hybrid hearings is subpar, set up hastily during COVID without consulting people with disabilities or representative organisations. Despite meetings with IT and education, there has been little progress.”

**Non-Governmental Organisation, Member of the Deaf Community**

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## **Barriers to Accessing the Legal Profession for Members of the Deaf Community**

This participant highlighted the barriers legal professionals who require sign language interpretation encounter. They suggested that the Court Service’s interpretation of the Irish Sign Language Act 2017 is that legal professionals need to organise interpretation themselves.

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"You see, barristers, are self-employed... The Court Service assert that barristers are responsible for the payment of interpreters. However, their interpretation of the ISL Act is that they provide access to the public, not legal professionals who need sign language interpretation. So, it seems that the obligation only extends to those who are going through legal proceedings.”

**Member of the Deaf Community**

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Further issues with the Irish Sign Language Act 2017 were identified, including solicitors refusing to pay for Irish sign language interpretation.

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“[A] Deaf person who had experienced traumatic abuse in school, an experience shared by many Deaf people. This person wanted to take a case... but the solicitor refused to cover the cost of an interpreter, denying access to justice. This triggered trauma, frustration, and emotional distress. They tried to find alternative ways to proceed but couldn't.”

**Member of the Deaf Community**

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## **The Experience of Members of the Deaf Community taking Equality Cases**

This participant described their experience of pursuing legal action against a bank, and the barriers in taking legal proceedings.

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“I've taken legal action against organisations twice. In hindsight, I probably shouldn't have, because the process was incredibly complex, mentally draining, and frustrating.... One case was against a bank, and the other an institution providing higher education. Both processes were daunting... The education provider controlled their own funds and can decide whether to pay for an interpreter or not.”

### **Member of the Deaf Community**

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This participant highlighted that within the Deaf community, there's a lack of understanding of the legal system. It was suggested that people require both sign language interpreters and additional support to access justice, but the need for extra assistance, such as Deaf Interpreters and Deaf Advocates, is often overlooked, as sign language interpretation is seen as sufficient by itself.

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“A lot of the community may not fully understand the legal system or its intricacies. Even within the disability community, discussions often revolve around issues of attitudes, perception, and the use of language that relates to us. While we share these common experiences, we also have the additional challenge of language. We lack access to the same communication and understanding of legal terminology. Deaf people require both a sign language interpreter and additional support to bridge the gap. [T]here's an assumption that having an interpreter is sufficient. However, there's a requirement for additional support systems... We are a diverse group within the broader population, and these differences need to be recognised.”

### **Non-Governmental Organisation, Member of the Deaf Community**

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This interviewee discussed the lack of awareness among some members of the Deaf community about their legal rights.

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"Some Deaf people have ... received little information about their rights. It's only through organisations like the Irish Deaf Society and others that they come to realise they have rights, and it's met with shock and surprise. They've been institutionalised to believe that hearing people are right, and we're always wrong. We have to remind them that they have rights, but the understanding is still vague and lacks clarity. Deaf people do not have easy access to the law, period."

**Non-Governmental Organisation, Member of the Deaf Community**

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## **The Challenges Faced by Deaf Prisoners**

This participant discussed the challenges faced by Deaf prisoners in accessing justice, including issues related to communication, understanding legal procedures, and the treatment of Deaf people within the prison system.

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"Working with Deaf prisoners, particularly in places like Mountjoy or Cloverhill Prison, is difficult. We can't access these Deaf prisoners, even though we aim to make their lives easier and help the prison officers understand their needs. When we're present, we can explain the situation, and they often express surprise about what they're supposed to do because they've been arrested without an interpreter. There's a need for additional support and awareness."

**Non-Governmental Organisation, Member of the Deaf Community**

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They elaborated on the difficulties they face in supporting Deaf prisoners as part of their work.

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"I sometimes face difficulties because I'm perceived as a friend of the Deaf person, which is not true. I haven't met them before. There's an assumption that we all know each other, but we are professional workers, and it's challenging to go through such processes. We can't ignore the rights of Deaf prisoners, and they have the right to support. However, we often face resistance from prison officers. This issue boils down to awareness and communication within the system. For example, when I visited the

prison with a priest, the prison officers treated the priest differently, and I faced additional security checks.”

**Non-Governmental Organisation, Member of the Deaf Community**

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## **Access to Irish Sign Language During Garda Questioning**

This participant shared a recent example of a suspect in a criminal investigation providing a statement to Gardaí without a sign language interpreter, which raises significant human rights and access to justice issues.

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"I'm thinking about a recent criminal situation that I heard about... and I believe it's important to mention this. A Deaf person was placed in custody and taken to the Garda station... During the initial stages, such as the recording of statements, there was no interpreter present. The Gardaí decided to proceed with the interview without an interpreter... They took a statement and only brought in an interpreter afterward to go through the next steps. This is absolutely wrong; they cannot do that. The police and the government are obligated under the ISL Act to provide access.”

**Member of the Deaf Community**

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## **Access to Justice Membership of the Deaf Community and Intersecting Identities**

This participant emphasised that some members of the Deaf community who have other minority identities, such as being transgender, from the Traveller community, migrants, refugees, or people with additional disabilities, face additional challenges that further complicate access to justice.

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"Being transgender is the same as any other transgender experience, but with Deaf people, it's the additional challenge of communication. So when you consider intersectionality, it will be the same for Deaf people with the added language barrier. Disability, whether it's related to mobility, being Deaf, or anything else, brings similar problems for Deaf people with the added layer of communication. We also have to consider Deaf migrants, Deaf refugees, and asylum seekers... [D]ifferent sign languages are used, making the first few months in a new country particularly challenging... Refugees have faced issues as well, particularly in direct provision centres. There have been cases of deportations without giving people a chance to explain their situation due to the language and communication barrier."

**Non-Governmental Organisation, Member of the Deaf Community**

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## **Accessible information for Members of the Deaf Community**

This participant suggested that legal professionals, including judges, barristers, and solicitors, should undergo training in Deaf studies and gain an understanding of the Deaf community to better serve Deaf clients.

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"Professionals in the justice system should have a deep linguistic and cultural understanding of the Deaf community. This includes training in Deaf studies, going beyond just basic awareness. It's important that solicitors and barristers undertake training that provides them with a genuine understanding of Deaf culture and the community's needs. We are dealing with a legal system where senior judges often are old school.... The good news is that some of them have undergone training and supervision, which has improved their knowledge significantly. Some expressed a desire to learn Irish Sign Language, even if it's just an introduction. This shift in perspective can have a positive impact..."

### **Member of the Deaf Community**

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## **Summary of Key Points**

Numerous barriers experienced by members of the Deaf community accessing justice were highlighted. Access to sign language interpreters was identified as a major barrier. While the Irish Sign Language Act of 2017 represents a step in the right direction, it has not resolved all the challenges faced by members of the Deaf community in practice. Some Circuit Court offices do not take responsibility for booking sign language interpreters, despite public bodies being legally required to do so. This places the onus on the person requiring the interpreter to arrange themselves, creating an additional barrier. Awareness regarding access to remote hearings remains low within the Deaf community. The rapid adoption of technology for remote and hybrid hearings during the COVID-19 pandemic failed to adequately consider the needs of disabled people, including members of the Deaf community. Legal professionals who require sign language interpretation encounter their own set of obstacles that restricts access to the legal profession and a lack of diversity. This interpretation further complicates their work and adds to the challenges they face. It was suggested that Deaf prisoners, encounter numerous challenges within the prison system. These include the lack of access to sign language interpretation and misunderstandings with prison officers, which hinder effective communication and support. Members of the Deaf community who want to initiate equality cases face barriers in accessing the legal system.

Another theme that emerged was the lack of awareness of the amongst the Deaf community of their legal rights. While organisations like the Irish Deaf Society often take on the role of raising awareness about their rights more work needs to be done. Members of the Deaf community who belong to other minority groups, such as being transgender, from the Traveller community, migrants, refugees, or having other disabilities, face compounded challenges when accessing justice due to multiple intersecting identities. The lack of accessible information was also identified as a major barrier. The interviewees identified a pressing need for legal professionals, including judges, solicitors, and barristers, to undergo training in Deaf studies and gain a deeper understanding of the Deaf community. This training needs to go beyond basic awareness in order to contribute to a more accessible legal system for the Deaf community.

## **Access to Justice for Children and Parents with Disabilities**

This section considers the challenges parents and children with disabilities face when seeking access to justice and disability services. Participants identified a number of barriers, including delays in accessing services, the invisibility of parents with disabilities, the absence of dedicated advocacy services for children, and gaps in data collection regarding disabled people in the justice system. They also highlighted the need for improved support, early interventions, and better recognition of children's evolving capacity.

A number of participants highlighted barriers facing parents litigating on behalf of their children in seeking access to disability services. This participant noted that the delays are a real barrier in respect of parents litigating for access to services for their child.

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"Very often, parents of children... have no choice but to take... cases. If it appears to them that it's going to take, you know, 18 months, two years, obviously, every year that goes past places them in a more difficult position."

**Solicitor, Statutory Stakeholder, Expert on Disability 1**

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Another participant identified that the invisibility of parents with disabilities coming before family courts.



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“In the context of discussing people with disabilities, I have observed that a significant proportion of parents coming before the courts dealing with child protection have disabilities. These are not typically physical disabilities, but more often cognitive disabilities or mental health problems, which sometimes intersect.”

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**Researcher, Expert on Children’s Rights and Family Law**

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They suggested that typically parents might have a cognitive disability or mental health problem and there is a lack of reasonable accommodations to support these parents, as diagnoses often come late in the legal process or do not come at all.

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“Rarely are any exceptional measures taken to support these parents. The challenge lies in the late diagnosis of their disabilities, often only identified during parental capacity assessments. This late diagnosis is a common scenario, especially for those with mild intellectual disabilities who have previously managed to navigate through various educational and social nets until they encounter challenges in parenting, prompting intervention by social services.”

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**Researcher, Expert on Children’s Rights and Family Law**

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The absence of adequate advocacy services for parents with disabilities was also discussed, including the importance of offering early support to parents when concerns arise regarding their ability to manage parenting responsibilities effectively. It was suggested that this approach would reduce the need for care proceedings where issues of access to justice arise.

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“I have observed that sometimes parents have advocates, but this is inconsistent due to limited availability of advocacy services. The criteria for accessing an advocate seem to be very ad hoc, likely depending on whether a social worker feels a person would benefit from having one and if the local advocacy service can provide one. Besides advocacy, I’m not aware of any other supports or assistance provided... In my view, the screening process should start much earlier. As soon as there are concerns about a person's ability to cope with parenting, an assessment of their needs should be initiated so that appropriate supports can be put in place, well before the escalation to legal proceedings becomes necessary.”

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**Researcher, Expert on Children’s Rights and Family Law**

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This researcher also highlighted the need for better advocacy services to facilitate access to justice for parents with disabilities. A statutory right to advocacy was suggested, but with caution due to potential stigma and challenges in defining eligibility.

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"It might seem straightforward to say 'yes' to a statutory right to advocacy, but there are complexities to consider. Not everyone might embrace the idea of advocacy; some might perceive it as stigmatising. Also, defining who qualifies for a statutory right to advocacy is challenging. For instance, could this inadvertently exclude people who currently receive some form of advocacy, particularly those with mental health issues? So, while the concept is appealing, I would approach it with caution. A more immediate and practical step would be significantly enhancing the availability of advocacy services, making them more accessible to those who truly need them."

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**Researcher, Expert on Children’s Rights and Family Law**

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The failure to recognise the evolving capacity of children has been identified as a barrier to accessing justice, especially for children with disabilities.

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"I think children face significant barriers in getting to the justice system. Because the systems don't have regard to their evolving capacities, their particular needs, and I think then when you add another dimension and disability might be one of those dimensions, it becomes a barrier."

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**Statutory Stakeholder, Expert on Disability**

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This participant discussed the obstacles facing disabled children in accessing justice. They also discussed procedural hurdles, a lack of accessible information, and a deficiency in advocacy and support.

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"When you look at children with disabilities, they are often insufficiently visible in legislation and policies related to children. Similarly, in legislation and policies related to disability, they may not receive the same level of visibility. There are also substantial practical barriers, particularly for children with disabilities, who are at higher risk of marginalisation and exclusion. These barriers include procedural obstacles in accessing accessible information, advocacy, and support. Creating child-friendly environments is needed..."

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**Statutory Stakeholder, Expert on Disability 3**

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Another recurring perspective shared by participants was that compounded disadvantages may make it harder for disabled people to engage with the justice system effectively. This participant discussed the complexity of intersectionality and multiple identities for children, who face layered barriers due to their intersecting identities.

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"As for intersectionality and multiple identities, it's a complex issue. [A]t the core of the matter is the layering of barriers that people, especially children, face due to their intersecting identities. This can put them at a higher risk of exclusion and disadvantage when navigating the system. We have to approach this issue with the expectation that additional barriers may exist, even though it shouldn't be the case. Our system needs to become more agile and inclusive..."

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**Statutory Stakeholder, Expert on Disability 3**

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Several participants highlighted the inadequacy of children's advocacy. This participant highlighted that advocacy for children with disabilities is lacking, and there is no dedicated national service.

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"There are several areas where we need to improve our efforts, and advocacy stands out... The inadequacy of advocacy, especially concerning children, needs consideration. There is no dedicated national advocacy service specifically for children. Even the national service for assisting people with disabilities does not include children. This leaves gaps in terms of support, not only for children with disabilities but also for their parents and families who often play a vital advocacy role in their lives. While not on a professional basis, parents are often the most dedicated advocates for their children. So, there's a substantial need to address this."

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**Statutory Stakeholder, Expert on Disability 3**

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This participant identified a misalignment between the Assisted Decision-Making (Capacity) Act and mental health legislation, particularly for 16 and 17-year-olds, which requires examination and resolution.

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"Regarding the Assisted Decision-Making Capacity Act, it primarily focuses on adults, and there appears to be a gap when it comes to 16 and 17-year-olds. This gap presents a barrier in terms of decision-making support and access to justice... There is need for a comprehensive review, pointing out the misalignment between the Assisted Decision-Making Capacity Act and mental health legislation."

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**Statutory Stakeholder, Expert on Disability 3**

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## Summary of Key Points

Several key points emerged in the interviews regarding access to justice for children and parents with disabilities. It was suggested that delays in accessing disability services create

barriers for parents seeking support for their children with disabilities. Parents with cognitive disabilities or mental health problems are often invisible within family courts, and the lack of reasonable accommodations further restricts their access to justice. The absence of dedicated advocacy services for children, and inconsistent criteria for accessing advocacy services create barriers. Some participants suggested that the failure to recognise the evolving capacity of children, intersectionality, and multiple identities also restrict access.

## **Public Sector Duty, Transport, and Time Limits to Litigate**

Several other themes emerged from the interviews. These include the role of public sector duties on access to justice, transportation barriers that hinder justice access, and time constraints on litigation that disproportionately affect disabled people.

### **Public Sector Duty**

A number of participants in the research highlighted the necessity of reinforcing the public sector duty to enhance equality and data collection practices. This participant noted that effective enforcement of the public sector equality duty could significantly influence public bodies, including the Court Service, to gather more accurate and comprehensive data.

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“I do think the public sector equality duty, if it was properly enforced would improve things. It would put a big impetus on public bodies like the Court Service to collect proper data, but it hasn't been properly enforced. The Irish Human Rights and Equality [Commission] have a role in that regard.”

**Barrister, Non-Governmental Organisation, Expert on Access to Justice**

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This participant also pointed out the inaccessibility solicitors and barristers' offices. It was suggested that the public sector duty should apply to legal professionals to address the barriers facing people with disabilities accessing justice.

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“The Public Sector Duty should apply to solicitors and barristers. Their premises should be accessible as well. There is a need for training about, you know, communication with people with disabilities and disability awareness and all of that. That should also include judges.”

**Statutory Stakeholder, Expert on Disability 2**

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## **Transport**

One participant in the research indicated that disabled people living in rural areas, face additional hurdles in accessing justice due to dependency on others for transportation.

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“And then in Ireland we have a lot of rural areas. As a disabled woman I find myself depending on others to get places. I know of disabled women who have to rely on others sometimes the perpetrator of violence, to bring you to the places to report. That is a barrier.”

**Researcher, Expert on Access to Justice, Expert by Experience 1**

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## **Time Limits to Litigate**

Some participants highlighted the time limits in taking legal actions as a barrier for some disabled people. This barrier was highlighted against other challenges such as civil litigation, civil legal aid. This participant pointed out the broad challenges in civil litigation, civil legal aid, and limitations statutes, extending beyond just accessibility issues for people with disabilities.

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"The statute of limitations can be an obstacle for people with disabilities when it comes to legal action. The limited timeframes set for initiating legal proceedings often don't accommodate the needs and challenges faced by people with disabilities. For example, a client might need additional time to fully understand their rights, get legal advice, and properly prepare for their case."

**Solicitor, Non-Governmental Organisation, Expert on Prisons**

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## **Summary of Key Points**

Participants identified a number of other interconnected and cross-cutting issues that act as barriers to accessing justice for disabled people in Ireland. The importance of reinforcing the public sector duty, expanding it to include legal professionals, and addressing issues related to transportation, and time limits for initiating litigation. These challenges speak to the need for systemic reforms and proactive measures to ensure equal access to justice.

## Conclusions

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The interviews conducted with key stakeholders in the justice system undertaken as part of the qualitative component of this baseline study highlights a multitude of challenges faced by disabled people in Ireland when accessing the justice system. These challenges encompass a wide range of issues, including limited awareness and understanding of disability rights, inadequate training for key stakeholders, unmet legal needs, lengthy litigation processes, barriers for people with less visible disabilities, and lack of reasonable accommodation, and other barriers. The common thread throughout the findings is the pervasive lack of awareness and understanding of disability rights, particularly the CRPD, and specifically Article 13 on access to justice. This lack of awareness is not only present among the general public but also within the Irish justice system, including legal professionals, judges, the Gardaí, the Court Service, the Irish Prison Service and other key public bodies involved in the administration of justice.

The findings point to the urgent need for comprehensive training for all stakeholders in the justice system, covering areas such as human rights, disability awareness, and equality, diversity and inclusion. This training should extend to judges, solicitors, barristers, Gardaí, prison officers, and personnel in relevant public bodies working in the administration of justice. The involvement of disabled people and their representative organisations in the design and delivery of this training is essential. Access to justice is obstructed by a range of factors, including the unmet legal needs of disabled people, delays in legal proceedings, and insufficient provision of legal aid. The findings highlight the need to expand legal aid to include all groups protected under anti-discrimination legislation, with a focus on prioritising disabled people. Delays in the legal system, a shortage of solicitors equipped to support people with certain disabilities, and disparities between the criminal and civil justice systems further impede access to justice.

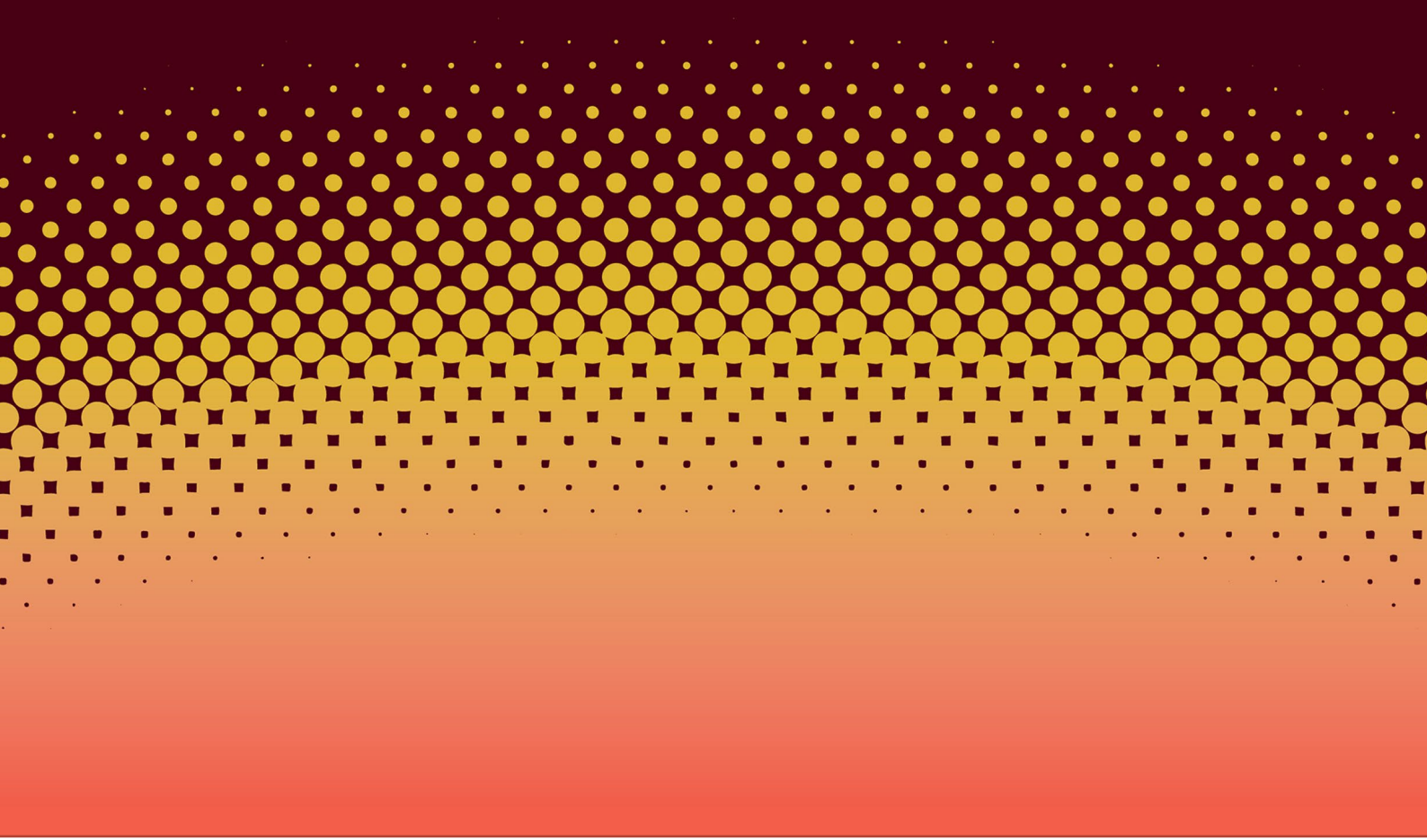
Advocacy services play a pivotal role in helping disabled people navigate the complexities of the justice system (both civil and criminal). However, the findings point to the limitations advocacy services, including waiting lists. Participants call for increased funding, better training for advocates, and the introduction of a statutory right to independent advocacy.



Another important finding is the challenges faced by members of the Deaf community, including barriers related to sign language interpretation, lack of awareness of legal rights, and the intersection of multiple identities. Participants emphasised the need for legal professionals to undergo comprehensive training in Deaf studies to make the legal system more accessible. Other important findings include restrictions on legal capacity, access to justice for children and parents with disabilities, and the challenges faced by prisoners with disabilities. Participants calls for reforms in existing legislation and public policy, consolidation of the relevant legal frameworks, and alignment with international standards, particularly the CRPD.

The findings point to a complex matrix of barriers that disabled people encounter when seeking to access justice in Ireland. There is a need for systemic reforms, increased awareness, comprehensive training, and a commitment to ensuring equal access to justice for all, regardless of disability or other intersecting identities. Addressing these issues is essential to fulfil Ireland's obligations under the CRPD, specifically Article 13 in ensuring an accessible justice system that it fit for purpose.

# Chapter 4: Conclusions and Recommendations



## Overview

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This chapter presents the conclusions and recommendations from this baseline study, drawing from the insights obtained through the literature review in Chapter 2 and the qualitative findings presented in Chapter 3. Chapter 2, discussed the "International Principles and Guidelines on Access to Justice for Persons with Disabilities" (2020), a comprehensive framework developed by the UN Special Rapporteur on Disability, outlining key principles and detailed guidelines to ensure access to the justice system for disabled people. These principles serve as a benchmark for assessing Ireland's compliance with Article 13 of the CRPD, guided by insights from the literature review and qualitative research in this project. This chapter makes recommendations aimed at removing the identified barriers that impede access to justice for disabled people in Ireland. These recommendations are intended to facilitate the realisation of the principles set forth in the international guidelines, and fulfil Ireland's obligations under Article 13 of the CRPD.

## **Application of the International Principles and Guidelines on Access to Justice for Persons with Disabilities to Ireland**

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This section considers Ireland's compliance to the "International Principles and Guidelines on Access to Justice for Persons with Disabilities", the key framework for ensuring access to justice for disabled people. While Ireland has taken measures aimed at advancing the rights of disabled people, this research had identified that significant barriers remain. The ensuing discussion offers a concise overview of the Ireland's compliance with these principles.

It is clear from the analysis that Ireland has not fully met these principles. Access to comprehensive data is critical in assessing compliance, which as noted above is lacking in Ireland. Continued efforts and improvements are needed to ensure full compliance with these principles and to enhance access to justice for disabled people in Ireland.

### **Principle 1: All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice based on disability.**

While Ireland has provided for greater recognition of legal capacity with the introduction of the Assisted Decision-Making (Capacity) Act 2015, there remains significant concerns regarding the recognition of legal capacity for disabled people in Ireland. Regrettably, the ADMCA 2015 still maintains provisions for substitute decision-making, which is not in compliance with Article 12 of the CRPD.

### **Principle 2: Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.**

Ireland has taken steps to address accessibility and inclusivity for disabled people within the justice system. However, there remain significant challenges and inconsistencies in complying with Principle 2. Legislation and policy seeking to ensure accessibility is inadequate and in need of review.

### **Principle 3: Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.**

In Ireland, while there are procedural accommodations for access to justice for disabled people, including children, significant disparities and challenges exist. Children, especially those with disabilities, face obstacles in exercising their rights within the justice system, there is limited support, inconsistent judicial training, and inadequate data collection. Proposed amendments to the Mental Health Act 2001 underscore the need for aligning legislation with children's evolving capacity, promoting mandatory consultation, and ensuring independent advocacy to uphold their rights effectively. As discussed in Chapter 3 significant issues with the adequacy of procedural accommodations remain.

### **Principle 4: Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.**

While public policy underpinned by legislation seeks to facilitate access in a timely manner the research participants catalogued significant and persistent problems with physical access to court buildings and the lack of accessible information, particularly impacting people with intellectual disabilities, and a range of related barriers including accessible communication.

### **Principle 5: Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.**

The lack of accommodation for disabled people in the justice system poses a significant barrier in accessing justice, and the responsiveness of court and tribunal offices to requests for accommodations has been inadequate.

### **Principle 6: Persons with disabilities have the right to free or affordable legal assistance.**

In Ireland, there is major compliance issues with Principle 6, guaranteeing free or affordable legal assistance for disabled people. Limited access to legal aid poses a major obstacle, with delays, and financial constraints further impeding justice.

### **Principle 7: Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.**

There is significant evidence that disabled people cannot participate in the administration of justice on an equal basis with others. In particular, unmet legal need, the lack of awareness of rights, the inadequacy of advocacy services and deficiencies with legal aid mean that disabled people cannot exercise the right to participate in the administration of justice on an equal basis with others.

### **Principle 8: Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.**

There is evidence that despite the introduction of the ADMCA barriers still remain in respect of reporting complaints and initiating legal proceedings concerning human rights violations and crimes, having complaints investigated and obtaining effective remedies. The research identified particular barriers in residential disability services, mental health services, and prisons. The research also identified barriers that restrict children with disabilities initiating legal proceedings. These barriers are further compounded by inadequate complaints mechanisms for people subject to mental health legislation and prisoners.

**Principle 9: Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.**

There are insufficient monitoring mechanisms to ensure access to justice for children and adults with disabilities in Ireland. There is a lack of comprehensive data collection regarding the experiences of disabled people within the Irish justice system. This deficiency in data collection inhibits the ability to understand the full scope of challenges and hinders evidence-based policymaking, and the removal of barriers.

**Principle 10: All those working in the justice system must be provided with awareness-raising and training programmes.**

It is clear from the literature review that disability training is being delivered to persons working in the justice system. However, there is limited information available regarding the nature of the training, its content, who delivers it, who exactly it is delivered to and how often. The involvement of disabled people in the design and delivery remains unclear. There was a strong view amongst research participants that the training that is being delivered is wholly inadequate.

## Interdependence of Article 13 with other Rights in the CRPD

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As discussed in chapter 2 and further evidenced by the analysis of the findings of the qualitative research in chapter 3, understanding the interdependence of rights is important in ensuring access to justice for disabled people under Article 13 of the CRPD. This is supported by the jurisprudence of the Committee on the Rights of Persons with Disabilities.<sup>225</sup> The interdependence of key articles within the CRPD highlights how these rights are interconnected, each important in realising a range of substantive rights. This is clear from the five cross-cutting themes discussed in chapter 3, and emerged repeatedly in the evidence and experience provided by participants. Recognising how these rights interact is necessary for effective advocacy and evidence based policy-making, ensuring that supporting one right enhances the realisation of others.

**Article 5 (Equality and Non-Discrimination):** This principle is key, ensuring that all subsequent rights are applied without discrimination on the basis of disability, which is essential for ensuring access to justice for disabled people.

**Article 6 (Women with Disabilities) and Article 7 (Children with Disabilities):** These articles highlight the need for specific measures to protect and advance the rights of women and children with disabilities, who may face multiple layers of discrimination, including in accessing justice.

**Article 8 (Awareness-Raising):** Increased awareness is crucial for realising an environment where disabled people can effectively seek and obtain justice.

**Article 9 (Accessibility):** This article emphasises the importance of accessible, information, and communication, which are prerequisites for disabled people to participate equally in the justice system.

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<sup>225</sup> See Chapter 2.



**Article 12 (Equal Recognition Before the Law):** This is directly tied to Article 13, as it affirms the legal capacity of disabled people on an equal basis with others, which is a gatekeeper right unlocking access to justice.

**Article 14 (Liberty and Security of the Person):** This article relates to the protection of disabled people from arbitrary detention, a scenario where access to justice is often restricted.

**Article 16 (Freedom from Exploitation, Violence and Abuse):** States Parties are required to adopt comprehensive measures including legislative and educational efforts to safeguard disabled people from all kinds of abuse and exploitation, emphasising protection both in and outside the home with a focus on gender and age sensitivities. The non-prosecution of offences, particularly in cases of violence and sexual violence against disabled people raise serious concerns around access to justice and the right to be free from abuse.

**Article 19 (Independent Living and Inclusion in the Community):** Living independently and being included in the community ensure that disabled people can engage fully in society. People living in residential disability services face many obstacles in accessing the justice system.

**Article 21 (Freedom of Expression and Opinion, and Access to Information):** This article is key for enabling access to justice. It ensures that people with disabilities can fully participate in and understand legal processes, essential for effectively exercising their legal rights.

**Article 24 (Education):** Ensuring inclusive education opens doors to better understanding of rights and how to claim them.

**Article 27 (Work and Employment):** Employment provides economic independence and social interactions that can enhance a person's ability to access and navigate the justice system effectively. Thus, the absence of legal aid for disabled people to pursue equality case, which challenge their exclusion from education and employment, is a significant issue.

**Article 28 (Adequate Standard of Living and Social Protection):** This right ensure that disabled people have the necessary support to engage with the justice system without being hindered by socioeconomic barriers.

**Article 31 (Statistics and Data Collection):** Robust data collection is vital for identifying gaps in access to justice and for informing policy decisions.

## Conclusions

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It is clear from this research is that the persons with the greatest legal needs encounter the most significant obstacles when attempting to access the Irish justice system. In Chapter 2, the literature review highlighted an expansive array of relevant legislation, initiatives, and policies ostensibly designed to enhance access to justice for disabled people. However, these developments tend to obscure the reality that justice remains largely inaccessible for disabled people. Significant gaps in existing research on access to justice exist, but the literature provides the foundation for our understanding of the challenges faced by disabled people in accessing justice, both internationally and within the Irish context. The qualitative findings from Chapter 3 shed light on the lived experiences of disabled people within the Irish justice system, which mirror and are consistent the analysis presented in literature. The interviews with key stakeholders within the justice system revealed a multitude of barriers and challenges that persistently hinder access to justice.

These findings make clear the need for significant reforms, addressed in the proposed recommendations below, action to improve and provide access to justice for disabled people in Ireland. The research findings demonstrate a critical issue of misalignment between Irish law and international human rights standards, particularly the CRPD. These inconsistencies pose a significant challenge and raise concerns about the rights of children and adults with disabilities in Ireland to access justice. There is an urgent need to bring Irish law into conformity with the CRPD, aligning it with international best practices. The fragmented nature of research and policy development regarding access to justice for disabled people in Ireland is a limiting factor; the existing body of research has often focused on specific subgroups, resulting in a lack of a unified and comprehensive perspective. To address this gap, a more holistic, cross-cutting approach to research and policy development is needed. A significant impediment identified is the lack of comprehensive data collection regarding the experiences of disabled people within the Irish justice system. This deficiency inhibits the ability to understand the full scope of barriers and hinders evidence-based policymaking. Therefore, prioritising comprehensive data collection and research efforts is essential and urgent.

The interplay between different legal frameworks within the Irish justice system is complex. While anti-discrimination legislation aims to advance the rights of disabled people, the criminal law looks at disability through a lens of vulnerability and incapacity. Addressing these inconsistencies and ensuring a harmonised legal framework that respects the rights and dignity of disabled people is essential. The research findings highlight a pervasive lack of awareness and understanding of disability rights, particularly the CRPD, among key stakeholders in the Irish justice system. This lack of awareness extends to legal professionals, judges, the Gardaí, and other critical personnel in the administration of justice. Comprehensive training in human rights, disability awareness, and equality, diversity, and inclusion with the involvement of disabled people and their representative organisations, is urgently needed to bridge this knowledge gap.

Unmet legal needs, delays in legal proceedings, and insufficient access to legal aid is a significant barrier to accessing justice. Expanding legal aid to include all groups protected under Irish anti-discrimination legislation, with a specific focus on disabled people, is necessary. Additionally, advocating for increased funding, better training for advocates, and a statutory right to independent advocacy can contribute to addressing these gaps. The research brought attention to the unique challenges faced by specific subgroups, such as the Deaf community, children and parents with disabilities, and prisoners with disabilities. Addressing these challenges requires tailored reforms in legislation and public policy, along with alignment with international standards, specifically the CRPD. In conclusion, there is a compelling need for systemic reforms in the Irish justice system to ensure equal access to justice for disabled people, including with those with other intersecting identities. This includes raising awareness, comprehensive training, legal reform, and a commitment to fulfilling Ireland's obligations under the CRPD. It is incumbent upon policymakers, legal professionals, and all stakeholders to work collaboratively to remove barriers and ensure that accessing justice is a reality for disabled people.

## Recommendations

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The recommendations stemming from the research are categorised below under the five overarching themes outlined in Chapter 3, which disabled people encounter when seeking access to the justice system. Just as the barriers to accessing justice are intersecting and often mutually reinforcing, these recommendations seek not only to address specific issues or categories but also to intersect with and reinforce recommendations presented under different thematic areas. This reflects the reality that providing access to justice requires a multi-pronged and holistic approach.

### **Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System**

#### **Understanding Access to Justice and Disability in Ireland**

To bridge the knowledge gap and ensure the effective implementation of disability rights in Ireland, it is essential to undertake additional awareness and education initiatives that targets multiple groups; disabled people, including the broader population, key stakeholders in the administration of justice, and the legal community.

#### **The Awareness Level of the CRPD and Article 13 (Access to Justice for Disabled People)**

To address the widespread lack of awareness and understanding regarding the CRPD and Article 13 on access to justice in Ireland, it is important to implement comprehensive education and awareness initiatives.

#### **The Failure to Ratify the Optional Protocol**

It is recommended that Ireland take immediate steps to ratify the optional protocol to the CRPD.

## **The Inadequacy of Training for Key Stakeholders in the Justice System**

- › To address the inadequacy of training, comprehensive training programme(s) must be established, and rolled out with all key stakeholders within the justice system, encompassing judges, solicitors, barristers, Gardaí, DPP, personnel in the Legal Aid Board, prison officers, and all relevant personnel in relevant public bodies.
- › Mandatory training programme(s) should encompass a broad spectrum of critical aspects, including disability awareness, human rights, diversity, including the obligations to provide accessible access to justice and the practicalities of implementing this, and the specific provisions outlined in the CRPD.
- › To ensure its effectiveness and inclusivity, it is essential to involve disabled people and their representative organisations in its development.
- › To guarantee the sustainability and continuity of this initiative, the government should commit long-term funding and provisionally make it available to DPOs that successfully tender for it.
- › The National Disability Authority, in collaboration with the Irish Human Rights and Equality Commission, should take the lead in shaping, administering and monitoring this training programme, in partnership with Disabled Persons Organisations.
- › This training programme(s) should not be a one-time event but an ongoing process. Continuous education and awareness-building are needed to foster a justice system that is inclusive and responsive to the needs and rights of disabled people.

## **Lack of Diversity in the Legal Professions and Judiciary**

To encourage diversity initiatives in the legal professions, funding should be made available for support schemes for legal professionals with disabilities. For example, a scheme that provides financial assistance for barristers with disabilities to support access to the

profession. The professions should provide enhanced opportunities for early career support and mentorship.

## **Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy**

### **Unmet Legal Need**

To address unmet legal needs among disabled people, the Government should prioritise the collection and analysis of data on unmet legal needs, raise awareness about available legal remedies, redirect legal services to areas with high unmet needs, particularly in residential disability services, and ensure access to legal representation and resources to overcome barriers in pursuing discrimination cases.

### **The Length of Litigation as a Barrier**

To address the barriers posed by lengthy litigation processes for disabled people in accessing the justice system, stakeholders in the justice system should expedite disability-related cases, provide mental health support, raise awareness about available resources, and establish monitoring mechanisms to discourage delays and strategic tactics by opposing parties that target litigants with disabilities.

### **Invisibility and Disability in Accessing Justice**

To address challenges faced by people with less visible disabilities, stakeholders in the justice system should prioritise raising awareness and understanding of neurodiversity, intellectual disabilities, and other less apparent disabilities among legal professionals, service providers, and other personnel within the criminal justice system. This is important to ensure that accommodations are readily available to support people with less visible disabilities in care proceedings and in participating the justice system etc.

## **Lack of Accommodations as a Barrier**

To address the deficits in providing accommodations, stakeholders in the justice system should improve responsiveness to requests for accommodations within the justice system, review and strengthen relevant laws and policies, and provide comprehensive training for personnel in the justice system to ensure effective implementation of accommodation measures for disabled people.

## **Inadequate Legal Aid as a Major Barrier to Accessing Justice**

- › To improve access to justice for disabled people, Ireland should expand legal aid to include all groups protected under anti-discrimination legislation, with a particular focus on disabled people.
- › Additionally, efforts should be made to address delays in legal proceedings, and reduce disparities between the criminal and civil justice systems.
- › Given the scale of unmet legal need identified in this research, the ongoing review of civil legal aid should incorporate a dedicated work package to consider this matter comprehensively.

## **The Need for Greater Advocacy Services to Facilitate Access to Justice**

- › To enhance access to justice for disabled people, adequate funding of advocacy services should be prioritised, addressing current limitations such as waiting lists. Increased funding and resources are essential for training advocates and expanding their capacity to support people effectively.
- › Consideration should be given to introducing a statutory right to independent advocacy to ensure consistent and tailored support for all disabled people wanting an advocate.



- › Additionally, tailored advocacy services for disabled children should be established, alongside clear standards and practices to prevent paternalistic approaches and ensure consistency and reliability in advocacy services.

## **Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality**

### **Deprivation of Liberty**

Ireland should ensure alignment of domestic law and the CRPD by addressing the concerns raised by participants about deprivation of liberty. These concerns underscore the need to bridge critical gaps in the protection and realisation of the rights of disabled people, particularly in accessing justice and safeguarding against deprivations of liberty.

### **Denial of Legal Capacity as a Barrier in Accessing Justice**

- › To address concerns around the denial of legal capacity, Ireland should prioritise recognising legal capacity, particularly for people in residential disability services.
- › This recognition should be accompanied by awareness campaigns to educate the public and stakeholders about the role of advocates and the principles outlined in the CRPD (see recommendations above).
- › Independent advocacy services to support legal capacity should be established, access to legal services improved, enhancing training for solicitors provided, and adequate support and resources for people with intellectual disabilities seeking legal services should be provided.
- › Additionally, streamlining data collection and reporting mechanisms under the ADMCA and promoting a better understanding of the Act's principles and values among service providers while safeguarding persons' will and preferences should be a priority.

## **Access to Justice for People Living in Residential Disability Services**

- › To address the access to justice barriers faced by people living in residential disability services, Ireland should prioritise the provision of legal services, independent advocacy, and access to adequate legal representation for residents.
- › Clear guidelines should be established to prevent unwarranted restrictions on personal autonomy and intimate relationships.
- › Review mechanisms should be put in place for rights restrictions.
- › The issue of deprivation of liberty should be closely examined, and priority given to the introduction of Deprivation of Liberty Safeguards being developed by the Department of Health.

## **Access to Justice for People Subject to the Mental Health Legislation and Other Access Issues**

- › To improve the protection of the rights of persons subject to mental health legislation, Ireland should undertake reforms that address gaps in the legal framework.
- › These reforms should prioritise transitioning away from the medical model, ensure better access to information, establish an independent complaints mechanism, and increase the involvement of people detained, through independent advocacy at tribunal hearings.
- › Additionally, measures should be taken to eliminate the discriminatory use of mental health history as a credibility factor in legal proceedings, addressing systemic biases within the justice system.

## **Intersectionality and Access to Justice**

- › To address the intersectional challenges faced by disabled people, especially those in marginalised communities, Ireland should adopt a holistic approach to inclusivity and access to justice.
- › This approach should consider the needs and compounded barriers experienced by people with intersecting identities, such as migrants, members of the Traveller community, and other protected groups.
- › Prioritising accessible housing, tackling stigma, and addressing the complex nature of child care proceedings for disabled people are essential measures.
- › Data collection should encompass intersecting identities and factors like race, gender, and socioeconomic status to better identify and address barriers within the justice system and in settings like direct provision centres.

## **Inaccessible Justice, Lack of Data, and Complex Legal Frameworks**

### **Communication as a Barrier to Accessing Justice**

Legal professionals should receive better training in effective communication, especially for people who are non-verbal. Specific support and accessible resources should be made available for children with intellectual disabilities.

## **Accessibility, Accessible Information and Access to Justice**

- › To address accessibility problems within the justice system, Ireland should prioritise the removal of physical and informational barriers through revising the Disability Act 2005.

- › This should include ensuring accessibility in historic court buildings, providing consistent and accessible information, and addressing the specific needs of people with intellectual disabilities.
- › Efforts should encompass disability awareness training for legal professionals, simplifying procedures, and accommodating various disabilities.
- › Legal information should be made accessible in multiple formats, languages, and through videos.

## **The Inadequacy of Data on Access to Justice in Ireland**

- › To address the inadequacy of data on access to justice for disabled people in Ireland, it is essential to prioritise comprehensive and accurate data collection.
- › The National Equality Data Strategy announced in 2022 should be expedited and should provide funding for an Access to Justice Collection Data Project. This project should be funded on an ongoing basis, be sustainable, and long-term.
- › Responsibility for the project should be vested with the National Disability Authority. This funding will ensure the continuous collection and analysis of data to monitor and improve access to justice for disabled people in Ireland. This data should encompass the experiences of disabled people, which includes children with disabilities and the quality of data. Strengthening the obligation for data collection within public bodies and facilitating data sharing among key stakeholders in the justice system are critical steps to identify gaps, inform policy, and raise awareness about the challenges faced by disabled people in accessing justice.

## Complex Legal Frameworks

- › To improve access to justice for disabled people, Ireland should conduct a comprehensive review of existing legislation and public policy, with a focus on consolidating and aligning the fragmented legal frameworks with international standards, particularly the CRPD.
- › In light of the serious human rights issues identified and the need for comprehensive legal reforms to ensure equal access to justice for disabled people, it is recommended that the Attorney General should prioritise this through the reference procedure to the Law Reform Commission under Law Reform Commission Act 1975. The Commission should be asked to undertake a thorough examination and propose necessary reforms to align with international human rights standards, particularly the CRPD. This project should also seek to address the offensive and discriminatory terminology used in respect of disabled people in different pieces of legislation.
- › To ensure that Irish legislation aligns as much as possible with international standards a review of the Criminal Law (Insanity) Act 2006 should be undertaken. The proposed changes to the Mental Health Act 2001 that enhance human rights protections should be extended to people subject to the 2006 Act.
- › A review of the Disability Act 2005 should be undertaken with a view to improving existing laws, strengthening reasonable accommodation measures in accessing justice, and ensuring accessibility.
- › Additionally, Ireland should address under-implementation or non-commencement of legislation to remove barriers to access justice for disabled people.

## Barriers for Certain Groups and Allied Issues

- › Government should introduce measures to ensure that people with mental health difficulties have accessible avenues for enforcing their rights, reducing litigation stress, and addressing risks associated with legal proceedings.

- › Government should provide funding for initiatives to address the inaccessibility of the justice system for people with low literacy, especially people with intellectual disabilities, to facilitate their participation in legal processes.
- › Government should adopt measures to address the non-prosecution of offenses, perceived credibility of people with intellectual disabilities as victims, especially women, and the exploitation of people with disabilities through online fraud within the criminal justice system.
- › The law reform project recommended above should consider access to legal advice before arrests or charges, avoid seeking mental capacity and medical records without providing legal representation, and promote better training for legal professionals in effective communication with disabled people.
- › Government should raise awareness, improve accessibility, and enhance support for prisoners with disabilities, develop accessible complaint mechanisms, and health services within the prison system.
- › Government should ensure seamless access to sign language interpreters, raise awareness about remote hearings, and provide comprehensive training for legal professionals to serve the needs of the Deaf community effectively.
- › Government should streamline access to disability services for parents of disabled children, address invisibility and lack of accommodations in family courts, and establish dedicated advocacy services for children.
- › Government should the public sector duty, expand it to include legal professionals, address time limits for initiating litigation, and implement systemic reforms to ensure equal access to justice for all disabled people in Ireland.

# Appendix 1: Methodology and Inclusive Research Design



The research methodology for this baseline analysis study is twofold. First, a literature review provides an overview of the relevant sources of law, policy and research relating to access to justice in Ireland and internationally. Second, qualitative research with key stakeholders was undertaken to assess their perceptions and experiences of access to justice for disabled people in Ireland. The literature review on access to justice seeks to provide a comprehensive review of the existing law, policy, research and data. Gaps in the existing knowledge were identified and informed the approach taken in the qualitative part of this study. The literature involved doctrinal analysis of law and policy relating to access to justice. It was essential that the views of disabled people who have lived experience as participants in the justice system (or persons seeking to access the justice system) were included in this study in line with General Comment No 7 of the Committee on the Rights of Persons with Disabilities.<sup>226</sup> Qualitative research with key stakeholders in the administration of justice was carried out. Interviews with key stakeholders were undertaken in order to complement the literature review and ensure that the voice and lived experience of disabled people is reflected in the study. The scale of the proposed qualitative part of this proposed research project was dictated by the time allocated for completion and willingness of stakeholders to participate in the research. The "International Principles and Guidelines on Access to Justice for Persons with Disabilities" 2020 developed by the UN Special Rapporteur on Disability is discussed in Chapter 2. They set out key principles and detailed guidelines to ensure that disabled people have equal access to justice system. These principles will be used to analyse Ireland's compliance with Article 13 of the CRPD based on the literature review and findings from the qualitative part of this research. This analysis will be included in Chapter 4, Conclusions and Recommendations.

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<sup>226</sup> See "General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention" Committee on the Rights of Persons with Disabilities, CRPD/C/GC/7, 9 November 2018



## **Research Ethics**

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The researcher obtained ethical approval for this research project. The process of ethical review is overseen by the University of Galway's Research Ethics Committee, which plays a pivotal role in evaluating research proposals. The Committee requires researchers to design research projects to comprehensively assess the ethical implications inherent in the research. Researchers are duty-bound to contemplate not only the well-being and dignity of participants in the research but also the broader societal and cultural repercussions of their research. The research was conducted in line with the University's policies and procedures.

## **Data Collection Method and Purpose**

The data collected as part of the qualitative part of this study (see Chapter 3) was gathered through semi-structured interviews involving 27 participants. Of the 27 participants, 12 identified as having a disability. Among them, 8 contributed insights from their personal lived experiences, while 4 participated by sharing perspectives based on their professional experience.

These interviews were designed to facilitate a discussion that spanned 30-60 minutes, most interviews lasted 50-60 minutes. The scheduling of interviews, was primarily online using MS Teams or Zoom. A number of interviews were undertaken in person. The semi-structured interviews explored the lived experiences and perspectives of the participants regarding the right to access justice in Ireland of disabled people. Only persons identified as key stakeholders in the research were recruited to participate.

## **Informed Consent and Participant Information**

Once a participant expressed a willingness to take part in the study, they received a "Participant Information Sheet" containing comprehensive details about the research topic, objectives, and the reasons for their selection. This sheet was provided in two formats – plain language text and a more accessible version with plain language text accompanied by explanatory visuals. Alongside the 'Participant Information Sheet', participants also received

a 'Consent Form', which they were asked to complete and return. This consent form was also provided in two formats – plain language text and a more accessible version with plain language text accompanied by explanatory visuals. An expert in the creation of accessible and easy read documents reviewed these documents and provided feedback on how to make them more accessible. This process ensured that all participants provided written consent, demonstrating their willingness to participate in the research.

## **Participant Selection, Inclusion and Exclusion Criteria**

Participants were selected through purposive sampling, focusing on persons aged 18 and above who are recognised as key stakeholders within the Irish civil and/or criminal justice system. The sample size was agreed with IHREC, having regard to the available resources, and agreed scope and scale of the proposed project. Both the researcher and the Irish Human Rights and Equality Commission considered the chosen sample size sufficient to complement the literature review on the right to access justice in Ireland.

### **Inclusion Criteria:**

1. Age profile: Persons aged 18 and above
2. Exposure of interest: Participants with professional or personal experience related to the civil and/or criminal justice system in Ireland
3. Jurisdiction: Participants whose professional or personal experience lies within the jurisdiction of Ireland
4. Informed Consent: Participant provides informed consent to participate

### **Exclusion Criteria:**

1. Age profile: Persons aged below 18
2. Exposure of interest: Participants lacking professional or personal experience related to the civil and/or criminal justice system in Ireland
3. Jurisdiction: Participants whose professional or personal experience is outside the jurisdiction of Ireland

4. Informed Consent: Participant does not provide informed consent to participate

## Key Stakeholders

The following organisations and groups were considered as potential key stakeholders in this research and were invited to participate. A number of key public bodies and other stakeholders declined to participate in the research, while others failed to respond to communications inviting participant.

Those invited to participate included:

- › Barristers
- › Child Law Project
- › Court Service
- › Decision Support Service
- › Department of Health
- › Department of Justice, Equality and Law Reform
- › Disabled Persons Organisations
- › Free Legal Aid Centre
- › Health Service Executive
- › Inclusion Ireland
- › Irish Penal Reform Trust
- › Irish Prison Service
- › Judicial Council
- › Members of An Garda Síochána
- › Members of the Judiciary
- › Mental Health Commission
- › Mental Health Reform
- › National Advocacy Service for People with Disabilities
- › National Disability Authority
- › National Forensic Mental Health Service
- › Office of the Children's Ombudsman

- › Office of the Director of Public Prosecutions
- › Office of the Inspector of Prisons
- › Rape Crisis Network of Ireland
- › Solicitors
- › The Legal Aid Board

## **Data Protection and Data Retention**

Stringent measures were implemented to safeguard participant confidentiality and data security. All personal information was anonymised throughout the research process. Data was securely stored and encrypted on a dedicated computer, with access restricted to the researcher. Physical materials and notes were stored in a locked filing cabinet within a secured office space. Data generated during this study was treated confidentially and retained in accordance with the University of Galway “Record Retention Schedule and Guidance” (October 2022 Version 1), which dictates the data be kept for the duration of the research project plus an additional 7 years. Following this period, all electronic records will be securely shredded and deleted. The researcher will not provide any research materials to the funder, ensuring strict adherence to participant confidentiality. The consent and research objectives were reviewed with each participant prior to commencing the interview, reaffirming their understanding and willingness to participate.

## **Anonymity and Confidentiality**

In line with the ethical approval for this research measures have been taken to ensure the confidentiality and anonymity of the interview participants. This approach was adopted to safeguard their identities while providing insights into their perspectives and experiences. This approach enables their perspective to be represented in the research without disclosing their identities. The quotes presented in Chapter 3 are grouped under thematic headings. This facilitates an understanding of participants’ perspectives on access to justice for disabled people, while preserving their privacy and confidentiality.

## Inclusive Research Design

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In this research, the principles of disability-inclusive research were applied throughout. The National Disability Authority has noted that disabled people “are often included in the category of ‘vulnerable groups’ in policy frameworks and strategies both internationally and nationally”.<sup>227</sup> The depiction of disabled people as “inherently vulnerable” does not recognise that people become “vulnerable” due to disabling barriers (attitudinal and otherwise) within society. The approach adopted in this research project is in line with the CRPD, in seeking to move from a paternalistic approach to one of inclusion, empowerment, and ensuring that disabled people as rights holders, can choose to participate in the research on an equal basis with others.

The researcher recognises the historical exclusion of disabled people from research and aims to rectify this gap by ensuring that the voices of disabled people, and Disabled Persons Organisations informed the research, its conclusions, and recommendations.<sup>228</sup> The research actively involved disabled people as research participants, and emphasises their contributions and perspectives (see Chapter 3). The research budget included provisions for reasonable accommodation, covering the costs of necessary accommodations like sign language interpreters. Ethical considerations are paramount in inclusive research design, and this was achieved through completing the research ethics approval process at the University of Galway. Accessible and easy read versions of documents were provided (consent form and participant information sheet). A flexible approach was taken offering breaks and rests for participants. A distressed participants protocol was also developed to mitigate any distress or discomfort that the interview process might have caused. This protocol did not need to be used.

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<sup>227</sup> National Disability Authority, '*NDA Advice Paper On Disability Language And Terminology*' (Dublin: National Disability Authority, June 2022).

<sup>228</sup> Mary Wickenden and Erika Lopez Franco, 'Chapter 24: Don't Leave Us Out: Disability Inclusive Participatory Research Why and How?' in Burns et al (eds), *The SAGE Handbook of Participatory Research and Inquiry* (SAGE, 2021).

## Limitations of the Research

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A limitation of this project on access to justice for disabled people was the challenge of obtaining participation from some key stakeholders. While several important public bodies directly involved in the administration of justice willingly participated, a number of other important participants declined the invitation or did not respond to the researcher's outreach efforts. This limitation may have implications for the representativeness of the data collected. The absence of input from certain stakeholders may lead to gaps in our understanding of the challenges and barriers faced by disabled people in accessing justice or indeed in initiatives and training to remove barriers. It also highlights the difficulty in engaging all relevant parties, which is not uncommon in research of this nature. Despite this limitation, the insights gathered from willing participants contributes valuable information to the study. However, it is important to acknowledge and consider the potential impact of the non-participation of some key stakeholders on the overall findings and recommendations.



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission




**IHREC**  
Monitoring Mechanism  
Independent Monitoring Mechanism  
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