

# Submission to the Independent Review of Civil Legal Aid Scheme

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

The Commission makes the following recommendations to the Review Group:

### Issue 1 - Types of Cases

The Commission recommends that:

- the Legal Aid Board provide accessible information to clarify the difference between legal aid and legal advice and the areas of law covered by both.
- the State develop public awareness of the availability of legal aid for judicial review proceedings and ensure that the Legal Aid Board is adequately resourced to enable it to respond to applications for legal aid in these cases in a timely manner.

The Commission recommends a tailored approach to the provision of legal aid for minority and structurally vulnerable groups to redress a systemic imbalance and a culture of discrimination.

The Commission recommends that the Civil Legal Aid Scheme is expanded to include a wider range of areas including, at a minimum, employment and equality cases before the Workplace Relations Commission, housing and eviction cases, and social welfare matters.

The Commission recommends the removal of the blanket exclusion of the areas of law specified in the Civil Legal Aid Act 1995.

The Commission recommends that:

- the Civil Legal Aid Act 1995 is amended to provide that the Legal Aid Board may provide free legal advice and aid to all victims of sexual offences.
- the term 'suspected victim of human trafficking' be used in place of 'potential victim of human trafficking'.
- all suspected victims of trafficking be proactively provided with adequate and early legal support.

- the Civil Legal Aid Act 1995 should be amended to allow for separate legal representation for victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008. As such, this would require amendment to the 1995 Act.
- the Legal Aid Board offer legal assistance to suspected and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána. This must align fully with the new National Referral Mechanism.
- the Civil Legal Aid Act 1995 be extended to include sexual exploitation offences and that such legal advice should not be contingent on there being a prosecution or on the person having been identified as a suspected victim of trafficking.
- the Civil Legal Aid Review consider the specific needs of trafficked victims especially as it relates to compensation, most notably the use of Section 6 Orders as a means of compensating victims within the criminal process, and the potential need for separate legal representation for this purpose.
- a clear policy is developed on how children can access the services of the Legal Aid Board in accordance with the Council of Europe Guidelines on Child-Friendly Justice, including individual eligibility assessments where necessary and appropriate.
- the Legal Aid Board prioritises support and advice, and that representation should have a human rights and equality focus that considers the needs and structural vulnerability of the applicant, and the urgency of the issue.
- the Legal Aid Board conduct stakeholder consultation in order to create broad categories which should receive priority support.

## Issue 2 – Jurisdictions Covered by the Scheme

The Commission recommends the extension of the scope of the Civil Legal Aid Scheme to quasi-judicial tribunals and bodies.

## Issue 3 – Eligibility

The Commission recommends a thorough review of the means test, including the income, capital and allowance limits.

The Commission recommends that:

- if a means test is required, a more flexible approach to its application should be adopted.
- if a means test is required, the income, capital and allowance thresholds should be adjusted to realistic levels to take account of increases in the cost of living and additional costs incurred by structurally vulnerable groups for example the Cost of Disability.
- any financial eligibility criteria be reviewed annually against national poverty proofing standards and the Department of Justice should publish the underlying analysis, which should be based on human rights and equality principles.
- consideration be given to removing the financial eligibility criteria for certain cases, including, at a minimum, those involving fundamental rights.
- Any merits test should be reviewed and revised as appropriate to ensure it is not acting as a barrier to accessing justice.
- ‘merits’ should have an expansive meaning, taking into account European Convention on Human Rights standards, and should be underpinned by human rights and equality principles.

## Issue 4 - Financial Contribution

The Commission recommends a fundamental review of the requirement for a financial contribution.

The Commission recommends that:

- for so long as the financial contribution requirement exists, it should be periodically reviewed against any national poverty proofing standards and adjusted as necessary and appropriate to ensure that it does not operate as an additional barrier to accessing justice, particularly for those on low incomes, women, victims of labour exploitation, international protection applicants, Travellers, Roma, disabled people and minority ethnic communities.
- the State review the Legal Aid Board's system of waiver to ensure it operates in a transparent and effective manner and does not prevent individuals from accessing civil legal aid due to their economic circumstances.

The Commission recommends further consideration of the financial contribution in cases involving fundamental rights.

## Issue 5 – Mode of Delivery

The Commission recommends that:

- the Independent Review undertake a comprehensive mapping of all forms of public legal assistance currently provided by statutory and non-statutory bodies and the Independent Law Centres.
- the Independent Review conduct research into tailored supports and best practices in other jurisdictions to determine the most effective modes of delivery of civil legal aid services.
- affected communities should be involved in the design and implementation of tailored services.

## Issue 6 – Accessibility

The Commission recommends that:

- access to justice, defined in a manner that complies with human rights and equality standards, be a core value of the Legal Aid Board.



- the State conduct a review into the barriers which may impede the accessibility of the Scheme for structurally vulnerable groups.
- comprehensive, accessible and reliable information is available to all sections of the public on legal rights, as well as on access to civil legal aid and advice, with targeted measures to ensure that information on the Scheme reaches structurally vulnerable groups, and that such information be available in a range of formats and languages including Irish Sign Language, and should be accessible on and offline.
- further specialised outreach which engages structurally vulnerable groups, including Travellers, in a meaningful way to encourage access to justice through the Scheme.

The Commission recommends simplification at all stages of the process of applying for Civil Legal Aid through the Scheme.

The Commission calls for continued specialisation and that such services be adequately resourced to ensure the best assistance to victims.

The Commission recommends that:

- the Civil Legal Aid Scheme be equality proofed to guarantee equality of access to civil legal aid and advice for all those who need to avail of the Scheme.
- the current geographic gaps in the provision of legal aid and advice through law centres are identified and addressed.
- resources and training on literacy and Plain English standards be rolled out to staff employed by the Legal Aid Board.
- the main client-facing documents be revised to meet Plain English standards to improve client access.
- the development of a high quality system of accredited training and quality assurance for legal interpretation should be an essential component in the Independent Review of the Civil Legal Aid Scheme and in ensuring access to justice for all service users.

- client-facing documentation from the Legal Aid Board be made available in a range of accessible formats and languages, including Irish Sign Language.
- the Legal Aid Board publish on their website an information guide on the Board's provision of Irish Sign Language interpreters to service users.
- an Irish Sign Language Clinic be introduced under the remit of the Legal Aid Board.
- the chat function on the Legal Aid Board's website be rolled out fully on a permanent basis.
- regular training on disability and reasonable accommodation be rolled out to staff employed by the Legal Aid Board to ensure that staff are suitably trained in the requirements for disabled people.
- the Legal Aid Board review how it provides the entirety of its services to ensure they are fully accessible to disabled people and compliant with the UN Convention on the Rights of Persons with Disabilities Article 13.

## Issue 7 – Awareness and Assessment of the Scheme

The Commission recommends that:

- thorough and regular research be carried out by the Legal Aid Board to determine the nature and extent of unmet legal need in Ireland.
- the Legal Aid Board be adequately funded to address its current mandate and any additional functions conferred on it.
- further resources are allocated to the Legal Aid Board to address law centre waiting times.
- pay scales for solicitors employed by the Legal Aid Board are reviewed by the Department of Public Expenditure and Reform to ensure appropriate remuneration.
- the legal aid fees for private practitioners are reviewed by the Department of Public Expenditure and Reform to ensure appropriate remuneration.

- the State conduct a cost of service analysis as well as an impact assessment into the provision of civil legal aid.
- the existing and any revised Civil Legal Aid Scheme and the body or bodies that administer it are adequately funded.

## Issue 8 – the Future of the Scheme

The Commission recommends that:

- the Legal Aid Board undertake a comprehensive public information campaign to raise awareness of common legal rights and problems, the services of the Legal Aid Board and the Courts Service.
- any information campaign should be inclusive, accessible, widely available, and target in particular, structurally vulnerable groups.
- the State explore best practices in relation to the provision of information and education in order to effectively raise awareness of rights and the law.
- research be conducted to determine which other minoritised groups need tailored supports to access legal aid services and, following due consultations with those groups, that appropriately tailored legal support initiatives are set up accordingly.
- outreach be facilitated through partnership and collaboration with relevant organisations to ensure targeted support for structurally vulnerable communities and people with low incomes.
- the State undertake research into the ways in which early intervention can resolve legal disputes.
- the Legal Aid Board have a close relationship with other forms of publicly-funded and part-publicly funded legal assistance initiatives, and in particular, partnerships between the Legal Aid Board and Independent Law Centres.

- there is more cohesion between all of the organisations involved in providing legal information and support.
- an obligation be placed on the Legal Aid Board to collect disaggregated equality data that would allow for assessment of the impact of the Scheme; and that this data is anonymised and published to facilitate public scrutiny, research and allow for recommendations for law reform where appropriate.
- that the development of existing data such as administrative datasets in a way that allows for intersectional analysis, data linkages and data harmonisation.
- that urgent action is taken by the State to develop and roll out disaggregated equality data collection, processing and communication systems across relevant public bodies in order to monitor the effectiveness and impact of the Scheme in Ireland, and that the relevant bodies publish statistics and analysis on an annual basis.
- the Legal Aid Board establish a dedicated service to assess how the law impacts on the communities it serves, including structurally vulnerable communities, as well as older people. The information and analysis should be available to Legal Aid Board staff for use in their work and to the public.
- research be conducted to determine which other groups are most in need of tailored supports to access the Scheme and that initiatives similar to that initiated for Travellers are set up accordingly.
- the Legal Aid Board be mandated to gather and analyse information; monitor progress in attaining Strategy goals; identify good practice; and propose measures for future action.

## Abbreviations

CAT	Committee Against Torture
CLM	Community Law and Mediation
EEA	Employment Equality Act 1998
ESA	Equal Status Act 2000
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CERD	The Covenant on the Elimination of All Forms of Racial Discrimination
UNCRPD	International Covenant on the Rights of Persons with Disabilities
OECD	Organisation for Economic Co-operation and Development
RTB	Private Residential Tenancies Board
SWAO	Social Welfare Appeals Office
1995 Act	The Civil Legal Aid Act 1995
CESCR	The Committee on Economic, Social and Cultural Rights
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
LAB	The Legal Aid Board
WRC	Workplace Relations Commission
FLAC	Free Legal Advice Clinics
ISL	Irish Sign Language

## Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014 (the '2014 Act').

We have a statutory mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality, and make recommendations to the Government to strengthen, protect and uphold human rights and equality in the State.<sup>1</sup> This submission is informed by our Strategy Statement 2022-2024, and our prioritisation of the following areas within our work: access to justice; respect and recognition, promoting the eradication of racism, ableism, ageism and sexism through public understanding and State action; futureproofing; encouraging, reporting on and enforcing the compliance of public bodies with the Public Sector Equality and Human Rights Duty; and economic equality.<sup>2</sup>

The Scheme of Civil Legal Aid and Advice was first established in Ireland in 1979.<sup>3</sup> During this time, the Legal Aid Board ('LAB') was established as the administrative body to oversee the Civil Legal Aid Scheme and Law Centres were established throughout the country to provide free legal advice. In 1995, the Civil Legal Aid Scheme ('the Scheme') was placed on a statutory footing under the Civil Legal Aid Act ('1995 Act') with amendments to the scheme between 1996-2021. In June 2022, the Minister for Justice announced the Independent Review of the Scheme and established a Review Group with a tenure of 12 months.<sup>4</sup> We welcome the opportunity to make a submission to the Independent Review Group on the Scheme. The Commission has repeatedly highlighted shortcomings with the Scheme and has

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<sup>1</sup> Section 10(2)(c) of the Irish Human Rights and Equality Commission Act 2014.

<sup>2</sup> IHREC, [Strategy Statement 2022-2024](#) (2022)

<sup>3</sup> Legal Aid Board, '[Providing Access to Justice since 1979](#)' (January 2020)

<sup>4</sup> Department of Justice, [Minister announces review of Civil Legal Aid Scheme](#) (Press Release, 2 June 2022)

previously made recommendations, including to extend the scope of the LAB<sup>5</sup>, to review the financial contribution<sup>6</sup>, and to ensure the LAB is adequately resourced.<sup>7</sup>

The wider context within which this Review takes place should be acknowledged. As Ireland recovers and rebuilds from the Covid-19 pandemic, we continue to experience the housing crisis and have now entered a cost of living crisis,<sup>8</sup> exacerbating issues of economic inequality, making fair and effective access to civil legal aid all the more pressing.

The next generation of the Scheme needs to ensure access to justice is a priority, ensure awareness of rights, address the existing procedural and accessibility issues impacting the most structurally vulnerable, and mandate disaggregated equality data. We look forward to engaging with the Independent Review Group and remain available to assist its work including through our ongoing programme of work on civil legal aid reform.

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<sup>5</sup> IHREC, [Housing Assistance and Discrimination Report](#) (April 2022) p.52; IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#) (March 2022) p.16; IHREC, [Developing a National Action Plan Against Racism](#) (August 2021) p.62-63; IHREC, [Submission on the Review of the Equality Acts](#) (December 2021) p.8-11; IHREC, [Submission to the Third Periodic Review Cycle for Ireland](#) (March 2021) at p.10; IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (August 2020) p.13; IHREC, [Submission to UN Committee on the Elimination of Racial Discrimination](#) (October 2019) p.143; IHREC, [Comments on Ireland's 14<sup>th</sup> National Report on the Implementation of the European Social Charter](#) (April 2017) p.16; IHREC, [Ireland and the International Covenant on Economic Social and Cultural Rights](#) (May 2015), p.53.

<sup>6</sup> IHREC, [Review of the Intoxicating Liquor Act](#) (February 2022) p.39; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (December 2021) p. 3.

<sup>7</sup> IHREC, [Developing a National Action Plan Against Racism](#) (2021) 62 and IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (August 2020) 13.

<sup>8</sup> See: Economic and Social Research Institute (ESRI) [Despite significant headwinds, Irish economy set to perform in robust manner for remainder of 2022, however pace of growth set to moderate in 2023 as both macroeconomic uncertainty and inflationary pressures persist](#) (October 2022).

## Access to Justice

In Ireland, the Civil and Criminal Legal Aid Systems are two of the main avenues by which the State enables the realisation of the right to access justice. In 2015 the UN's Sustainable Development Goals included, for the first time, providing access to justice for all.<sup>9</sup>

Addressing the gaps in the provision of civil legal aid is part of ensuring access to justice.

The work of the Independent Review should be underpinned by the recognition of the fundamental human right of access to justice. It should also be a core element of the operation of the Scheme. However, access to justice needs to be seen as a continuum of issues including awareness of legal rights and the effective availability of appropriate legal services for information, advice and, if necessary, to remedy a wrong. Without the vindication of the right of access to justice, there will be an increased risk of social and economic exclusion. For those who cannot afford the services of private practitioners, accessible legal aid is the only mechanism available to ensure that their rights may be effectively realised.

The State is required to put in place structural and proactive interventions to enable access to justice, as a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.<sup>10</sup> Access to justice is reflected in the constitutional right of access to the courts, which can be considered to include an entitlement that the right be effective not just as a matter of law and form, but also in practice.<sup>11</sup> As established by the International Covenant on Civil and Political Rights ('ICCPR') and the Human Rights Committee, the right to equality before courts and tribunals, including both equal access and equality of arms, and to a fair trial are essential elements of the proper administration of justice.<sup>12</sup> Enabling access to justice requires accessible and effective remedies for

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<sup>9</sup> [UN Sustainable Developments](#), Goal 16

<sup>10</sup> Human Rights Council, [Access to justice for children: Report of the United Nations High Commissioner for Human Rights](#) (2013) UN Doc. A/HRC/25/35, paras 3, 8.

<sup>11</sup> *Persona Digital Telephony Limited & Sigma Wireless Networks Limited and The Minister for Public Enterprise, Ireland and the Attorney General, and Denis O'Brien and Michael Lowry* [2017] IESC 27 [2.9] (Clarke J).

<sup>12</sup> ICCPR addresses right to legal aid under Article 14(3)(d) stating that individuals are required 'to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.' Although the primary intention of Article



individuals to vindicate their rights, including through administrative mechanisms.<sup>13</sup> The Committee on Economic, Social and Cultural Rights ('CESCR') has underlined the importance of free legal aid in the effective protection of and access to the rights protected in the Covenant, and has criticised Ireland for the lack of free legal aid services in the country and the negative effect this has had on the vindication of the Convention rights such as housing, social welfare and employment.<sup>14</sup> The Committee on the Elimination of All Forms of Racial Discrimination has also criticised the limited nature of Ireland's Civil Legal Aid Scheme which impacts on Travellers and other ethnic minority groups in particular.<sup>15</sup> The Committee on the Rights of Persons with Disabilities has set out that State Parties should establish accessible and effective redress mechanisms and ensure access to justice for victims of discrimination based on disability.<sup>16</sup> The Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW') requires women to be able to enjoy the same legal rights and status as men.<sup>17</sup> In Ireland's 6th and 7th periodic review under CEDAW, it was recommended that Ireland should "increase funding for civil legal aid services and review the financial eligibility criteria" noting economic barriers as a significant barrier for women accessing services<sup>18</sup>. The Committee Against Torture ('CAT') has referenced the

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14(3)(d) was to establish the right to criminal legal aid, the Human Rights Committee made it clear in General Comment No. 32 that Member States are encouraged to provide legal aid in civil instances and may also be obliged to do so in certain circumstances. See Human Rights Committee '[General Comment 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial](#)' (2007) UN Doc CCPR/C/GC/32.

<sup>13</sup> Article 2(3), ICCPR and Human Rights Committee, [General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant](#) (2004) UN Doc. CCPR/C/21/Rev.1/Add.13, para 15.

<sup>14</sup> CESCR, '[Concluding Observations on the Third Periodic Report of Ireland](#)' (8 July 2015) UN Doc E/C.12/IRL/CO3, para 8.

<sup>15</sup> Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (12 December 2019), CERD/C/IRL/CO/5-9, para 44.

<sup>16</sup> This encompasses access by all persons with disabilities to effective judicial and administrative procedures, including effective and accessible complaint mechanisms, and to appropriate and — where applicable and subject to statutory test of means and merits — affordable quality legal aid. See CRPD Committee, '[General Comment No 6 on Equality and Non-Discrimination](#)' (2018) CRPD/C/GC/6, 18. This is supported in the Committee's periodic review of State Parties whereby they recommend the provision of legal aid for persons with disabilities in all areas of law, see CRPD Committee, '[Concluding observations on the initial report of Malta](#)' (2018) CRPD/C/MLT/CO/1.

<sup>17</sup> Article 2 and 15. The Committee has acknowledged that access to justice is 'an essential component of the rule of law and a means for women to actively claim the entire range of rights provided for in the Convention, see CEDAW, '[Access to Justice – Concept Note for Half Day General Discussion](#)' (2011).

<sup>18</sup> IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (January 2017). The Committee has also presented further recommendations for the improvement of the quality of lawyer and gender and cultural sensitivity in the provision of services. See CEDAW, '[General recommendation on women's access to justice](#)' (2015) CEDAW/C/GC/33.

need for expanding and ensuring access to civil legal aid for specific groups such as women, refugees and irregular migrants, and disabled people.<sup>19</sup>

The right of access to justice is also protected in the European Convention on Human Rights<sup>20</sup> ('ECHR'), the Charter of Fundamental Rights<sup>21</sup>, the European Social Charter<sup>22</sup>, and more broadly in the Directives.<sup>23</sup>

The Courts have played important roles in elaborating the scope of the right to legal aid in civil law matters and ensuring the State upholds its obligations in this area. In the decision of *Airey v Ireland*<sup>24</sup>, the European Court of Human Rights ('ECtHR') found Ireland to be in violation of Article 6(1) of the ECHR for failing to provide legal representation to the applicant in a judicial separation case. The recognition of legal aid as constituting an integral part of the right to a fair trial in civil matters was further confirmed in *Steel and Morris v the United Kingdom*, in which the ECtHR found the:

“denial of legal aid to the applicants deprived them of the opportunity to present their case effectively before the court”

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<sup>19</sup> UNCAT, '[Consideration of reports submitted by States parties under Article 19 of the Convention pursuant to the optional reporting procedure](#)' (2015) CAT/C/IRL/2.

<sup>20</sup> Articles 6 and 13

<sup>21</sup> The Charter of Fundamental Rights of the European Union specifically provides for the right to legal aid under Article 47. The Explanations to the Charter make it clear that legal aid must be provided where 'the absence of such aid would make it impossible to ensure an effective remedy'. See Explanations relating to the EU Charter of Fundamental Rights, OJ 2007 C303/17. The seminal case on civil legal aid in the jurisprudence of the Court of Justice is *DEB Deutsche Energiehandels und Beratungsgesellschaft* CJEU, Case C-279/09 22 December 2010, where the Court had to consider whether a legal person was entitled to legal aid under Article 47 of the Charter in the context of a *Francovich and Others v Italian Republic* Case C-6/90 and C-9/90 damages claim made against Germany for its failure to correctly implement Union law. Notwithstanding the specific facts of the case, the Court also examined the scope of the right to legal aid more generally in Union law. The Court held that under the principle of effectiveness established throughout the case law, procedural rules 'must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law.'

<sup>22</sup> While the European Social Charter does not explicitly address the provision of legal aid, its monitoring body has highlighted concerns surrounding the provision of legal aid in several of its cases and suggested that legal remedies and legal aid should be provided in order to seek redress from the courts, and has set out important international standards and accountability for civil legal aid in Ireland, including finding a violation of Article 26 in *European Roma Rights Centre v Italy*, Complaint No 27/2004, Decision on Merits (7 December 2005) in part on the basis that Irish Travellers facing eviction did not have sufficient access to legal aid. See also *Medecins du Monde-International v France*, Complaint No 67/2011, Decision on Merits (11 September 2012).

<sup>23</sup> The Directives recognise that the provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed on states is essential to the effective implementation of the principle of equal treatment. See Racial Equality Directive, art 7(1); Framework Employment Directive, art. 9(1); Gender Goods and Services Directive, art. 8(1); and the Gender Recast Directive, art. 17(1).

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

and was therefore a violation of Article 6(1).<sup>25</sup> Similarly in *O'Donoghue v The Legal Aid Board, Minister for Justice & Equality and others*<sup>26</sup>, the High Court found the State had infringed on constitutional rights by virtue of the long delay the Plaintiff had experienced in being granted a legal aid certificate.

It is expected that as a minimum, the Independent Review will examine the Scheme in light of the State's obligations under domestic, European and international law, and address any shortcomings to ensure the right to access to justice is effectively upheld.

The Independent Review and any resulting Scheme must be underpinned by human rights and equality principles, the Public Sector Equality and Human Rights Duty, and recognise the public benefit of investing in a properly functioning and resourced Civil Legal Aid Scheme. Experience from other jurisdictions has shown that investment in civil legal aid services can result in economic and social benefits for both the individual and the State such as preventing people from falling into homelessness, limiting negative health experiences, and savings in the provision of other social services.<sup>27</sup> The Independent Review should consider international best practice as part of its remit, in particular, those jurisdictions that have established good practices in relation to the provision of early legal advice and legal assistance for groups covered by the discriminatory grounds under equality legislation and other structurally vulnerable groups.<sup>28</sup>

Effective access to civil legal aid for all is a cornerstone of a functioning democracy that seeks to uphold the rule of law. It is an essential element in allowing individuals to vindicate their rights, and in holding the State and institutions to account.

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<sup>25</sup> *Steel and Morris v the UK* App No 68416/01 (ECHR, 15 Feb 2005), 26

<sup>26</sup> *O'Donoghue v. Legal Aid Board, Minister for Justice Equality and Law Reform, Ireland and the Attorney General* [2004] IEHC 413, Kelly J.

<sup>27</sup> See section on Merits below for more details.

<sup>28</sup> We define a structurally vulnerable group as one who is particularly vulnerable to violations of their rights due to political, economic, social and cultural structures. Instead of focusing on the personal characteristics of individuals and groups and viewing them as lacking agency, 'structural vulnerability' refers to the structures in place, which render certain sectors of the population particularly vulnerable to inequality and human rights abuses. See: Irish Human Rights and Equality Commission, Submission to the Department of Social Protection's public consultation on the Roadmap for Social Inclusion: Mid-Term Review, (October 2022), p.7.

## Issue 1 - Types of Cases

Access to legal aid is fundamental to ensuring a fair and equitable judicial system and is a determining factor in ensuring and protecting human rights. In the civil space, legal issues often concern matters of personal and societal importance, from the many disputes which may arise for example in the context of the family unit, to issues of equality, and social housing. Civil legal aid is crucial to safeguarding the fundamental right of access to justice and ensuring equality of arms before the courts. Under the 1995 Act, the LAB may not provide legal aid in respect of certain areas of law.<sup>29</sup> However, this does not prevent legal advice being provided in some of these areas.<sup>30</sup> We consider it important that the State develops public awareness of this key distinction. We also note that there is no exclusion of the provision of legal aid in respect of judicial review proceedings *per se*,<sup>31</sup> however, the extent to which legal aid has been provided or refused in such cases is not clear. The extent to which service users are aware that legal aid may be granted for judicial review proceedings in certain instances, including in relation to international protection matters, is also not clear. The State should also develop public awareness of the availability of legal aid

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<sup>29</sup> Under section 28(9)(a), the following nine areas of law are excluded from the current scheme: defamation; disputes concerning rights and interests in or over land; civil matters within the jurisdiction of the District Court (Small Claims Procedure) Rules 1993; licensing; conveyancing; election petitions; where an application for legal aid is made in a representative, fiduciary or official capacity and the Board is of the opinion that legal aid should not be granted, having respect to any source from which the applicant is or may be entitled to be indemnified in respect of the costs of proceedings concerned and any resources of the persons who would be likely to benefit from a successful outcome of the proceedings for the applicant; a matter which in the opinion of the Board, involves a case being brought by applicant as a member of a group or by arrangement with a group of persons for the purpose of establishing a precedent in the determination of a point of law, or any other question, in which the members of the group have an interest; any other matter relating to an application for legal aid which is made by or on behalf of a person who is a member, and acting on behalf, of a group of persons having the same interest in the proceedings concerned.

<sup>30</sup> The provision of legal advice is provided for in [section 25](#) of the 1995 Act and involves the LAB providing advice to an applicant on their problem whilst the provision of legal aid is provided for in [section 27](#) of the 1995 Act and involves representation in Court. Whilst section 26(2)(b) states that legal advice may not be given in respect of the matters referred to in section 28(9)(a), section 26(3)(b) provides that a person shall qualify for legal advice, in respect of a matter referred to in section 28(9)(a), in the cases mentioned in subparagraphs (i) to (v) and (vii) of section 28(9)(c).

<sup>31</sup> Provided they do not involve an area of law excluded from the Scheme under section 28(9)(a). In the section on “Civil Legal Aid and Advice for International Protection Applicants” on the LAB website, it is stated that civil legal aid for an international protection application will not help with a judicial review of how the decision on an application was made but an applicant might be able to get [civil legal aid](#) for that separately: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/services-for-international-protection-applicants/>

for judicial review proceedings and should ensure that the LAB is adequately resourced to enable it to respond to applications for legal aid in these cases in a timely manner.

**The Commission recommends that the Legal Aid Board provide accessible information to clarify the difference between legal aid and legal advice and the areas of law covered by both.**

We are concerned that the blanket exclusion of some areas of law, and the preclusion of legal representation before quasi-judicial tribunals,<sup>32</sup> from the remit of the Scheme will deny some individuals their right of access to justice. This is especially concerning as the areas of law affected by these exclusions disproportionately affect individuals covered by the discriminatory grounds under equality legislation or from minorities or other structurally vulnerable groups,<sup>33</sup> who are thus impeded in accessing an effective remedy where there is a potential violation of fundamental rights. We note the Pringle Report found no logical basis on which any particular case category could be excluded,<sup>34</sup> and found that the merits of any case and the question of granting legal aid should be assessed, not by reference to the category to which it belongs, but by reference to the particular circumstances of the case. The Pringle Report did not consider any particular category of a case as more deserving of inclusion in a comprehensive legal aid scheme than any other, stating it would not be desirable even as an interim measure to confine legal aid to any particular case category.<sup>35</sup> The Pringle Report recommended legal advice and assistance in civil matters be available in relation to all types of legal problems, subject to the discretion of the LAB when a case involving another jurisdiction arose. Similar recommendations have continued to be made since the Pringle Report was published.<sup>36</sup> Over the last decade in particular, multiple

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<sup>32</sup> Per section 27 of the 1995 Act, the LAB cannot provide legal aid for proceedings in any administrative tribunal unless prescribed by the Minister. Per the [Civil Legal Aid \(International Protection Appeals Tribunal\) Order 2017](#), the LAB can provide legal aid in relation to proceedings in the International Protection Appeals Tribunal.

<sup>33</sup> IHREC, [Submission to the Equality Acts Review](#) (2022) at p. 9; IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019) 142-143.

<sup>34</sup> Committee on Civil Legal Aid and Advice, Report to the Minister for Justice ('Pringle Report') at p. 46

<sup>35</sup> Pringle Report at p. 46

<sup>36</sup> IHREC, [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (December 2022) at p107-109; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) at p. 88-89; IHREC, [Ireland and the Convention on the Elimination of All Forms](#)

international human rights organisations have criticised Ireland for the restrictive nature of the 1995 Act, including the CAT,<sup>37</sup> the Committee on the Elimination of Racial Discrimination,<sup>38</sup> and the CESCR.<sup>39</sup> Specifically, they note the disproportionate impact that the blanket exclusions have on marginalised populations and the resulting implications on effective access to justice.

## Employment & Equality Employment

We have recommended on multiple occasions that the State extend the scope of the LAB to cover quasi-judicial tribunals, and the Workplace Relations Commission ('WRC') in particular.<sup>40</sup>

The WRC is the tribunal of first instance for employment cases, including employment equality cases under the Employment Equality Act 1998 ('EEA'), and complaints of discrimination under the Equal Status Act 2000 ('ESA'). The Labour Court is the appellate tribunal for appeals under the EEA. However, the 1995 Act excludes tribunals from its remit, unless these are specifically prescribed by the Minister.<sup>41</sup> Thus legal aid is not available for the majority of equality cases,<sup>42</sup> which disproportionately impacts upon minority and

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[of Racial Discrimination](#) (March 2022), p.16; IHREC, [Developing a National Action Plan Against Racism](#) (August 2021), p.62-63; IHREC, [Comments on Ireland's 18th National Report on the Implementation of the European Social Charter](#) (June 2021), p.21; IHREC, [Submission on the Review of the Equality Acts](#) (December 2021), p.8-11; IHREC, [Submission to UN Committee on the Elimination of Racial Discrimination](#) (October 2019), p.143; IHREC, [Housing Assistance and Discrimination Report](#) (April 2022), p.52; IHREC, [Submission to the Third Periodic Review Cycle for Ireland](#) (March 2021), p.10; IHREC, [Submission to the UN Human Rights Committee on the LOIPR on Ireland's 5<sup>th</sup> Periodic Report](#) (August 2020), p.13; IHREC, [Comments on Ireland's 14th National Report on the Implementation of the European Social Charter](#) (April 2017), p.16; IHREC, [Ireland and the International Covenant on Economic Social and Cultural Rights](#) (May 2015), p.53.

<sup>37</sup> The Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in their [Concluding Observations](#) recommended the State enhance its funding for legal aid and other supports for victims of domestic violence (17 June 2011), CAT/C/IRL/CO/1, para. 27(b).

<sup>38</sup> The Committee on the Elimination of Racial Discrimination recommended in their [Concluding Observations on the combined fifth to ninth reports of Ireland](#) that the State extend the scope of the Legal Aid Board to areas of law that are particularly relevant to Traveller and other ethnic minorities (12 December 2019), CERD/C/IRL/CO/5-9, para 44.

<sup>39</sup> The Committee expressed concern in their [Concluding Observations on the Third Periodic Report of Ireland](#) at the lack of free legal aid services which particularly impact disadvantaged and marginalised individuals and groups from exercising their rights and obtaining appropriate remedies (8 July 2015), E/C.12/IRL/CO/3, para. 8.

<sup>40</sup> IHREC, [Submission to the Review of the Equality Acts](#) (2022) at p. 8.

<sup>41</sup> Section 27, 1995 Act

<sup>42</sup> It is noted that cases involving discrimination on or at the point of entry to licensed premises are dealt with under the Intoxicating Liquor Act 2003, and gender related complaints under the Equality Acts may be initiated in the Circuit Court.

structurally vulnerable groups, for whom tribunals, such as the WRC, are often the mechanism by which they access the law.<sup>43</sup> Therefore, having such an exclusion in place leaves many structurally vulnerable individuals without access to legal support. These cases can involve complex issues of law, including EU law, and can result in a significant impact on a person's rights and circumstances. In addition, many employers, service-providers, or public bodies, who are often the respondents in such cases, will have legal representation, thus creating a potential inequality of arms. Therefore, we are of the view that these cases should have the right to legal representation through civil legal aid.

The ECtHR has been clear that there will always be cases where the requirements of justice and fairness, demand legal representation.<sup>44</sup> Although the right to civil legal aid is not absolute, the imbalance of power that can arise between parties may require the provision of legal aid where failure to do so would place the applicant at a substantial disadvantage.<sup>45</sup>

The effective enjoyment of the right to equality and non-discrimination as protected by international human rights law necessitates sufficient and accessible provision of legal aid.<sup>46</sup> It is our view that there may in fact be a legal requirement that the blanket impediment to provide legal aid in respect of claims under the EEA and ESA be lifted.<sup>47</sup> Cases under both the EEA and ESA adjudicate upon matters of significant consequence for the complainant, are often technical and complex in nature, and can involve a significant amount of emotional involvement for the complainant. Many of the groups protected by the grounds of discrimination are characterised by a particular level of structural vulnerability and/or constitute socially disadvantaged groups within society.<sup>48</sup>

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<sup>43</sup> For detailed observations on the scope of the scheme with regards to tribunals, please see Issue 2 See also IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) at p. 88

<sup>44</sup> *Steel and Morris v The United Kingdom*, App No. 68416/01 (ECtHR, 15 February 2005)

<sup>45</sup> *Kress v France*, App no 39594/98 (ECtHR, 7 June 2001) and *Steel and Morris v The United Kingdom*, App No. 68416/01 (ECtHR, 15 February 2005)

<sup>46</sup> IHREC, [Review of Intoxicating Liquor Act](#) at p. 34

<sup>47</sup> Where EU equality Directives such as the Race Equality Directive or the Gender Goods and Services Directives are engaged, the Charter of Fundamental Rights of the European Union may also apply. The Charter provides for the right to an effective remedy as protected by Article 47, a corollary of which is legal aid, which "[s]hall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice." IHREC, [Review of Intoxicating Liquor Act](#) at p. 40 and 53.

<sup>48</sup> IHREC, [Review of Intoxicating Liquor Act](#) at p. 36-37

## Housing

The 1995 Act excludes legal aid being granted in “disputes concerning rights and interests in or over land”, subject to two exceptions.<sup>49</sup> It is noted that, on occasion, civil legal aid has been granted for matters relating to housing, however, there remains some confusion regarding the housing matters for which the LAB, can, or cannot, provide legal aid.<sup>50</sup>

We, therefore, seek clarification on whether housing issues are excluded from the 1995 Act under Section 28(9), noting that the Minister for Justice retains the power to issue general directives as to policy concerning legal aid and advice.<sup>51</sup>

The second exemption applies to disputes concerning residential property under the Landlord and Tenant Acts.<sup>52</sup> However, the LAB cannot provide representation before the Private Residential Tenancies Board (‘RTB’), resulting in cases involving landlord and tenant law being largely excluded from the Scheme. We note that one of the central roles of the RTB is to resolve, cheaply and speedily, disputes between landlords and tenants. However, we remain concerned that some cases involving landlord and tenant law will require legal representation due to the complexity of the legal matters involved,<sup>53</sup> and to avoid a possible power imbalance between the tenant and their landlord who may well have more resources to secure legal representation thus placing the tenant at a substantial disadvantage.

Achieving greater economic equality includes improved equality of access to both appropriate and adequate housing and accommodation, in particular for groups facing high or systemic barriers.<sup>54</sup> We are of the view that the Scheme should cover all housing matters, in particular given the current protracted housing, homelessness and accommodation crisis.

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<sup>49</sup> Per section 28(9)(c) 1995 Act, the first exemption applies where the dispute is in relation to an applicant’s home and the LAB considers that the applicant suffers from an “infirmity of mind or body due to old age or to other circumstances”; or may have been subject to undue influence or fraud; or that to refuse to grant Legal Aid would cause hardship to the applicant.

<sup>50</sup> Mercy Law Resource Centre, [Submission to the Civil Legal Aid Review](#) at p. 7.

<sup>51</sup> While no such directives have been published, the Minister retains this power under section 7 of the 1995 Act.

<sup>52</sup> Section 28(9)(c)(i) 1995 Act.

<sup>53</sup> FLAC, [Accessing Justice in Hard Times](#) at p. 9

<sup>54</sup> IHREC, [Strategy Statement 2022-2024](#) at p. 11



## Eviction Proceedings pursuant to Section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended) and Section 19 of the Criminal Justice (Public Order) Act 1994 (as amended)

We have previously highlighted that the 1995 Act does not extend to eviction proceedings, which can have a disproportionate impact on Travellers.<sup>55</sup> The European Committee on Social Rights, in analysing the rights of Roma families under Article 16 and Article E<sup>56</sup> of the Revised European Social Charter, held that “the law must also establish eviction procedures, ... provide legal remedies and offer legal aid to those who need it to seek redress from the courts.”<sup>57</sup> Though the decisions handed down in eviction proceedings are of huge significance, those affected cannot get legal aid.

Further, eviction notices often only give 24 hours’ notice to comply and evictions frequently take place in the evening, which means most of those affected cannot access legal advice and/or representation in a timely manner.<sup>58</sup> The lack of a fast, effective civil legal aid for eviction proceedings has the foreseeable consequence that those concerned may, therefore, not have representation at hearings, which may result in them being directed to vacate. This can have a disproportionate effect on Travellers and other minority groups.<sup>59</sup> According to the 2021 Free Legal Advice Centres (‘FLAC’) Annual report, “42% of case files opened during 2021 were on behalf of clients of FLAC’s Traveller Legal Service”.<sup>60</sup> This

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<sup>55</sup> IHREC, [Comments on Ireland’s 17<sup>th</sup> Report on the Implementation of the European Social Charter](#) (June 2020) p. 15; IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s combined 5<sup>th</sup> to 9<sup>th</sup> report](#) (October 2019) p. 142.

<sup>56</sup> Article 16 of the European Social Charter provides: ‘The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development. With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.’ Article E – ‘Non-discrimination The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.’

<sup>57</sup> *European Roma Rights Centre v Bulgaria*, no. 31/2005, 30 November 2006, 52.

<sup>58</sup> IHREC, [Comments on Ireland’s 17<sup>th</sup> National Report on the Implementation of the European Social Charter](#) (June 2020) at p. 15

<sup>59</sup> IHREC, [Comments on Ireland’s 18<sup>th</sup> National Report on the implementation of the European Social Charter](#) (2021) at p. 21-23; IHREC, [Comments on Ireland’s 17<sup>th</sup> National Report on the Implementation of the European Social Charter](#) (2020) at p. 13-15

<sup>60</sup> Free Legal Advice Centres, [Annual Report 2021 Towards Equal Access to Justice](#) at p. 30.

suggests the current Scheme is inadequate in addressing the legal needs of structurally vulnerable communities, particularly those subject to systemic discrimination, and is continuing to impose barriers in accessing justice.

## Social Welfare

Social welfare entitlements are crucial in addressing poverty and ensuring people can remain in employment. However, the LAB is not authorised to provide legal representation at proceedings before the Social Welfare Appeals Office ('SWAO').<sup>61</sup> The SWAO aims to provide an "independent, accessible and fair appeals service" regarding social welfare payments.<sup>62</sup> Various shortcomings have been highlighted in the administration of the appeals process, including the complexity of the law and procedures, the delays and the lack of consistency.<sup>63</sup> The appeals system is reported to be failing those whom it is intended to serve and the basic rights of access to social welfare, to fair procedures and to an effective remedy are not available as needed.<sup>64</sup> Both CESCR and the Committee on the Elimination of Racial Discrimination have raised concerns at the exclusion of tribunals from the Scheme, noting in particular the exclusion of the SWAO.<sup>65</sup> It is also noted that 54.8% of appeals lodged in 2021 resulted in a favourable outcome,<sup>66</sup> and that the likelihood of success on appeal increased where an oral hearing was held.<sup>67</sup>

We have previously raised concerns regarding the operation of the SWAO.<sup>68</sup> Issues experienced by appellants in addressing legal issues in their appeals are exacerbated by the lack of a publicly accessible database of decisions, resulting in appellants being unable to

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<sup>61</sup> As per section 27 of the 1995 Act, the Social Welfare Appeals Office is excluded from the legal aid scheme as it is a quasi-judicial tribunal which has not been prescribed by the Minister.

<sup>62</sup> SWAO [Annual Report 2021](#) at p. 7.

<sup>63</sup> FLAC, [Not Fair Enough](#) see generally the introduction at p. X

<sup>64</sup> FLAC, [Not Fair Enough, Making the case for reform of the social welfare appeals system](#) (2012) at p. 14

<sup>65</sup> CESCR, '[Concluding Observations on the Third Periodic Report of Ireland](#)' (8 July 2015) UN Doc E/C.12/IRL/CO3, para 8; CERD, '[Concluding Observations on the Combined Fifth to Ninth Reports of Ireland](#)' (23 January 2020) UN Doc CERD/C/IRL/CO/5-9, para 43.

<sup>66</sup> Social Welfare Appeals Office, [Annual Report 2021](#) at p. 21 and 30.

<sup>67</sup> 69.8% of appeals involving an oral hearing resulted in a favourable outcome. See Social Welfare Appeals Office, [Annual Report 2021](#).

<sup>68</sup> IHREC, [Comments on Ireland's 14<sup>th</sup> Report on the European Social Charter](#) (April 2017) at p. 15-16

access previous decisions which may be relevant to their appeal.<sup>69</sup> Other concerns with the social welfare appeals process include the fact that hearings are held in private<sup>70</sup>, which results in a lack of public scrutiny, and inequalities between the parties.<sup>71</sup> Availability of legal information, advice, and representation is, therefore, paramount to ensuring accessible, fair, and appropriate reviews of social welfare decisions which are necessary in order to combat poverty and promote social inclusion.

**The Commission recommends that the State develop public awareness of the availability of legal aid for judicial review proceedings and ensure that the Legal Aid Board is adequately resourced to enable it to respond to applications for legal aid in these cases in a timely manner.**

**The Commission recommends a tailored approach to the provision of legal aid for minority and structurally vulnerable groups to redress a systemic imbalance and a culture of discrimination.**

**The Commission recommends that the Civil Legal Aid Scheme is expanded to include a wider range of areas including, at a minimum, employment and equality cases before the Workplace Relations Commission, housing and eviction cases, and social welfare matters.**

**The Commission recommends the removal of the blanket exclusion of the areas of law specified in the Civil Legal Aid Act 1995.**

## Domestic & Gender Based Violence

We reiterate our longstanding concern that civil legal aid is unavailable in a number of legal and administrative areas, which has proven to be a barrier to access to justice for victims of domestic, sexual and gender based violence ('DSGBV') as they deal with issues relating to

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<sup>69</sup> While the Social Welfare Appeals Office publishes summaries of a small number of selected decisions in its annual reports, key decisions of importance are not published. See generally SWAO, [Appeals Procedures](#). . See also FLAC, [Accessing Justice in Hard Times](#) at p. 11.

<sup>70</sup> FLAC, [Not Fair Enough](#) at p. 10

<sup>71</sup> FLAC, [Accessing Justice in Hard Times](#) at p. 12; FLAC, [Not Fair Enough](#) at p. 40

social welfare and housing.<sup>72</sup> These shortcomings in service provision pose particular challenges for victims of human trafficking, international protection applicants, and minority ethnic communities facing particular barriers in accessing social and other supports, as highlighted previously.<sup>73</sup> Women's Aid has noted that legal aid for victims and survivors of DSGBV is over-stretched, under-resourced and not meeting demand.<sup>74</sup> Moreover, the legal advice service available to victims of sexual offences is limited to certain offences and where criminal proceedings have already been instituted.<sup>75</sup>

**The Commission recommends that the Civil Legal Aid Act 1995 is amended to provide that the Legal Aid Board may provide free legal advice and aid to all victims of sexual offences.<sup>76</sup>**

According to the LAB, legal assistance to suspected victims of trafficking is provided by a specialist unit.<sup>77</sup> We are concerned that full legal representation is not provided to victims of trafficking, except in the context of International Protection applications and in limited

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<sup>72</sup> IHREC, [Report to the Council of Europe on the Convention of preventing and combating violence against women and domestic violence](#) (2022) p107-109; IHREC, [Report of a review of section 19 of the Intoxicating Liquor Act 2003 carried out pursuant to section 30 of the Irish Human Rights and Equality Commission Act 2014](#) (2022), p. 65; IHREC, [Submission on the Review of the Equality Acts](#) (2022), p. 8-11; IHREC, [Developing a National Action Plan Against Racism](#) (2021), p. 62-63; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2015), p. 14-15.

<sup>73</sup> IHREC, [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#) (2022), pp. 108-109; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), pp. 88-89; IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (2020), pp. 29-30; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), pp. 110-111, 142-143.

<sup>74</sup> Women's Aid, [Submission to the Joint Committee on Gender Equality on the Recommendations of the Citizens' Assembly](#) (2022) p. 5.

<sup>75</sup> See Department of Justice, [Report by the Irish government on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2022), p. 60.

<sup>76</sup> Provision of free legal advice and aid to victims of sexual offences was recommended in the O'Malley Report, which provides the following, 'individual victims of sexual crime may also need information and advice that is tailored to the circumstances of their particular case. We acknowledge that many victims do not currently have access to such advice, and we therefore recommend the adoption of certain measures... to address this situation.' O'Malley, T., *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (2020), p. 97. See also IHREC, [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (December 2022) at p. 108; RSCI [Submission to the Legal Aid Review](#) (February 2023); Cliona Saidléar, [80% of sexual violence go unreported](#) (2015)

<sup>77</sup> See [Legal Advice for potential victims of human trafficking](#), legal advice is provided in relation to: Immigration status and matters set out in the Administrative Immigration Arrangements for the Protection of Victims of Humans; Trafficking; Information about the role of a witness in a criminal trial; Information about available mechanisms for compensation; Information about seeking redress regarding employment breaches.

criminal matters.<sup>78</sup> Legal advice is not enough to ensure that victims of trafficking in Ireland receive the assistance they are entitled to under Directive 2011/36/EU.<sup>79</sup> This is particularly true for child victims of trafficking.<sup>80</sup> Given their unique vulnerability, child victims need child-specific processes and procedures. We have emphatically called for the inclusion of child-specific identification and assistance measures to be included in the State's anti-trafficking response.<sup>81</sup>

Traffickers commonly use sexual violence as a tool of control over women, children, and men, regardless of the type of trafficking they are engaging in.<sup>82</sup> The difficulty arises where the accused trafficker is not the person who is actually perpetrating the sexual exploitation in which case the victim is deprived of the right to assistance under section 4A of the Criminal Law (Rape) Act 1981. It is essential that victims of trafficking be afforded the same protections as other victims of rape and sexual assault with regard to separate legal representation.

There are a number of offences relating to sexual exploitation wherein a victim/witness may be called upon to act as witnesses in a criminal trial.<sup>83</sup> Providing legal assistance to victim/witnesses of sexual exploitation offences would ensure that they are afforded the opportunity to be fully and thoroughly prepared for a case, and protect them from re-traumatisation through the court process. Such measures would also greatly enhance the capacity of victims to give their best evidence.

**The Commission recommends that the term 'suspected victim of human trafficking' be used in place of 'potential victim of human trafficking'.**

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<sup>78</sup> Such as, for example, separate legal representation under section 4A of the Criminal Law (Rape) Act 1981.

<sup>79</sup> Article 12.2. of the EU Anti Trafficking Directive states: Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

<sup>80</sup> According to a recent [EU Study](#), the social, economic and personal cost from the crime committed against European Commission (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#). Luxembourg: Publications Office of the European Union, pp. 27 and 41

<sup>81</sup> IHREC (2022) [Trafficking in Human Beings in Ireland](#)

<sup>82</sup> Additionally, a trafficking offence is not, by definition, a sexual offence, although the sexual exploitation (without the element of trafficking) of a person, may constitute rape and/or sexual assault of the victim.

<sup>83</sup> For example, sections 6, 7 and 7A (as amended) of the Criminal Law Act 1993.

**The Commission recommends that all suspected victims of trafficking be proactively provided with adequate and early legal support.<sup>84</sup>**

The LAB indicates that a referral by An Garda Síochána ('AGS') is required in order to access legal advice. Despite this, a self-referral option also appears to be available to victims of trafficking by completing an application form.<sup>85</sup> The requirement for a referral by AGS in essence means that that only victims who are cooperating with the investigation are considered eligible for legal advice from the LAB, a position that is not conducive to early assistance to victims of trafficking.

**The Commission recommends that the Civil Legal Aid Act 1995 should be amended to allow for separate legal representation for victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008. As such, this would require amendment to the 1995 Act.**

**The Commission recommends that the Legal Aid Board offer legal assistance to suspected and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána. This must align fully with the new National Referral Mechanism.<sup>86</sup>**

**The Commission recommends that the Civil Legal Aid Act 1995 be extended to include sexual exploitation offences and that such legal advice should not be contingent on there being a prosecution or on the person having been identified as a suspected victim of trafficking.**

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<sup>84</sup> As part of this, the 1995 Act should be: amended to provide that the separate legal representation provided for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences) be extended to victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008; amended to allow for the provision of legal advice and assistance to victims of all sexual exploitation offences and that such legal advice should not be contingent on there being a prosecution or on the person having been identified as a suspected victim of trafficking; and further consideration should be given to the specific needs of trafficked victims especially as it relates to compensation.

<sup>85</sup> Legal Aid Board (2016) [Legal Advice for potential Victims of Human Trafficking](#)

<sup>86</sup> Please see [IHREC Submission on the General Scheme Criminal Justice \(Sexual Offences and Trafficking\) Bill 2022](#) and the [Joint Committee on Justice Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022 March 2023](#).

**The Commission recommends that the Civil Legal Aid Review consider the specific needs of trafficked victims especially as it relates to compensation, most notably the use of *Section 6 Orders*<sup>87</sup> as a means of compensating victims within the criminal process, and the potential need for separate legal representation for this purpose.**

## Children

Children who come into contact with the legal system will often need legal assistance. Article 42A of the Constitution and Article 3 of the UN Convention on the Rights of the Child provide for the best interests of the child. The various international standards outlined in Section 1 also apply to children. In relation to cases involving EU law, the EU Charter of Fundamental Rights establishes basic rights of access to justice; Article 47 deals with the right to an effective remedy, the right to be represented and advised and the right to legal aid.

According to the LAB website, applications for civil legal aid should be made by adults, but the LAB will accept an application from a child who has a sufficient level of maturity.<sup>88</sup> Providing children with effective access to legal services acts as a fundamental safeguard against violations of their rights during the judicial process and supports them to fully understand and follow proceedings. According to the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, children:

- have a right to receive legal information and advice in understandable language;<sup>89</sup>
- should have the right to their own legal counsel and representation;<sup>90</sup>
- should have access to free legal aid.<sup>91</sup>

Access to justice for children cannot depend on the means or support of their parents or guardians, especially if a child does not have their support. Children seeking assistance from

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<sup>87</sup> Criminal Justice Act 1993

<sup>88</sup> See [Information for children](#)

<sup>89</sup> Guideline 2, Council of Europe [Guidelines on Child-Friendly Justice](#)

<sup>90</sup> Guideline 37

<sup>91</sup> Guideline 38

the LAB must be assessed based on the means of the child or young person alone, and not on the household income.

**The Commission recommends that a clear policy is developed on how children can access the services of the Legal Aid Board in accordance with the Council of Europe Guidelines on Child-Friendly Justice, including individual eligibility assessments where necessary and appropriate.**

## Prioritisation

Research has shown that there are life experiences and circumstances which tend to make people more vulnerable to legal problems and also less likely to seek help to address them.<sup>92</sup> In an attempt to acknowledge this, various legal aid providers globally operate a priority service.<sup>93</sup> We welcome that a priority service is provided by the LAB in certain urgent cases including cases involving domestic violence, child abduction, applications by the State to take children into care or under supervision, and cases that have statutory time limits close to expiry.<sup>94</sup> According to the LAB, if a matter is prioritised, an applicant will get an early appointment.<sup>95</sup>

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<sup>92</sup> Law and Justice Foundation, Reshaping legal assistance services: building on the evidence base, a discussion paper at p. 5-7

<sup>93</sup> In Australia, the National Legal Assistance Partnership principles include a focus on priority clients, which requires legal aid providers to ensure that services are focused on people experiencing financial disadvantage. They also set out a list of national priority client groups as Aboriginal and Torres Strait Islander people; children and young people; older people; people experiencing or at risk of family violence; people experiencing or at risk of homelessness; people residing in rural and remote areas; single parents. This has resulted in each province within Australia creating a list of priority clients. For example, in New South Wales, their [Quality Standards](#) set priority clients as those with “high levels of vulnerability and disadvantage and low levels of legal capability” are considered priority clients, this includes clients with an acute mental illness, intellectual disability or cognitive impairment, child, those from an Aboriginal or Torres Strait Islander background, and domestic violence matters.

<sup>94</sup> Prioritisation involves matters in relation to which the LAB considers that an immediate, or near immediate, service is needed. The LAB’s [Administration Procedures Handbook](#) (2018) sets out the categories of cases in respect of which it will give priority to applicants, at p. 3-36. In 2021 approximately 33% of first appointments were for prioritised matters - Legal Aid Board, Annual Report 2021, p 29. According to the [Civil Legal Aid Regulations 1996-2017](#), the Board may issue an emergency certificate to an applicant without going through the procedure laid down in Part 3 if it is in the interests of preserving the applicant’s rights, and it would cause undue hardship to the person if the ordinary procedure for granting a certificate were followed. See also Legal Aid Board, [Circular on Legal Services](#) (2017)

<sup>95</sup> LAB’s [Administration Procedures Handbook](#) (2018) at 3-35



We acknowledge that a priority service is needed in some instances, however we are of the view that any prioritisation of cases should have a human rights and equality focus that considers the needs and structural vulnerability of the applicant, and the urgency of the issue. At a minimum, in addition to the above matters, this would result in the prioritisation of cases involving victims of human trafficking,<sup>96</sup> and urgent housing issues and eviction proceedings. The LAB should conduct a consultation with stakeholders in order to adequately create broad categories which should receive priority support.

**The Commission recommends that the Legal Aid Board prioritises support and advice, and that representation should have a human rights and equality focus that considers the needs and structural vulnerability of the applicant, and the urgency of the issue.**

**The Commission recommends that the Legal Aid Board conduct stakeholder consultation in order to create broad categories which should receive priority support.**

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<sup>96</sup> IHREC, [Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#) (2022) at p. 38

## Issue 2 – Jurisdictions Covered by the Scheme

The 1995 Act precludes the LAB from providing representation before many quasi-judicial tribunals and bodies in the absence of a Ministerial Order.<sup>97</sup> This includes the RTB, the SWAO and the WRC. We have strongly and repeatedly criticised the restrictive nature of the Scheme,<sup>98</sup> and this has also been the subject of criticism from international experts such as the Committee on the Elimination of Racial Discrimination,<sup>99</sup> the CESCR,<sup>100</sup> and the former UN Independent Expert on the question of human rights and extreme poverty.<sup>101</sup> It is in this context, we wish to highlight the need to expand the delivery of state provision of civil legal aid to include quasi-judicial tribunals.

We recognise the important nexus between the right of access to justice and the individual's ability to effectively assert rights and to enjoy redress mechanisms when these rights are violated. We also note the intention in establishing certain quasi-judicial tribunals was to promote a non-adversarial process<sup>102</sup> however, the availability or absence of legal assistance and representation can determine whether or not a person can access court and

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<sup>97</sup> Under Section 27(2)(b) of the Civil Legal Aid Act 1995 the Minister for Justice, with the consent of the Minister for Finance, may by order extend the civil legal aid scheme to prescribed tribunals.

<sup>98</sup> IHREC, [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (December 2022) at p107-109; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) at p. 88-89; IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#) (March 2022), p.16; IHREC, [Developing a National Action Plan Against Racism](#) (August 2021), p.62-63; IHREC, [Comments on Ireland's 18th National Report on the Implementation of the European Social Charter](#) (June 2021), p.21; IHREC, [Submission on the Review of the Equality Acts](#) (December 2021), p.8-11; IHREC, [Submission to UN Committee on the Elimination of Racial Discrimination](#) (October 2019), p.143; IHREC, [Housing Assistance and Discrimination Report](#) (April 2022), p.52; IHREC, [Submission to the Third Periodic Review Cycle for Ireland](#) (March 2021), p.10; IHREC, [Submission to the UN Human Rights Committee on the LOIPR on Ireland's 5<sup>th</sup> Periodic Report](#) (August 2020), p.13; IHREC, [Comments on Ireland's 14th National Report on the Implementation of the European Social Charter](#) (April 2017), p.16; IHREC, [Ireland and the International Covenant on Economic Social and Cultural Rights](#) (May 2015), p.53.

<sup>99</sup> Committee on the Elimination of Racial Discrimination, [Follow-Up Letter](#) to the combined fifth to ninth reports of Ireland (2022), UN Doc. CERD/106th session/2021/FU/MK/ks p. 2; Concluding observations on the combined fifth to ninth reports of Ireland (2020), UN Doc. [CERD/C/IRL/CO/5-9](#), paras 43-44.

<sup>100</sup> Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (2015), UN Doc. E/C.12/IRL/CO/3, para 8.

<sup>101</sup> Human Rights Council, [Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland](#), (2011) A/HRC/17/34/Add.2, at para 10

<sup>102</sup> Department of Jobs, Enterprise and Innovation, [Legislating for a World-Class Workplace Relations Service](#): Submission to Oireachtas Committee on Jobs, Enterprise and Innovation (July 2012).

tribunal proceedings or participate in a meaningful way.<sup>103</sup> Moreover, the recent Supreme Court judgment in *Zalewski v Adjudication Officer & Ors* which found the standard of justice administered in bodies such as the WRC cannot be lower or less demanding than the justice administered by the courts, and must comply with fundamental human rights principles such as fairness, means that proceedings before such bodies now have increased formality thus heightening the need for civil legal aid in all employment and equality cases.<sup>104</sup>

Civil legal aid must be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice.<sup>105</sup> The exclusion of administrative tribunals from the remit of the LAB has a disproportionate impact upon those covered by the discriminatory grounds under equality legislation, minorities and other structurally vulnerable groups, for whom tribunals are often the mechanism by which they access the law. The exclusion fails to take into account the importance of the matters covered by these tribunals. Access to social welfare entitlements is crucial in addressing poverty and ensuring people can remain in employment, for example. Research has found that access to legal aid in eviction cases results in applicants being less likely to be evicted from their home, which they found in turn reduced homelessness and the costs of public service associated.<sup>106</sup> The prevalence of low paid, precarious employment and the lack of recognition of care-giving can also have an adverse impact on the ability of women to challenge discrimination in the workplace, which is further exacerbated by the absence of civil legal aid.<sup>107</sup>

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<sup>103</sup> Human Rights Committee, [General Comment No. 32](#): Article 14: Right to equality before courts and tribunals and to a fair trial (2007) UN Doc. CCPR/C/GC/32, para 10. See also, M. O’Sullivan and J. McMahon, *Employment equality legislation in Ireland: claimants, representation, and outcomes* (2010) 39(4) *Industrial Law Journal* 332.

<sup>104</sup> [2021] IESC 24.

<sup>105</sup> Article 47 of the EU Charter of Fundamental Rights. According to the European Court of Human Rights, the obligation on the State does not extend to ensuring a total equality of arms between an assisted person and an opposing party, so long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the opposing party. See *Steel and Morris v The United Kingdom* App No. 68416/01 (ECtHR, 15 February 2005), para 62.

<sup>106</sup> Law Society of Scotland, [Social Return on Investment](#) (2017) p. 17

<sup>107</sup> Community Law and Mediation, A submission by Community Law & Mediation to the Citizens’ Assembly on Gender Equality (2020) 1-2.

In practice, many respondents are represented by legal counsel before the WRC, which gives rise to an inequality of arms.<sup>108</sup> Research by the EU Agency for Fundamental Rights on access to justice in cases of discrimination found that complainants can be at a disadvantage to their alleged discriminators, largely due to a resource imbalance. Large or multi-national companies often deploy significant resources and legal advisors, while individual complaints are limited to the minimum legal advice and support. Complainants reported that any legal support they did receive was necessary to navigate the intricacies of access to justice and the relevant procedures. Overall, the research identified improving the legal aid system across Europe and increasing funding for legal advice and representation as key factors to guarantee equality of arms.<sup>109</sup>

It is welcomed that a Ministerial Order has been made under the 1995 Act to expand the scheme to include the International Protection Appeals Tribunal.<sup>110</sup> However, we reiterate our longstanding concern that Civil Legal Aid is unavailable in a number of legal and administrative areas, which has proved to be a barrier to access to justice for those on low incomes, women, those living with addiction, victims of domestic violence, victims of trafficking and labour exploitation, International Protection applicants, Travellers, Roma, and minority ethnic communities.<sup>111</sup>

**The Commission recommends the extension of the scope of the Civil Legal Aid Scheme to quasi-judicial tribunals and bodies.**

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<sup>108</sup> Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (2020), UN Doc. CERD/C/IRL/CO/5-9, paras 43-44; FLAC, [Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland](#) (2021) 4; and Community Law and Mediation, [Submission by Community Law & Mediation to the Citizens' Assembly on Gender Equality](#) (2020) 2.

<sup>109</sup> European Union Agency for Fundamental Rights, [Access to justice in cases of discrimination in the EU: Steps to further equality](#) (2012) 43, 50, 58

<sup>110</sup> Civil Legal Aid (International Protection Appeals Tribunal) Order 2017, S.I. No. 81/2017

<sup>111</sup> IHREC [Submission to the Citizens' Assembly on Gender Equality](#) (March 2020) at p. 29-30; IHREC [Submission to the United Nations Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports](#) (August 2020) at p. 38, 62, 68; IHREC [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5<sup>th</sup> to 9<sup>th</sup> Report](#) (July 2019) at p. 110-111, 142-143; IHREC [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (May 2015) at p. 14-15. Note that people facing addition issues has been added to this definition based on findings that those facing addition have difficulty accessing services, as per Department of Health, [Mid-Term Review of the National Drugs Strategy](#) (October 2021) at p. 20-21.

## Issue 3 – Eligibility

The mission of the LAB is to enable the effective resolution of civil disputes through the delivery of efficient and accessible legal aid services.<sup>112</sup> This is part of the broader vision to provide access to justice by enabling the resolution of disputes and the vindication of people’s rights in the most appropriate manner while keeping in mind the dignity of the person, the nature of the dispute and the impact of the dispute on the parties immediately involved and wider society.<sup>113</sup> To achieve these goals, there is a fundamental requirement that any eligibility thresholds be appropriate, effective and not act as a barrier. A lack of economic equality affects all marginalised groups and prevents the realisation of many fundamental rights.<sup>114</sup> We are of the view that reducing this gap is crucial for social cohesion, social inclusion and improving the quality of life for those experiencing or at risk of poverty.<sup>115</sup>

To qualify for Civil Legal Aid and Advice in most instances, an applicant’s problem must be one that is covered by the Scheme, and they must show that their income and assets are below a certain limit. In addition, a merits test will be applied if the applicant’s case requires representation in court. It is vital that the Scheme’s financial eligibility and merits tests, discussed further below, should not result in people of insufficient means being unfairly excluded from the Scheme and from accessing justice thus exacerbating existing economic inequalities and the risk of social exclusion.

### Means Test

The means test requires an assessment of a person’s financial eligibility, which includes an assessment of their disposable and capital income. The current thresholds provide that the applicant must have a disposable income not exceeding €18,000 after some allowances are deducted<sup>116</sup> and that capital owned by the applicant does not exceed a maximum value

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<sup>112</sup> Legal Aid Board, [Our Mission](#)

<sup>113</sup> Legal Aid Board, [Customer Charter](#)

<sup>114</sup> IHREC, [Strategy Statement 2022-2024](#) (2022)

<sup>115</sup> IHREC, [Strategy Statement 2022-2024](#) (2022)

<sup>116</sup> Per section 3 Civil Legal Aid Regulations, 2006, “disposable income” refers to all income less some allowances, and ‘income’ refers to all income received by the applicant other than child maintenance, Child

threshold of €100,000, not including the family home.<sup>117</sup> If an applicant exceeds either amount, the person will not qualify for legal aid or advice. In 2020, 29% of the refusals of legal aid by the LAB were because the applicant was deemed financially ineligible.<sup>118</sup> Aside from the reduction to the capital allowance in 2013,<sup>119</sup> the financial eligibility criteria under the Scheme has not substantially changed since 2006.<sup>120</sup> According to the LAB, there is no discretion or capacity to provide services to persons who may be marginally outside the financial limits, which they acknowledge effectively reduces access to their services over time.<sup>121</sup> The LAB is of the view that this is because people of the most limited economic means may typically have higher nominal incomes now, but are equally, if not more, disadvantaged as their living costs have increased at a faster pace over that period.<sup>122</sup> This is even truer in 2023 given the rising cost of living affecting the population.<sup>123</sup> It is noted that the earnings of an employee being paid the National Minimum Wage in 2023 would be more than 15% higher than the current disposable income threshold.<sup>124</sup>

Furthermore, the Commission on Taxation and Welfare Report found that, although Ireland has a progressive and redistributive tax and welfare system, there are a number of undesirable cliff-edge effects across these systems, which can mean that individuals become financially worse off because they have taken up employment, increased their hours of work or obtained a pay rise.<sup>125</sup> We are concerned that these cliff-edge effects may be also be

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Benefit and certain Supplementary Welfare Payments and charitable payments. The allowances provides for are as follows: Spouse: €3,500; Child or other dependent: €1,600; Childcare per child: €6,000; Accommodation: €8,000; Ex gratia allowance: deduction if €20 for each payment received each week; All income taxes and social insurances. The child dependent allowance is reduced by the amount of any maintenance received by the applicant in respect of the child, up to the €1,600. Where the amount of child maintenance exceeds the child dependent allowance, the allowance is reduced to zero.

<sup>117</sup> Section 3, Civil Legal Aid Regulations, 2013.

<sup>118</sup> Legal Aid Board, *Annual Report (2020)* 62.

<sup>119</sup> The Civil Legal Aid Regulations 2013

<sup>120</sup> Legal Aid Board Annual Report (2021) p. 18

<sup>121</sup> Legal Aid Board Annual Report (2021) p. 18

<sup>122</sup> Legal Aid Board Annual Report (2021) p. 18

<sup>123</sup> Economic and Social Research Institute (ESRI) [Despite significant headwinds, Irish economy set to perform in robust manner for remainder of 2022, however pace of growth set to moderate in 2023 as both macroeconomic uncertainty and inflationary pressures persist](#) (October 2022).

<sup>124</sup> Based on an assessment of the new national minimum wage for 2023, per Press Release '[National Minimum Wage Increase 2023](#)'.

<sup>125</sup> A cliff-edge effect is one that causes a significant consequence that is disproportionate to the change that caused it, for example, instances which result in individuals being left financially worse off as a result of taking

impacting on individuals' ability to qualify under the Scheme since the financial eligibility thresholds have not substantially changed since 2006.<sup>126</sup> An effective and fair civil legal aid system must be designed to avoid cliff-edge effects in terms of financial eligibility thresholds in order to reduce barriers to accessing justice.

We are concerned that the lack of flexibility in the application of the means test is impacting unduly on the right of access to justice.<sup>127</sup> Moreover, there has been no change to the amounts in respect of the allowances that can be used to offset income to determine disposable income despite the lowest income households being most affected by the recent increases in inflation and as such disproportionately impacted by increases in the cost of living.<sup>128</sup>

It is noted that the requirement to pass a financial means test in order to be eligible for civil legal aid is not unique to the Irish system.<sup>129</sup> The ECtHR has also found that, in considering the right to a fair trial under Article 6, it may be acceptable to impose conditions on the grant of legal aid including on the basis of the financial situation of the litigant.<sup>130</sup>

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up employment, or increasing their hours of work. The Commission on Taxation and Welfare, [Foundations for the Future](#) (2022) p 225-255.

<sup>126</sup> In various Annual Reports of the Legal Aid Board, the then Chairperson repeatedly stressed the importance of a revision of the financial eligibility criteria and the danger of 'poverty traps'. See Legal Aid Board, Annual Report (2020) at 5; Annual Report (2019) at 12, and Annual Report (2018) at 10. St Vincent de Paul report that the financial eligibility criteria, including the financial contribution act as barriers to accessing justice, finding that even low income households are not qualifying for legal aid, or those who do qualify are struggling to pay the financial contribution: SVP, [Submission to the Review of Civil Legal Aid](#) (2023) at p. 5

<sup>127</sup> As an example, see SVP, Submission to the Review of Civil Legal Aid Scheme in which they found low-income households do not qualify for legal aid but are struggling to meet their basic needs at p. 5; see also Women's Aid, Submission to the [Review of the Civil Legal Aid Scheme](#) in which they found women are often denied legal aid but cannot afford to pay for private representation; resulting in restricted access to justice at p. 8-9; See also CLM, Submission to the Review of the Civil Legal Aid Scheme in which they report they regularly engage with people who cannot afford a solicitor but do not meet the current threshold for legal aid, due to the overly strict means test, at p. 22.

<sup>128</sup> CSO, Consumer Price Index October 2022 shows a spike in inflation seen over the past year. Research by the Central Bank of Ireland and the Central Statistics Office has found that households in the bottom 20 per cent of the income distribution, have a higher rate of inflation than the national average, and are, therefore, disproportionately impacted by increases in the cost of living. See [Central Bank of Ireland, 2022, Household Characteristics, Irish Inflation and the cost of living at p. 1 and p. 4; CSO, 2022, Estimated Inflation by Household Characteristics March 2022.](#)

<sup>129</sup> According to the Global Study on Legal Aid Report conducted by UNDP and UNODC, globally, financial need is the most common factor determining eligibility to legal aid in civil cases, with 73% of participating countries using financial need as an eligibility criteria. See United Nations Office on Drugs and Crime and United Nations Development Programme, 'Global Study on Legal Aid: Global Report' (2016) 119.

<sup>130</sup> *Steel and Morris v. the United Kingdom* no. 68416/01, 15 February 2005 at para 62. See also *Glasser v. the United Kingdom*, no. 32346/96, 19 September 2000 at para, 99, and *Santambrogio v. Italy* no. 61945/00, 21

However, Guidelines of the Committee of Ministers of the Council of Europe on legal aid schemes state that Member States should consider allowing the waiving of means testing whenever justified.<sup>131</sup>

Moreover, the ECtHR has also emphasised that the question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.<sup>132</sup> The vulnerability of an applicant is a factor which is to be taken into account when considering whether they have a right to access legal aid.<sup>133</sup> The Pringle Report found the basis of financial eligibility should be such as to provide adequately for a wide range of persons,<sup>134</sup> and recommended that people who have qualified for certain social services, on the basis of existing means tests, should automatically qualify for services under the Scheme.<sup>135</sup>

The CESCR has expressed concern at the lack of free legal aid services in Ireland which particularly impact disadvantaged and marginalised individuals and groups in exercising their rights and obtaining appropriate remedies.<sup>136</sup> The strict 'earnings and wealth' limit in Norway has been criticised internationally with the Human Rights Committee stating it was particularly concerned as this means test "failed to take account of the actual circumstances

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September 2004 at para 53 and 58 (no violation of Article 6.1 if an applicant falls outside the legal aid scheme because their income exceeds the financial criteria, provided the essence of the right to a court is not impaired).

<sup>131</sup> Council of Europe, [Guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law](#) adopted on 31 March 2021, Guideline 15.

<sup>132</sup> *Steel and Morris v United Kingdom*

<sup>133</sup> *Nenov v. Bulgaria*, application no.33738/02, ECtHR, 16 July 2009, §52.

<sup>134</sup> Pringle Report at p. 63

<sup>135</sup> Pringle Report at p. 65

<sup>136</sup> Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (8 July 2015), E/C.12/IRL/CO/3, para. 8.



of the applicants".<sup>137</sup> Other jurisdictions do exercise discretion in the means test, which leads to a more inclusive civil legal aid system.<sup>138</sup>

The State should consider whether a means test is required in every case, or whether it is more appropriate to determine access to the Scheme having regard to the needs and circumstances of the individual applicant on a case-by-case basis. If a means test is required, the State should examine how the current thresholds and the lack of flexibility regarding same may be excluding certain sections of society from accessing justice.

**The Commission recommends a thorough review of the means test, including the income, capital and allowance limits.**

**The Commission recommends that, if a means test is required, a more flexible approach to its application should be adopted.**

**The Commission recommends that, if a means test is required, the income, capital and allowance thresholds should be adjusted to realistic levels to take account of increases in the cost of living and additional costs incurred by structurally vulnerable groups for example the Cost of Disability.<sup>139</sup>**

**The Commission recommends that any financial eligibility criteria be reviewed annually against national poverty proofing standards and the Department of Justice should publish the underlying analysis, which should be based on human rights and equality principles.**

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<sup>137</sup> International Covenant on Civil and Political Rights, '[Concluding Observations of the Human Rights Committee on Norway](#)' (18 November 2011) CCPR/C/NOR/CO/6. This concern was reiterated by the Committee in 2018, see '[Concluding Observations of the Human Rights Committee on Norway](#)' (25 April 2018) CCPR/C/NOR/CO/7. See also Ole Hammerslev and Olaf Rønning, *Legal Aid in the Nordic Countries* (Palgrave Macmillan, 2018). The Committee on Economic, Social and Cultural Rights also raised concern regarding the unrealistic financial eligibility of the scheme, see '[Concluding Observations on the Sixth Periodic Report of Norway](#)' (2 April 2020) E/C.12/NOR/CO/6.

<sup>138</sup> In Edward Island, Canada, income is the primary factor, but there are no fixed income cut-offs; an applicant's assets, liabilities and the complexity of the case, urgency of the situation, cost of proceedings and whether a reasonable person will spend money to advance the case will be considered. See Department of Justice Canada, 'Legal Aid Research Series'. New South Wales in Australia have some discretion when applying the means test in some instances. They have provisions for granting legal aid in situations where one's income exceeds the income eligibility limit and/or the applicant does not satisfy the means test for other reasons, such as the type of proceedings. See Legal Aid New South Wales [Policy on the Means Test](#)

<sup>139</sup> See Indecon, [Cost of Disability Report](#) (2021)

## Cases where there should be no financial eligibility test

There are certain types of cases that are so fundamental to the rights of an individual that civil legal aid should be provided without a financial eligibility test. We recommend consideration be given to the creation of a non-exhaustive list of cases in which the eligibility criteria should not apply. At a minimum, this should include cases involving fundamental rights as these cases involve complex issues and often involve the most structurally vulnerable. It is noted that eligibility in criminal cases operates with more flexibility, and is not governed by any financial eligibility criteria.<sup>140</sup> Further, the Committee of Ministers of the Council of Europe recommend that Member States consider allowing the waiving of means testing whenever justified.<sup>141</sup>

At a minimum, there should be no means test in the following circumstances:

- Cases of domestic violence;
- Cases involving childcare and children;
- Where the applicant is in immediate danger of eviction or repossession;
- Where an applicant receives a social welfare payment or possesses a medical card;
- Where the applicant is seeking legal assistance for welfare matters; and
- Where undue hardship will be caused legal aid is denied.

This is a non-exhaustive list. We recommend further investigation into the cases in which eligibility should be waived, that takes any unintended consequences into account. In this regard, we wish to highlight that we will be conducting an international comparative study of civil legal aid systems, which we intend will provide an evidential base for best practice.

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<sup>140</sup> An applicant must establish that their means are insufficient to enable them to pay for legal aid, and the court must be satisfied that by reason of gravity of the charge or exceptional circumstances, it is essential in the interests of justice that the applicant should have legal aid. An applicant may be required to complete a statement of means. See Department of Justice, [Criminal Legal Aid/Advice](#)

<sup>141</sup> Guidelines of the Committee of Ministers of the Council of Europe on [the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law](#) adopted on 31 March 2021, Guideline 15.

**The Commission recommends that consideration be given to removing the financial eligibility criteria for certain cases, including, at a minimum, those involving fundamental rights.**

## Merits Test

If an applicant requires legal representation in Court, they must also satisfy the merits test. The LAB must be satisfied that the average person would be willing to go to Court at their own expense, and a solicitor or barrister acting reasonably would recommend that the applicant go to court.<sup>142</sup>

The LAB will also examine:

- (a) If there are reasonable grounds for taking the case;
- (b) The likelihood of success in the proceedings;
- (c) Whether taking a case is the most appropriate way of solving the dispute; and
- (d) The cost to the taxpayer against the benefit the applicant might receive if successful.<sup>143</sup>

We are concerned that by having a merits test based on the above considerations, instead of on the applicant's need for legal services, the LAB is restricting its ability to deliver effective access to justice.

The ECtHR<sup>144</sup> has found that the requirement to provide legal aid will depend on a number of other factors, such as:

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<sup>142</sup> Section 24 Civil Legal Aid Act 1995

<sup>143</sup> Section 28(2) Civil Legal Aid Act 1995

<sup>144</sup> In *Airey v. Ireland*, No. 6289/73, 9 October 1979, while the ECtHR excluded the existence of a right to free legal aid in all civil cases, it held that an individual should enjoy an effective right of access to the courts, finding that in this instance, this had been denied to the applicant, at §§ 24, 26 and 28. While *Airey* was a landmark case, it was a consequence of a previous decision in *Golder v the United Kingdom*, No. 4451/70, 21 February 1975, in which the ECtHR found that Article 6.1 does not expressly provide for a right of access to courts or tribunals, but that the right to fair, public and expeditious proceedings would have no value if there was no access to the courts, at p. 21. In *McVicar v United Kingdom*, App no 46311/99 (ECtHR, 7 May 2002) [14] - [18], the ECtHR emphasised the importance of the circumstances of the applicant and their capacity to represent themselves when making a determination about the provision of legal aid.

- the importance of what is at stake for the applicant;<sup>145</sup>
- the vulnerability of the applicant;<sup>146</sup>
- the complexity of the relevant law or procedure;<sup>147</sup>
- the applicant’s capacity to represent themselves effectively;<sup>148</sup> and
- the need to establish facts through expert evidence and the examination of witnesses.<sup>149</sup>

We are of the view that ‘merits’ should have an expansive meaning, taking into account the above factors, and be underpinned by human rights and equality principles and the view that the provision of civil legal aid can result in economic and social benefits for both the individual and the State. These benefits could include preventing people from falling into homelessness,<sup>150</sup> limiting negative health experiences,<sup>151</sup> and savings in the provision of other social services.<sup>152</sup> Whilst the ECtHR has also found that it may be permissible to

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<sup>145</sup> *Steel and Morris v the United Kingdom*, no. 68416/01, 15 February 2005, § 61, and *P, C and S v the United Kingdom*, no. 56547/00, 16 July 2002, §§ 91, 95 and 100.

<sup>146</sup> *Nenov v Bulgaria*, no. 33738/02, 16 July 2009, § 52

<sup>147</sup> *Airey v Ireland*, §§ 24 and 26; *P, C and S v the United Kingdom* § 89.

<sup>148</sup> *McVicar v the United Kingdom*, no. 46311/99, 7 May 2002, §§ 48-62, and *Steel and Morris v the United Kingdom* § 61.

<sup>149</sup> *Airey v. Ireland*, No.6289/73, ECtHR, 9 October 1979, §24.

<sup>150</sup> Various impact and value based assessments on the provision of legal aid have been conducted in other jurisdictions. For example, in the United States, the provision of civil legal aid in eviction proceedings prevented an estimated 25 percent of clients ending up in homeless services and saved the State an estimated \$8.4 million. Laura K. Abel and Susan Vignola, [Economic and Other Benefits Associated with the Provision of Civil Legal Aid](#) (2010), 9 Seattle J Soc Just 193, 149.

<sup>151</sup> A study in the United Kingdom found a significant impact on the health of those experiencing unresolved legal problems, with approximately 1.1 million people suffering from a stress-related illness serious enough to seek medical help - PLEAS Task Force, [Developing capable citizens: the role of public legal education](#) (2007), p.8

<sup>152</sup> A study in Pennsylvania found that providing representation to low-income tenants yielded a return of \$12.74 for every \$1 spent. This is a conservative estimate. See Lisa Moore and Trevor Farrow, [Investing in Justice: A literature Review in Support of the Case for Improved Access](#) (2019). A study in Colorado concluded that the “social value impact” of their domestic violence work was \$1.3 million, while research by the Boston Bar Association found that investing in 100 new legal aid attorneys could result in savings of \$16 million in medical costs. See Jacqueline Lee and Bethany Backes, *Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions* (2018), *Journal of Family Violence*, vol.33, 421-433, p.428. A study in the UK estimated that civil legal aid investments supporting legal issues related to homelessness were approximately £5.8 million while the cost of a lack of access to legal aid for homelessness was estimated to be approximately £37.7million. Lisa Moore and Trevor Farrow, *Investing in Justice: A literature Review in Support of the Case for Improved Access* (2019) at 34

impose conditions on the grant of legal aid based on considerations, such as the prospect of success in the proceedings,<sup>153</sup> it is our view that success may not be a simple matter of winning or losing but could mean, for example, that an eviction is deferred for six months, an important point of law is clarified, or a settlement is reached. We would emphasise that any merits test should be based on the applicant's need for legal services and not on the likelihood of being the successful party to proceedings.

**The Commission recommends that any merits test should be reviewed and revised as appropriate to ensure it is not acting as a barrier to accessing justice.**

**The Commission recommends that 'merits' should have an expansive meaning, taking into account European Convention on Human Rights standards, and should be underpinned by human rights and equality principles.**

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<sup>153</sup> Provided that the State offer substantial guarantees to protect individuals from arbitrariness. See *Steel and Morris v the United Kingdom*, § 62; *Gnahore v France*, § 41; *Essaadi v France*, no. 49384/99, § 36; *Del Sol v France*, no. 46800/99, § 26; *Bakan v Turkey*, no. 50939/99, §§ 75-76 with a reference to *Aerts v Belgium*, no. 25357/94, § 60.

## Issue 4 - Financial Contribution

The legal services provided for by the LAB are subject, in most cases to the applicant paying a financial contribution. This contribution is assessed on the applicant's disposable income and capital, with the amount differing depending on whether the applicant is seeking legal advice or legal aid. If the applicant also has disposable capital, they will also be liable for a further 'capital contribution'.<sup>154</sup> We have repeatedly highlighted the need to review the financial contribution for legal representation under the Scheme as it represents an additional barrier to access, particularly for those on low incomes, women, victims of labour exploitation, international protection applicants, Travellers, Roma, disabled people and minority ethnic communities.<sup>155</sup> CESCR have expressed concern at the lack of free legal aid services which prevents in particular structurally vulnerable individuals and groups from claiming their rights and obtaining appropriate remedies.<sup>156</sup>

The LAB, at their discretion<sup>157</sup> may either waive the contribution or accept a lower contribution if it considers that it would cause that person undue hardship to pay the full contribution.<sup>158</sup> The LAB have put in place guidelines to assist their decision makers when deciding on whether to grant a waiver.<sup>159</sup> However, even if an applicant fits within the

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<sup>154</sup> Regulation 3, Civil Legal Aid Regulations 2013. The minimum contribution payable for legal advice is €30 and the maximum €150. The contribution for legal aid is €130 if disposable income is below €11,500. An additional amount is payable if disposable income is above €11,500 but below €18,000. See [LAB website](#) for further explanation on how contributions are calculated.

<sup>155</sup> IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#) (March 2022), p.16; IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#) (2021) p.7; IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (January 2017), p.39; IHREC, [Ireland and the Convention on the Rights of the Child](#) (December 2015), p.10.

<sup>156</sup> Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (8 July 2015), E/C.12/IRL/CO/3, para. 8.

<sup>157</sup> In 2021, 794 waivers/reductions were granted & 61 refused – Legal Aid Board [Annual Report 2021](#), p.56.

<sup>158</sup> Section 29, Civil Legal Aid Act, 1995. See also Legal Aid Board Guidance on the circumstances in which they will consider granting a waiver.

<sup>159</sup> According to the [LAB](#), they will consider granting waivers in the following circumstances: if the applicant is dependent entirely on supplementary welfare payments; if the applicant is dependent on social welfare, but the Department of Social Protection has decided to share your payments with another person or you are benefitting from a shared payment; If you are dependent on social welfare, but the Department of Social Protection has decided to share your payments with another person or you are benefitting from a shared payment; If an applicant has an order directing someone to pay maintenance and has to take further steps to enforce the payment; If the applicant has applied for international protection; If the applicant is in prison with a sentence of longer than one year and does not own any property or other capital assets. The LAB might

guidelines, the LAB must be satisfied that paying the contribution would cause undue hardship, otherwise a waiver will not be granted.

It is also noted that a contribution of €10 is required by applicants for international protection in respect of their applications for legal aid and/or advice.<sup>160</sup> We are concerned that the requirement of a contribution for those seeking international protection may act as a barrier, or may place an additional burden on an already vulnerable cohort, who do not have sufficient means to cover living expenses.<sup>161</sup>

The State should conduct a review of the financial contribution which should include an examination of the rationale for the existence of the contribution and, an analysis of whether the exclusion of people from the Scheme on the basis of inability to pay a financial contribution, and who do not receive a waiver, exacerbates existing, or creates new, legal needs and the resulting economic and social cost of same to both the individual and the State. For so long as a financial contribution exists it should be reviewed periodically against any national poverty proofing standards and to take into account increases in inflation and the cost of living. A civil legal aid system that excludes those of low or modest means as a result of outdated financial eligibility thresholds or contributions which have not kept pace with increases to inflation or the cost of living crisis, risks exacerbating already existing economic inequalities amongst people in Ireland.

**The Commission recommends a fundamental review of the requirement for a financial contribution.**

**The Commission recommends that for so long as the financial contribution requirement exists, it should be periodically reviewed against any national poverty proofing standards and adjusted as necessary and appropriate to ensure that it does not operate as an additional barrier to accessing justice, particularly for those on low incomes, women,**

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consider granting a waiver in other circumstances, on a case by case basis. In every case, the decision to grant a waiver lies with the LAB.

<sup>160</sup> See section 3(g), Civil Legal Aid Regulations 2013

<sup>161</sup> See Immigration Council of Ireland, Submission to the Civil Legal Aid Review at p. 12; Irish Refugee Council, [‘IRC budget to submission calls for extension of Child Benefit to children in direct provision and increase of weekly payment to people seeking protection’](#) (September 2022)

**victims of labour exploitation, international protection applicants, Travellers, Roma, disabled people and minority ethnic communities.**

**The Commission recommends that the State review the Legal Aid Board's system of waiver to ensure it operates in a transparent and effective manner and does not prevent individuals from accessing civil legal aid due to their economic circumstances.**

## Cases involving fundamental rights

As noted above, there are certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test. The Commission supports and welcomes the waiving of the financial contribution requirement in certain instances, including for victims of trafficking,<sup>162</sup> domestic violence cases in the District Court,<sup>163</sup> child care proceedings<sup>164</sup> and recommends that this continue. For so long as the financial contribution persists, we recommend consideration be given to the creation of a more expansive list of cases in which the requirement of a financial contribution should not apply. At a minimum, this should include cases involving fundamental rights as these cases involve complex issues and often involve the most structurally vulnerable.

At a minimum, the waiving of the contribution should be expanded to include the following circumstances:

- Cases involving childcare and children;
- Where an applicant receives a social welfare payment or possesses a medical card;
- Where the applicant is seeking legal assistance for welfare matters;
- Potential victims of trafficking in all cases;

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<sup>162</sup> See LAB, [Legal Advice for potential Victims of Human Trafficking](#). However, accessing services of the LAB is only without a contribution if a potential victim is seeking advice and has been identified by AGS, or if they are seeking representation in certain rape and sexual offences cases. See [Victims Charter](#) for further information.

<sup>163</sup> As per LAB [website](#), no contribution is payable if you are taking or defending proceedings in the District Court for a barring order, safety order, protection order, or interim barring order.

<sup>164</sup> See section 3(f), Civil Legal Aid Regulations 2013. See also LAB [website](#), no contribution is payable if Tulsa is asking the Court to take children into foster care or to allow its staff to supervise children in their home.



- Where undue hardship will be caused by a contribution.

This is a non-exhaustive list. We recommend further investigation into the cases in which the contribution should be waived, that takes any unintended consequences into account.

**The Commission recommends further consideration of the financial contribution in cases involving fundamental rights.**

## Issue 5 – Mode of Delivery

In addition to the LAB in its law centres, civil legal assistance is currently provided for by, Independent Law Centres, and some statutory, and non-statutory bodies. The organisations working within this space have been bridging the gap between the service the LAB provides and the unmet legal need in our communities. The value of the service provided by these organisations should not go unrecognised. The Independent Review should consider how these various modes of service provision should interact to ensure effective access to civil legal services, including early advice and assistance, and specialised legal services where required.

### Community Focus

The Pringle Report highlighted the ability of full-time law centres in disadvantaged areas to ascertain the legal needs of the community in which they are situated, provide information about the law and make suggestions for law reform, in addition to providing legal aid and advice. Such centres would be more accessible for the community, and staff employed at centres would develop an expertise in dealing with the particular problems of the local community.<sup>165</sup> Whilst there is a relatively broad spread of LAB law centres throughout the country, they are still insufficient in number and geographical reach, and it does not seem that they have the level of involvement in the communities in which they are situated as envisaged by the Pringle Report.<sup>166</sup> Nor do they have a widespread public information function or outreach services.

There are seven independent law centres in Ireland, which provide legal assistance, in particular to structurally vulnerable groups and individuals. They also regularly provide legal assistance in areas of law not covered by the LAB, and can operate with a flexibility which is not always possible under a statutory scheme. The Pringle Report envisaged there would be centres established in marginalised communities in an attempt to ‘bring’ the law to these

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<sup>165</sup> Pringle Report at p. 90-91

<sup>166</sup> There are thirty full-time law centres across the country, as well as three part-time centres. Legal Aid Board, [Find a Law Centre](#)

communities.<sup>167</sup> It was submitted to the Pringle Committee that the approach adopted by law centres is the right one, as it begins with an understanding of the community it intends to serve.<sup>168</sup>

There are several other bodies which receive public funding and which provide varying levels of legal assistance, ranging from information to reform.<sup>169</sup> There are also various pro bono services which operate within the provision of Civil Legal Aid.<sup>170</sup> We also note the significant role played by private practitioners in the current Scheme. Their role in a revised Scheme should also be considered as part of the Independent Review, including their level of remuneration which should reflect the amount of time, work and skill required.

There is a need for a proper and comprehensive mapping of all forms of public legal assistance currently provided by statutory and non-statutory bodies and the Independent Law Centres. There should also be consideration of how these services could best interact and complement each other in a revised Scheme in order to achieve equal access to justice. The Independent Review should also conduct research into various practices in other jurisdictions to determine whether these could or should be replicated in Ireland.<sup>171</sup>

## Specialist Units

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<sup>167</sup> Pringle Report at p. 87

<sup>168</sup> Pringle Report at p. 90

<sup>169</sup> These include the Citizens Information Board, IHREC, the Competition and Consumer Protection Commission, the Courts Service, the Workplace Relations Commission, MABS and the *Abhaile* scheme.

<sup>170</sup> The Bar Council, Voluntary Assistance Scheme; the Law Society; PILA; and various private firms.

<sup>171</sup> For example, in Canada, the 'multi-disciplinary models for problem resolution which seek to engage legal professionals and non-professionals, and professionals and resources from outside of the legal sector to identify and resolve legal and non-legal aspects of problems'. Medical-legal partnerships are among the most established types of legal partnerships and seek to consider the social determinants of health and the potential for legal remedies. They are predominately located in healthcare settings, with health professionals incorporating screenings for social and legal need into the service delivery model and lawyers offer support for the legal dimensions of these problems. Other multi-disciplinary approaches include; joint social work and legal services whereby a lawyer may help resolve the client's legal issue and the social worker provides emotional and practical support to prevent a reoccurrence of the legal problem. See Lisa Moore, *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* (2022), p.11.

In Australia, Legal Aid New South Wales is a state-wide organisation that operates a network of offices, outreach locations, and legal centres providing specialist and general services working in collaboration with community legal centres, pro bono services, and other agencies that help them deliver integrated services to address clients' legal and non-legal needs - <https://www.legalaid.nsw.gov.au/about-us/who-we-are>

We have previously called for the development of a tailored approach to the provision of legal aid for historically oppressed and minority groups, including in particular for Travellers.<sup>172</sup> Tailored supports for structurally vulnerable groups would allow for effective legal protection for those who often face multiple forms of discrimination.<sup>173</sup> It is welcomed that the LAB have undertaken a project to improve access to the service for Travellers,<sup>174</sup> and we note the operation of specialised units within the remit of the LAB.<sup>175</sup> A systematic approach to the development of effective tailored legal services is required, and further research should be conducted as part of the Independent Review, and thereafter on an ongoing basis, to ascertain those groups for whom tailored services should be provided. In addition, mandatory and ongoing legal and cultural training for all staff and solicitors providing tailored or specialised services should be embedded in the Scheme.<sup>176</sup> Affected communities should be involved in the design and delivery of such services.

**The Commission recommends that the Independent Review undertake a comprehensive mapping of all forms of public legal assistance currently provided by statutory and non-statutory bodies and the Independent Law Centres.**

**The Commission recommends that the Independent Review conduct research into tailored supports and best practices in other jurisdictions to determine the most effective modes of delivery of civil legal aid services.**

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<sup>172</sup> IHREC, [Housing Assistance and Discrimination Report](#) (April 2022) at p. 52; IHREC, [Developing a National Action Plan Against Racism](#) (August 2021) at p. 62-63; IHREC, [Comments on Ireland's 18<sup>th</sup> Report on the implementation of the European Social Charter](#) (June 2021) at p. 21-22.

<sup>173</sup> IHREC, [Housing Assistance and Discrimination Report](#) (April 2022) at p. 52.

<sup>174</sup> Legal Aid Board Annual Report 2021 at p. 18.

<sup>175</sup> According to the Legal Aid Board Annual Report 2021 at p. 8, there are dedicated units covering the following issues: International protection, medical negligence, childcare and personal injuries. There is also a dedicated team in Dolphin House, Dublin who deal with the majority of domestic violence cases. In addition, according to the LAB website, usually a specially trained solicitor in the Smithfield Law Centre will provide legal advice in respect of human trafficking applications, with possible services also provided from the Galway Seville House Law Centre: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/>.

<sup>176</sup> For example, with regard to victims of trafficking and victims of domestic, sexual and gender based violence, it is essential that lawyers working in this field provide a victim-centred approach in practice.

**The Commission recommends that affected communities should be involved in the design and implementation of tailored services.**

## Issue 6 – Accessibility

### Barriers

The Pringle Report, published in 1977, identified certain barriers to accessing justice.<sup>177</sup> Similar findings were made in reports conducted by Ballymun Community Law Centre<sup>178</sup>, FLAC<sup>179</sup>, and Community Law and Mediation ('CLM') in later years.<sup>180</sup> These reports found that the overarching obstacles facing those in need of legal services are:

- Cost;
- Lack of knowledge of rights and the law;
- Intimidation of the legal system;
- Inaccessibility of legal services; and
- The time associated, including waiting times for legal aid and how long it takes for a case to be heard.

This is similar to the main barriers identified by the Canadian Forum on Civil Justice which were: the data gap; the finance gap; and the implementation gap.<sup>181</sup> According to this research, these three gaps manifest as a lack of actionable data, lack of awareness of the seriousness of the crisis in access to justice, lack of public knowledge of what constitutes a legal problem, lack of cost-effective accessible avenues to deal with legal problems, lack of collaboration among justice stakeholders and resistance to change in the legal sector.<sup>182</sup>

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<sup>177</sup> Pringle Report at p. 38-39

<sup>178</sup> Susan Gogan, Law from a Community Perspective: Unmet Legal Need in Ballymun (2005)

<sup>179</sup> FLAC, Civil Legal Aid in Ireland: 40 Years On (2009)

<sup>180</sup> Limerick Community Law & Mediation Centre, Community Consultation Report: Unmet Legal Need in Limerick (2013)

<sup>181</sup> Canadian Forum on Civil Justice, [Return on Investment in Access to Justice](#) (2019)

<sup>182</sup> Canadian Forum on Civil Justice, [Return on Investment in Access to Justice](#) (2019)

The adverse consequences of experiencing civil justice issues disproportionately affect those on low incomes, minorities, women and other structurally vulnerable groups.<sup>183</sup> There is an overarching need to address barriers to access to justice for these groups.<sup>184</sup> We are concerned that without full vindication of the right of access to justice, the risk of social and economic exclusion is greatly increased, particularly for structurally vulnerable groups,<sup>185</sup> as individuals and groups cannot fully claim their rights, challenge inequality or hold decision-makers to account.<sup>186</sup>

**The Commission recommends that access to justice, defined in a manner that complies with human rights and equality standards, be a core value of the Legal Aid Board.**

**The Commission recommends that the State conduct a review into the barriers which may impede the accessibility of the Scheme for structurally vulnerable groups.**

**The Commission recommends that comprehensive, accessible and reliable information is available to all sections of the public on legal rights, as well as on access to civil legal aid and advice, with targeted measures to ensure that information on the Scheme reaches structurally vulnerable groups, and that such information be available in a range of formats and languages including Irish Sign Language, and should be accessible on and offline.**

## Accessibility

The accessibility of Civil Legal Aid and access to the legal system for structurally vulnerable individuals and groups remains an issue.<sup>187</sup> The Scheme itself remains under-funded and

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<sup>183</sup> Lisa Moore and Trevor Farrow, *Investing in Justice: A literature Review in Support of the Case for Improved Access* (2019), p.14, [here](#)

<sup>184</sup> IHREC, [Submission on the General Scheme of the Family Court Bill](#) (July 2021), pp. 4-5. Our Disability Advisory Committee has raised concerns about the inherent ableism which underpins the Irish legal system.

<sup>185</sup> For example, victims of human trafficking, international protection applicants, and minority ethnic communities: IHREC, [Trafficking in Human Beings in Ireland](#) (June 2022), pp. 108-109; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022), pp. 88-89; IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (March 2020), pp. 29-30; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (October 2019), pp. 110-111, 142-143.

<sup>186</sup> FLAC, [Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland](#) (2021) 1.

<sup>187</sup> For further discussion on targeted supports for structurally vulnerable groups, see Issue 8

under-resourced.<sup>188</sup> The Council of Europe recommends legal aid schemes should be accessible, effective, sustainable and reliable to allow individuals to effectively exercise their right of access to justice.<sup>189</sup> In this regard, we highlight the LAB's own concern that there may be people who need their assistance but are simply not aware of their service.<sup>190</sup> It is welcomed that in 2021, the LAB commenced a project to engage with Travellers regarding access to justice, which it is hoped will serve as a foundation for a deepening engagement between the LAB and structurally vulnerable groups in society more widely.<sup>191</sup>

**The Commission recommends further specialised outreach which engages structurally vulnerable groups, including Travellers, in a meaningful way to encourage access to justice through the Scheme.**

The means of service delivery to the client throughout the engagement with the Scheme is hugely important to the overall effectiveness.<sup>192</sup> The Pringle Report found that even where a Legal Aid Scheme has been in existence for many years, a high proportion of people in poor financial circumstances were either unaware of its existence or did not understand what it involved.<sup>193</sup> The public should be aware of the civil legal aid services to which they are entitled and how they can access them. Although a function of the LAB is to provide information to the public on accessing civil legal aid and advice, there is also evidence showing lack of awareness of the Scheme which would indicate that greater information provision and awareness raising is required.<sup>194</sup> We would also like to see this function extended to the provision of comprehensive, accessible and reliable information on legal rights.

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<sup>188</sup> See Law Society Gazette, [Underfunding causes access-to-justice issues](#) (November 22). This issue was again raised at the Access to Justice Conference 2023 by various presentations, most notably, Keith Walsh SC, and acknowledged by the Department of Justice.

<sup>189</sup> Council of Europe, [The efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law](#) at p. 7

<sup>190</sup> Legal Aid Board, [Annual Report 2021](#) p. 18

<sup>191</sup> Legal Aid Board, [Annual Report 2021](#) p. 18

<sup>192</sup> Mercy Law Resource Centre, Making free legal and advocacy services accessible (2023) at p. 6

<sup>193</sup> Pringle Report at p. 130

<sup>194</sup> See as an example, Immigration Council of Ireland, Submission to the Review of Civil Legal Aid at p. 15 which states that their helpline staff often direct service users who has not been aware of the LAB or the services it provide to them.



**The Commission recommends simplification at all stages of the process of applying for Civil Legal Aid through the Scheme.**

Another example of specialisation is the Anti-Trafficking Unit within the LAB.<sup>195</sup> Given the complex challenges many victims of trafficking may experience, specialisation is essential. This is particularly so given the increased specialisation across all departments and agencies for example, The HSE Anti-Trafficking Team, and The AGS Anti-Trafficking Investigation Unit. While we welcome this specialisation, survivors continue to raise the extremely long waiting lists and difficulty in making contact with their solicitor.

**The Commission calls for continued specialisation and that such services be adequately resourced to ensure the best assistance to victims.**<sup>196</sup>

## Logistics

Fulfilling access to justice for all requires an accessible Scheme that removes barriers to access. Equality of access is contingent on the availability of services across the State, so that individuals whose geographic location intersects with structural vulnerabilities may access civil legal aid and advice. The most recent available information shows that there are just 30 full-time law centres across the country.<sup>197</sup> We are concerned that some counties either do not have a law centre at all<sup>198</sup>, or have only one law centre across a large area.<sup>199</sup> This has resulted in an unequal geographic distribution of service provision with some areas of the country particularly underserved. This translates into significantly longer travel times for some who need civil legal aid and advice. Travel creates logistical and economic barriers for structurally vulnerable groups who do not have the mobility or resources to navigate the law easily, such as rural communities, those on low incomes, disabled people, those living

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<sup>195</sup> Legal Aid Board website: < <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/> >

<sup>196</sup> IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the United Nations Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports*. Dublin, p. 39

<sup>197</sup> See Legal Aid Board, [Find A Law Centre](#)

<sup>198</sup> Such as Carlow, Leitrim and Roscommon. See Legal Aid Board, [Find A Law Centre](#)

<sup>199</sup> Such as Donegal, Mayo and Kerry. While it is acknowledged there are two centres in both Cork and Galway, both are located in the city centre, making it difficult to access for anyone on the outskirts of the county. See Legal Aid Board, [Find A Law Centre](#)

with addiction, victims of domestic violence, victims of trafficking and labour exploitation, International Protection applicants, Travellers, Roma, and minority ethnic communities. The LAB should ensure that there is a sufficient number of law centres located in convenient and accessible areas and appropriately spread throughout the country.

**The Commission recommends that the Civil Legal Aid Scheme be equality proofed to guarantee equality of access to civil legal aid and advice for all those who need to avail of the Scheme.**

**The Commission recommends that the current geographic gaps in the provision of legal aid and advice through law centres are identified and addressed.**

## Language Barriers

The National Adult Literacy for Life Strategy published in 2021 by the Department of Further and Higher Education observes:

“One of the main barriers to making education and wider public services more accessible is the use of complex language, instructions and conditions that make application processes difficult to navigate.”<sup>200</sup>

The OECD Adult Skills Survey found that approximately 1 in 6 Irish adults are at or below Level 1 on the literacy scale.<sup>201</sup> The National Literacy Agency reports that at this level, a person may be unable to understand basic written information.<sup>202</sup> Some studies suggest literacy rates are disproportionately lower among people who are homeless<sup>203</sup> and among members of minority groups who are more likely to face homelessness.<sup>204</sup> Literacy and/or difficulty understanding complex documents is one of the leading barriers to accessing civil legal aid and advocacy services.<sup>205</sup> The Council of Europe recommends applicants who have

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<sup>200</sup> Department of Further and Higher Education, ‘Adult Literacy for Life’ (September 2021) at p. 47

<sup>201</sup> OECD, [Country Profile of Ireland](#)

<sup>202</sup> See National Adult Literacy Agency, [Literacy and Numbers in Ireland](#)

<sup>203</sup> Cork Simon Community, [Working it Out A Report on the barriers to employment faced by homeless people](#) (2012)

<sup>204</sup> National Adult Literacy Agency [Opening Statement](#) to the Special Joint Committee on Key Issues affecting the Traveller Community, 3 December 2019

<sup>205</sup> Mercy Law Resource Centre, Making free legal and advocacy services accessible (2023) at p. 3

been granted legal aid, be provided with accessible information in plain language, about the procedure and process involved.<sup>206</sup>

**The Commission recommends that resources and training on literacy and Plain English standards be rolled out to staff employed by the Legal Aid Board.**

**The Commission recommends that the main client-facing documents be revised to meet Plain English standards to improve client access.**

According to the Organisation for Economic Co-operation and Development ('OECD'), 17% of the Irish population are immigrants,<sup>207</sup> with 13.8% of the population consisting of non-Irish nationals.<sup>208</sup> Access to justice across language and cultural barriers has increasingly become an issue as Ireland evolves into a more diverse society.<sup>209</sup> The challenge is to embrace the diversity of languages and cultures that many people and migrants enjoy in the provision of an effective civil legal aid services. Language has been found to be one of the leading barriers to accessing free legal and advocacy services.<sup>210</sup> A review of Language and Migration in Ireland found that almost 45% of migrants expressed having difficulties in communicating with institutions in Ireland.<sup>211</sup> Reports also suggest that there are many obstacles relating to both translation and interpretation in all forums of the legal system, with the standard of interpreters varying.<sup>212</sup> It is, therefore, crucial to have appropriately trained legal interpreters available at all stages, including in the provision of legal advice, to allow those whose first language is not English to access the Scheme on an equal basis with those whose first language is English or Irish.

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<sup>206</sup> Council of Europe, [The efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law](#) at p. 10

<sup>207</sup> OECD (2023), [Foreign-born population Indicator](#)

<sup>208</sup> Central Statistics Office, [Population and Migration Estimates](#) (April 2022)

<sup>209</sup> Ivana Bacik, '[Breaking the Language Barrier: Access to Justice in the New Ireland](#),' Judicial Studies Institute Journal [2007:2].

<sup>210</sup> Mercy Law Resource Centre, Making free legal and advocacy services accessible (2023) at p. 3

<sup>211</sup> Immigration Council of Ireland, [Language and Migration in Ireland](#) (2017)

<sup>212</sup> Contribution by Colin Smith BL to a roundtable discussion on [Human Rights and Interpreting in the Irish legal system](#), in which he notes the rules of court need to be adapted and highlights that there is no way to check the quality of interpreting as interviews and hearings cannot be recorded.

**The Commission recommends that the development of a high quality system of accredited training and quality assurance for legal interpretation should be an essential component in the Independent Review of the Civil Legal Aid Scheme and in ensuring access to justice for all service users.**

The most effective accommodation for a client without English fluency is the availability of documents and services in their preferred language.<sup>213</sup> While it is welcomed that the LAB provide information to the public in some foreign languages, we would encourage extension of this range.<sup>214</sup>

**The Commission recommends client-facing documentation from the Legal Aid Board be made available in a range of accessible formats and languages, including Irish Sign Language.**

## Irish Sign Language

Section 6(1) of the Irish Sign Language Act 2017 ('ISL Act') requires a public body to do all that is reasonable to ensure that interpretation into Irish Sign Language ('ISL') is provided for a person who is competent in that language and cannot hear or understand English or Irish when that person is seeking to avail of or access statutory entitlements or services provided by or under statute by that public body. While the ISL Act obliges courts and public bodies to only employ ISL interpreters which are accredited by the state-funded accreditation scheme,<sup>215</sup> according to the National Disability Authority, free ISL interpretation is not consistently provided in civil courts,<sup>216</sup> with 38% of respondents rating the experience of accessing court services through ISL as poor or very poor.<sup>217</sup> The Register of ISL Interpreters currently has 113 accredited interpreters.<sup>218</sup> No information is provided on ISL interpretation through the LAB's website; it is therefore not clear if there is a

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<sup>213</sup> Crosscare, [Do you speak English? A Study On Access To Interpreter Services In Public Social Welfare Offices In Ireland](#) (2018)

<sup>214</sup> Currently only six languages are provided for. See Legal Aid Board, [Information in Other Languages](#)

<sup>215</sup> Section 7, ISL Act 2017

<sup>216</sup> Feedback from both the Courts Service of Ireland and the ISL community. See National Disability Authority, [Report on the Operation of the Irish Sign Language Act 2017](#) at p. 32

<sup>217</sup> National Disability Authority, [Report on the Operation of the Irish Sign Language Act 2017](#) at p. 33

<sup>218</sup> See [Register of ISL Interpreters](#)

procedure in place for the provision of interpreters for those accessing the Scheme. It is noted that FLAC provide an ISL Clinic, in which appointments can be booked through text.<sup>219</sup> We would encourage a similar function be rolled out under the LAB. While it is welcomed that the LAB provide a chat function on their website, it is only available on a limited pilot basis.<sup>220</sup> We would encourage this to be rolled out fully on a permanent basis.

**The Commission recommends that the Legal Aid Board publish on their website an information guide on the Board’s provision of Irish Sign Language interpreters to service users.**

**The Commission recommends that an Irish Sign Language Clinic be introduced under the remit of the Legal Aid Board.**

**The Commission recommends that the chat function on the Legal Aid Board’s website be rolled out fully on a permanent basis.**

## Disabled People

Civil legal aid and advice services depends on engagement with clients to take instruction. Given the variety of needs that clients may have, the critical step is for clients to be given real choice regarding their service delivery. Article 13 of the UN Convention on the Rights of Persons with Disabilities (‘UNCRPD’) obliges states to ensure effective access to justice for disabled people on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses. The National Disability Authority Centre for Excellence in Universal Design notes the challenges of achieving universal accessibility given the separate, though often overlapping and intersectional, accessibility challenges people may experience:

“For each form and channel, there will be some users for whom it is not accessible.

For example, people with sight loss, low literacy or reading disorders may find it

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<sup>219</sup> See FLAC [Specialised Centres: Deaf Accessible](#) which states that sign language interpretation provided through IRIS, the National Remote Interpreting Service run by SLIS is available free of charge.

<sup>220</sup> See Legal Aid Board [LiveChat Service](#)

difficult or impossible to read printed information. People who are deaf or hard of hearing will have difficulties with audible information or telephone conversations. Online information can be designed to be accessible to the widest audience but not everyone has access to the internet or email.”<sup>221</sup>

It is acknowledged that no single mode can ensure universal accessibility of civil legal aid and advice. What is required is a system of overlapping measures and organisational awareness to keep accessibility at the forefront.<sup>222</sup> It is welcomed that the LAB engaged with Ability Focus to deliver Disability Awareness Training to employees from Law Centres throughout Ireland.<sup>223</sup> It is also noted that the LAB has appointed an Access Officer, however, we remain concerned that the only officer is based in Dublin. We would encourage the LAB to review how it provides the entirety of its services to ensure they are fully accessible to disabled people and compliant with UNCRPD Article 13.

**The Commission recommends that regular training on disability and reasonable accommodation be rolled out to staff employed by the Legal Aid Board to ensure that staff are suitably trained in the requirements for disabled people.**

**The Commission recommends that the Legal Aid Board review how it provides the entirety of its services to ensure they are fully accessible to disabled people and compliant with the UN Convention on the Rights of Persons with Disabilities Article 13.**

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<sup>221</sup> [National Disability Authority Centre for Universal Design](#) notes the importance of ensuring that information is available to every user in a form that is accessible to them

<sup>222</sup> See Legal Aid Board, [Access Officer](#)

<sup>223</sup> For more information, see [Ability Focus](#)

## Issue 7 – Awareness and Assessment of the Scheme

### Benefits and Advantages

The existence of a state-funded structure dedicated to the provision of civil legal aid which is underpinned by statute is undoubtedly welcome.<sup>224</sup> That the governing legislation includes a provision in relation to State funding of the Scheme indicates that the State recognises that the provision of civil legal aid to those of ‘insufficient means’ to allow them to access justice must be adequately resourced.<sup>225</sup> We also acknowledge the significant contribution that the LAB makes to ensure effective access to justice, albeit that this is primarily in the area of family law.<sup>226</sup> There have been some welcome developments in the provision of services under the Scheme in recent years:

- the waiver of the financial contribution for victims of domestic violence;<sup>227</sup>
- the provision of telephone and video consultations, where beneficial, particularly throughout the Covid-19 pandemic;<sup>228</sup>
- the commencement of a Traveller-specific service;<sup>229</sup>
- the provision of services in the area of International Protection;<sup>230</sup>
- the specialised Refugee Documentation Centre;<sup>231</sup>
- family mediation services;<sup>232</sup>

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<sup>224</sup> Civil Legal Aid Act, 1995

<sup>225</sup> Section 18 1995 Act

<sup>226</sup> 79.1% of applications to the Legal Aid Board in 2021 related to general family law and/or divorce/separation/nullity. See 2021 Annual Report at p. 26.

<sup>227</sup> In 2017, we called for a review of the waiver system for victims of domestic violence. See IHREC, Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women (2017) at p.3; IHREC, Ireland and the Convention Against Torture at p.7. See Legal Aid Board [website](#).

<sup>228</sup> See Legal Aid Board Annual Report 2021 at p18 and 2020 at p.4

<sup>229</sup> See Legal Aid Board 2021 Annual Report at p18 and p. 63

<sup>230</sup> See Legal Aid Board [website](#) and 2021 Annual Report at p8, 22, 32-33, 38-40 and 42.

<sup>231</sup> See Legal Aid Board 2021 Annual Report at p8, p.39 and p.41-42.

<sup>232</sup> There are seventeen family mediation offices nationwide which offer mediation services for free. See Legal Aid Board [website](#) and 2021 Annual Report at p9, 12, 23 and 44-49.

- the creation of the External Consultative Panel;<sup>233</sup> and
- the introduction of the *Abhaile* Scheme,<sup>234</sup> and its subsequent extension.<sup>235</sup>

The LAB has shown itself to be adaptable and responsive where needs have arisen, albeit in an ad hoc fashion. These developments can be expanded and built on to create more welcome improvements to the provision of the Scheme to ensure effective access to justice. It is also an advantage that the LAB may write letters on behalf of applicants and can conduct negotiations on an applicant's behalf to settle a dispute amicably.<sup>236</sup>

We recognise the attempts made to ensure the geographical reach of the Scheme, with thirty full-time law centres across the country in almost every county, albeit that we would like to see this geographical reach extended to remove unnecessary barriers to accessing the services.<sup>237</sup> The Scheme as it currently stands provides a blueprint for an expanded and developed Scheme of Civil Legal Aid, with its existing network of staff and solicitors, that when reformed, can address current unmet legal needs. In this regard, we wish to acknowledge and commend the staff of the LAB who allow for the provision of legal assistance to those who need it. Their dedication and commitment to the service, despite the limited resources,<sup>238</sup> has improved access to justice for many. We are of the view that the provision of the Scheme can only improve with increased funding.

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<sup>233</sup> The LAB established an [External Consultative Panel](#) to provide a forum to enable the Board to keep stakeholders informed and updated on the relevant developments in the areas to which the Board has an interest, and to facilitate stakeholders to provide feedback and assistance to the Board on the Board's services from the perspective and informed position of the stakeholder.

<sup>234</sup> The *Abhaile* Scheme was introduced in 2016 to provide financial and legal advice to people who are insolvent and in mortgage arrears on their homes. See Legal Aid Board 2021 Annual Report at p. 22, 32, 34-37. This is particularly welcomed given the concerns expressed by the Committee on Economic, Social and Cultural Rights regarding the number of long-term mortgage arrears in Ireland. See UN Committee on Economic, Social and Cultural Rights (2015) Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland, Geneva: OHCHR, para.27(d).

<sup>235</sup> As of November 2022, the Scheme has supported over 19,300 households at risk of losing their homes and has been extended until the end of 2023. See Department of Social Protection, [Minister Humphreys extends scheme to support families in mortgage arrears](#) (November 2022)

<sup>236</sup> See [What is civil legal advice and aid?](#)

<sup>237</sup> There are also three part-time centres. See Legal Aid Board, [Find A Law Centre](#)

<sup>238</sup> For a detail discussion on funding, please see page



## Challenges and Disadvantages

The primary disadvantage of the Scheme is its limited scope and model of service delivery. The Scheme as it currently stands provides a service which is absorbed largely by family law,<sup>239</sup> and while the LAB meets three times per year with its External Consultative Panel which is comprised of relevant stakeholders,<sup>240</sup> this is no substitute for ongoing and direct engagement with communities to determine the areas of law in respect of which the need for legal services is the greatest.<sup>241</sup> The issue of unmet legal need has been repeatedly flagged by organisations such as FLAC,<sup>242</sup> CLM,<sup>243</sup> and other independent law centres. Further investigation is needed to understand the full scale of unmet legal need in Ireland. Research into unmet legal needs across different communities must be central to the Independent Review and going forward must become a central component of a State provided civil legal aid service.

The under-resourcing of the LAB is another substantial challenge to the effectiveness of the Scheme.<sup>244</sup> We also note that the Spring Legislation Programme states that work is underway in respect of the Criminal Justice (Legal Aid) Bill, the purpose of which is to update and strengthen the system of granting of criminal legal aid and to transfer the responsibility for the administration of the main scheme and ad-hoc schemes to the LAB. The State must ensure that the LAB is appropriately and adequately funded to deal with these additional

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<sup>239</sup> 67% of the cases handled in 2021 dealt with private family law. See Legal Aid Board 2021 Annual Report.

<sup>240</sup> See [External Consultative Panel](#). A term of reference of the Panel is “To facilitate stakeholders to provide feedback and assistance to the Board on the Board’s services from the perspective and informed position of the stakeholder.”

<sup>241</sup> Legal Aid New South Wales provides the Civil Law Service for Aboriginal Communities (‘CLSAC’) who offer regular outreach to twenty-two communities. The model of outreach is designed in part by the communities it intends to service and they also provide a free telephone advice service to all who require it. The impact of this dedicated Aboriginal Civil Legal Service was highlighted through an evaluation of the service in 2019. This [report](#) found that having a dedicated Aboriginal civil law service improves accessibility for the community who regularly face racism when accessing mainstream services, and highlighted that CLSAC is proactively seeking to address the unmet legal needs of Aboriginal people through their outreach service.

<sup>242</sup> FLAC [Annual Report 2021](#); Eilis Barry, [An Overview](#), finding cost, intimidation of the legal system, lack of knowledge of rights and the law and the inaccessibility of legal services to be main barriers to access [Overview of unmet legal needs](#) (2021 Access to Justice Conference)

<sup>243</sup> CLM, [Unmet Legal need in Limerick](#)

<sup>244</sup> See Law Society Gazette, [Underfunding causes access-to-justice issues](#) (November 22). This issue was again raised at the Access to Justice Conference 2023 by various presentations, most notably, Keith Walsh SC, and acknowledged by the Department of Justice.

functions. The transfer of these responsibilities must not negatively impact the provision of civil legal aid services, or the review and development of the civil legal aid scheme.

**The Commission recommends that thorough and regular research be carried out by the Legal Aid Board to determine the nature and extent of unmet legal need in Ireland.**

**The Commission recommends that the Legal Aid Board be adequately funded to address its current mandate and any additional functions conferred on it.**

## Wait Times/Delays

We note that the LAB seeks to ensure that a person who qualifies for civil legal aid will be offered an appointment with a solicitor within a maximum period of four months from the time the application is completed or will be offered earlier legal advice if it is not possible to provide full legal services within four months.<sup>245</sup> However, waiting lists vary greatly around the country and can vary within each centre. While the LAB itself designates between two and four months as an acceptable waiting time, data from 2021 demonstrates waiting times of up to 54 weeks in some law centres in some cases.<sup>246</sup> Whilst as of December 2022 the longest wait time reported was 34 weeks in one law centre,<sup>247</sup> which is a reduction in the longest waiting time noted in 2021, this is still an unreasonably long time to have to wait for an initial consultation with a solicitor, and is still more than twice as long as the four months' waiting time deemed to be the outer limit of acceptable by the LAB. The average waiting time sits at 14.5 weeks across the Scheme, however, in many instances where an urgent situation arises, even this will be too long. We note the discrepancies in waiting times between law centres, with only eight having a reported wait-time of less than two months, whilst nine centres were over the four month mark. The delays are a substantial challenge to the effectiveness of the Scheme.

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<sup>245</sup> See [How long will I have to wait to see a solicitor?](#) :

<sup>246</sup> Annual report p30 <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/annual-report-2021.pdf>

<sup>247</sup> <https://www.legalaidboard.ie/en/about-the-board/press-publications/statistics/>

**The Commission recommends that further resources are allocated to the Legal Aid Board to address law centre waiting times.**

## Recruitment and Private Practitioner Panels

According to the LAB, a significant challenge centres on recruitment and in particular the recruitment of solicitors as the Board is compelled by public pay policy to advertise for new solicitors on the first point of the applicable pay scale.<sup>248</sup> Recruitment must be promoted and facilitated otherwise longer waiting times will result for those who require legal aid to access justice.<sup>249</sup> It is noted that there seem to be positive developments in this regard,<sup>250</sup> however it remains unclear if this issue has been remedied.

**The Commission recommends that pay scales for solicitors employed by the Legal Aid Board are reviewed by the Department of Public Expenditure and Reform to ensure appropriate remuneration.**

The LAB remains greatly dependent upon its private practitioner panels in the provision of services, especially at District Court level.<sup>251</sup> In 2021, 8,367 cases were referred to a private solicitor.<sup>252</sup> It is essential that legal aid fees are adequate to ensure private practitioners are willing and able to undertake legal aid work in the interest of preserving access to justice.

**The Commission recommends that the legal aid fees for private practitioners are reviewed by the Department of Public Expenditure and Reform to ensure appropriate remuneration.**

## Data Collection

The State does not collect sufficient disaggregated data to allow a timely and regular assessment of the efficacy and impact of the Scheme or the extent to which the State is

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<sup>248</sup> Legal Aid Board, Annual Report 2021 p. 19

<sup>249</sup> Legal Aid Board, Annual Report 2021 p. 19

<sup>250</sup> The Chair states they welcome the support of the Department of Justice on this matter at p. 19

<sup>251</sup> Legal Aid Board, Annual Report 2021 p. 19

<sup>252</sup> Legal Aid Board, Annual Report 2021 p. 29

meeting its international obligations.<sup>253</sup> The National Equality Data Strategy will put in place a strategic approach to improving the collection, use and dissemination of equality data.<sup>254</sup>

## Provision of Information

The current Scheme has no focus on access to information and legal education.<sup>255</sup> It is also often not clear to the public which legal services they can access through the Scheme. This challenge was first identified in the Pringle Report.<sup>256</sup> The provision of information and education is hugely important to improving access to justice; it is essential that provision of such be placed at the heart of the Scheme.

## Funding

There is a lack of publicly available data and analysis into resource allocation of the LAB. We wish to highlight that we will be conducting a resource implication study of civil legal aid systems in an attempt to assist reform of civil legal aid by providing an evidential base on the funding of human rights and equality based civil legal aid services.

Research elsewhere has shown that lack of access to justice in terms of civil legal needs which go unmet can end up costing the State in most countries.<sup>257</sup> Almost every state in the US has conducted some sort of assessment of the value received from civil legal aid, with a clear theme that investing in civil justice for low and moderate income individuals produces a positive return on investment.<sup>258</sup> The research shows that reduced spending on civil legal aid ends up costing state and federal governments significantly more.<sup>259</sup>

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<sup>253</sup> For further recommendations on Data Collection, see Issue 8

<sup>254</sup> See Department of Children, Equality, Disability, Inclusion and Youth, [Minister O’Gorman announced the development of a National Equality Data Strategy](#) (March 2022)

<sup>255</sup> For further recommendations on the provision of information, see section 8

<sup>256</sup> Pringle Report at p. 38

<sup>257</sup> OECD, [Building a Case for Access to Justice](#), p.47.

<sup>258</sup> Lisa Moore and Trevor Farrow, *Investing in Justice: A literature Review in Support of the Case for Improved Access* (2019), p.15, [here](#)

<sup>259</sup> For example, a study conducted in Florida found that an investment of \$83million in 33 civil legal aid programmes yielded a total monetary saving of \$600million, which includes a saving of \$60.4million in savings from not having to access government assistance and other services and \$264.3million in direct monetary benefits to clients whose civil justice problems were successfully resolved. See Lisa Moore and Trevor Farrow, *Investing in Justice* at p. 17; In 2012, Colorado handled 502 domestic violence cases and concluded that the “social value impact” of this work was \$1.3 million and in 2014 research done by the Boston Bar Association

In Australia, federal and state governments provide funding to legal aid commissioners, community legal centres and Aboriginal and Torres Strait Islander legal services. However, twenty years ago, approximately 55% of legal aid funding was provided by the Commonwealth Government reducing to 35% by 2019.<sup>260</sup> A report commissioned by Legal Aid Queensland in 2009 assessed the benefits of access to legal aid as provided by legal aid commissions in the Australian state.<sup>261</sup> The Report found that completely defunding access to legal aid in family law matters would save the government AUS\$26.39million but the resulting cost to the courts would be approx. AUS\$42.24million, meaning the net benefit of defunding legal aid in this instance would be a deficit of AUS\$15.86million.<sup>262</sup>

In the UK, it is estimated that there has been a £950 million cut to the spending on legal aid, along with a 21% cut to public services over the last 10 years.<sup>263</sup> A study from 2007 estimated that unresolved law-related problems cost individuals and the public purse £13 billion.<sup>264</sup> Studies have also investigated the impact of a reduction in spending on civil legal aid following the introduction of Sentencing and Punishment of Offenders Act, 2012 in 2013. In 2015, there was a 30% rise in the number of contested family cases in which both parties were self-represented and a rise in the number of those cases reaching the court.<sup>265</sup> The Magistrates' Association reports that these cases with lay litigants take longer and place

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found that investing in 100 new legal aid attorneys could result in savings of \$16 million in medical costs, while the provision of civil legal aid to stop an eviction prevented an estimated 25 percent of clients ending up in homeless services and saved the State an estimated \$8.4 million. See Jacqueline Lee and Bethany Backes, *Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions* (2018), *Journal of Family Violence*, vol.33, 421-433, p.428

<sup>260</sup> Lisa Moore and Trevor Farrow, *Investing in Justice: A literature Review in Support of the Case for Improved Access* (2019) at p. 37

<sup>261</sup> The report explores outcomes related to early legal problem resolution and appropriate triaging of problems through the justice system, increased problem resolution outside of the courts, and the effects of fewer pro se litigants in courts. See Lisa Moore and Trevor Farrow, *Investing in Justice: A literature Review in Support of the Case for Improved Access* (2019), p.38.

<sup>262</sup> *Ibid* 40.

<sup>263</sup> Helen O'Nions, 'Fat cat' lawyers and 'illegal' migrants: the impact of intersecting hostilities and toxic narrative on access to justice (2020), *Journal of Social Welfare and Family Law*, Vol. 42(3), 319, p.319-320.

<sup>264</sup> There is a significant impact on the health of those experiencing unresolved legal problems, with approximately 1.1million people suffering a stress-related illness serious enough to seek medical help. See PLEAS Tash Force, *Developing capable citizens: the role of public legal education* (2007), p.8, [here](#)

<sup>265</sup> Committee of Public Accounts, *Implementing Reforms to Civil Legal Aid* (2015), p.6.

additional pressure on the courts service.<sup>266</sup> This potentially mitigates the savings from reduced spending on CLA given the public spending on lengthier court cases.

In Ireland, significant cuts were made to the Legal Aid Fund after the last recession.<sup>267</sup> The LAB have consistently attributed the increase in waiting times to budgetary constraints.<sup>268</sup> While funding has been increasing over the last six years,<sup>269</sup> Ireland remains below average for spending across Europe.<sup>270</sup> A Council of Europe Report found that Ireland spends less than the European average on public prosecution services.<sup>271</sup>

Research from other jurisdictions shows that increased funding for civil legal aid leads to cost saving measures for the State. It is important to conduct an assessment of the value received from civil legal aid. It is vital that a similar initiative is conducted in Ireland. We are of the view that investing in civil legal aid, and recognising the value of a stable, accessible legal aid scheme would create a positive return on investment for the state.

**The Commission recommends that the State conduct a cost of service analysis as well as an impact assessment into the provision of civil legal aid.**

**The Commission recommends that the existing and any revised Civil Legal Aid Scheme and the body or bodies that administer it are adequately funded.**

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<sup>266</sup> Ibid.

<sup>267</sup> State funding dropped from €35.8m in 2008 to €30m in 2011. It took a further five years for State funding to return to pre-recession levels, with €36.1m allocated in 2016.

<sup>268</sup> Legal Aid Board, [Annual Report 2003](#), the Chair stated the level of funding presented a challenge to the Board in seeking to maintain a reasonable level of service at p. 2; the Chair welcomed the increase in funding in 2005, stating the effect would be capacity to provide a timely service. See Legal Aid Board, Press Release (November 2004); in 2008 Annual Report the Chair stated increase demand presented the Board with considerable challenge in a time of scarce resources, at p. 4; in [2009 Annual Report](#) the Chair stated the noticeable challenge faced by the Board was the surge in applications at a time when resources were depleted; in [2011 Annual Report](#), the Chair stated meeting the need with reduced manpower resources was the main challenge; in [2016 Annual Report](#) the Chair stated the evolving complexity of childcare cases continued to challenge their staff and budget, at p. 6.

<sup>269</sup> Funding has been steadily increasing since 2016, with €42.2m allocated in 2020.

<sup>270</sup> Council of Europe, [European Judicial Systems CEPEJ Evaluation Report](#) (2022) this report includes spending on both civil and criminal matters

<sup>271</sup> [European Judicial Systems CEPEJ Evaluation Report](#) (2022 at p. 30 Ireland spending 24.9 per inhabitant

## Issue 8 – the Future of the Scheme

Addressing the gaps in the provision of civil legal aid is part of ensuring access to justice. While there have been some improvements to the Scheme since it was placed on a statutory footing, we are concerned that serious shortcomings remain which act as barriers to justice and lead to gaps of unmet legal need. Access to justice needs to be seen as a continuum of issues; a crucial element is the effective availability of the services of a lawyer for information, advice and, if necessary, to remedy a wrong. It should also encompass awareness of legal rights. Without the vindication of the right of access to justice, there will be an increased risk of social and economic exclusion. The State is required to put in place structural and proactive interventions to enable access to justice, as a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.<sup>272</sup> It is crucial that the State prioritises creating an accessible legal aid scheme through adequate investment and continued resourcing.

We acknowledge that the state needs qualitative and quantitative data to help allocate social spending most efficiently and effectively on a range of services, including legal aid. We also recognise that some of the recommendations put forward would require increased funding, however, the need for a fully effective and accessible civil legal aid system in a democratic society cannot be underestimated.

### How can individuals' awareness about justiciable problems/legal disputes be raised?

The Pringle Report found that lack of awareness of rights and the law acts as a barrier to accessing justice.<sup>273</sup> Similar findings have been made by Ballymun Community Law Centre,<sup>274</sup> CLM,<sup>275</sup> and FLAC.<sup>276</sup> The provision of information and education is hugely

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<sup>272</sup> Human Rights Council, Access to justice for children: Report of the United Nations High Commissioner for Human Rights (2013) UN Doc. A/HRC/25/35, paras 3, 8.

<sup>273</sup> Pringle Report at p. 38

<sup>274</sup> Susan Gogan, Law from a Community Perspective: Unmet Legal Need in Ballymun (2005)

<sup>275</sup> Limerick Community Law & Mediation Centre, Community Consultation Report: Unmet Legal Need in Limerick (2013)

<sup>276</sup> FLAC, Civil Legal Aid in Ireland: 40 Years On (2009)

important to improving access to justice not least as it enables individuals to identify that they have a legal need. This would serve to remove one of the key barriers found to be affecting structurally vulnerable groups. It is essential that provision of information and education on the law and legal rights be placed at the heart of the Scheme. Good public legal education “initiatives have well-specified audiences, groups of users, or participants – from a small local group to a broad category of people or indeed the whole of society”.<sup>277</sup> In the United States, civil legal aid has been integrated into other social services. There is an increased focus on preventative interventions and use of other legal avenues.<sup>278</sup> This model sees a variety of providers involved in the process in an attempt to reach individuals who may be at risk in the place in which they seek help.<sup>279</sup> They have found a strong association between knowledge of rights and processes and success in dealing with legal problems supporting widespread public legal education.<sup>280</sup> We reiterate the Pringle Report’s recommendation that the LAB should engage in dissemination of information about the law to the public.<sup>281</sup> A range of other organisations provide legal information and assistance across Ireland and aim to improve awareness and understanding of the law in a number of ways including:

- Information guides;<sup>282</sup>
- Provision of information and advice;<sup>283</sup>
- Outreach work and community education;<sup>284</sup> and

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<sup>277</sup> PLEAS Task Force, *Developing capable citizens: the role of public legal education* (2007), p.13.

<sup>278</sup> Jacqueline Lee and Bethany Backes, *Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions* (2018), *Journal of Family Violence*, vol.33, 421-433, p.429.

<sup>279</sup> For example, a community centre, or a medical facility.

<sup>280</sup> Jacqueline Lee and Bethany Backes, *Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions* (2018), *Journal of Family Violence*, vol.33, 421-433, p.429.

<sup>281</sup> Pringle Report at p. 12. We acknowledge that the LAB provides some information on common legal problems through their website and provides information on certain issues to victims of human trafficking. See [Common Legal Problems and](#) Legal Aid Board, Annual Report 2021, p.40.

<sup>282</sup> See Community Law and Mediation [Information Guides](#); FLAC [FLACSheets](#); IHREC [Your Rights Guides](#); Immigration Council of Ireland, [Know Your Rights Information Sheets](#); Nasc, [Know Your Rights](#)

<sup>283</sup> [FLAC](#), [Community Law and Mediation](#), [Ballymun Community Law Centre](#), [Mercy Law Resource Centre](#) host free legal advice clinics. Immigration Council of Ireland have an [Immigration Information and Support Helpline](#); Nasc host a [free phone line service](#).

<sup>284</sup> [Community Law and Mediation](#) deliver free talks within the community to help learn about and understand their rights in a range of areas. The talks are usually delivered in libraries and other accessible locations and



- Collaboration with other organisations.<sup>285</sup>

We recommend the LAB should be tasked with undertaking similar initiatives to raise awareness on all rights, the law and the Scheme, and should be adequately funded to address any increased demand as a result. As part of this, the State should explore best practice in relation to the provision of information and education in order to effectively raise awareness of rights and the law. In Canada, research has been conducted into the benefit of multi-disciplinary approaches to legal problems.<sup>286</sup> Medical-legal partnerships located predominantly in healthcare settings are among the most established types of partnership.<sup>287</sup> This involves health professionals incorporating screenings for social and legal need into the service delivery model, with lawyers offering support for the legal elements of the problem.<sup>288</sup> Other multi-disciplinary approaches include: joint social work and legal services,<sup>289</sup> trusted intermediaries and legal health check-ups.<sup>290</sup>

**The Commission recommends that the Legal Aid Board undertake a comprehensive public information campaign to raise awareness of common legal rights and problems, the services of the Legal Aid Board and the Courts Service.**

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often in partnership with other groups and organisations such as Men’s Sheds, Sage Advocacy, Family Carers Ireland, and Opendoor. They also offer training and accredited courses on a range of areas; [Mercy Law](#) offer legal support to voluntary organisations and professions working in the field of homelessness and social housing or supporting individuals who are affected by housing issues or homelessness; [Ballymun Community Law Centre](#) offer a range of training and courses, as well as seminars and talks with expert presentations on topical legal subjects.

<sup>285</sup> FLAC operate a [phone advice legal clinic](#) in collaboration with Citizens Information; [Community Law and Mediation](#) collaborates with other organisations in the delivery of legal advice clinics and community education, including delivering such services on an outreach basis. They partner with MABS, the National Advocacy Service and others.

<sup>286</sup> Lisa Moore, *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* (2022)

<sup>287</sup> *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* (2022) at p. 11

<sup>288</sup> *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* (2022) at p. 16

<sup>289</sup> Which includes a lawyer providing assistance to resolve the legal issue social worker providing emotional and practical support in an attempt to prevent a reoccurrence. See *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* at p. 18-19.

<sup>290</sup> Which seek to equip community workers with existing trusting relationships with clients, with training to recognise the legal dimensions of a project, provide legal information where applicable and refer a person to a legal professional as needed. See *Crossing Boundaries: Exploring Multi-Disciplinary Model for Legal Problems Resolution* at p. 25-26.

**The Commission recommends that any information campaign should be inclusive, accessible, widely available, and target in particular, structurally vulnerable groups.**

**The Commission recommends that the State explore best practices in relation to the provision of information and education in order to effectively raise awareness of rights and the law.**

**How should low income individuals/marginalised groups be supported to access justice? How can the service best be targeted or prioritised for recipients in the future?**

We have previously called for the development of a tailored approach to the provision of civil legal aid for historically oppressed and minority groups, including in particular for Travellers, and those who may face multiple discrimination.<sup>291</sup> Tailored support that includes outreach is key to ensuring access to justice for all, and in particular for structurally vulnerable groups, who are less likely to be aware of or to access the service.<sup>292</sup> The LAB should ensure that it is proactive in ensuring that these groups are reached. Independent Law Centres focus on reducing and removing barriers to accessing the law through targeted services for the community they seek to serve who are often structurally vulnerable and hard to reach groups and individuals.<sup>293</sup> It is welcomed that the LAB have undertaken a project to improve access to the service for Travellers.<sup>294</sup> As part of this, they are working to develop the capability within the organisation, and with non-government organisations to

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<sup>291</sup> IHREC, Housing Assistance and Discrimination Report (April 2022) at p. 54; IHREC, Developing a National Action Plan Against Racism (August 2021) at p. 62-63; IHREC, Comments on Ireland's 18<sup>th</sup> Report on the implementation of the European Social Charter (June 2021) at p. 21-22.

<sup>292</sup> Susan Gogan, Law from a Community Perspective: Unmet Legal Need in Ballymun (2005); FLAC, *Civil Legal Aid in Ireland: 40 Years On* (2009); Limerick Community Law & Mediation Centre, Community Consultation Report: Unmet Legal Need in Limerick (2013)

<sup>293</sup> As per section 4(3)(b) [The Solicitors Acts 1954 to 2002 \(Independent Law Centres\) Regulations, 2006](#) Independent Law Centres are required to operate in a not-for-profit capacity and are accountable to the community whom it seeks to serve.

<sup>294</sup> Legal Aid Board Annual Report 2021 at p. 18.

explore how they can better support Travellers by raising general awareness of legal rights and entitlement, and identifying barriers to the service.<sup>295</sup>

The LAB should also consider how similar initiatives can be devised for other structurally vulnerable groups, and research should be conducted to identify those groups most in need of tailored supports. Any tailored service should involve ongoing training for LAB staff into the legal and societal issues affecting these groups, and ongoing engagement and consultation with relevant civil society organisations.

**The Commission recommends that research be conducted to determine which other minoritised groups need tailored supports to access legal aid services and, following due consultations with those groups, that appropriately tailored legal support initiatives are set up accordingly.**

**The Commission recommends that outreach be facilitated through partnership and collaboration with relevant organisations to ensure targeted support for structurally vulnerable communities and people with low incomes.**

## Early Intervention

The Guidelines of the Committee of Ministers of the Council of Europe state that early intervention to resolve legal disputes quickly should be encouraged to alleviate financial demands on the Scheme as well as the legal system,<sup>296</sup> and can prevent legal problems from escalating or occurring.<sup>297</sup> Further, early intervention can increase understanding, awareness and accessibility of the law and legal services.<sup>298</sup> There is a benefit to everyone in

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<sup>295</sup> It is stated that this involved staff training on: legal and societal issues affecting Travellers and how those issues interact with the civil legal aid scheme; engagement and training with local Traveller groups on how to apply, what is covered by the Act and the specific legal issues that can affect Travellers; and establishing a consultative committee involving Traveller organisations. See [Minutes of External Consultative Panel](#) (April 2022) Agenda Item 7 at p. 9

<sup>296</sup> Guidelines of the Committee of Ministers of the Council of Europe on [he Efficiency and the effectiveness of legal aid schemes in the area of civil and administrative law](#) adopted on 31 March 2021 at p. 7.

<sup>297</sup> Explanatory Memorandum to the Guidelines of the Committee of Ministers of the Council of Europe on [he Efficiency and the effectiveness of legal aid schemes in the area of civil and administrative law](#) adopted on 31 March 2021 at p. 17.

<sup>298</sup> Explanatory Memorandum to the Guidelines of the Committee of Ministers of the Council of Europe on [he Efficiency and the effectiveness of legal aid schemes in the area of civil and administrative law](#) adopted on 31 March 2021 at p. 17.

society of resolving a legal issue before it becomes intractable. Research has shown that investment in legal assistance helps to limit the costs to the public from unresolved legal issues.<sup>299</sup> We consider that the State should consider how early intervention can support low income and structurally vulnerable groups to access justice and improve overall outcomes by deescalating problems.

**The Commission recommends that the State undertake research into the ways in which early intervention can resolve legal disputes.**

### What should the aim of a civil legal aid scheme be? What values should underpin it?

The aim should be to ensure a user-focused, high quality scheme that provides non-discriminatory, timely and effective access to justice for those who lack sufficient means in Ireland.

The current values of the LAB are:

- Respect;
- Client centred;
- Openness;
- Collaboration;
- Learning;
- Influence;
- Integrity; and
- Child-centred.<sup>300</sup>

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<sup>299</sup> See generally World Bank Group, [A tool for Justice: a cost benefit analysis of legal aid](#)

<sup>300</sup> [Statement of Strategy 2021-2023](#) p.5

We are of the view that any Scheme, and the body tasked with the administration of same, must be underpinned by human rights and equality principles. Section 42 of the Irish Human Rights and Equality Commission Act 2014 imposes obligations on statutory bodies such as the LAB, to have regard to, in the performance of their functions, the need to eliminate discrimination, promote equality of opportunity and treatment for litigants, potential litigants and staff and to protect the human rights of staff and litigants and potential litigants. We recommend access to justice be a core value of the LAB. In addition, we recommend the incorporation of the following values to reflect a user-focused approach: accessibility, outreach, non-discrimination, and simplicity.

## What should the scheme's relationship be to other forms of publicly/part-publicly funded legal assistance initiatives?

We recommend the LAB have a strong relationship with the other organisations providing legal assistance, including those that are publicly-funded/part-publicly funded. At a minimum, the State should promote partnerships between Independent Law Centres and the LAB. Ideally, under the reformed Scheme, all of the organisations involved in providing legal information and support would be recognised and valued, and would work in a more cohesive manner.

**The Commission recommends that the Legal Aid Board have a close relationship with other forms of publicly-funded and part-publicly funded legal assistance initiatives, and in particular, partnerships between the Legal Aid Board and Independent Law Centres.**

**The Commission recommends that there is more cohesion between all of the organisations involved in providing legal information and support.**

## What additional roles if any should the LAB have?

### Data Collection & Disaggregation

The Pringle Report highlighted that the operation of a legal aid scheme would, over time, make available to the LAB a substantial body of information in important aspects of law and legal services, citing as an example, statistics on the scale of recourse to certain legal

remedies in disadvantaged areas and among certain groups within the community, which would indicate the practical relevance of particular remedies and might also point to the need for improvement or for more effective remedies in some instances. The fact that one public body would have access to information on legal needs on a nationwide basis was of particular importance.<sup>301</sup> The Pringle Report suggests that if this information is collected and properly analysed, it would provide for a valuable basis for assessment of the workings of the Scheme as well as the legal system; and also allow for the formulation of appropriate recommendations in relation to law reform.

Although the LAB is required to produce and submit annual reports to the Minister for Justice,<sup>302</sup> these reports are limited in scope and lack detailed data analysis. The focus of the annual reports is primarily on administrative data. Although data of this nature can be useful, by itself it offers a very narrow perspective on access to justice and severely limits the ability to identify the unmet legal needs of the population, as outlined by the OECD.<sup>303</sup> Guidelines of the Committee of Ministers of the Council of Europe highlighted the importance of quality data collection and analysis.<sup>304</sup> Similarly, Guideline 17 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems makes similar provision for the need for ‘mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid’.<sup>305</sup>

**The Commission recommends that an obligation be placed on the Legal Aid Board to collect disaggregated equality data that would allow for assessment of the impact of the Scheme; and that this data is anonymised and published to facilitate public scrutiny, research and allow for recommendations for law reform where appropriate.**

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<sup>301</sup> Pringle Report at p. 28

<sup>302</sup> in accordance with section 9 of the Civil Legal Aid Act 1996

<sup>303</sup> OECD, *Understanding Effective Access to Justice*, 2016, p.7.

<sup>304</sup> Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law*, 31 March 2021 (Guidelines on the Efficiency and the Effectiveness of Legal Aid Schemes).

<sup>305</sup> United Nations Office on Drugs and Crime, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, June 2013, 74. Although these guidelines specifically apply to criminal legal aid, the benefits of a comprehensive system of data collection and analysis are universal to both the civil and criminal justice systems.

**The Commission also recommends that the development of existing data such as administrative datasets in a way that allows for intersectional analysis, data linkages and data harmonisation.**

It is noted that the LAB is not the only public body which provides legal advice and representation; nor are the courts the only body which hand down decisions.<sup>306</sup> A tool to synthesise the data and decisions from all relevant public bodies according to disaggregated equality groups would offer significant insights into overall trends and interactions with the Scheme.

**The Commission recommends that urgent action is taken by the State to develop and roll out disaggregated equality data collection, processing and communication systems across relevant public bodies in order to monitor the effectiveness and impact of the Scheme in Ireland, and that the relevant bodies publish statistics and analysis on an annual basis.**

**The Commission recommends that the Legal Aid Board establish a dedicated service to assess how the law impacts on the communities it serves, including structurally vulnerable communities, as well as older people. The information and analysis should be available to Legal Aid Board staff for use in their work and to the public.**

## Research

A comprehensive scheme of legal aid and advice should be concerned not only with the provision of legal advice and representation, but also with research aimed at establishing the nature and extent of hidden and unmet legal needs. The need for systemic research on unmet legal needs is an essential component of improving the quality and availability of public legal assistance. This was first recommended in the Pringle Report.<sup>307</sup> The Guidelines of the Committee of Ministers of the Council of Europe state that Member States should consider collecting data on legal aid.<sup>308</sup> Analysis of such data will help Member States

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<sup>306</sup> The Workplace Relations Commission, for example, publishes decision data on its website, however the detail and accessibility of data remains to be limited from an equality perspective.

<sup>307</sup> Pringle Report at p. 29

<sup>308</sup> Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 31 March 2021 (Guidelines on the Efficiency and the Effectiveness of Legal Aid Schemes).

identify the unmet legal needs of their citizens and understand how these citizens interact with the legal aid system.<sup>309</sup> It is welcomed that the LAB is utilising their research function to some extent, however, without research into unmet legal need, it will not be possible to adequately assess the effectiveness of the Scheme.<sup>310</sup>

**The Commission recommends that research be conducted to determine which other groups are most in need of tailored supports to access the Scheme and that initiatives similar to that initiated for Travellers are set up accordingly.**

**The Commission recommends that the Legal Aid Board be mandated to gather and analyse information; monitor progress in attaining Strategy goals; identify good practice; and propose measures for future action.**

### Is there a role for mediation and/or alternative dispute resolution processes as part of the scheme?

We recognise the benefits of mediation in appropriate cases and are of the view that it should have a role as part of the civil legal aid scheme. However, we stress that this should be an entirely voluntary process. In relation to WRC, facilitated mediation we have previously highlighted concerns that some claimants who have not had the benefit of legal advice and/or representation may agree to participate in this process where they might otherwise have elected for an adjudication hearing. As a result, there may be less visibility with regard to the nature and extent of discrimination in the State.

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<sup>309</sup> Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 31 March 2021 (Guidelines on the Efficiency and the Effectiveness of Legal Aid Schemes).

<sup>310</sup> In 2021, the LAB conducted the following research projects: outreach with Higher Education Institutes; doctoral research project on mediation in cases of child abduction; doctoral research project on the client journey through mediation for separation and divorce; commencement of new research project examining legal capability. See 2021 Annual Report at p. 60-61. In 2020, the LAB conducted the following research projects: a critical exploration of the client's journey through the Legal Aid Board's Dispute Resolution Services; Child Abduction and Mediation; the practical application of an employee engagement strategy in the LAB; the potential use of deprivation as a means of allocating resources of the LAB; contribution to the global access to justice project. See 2020 Annual Report at p. 65-66.





Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas  
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