



**Community
Law & Mediation**

A submission by Community Law & Mediation to the Citizens' Assembly on Gender Equality

Executive Summary:

Community Law & Mediation (CLM) is a community based, independent law centre. We have seen a strong demand for free legal advice and representation in relation to employment equality issues, including direct and indirect gender discrimination, in recent years. Our submission makes recommendations in relation to the following issues which impact on gender equality:

- Access to Justice and the limitations of the Civil Legal Aid Scheme
- Safeguarding rights in an environment of precarious work and low pay
- Indirect discrimination by under-valuing of the contribution of unpaid care-givers to the economy
- The State Pension (Contributory) and discrimination against older women



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Citizens' Assembly on Gender Equality Submission by Community Law & Mediation

Who we are

Community Law & Mediation (CLM) is a community based, independent law centre operating in two locations: Dublin and Limerick. It was founded in 1975 and assists more than 3,000 people annually through its services, which include free legal advice and representation; information and education; and mediation and conflict coaching. CLM also campaigns for law reform, and for the safeguarding of rights already enshrined in law.

CLM and gender equality

Community Law & Mediation has seen a strong demand for free legal advice and representation in relation to employment equality issues, including direct and indirect gender discrimination, in recent years. Many women who access our services are low paid workers often in precarious employment, and poverty and precarity has had a detrimental effect on every aspect of their lives. Lack of recognition of care-giving and parenting, coupled with the cost of childcare, also affects women's choices and opportunities for employment, and their potential to move out of poverty. Crucially, the pressures flowing from low income employment and from the lack of recognition of care-giving have an adverse impact on the ability of individuals to challenge discrimination in the workplace, particularly in the absence of civil legal aid. The Civil Legal Aid Scheme does not currently cover cases taken to the Workplace Relations Commission (WRC).

Last October, in partnership with the National Women's Council of Ireland (NWC), CLM launched a new employment law advice clinic for women. The clinic, which is funded by the Irish Human Rights & Equality Commission (IHREC), has been fully subscribed to date. The issues raised at the clinics will feed in to the development of a Charter for Working Women by the NWC, which will be used as an advocacy and lobbying tool to strengthen safeguards for working women and to challenge discrimination in the workplace.

CLM's submission

CLM's submission will focus on the following issues and their impact on gender equality:

1. Access to Justice and the limitations of the Civil Legal Aid Scheme
2. Safeguarding rights in an environment of precarious work and low pay
3. Indirect discrimination by under-valuing of the contribution of unpaid care-givers to the economy

4. The State Pension (Contributory) and discrimination against older women

Our submission draws on the findings of a recent roundtable we held on women in the work place – speakers at the roundtable included members of the legal profession, representatives of trade unions, universities and other advocacy organisations – and is also informed by issues we see coming through the employment law advice clinic for women and our other free legal advice clinics.

1. Access to Justice and the limitations of the Civil Legal Aid Scheme

Our experience of representing and advocating for women who are dealing with discrimination in the workplace, or other gender-related issues, is not that their rights are not protected by law, but rather that these rights are not respected or enforced.

This issue is further exacerbated by the current statutory limitations of the Civil Legal Aid Scheme. While legal advice is provided by the Legal Aid Board in most areas, legal representation is limited by statute. The only tribunal in which legal representation can be provided is the International Protection Appeals Tribunal. This means that, for example, a woman experiencing gender discrimination in the workplace, cannot apply for legal aid for employment and equality cases before the WRC.

Employment equality law can be complex and technical and the clients that CLM assists are often women working in low paid, precarious jobs, who cannot afford the services of a lawyer. While the intention in creating the WRC was to remove the need for lawyers from the workplace disputes process, it is our experience that, in practice, employers tend to engage legal representation which creates a real cause for concern from the point of view of equality of arms and natural justice. There are other accessibility issues with the WRC too, such as the increasingly online process, and the Labour Court’s requirements for “front loading” appeals with detailed written submissions, often from unrepresented lay litigants. The WRC requires written submissions in advance in employment equality claims, creating an often insurmountable barrier for Claimants. The short time periods within which claims must be submitted to the WRC also acts as a barrier. Most claims must be submitted within six months, with an extension to 12 months in very limited circumstances. For an individual who is emerging from a difficult experience, this is an extremely tight deadline.

This case study highlights the difficulties faced by women who try to challenge discrimination in the workplace without legal support:

Case Study

Employment Equality Law – Discrimination and Constructive Dismissal

Sarah was working in the catering industry and had been working in the same fast food restaurant for over 20 years. She reported that throughout her employment, male employees were given longer breaks than their female counterparts. Female employees were also given cleaning jobs which male employees were not required to do. Sarah described a culture of favouritism, in which male members of staff were given more responsibility and female members of staff were treated

less favourably than their male counterparts. She never challenged this, putting it down to the culture within the industry.

One incident, however, compelled her to act. She and the only other female member of staff were told not to come to work for a month, as the business was to close while renovations were completed. Both women received notice of temporary unavailability of employment for the period of temporary closure. It then emerged that the male members of staff had been asked to attend work as normal to assist with the work and the clean up afterward. This option was not given to the female employees. Sarah lodged a grievance but ultimately, was forced to resign due to the manner in which her grievance was dealt with.

Sarah decided to make a complaint to the Workplace Relations Commission (WRC), alleging discrimination and constructive dismissal. She represented herself in the case before the WRC but found the process intimidating and confusing and her complaint was unsuccessful.

Sarah then attended one of CLM's free legal advice clinics and CLM lodged an appeal to the Labour Court on her behalf, challenging the decision of the WRC, and making submissions on the circumstances of her resignation. Ultimately, a satisfactory settlement was reached. Sarah was happy with the outcome, as it vindicated her decision to enforce her rights and consequently, to end her employment. She quickly secured another job and is much happier with it.

2. Safeguarding rights in an environment of precarious work and low pay

A disproportionate amount of women work in part-time, precarious and low paid work. The root causes of this are a matter of policy, and will have been addressed in detail in the submissions of other organisations. Women who are experiencing issues connected to part-time, precarious work and low pay present at our legal advice clinics on a regular basis. This case study highlights the unfair and unlawful treatment often experienced by part-time workers:

Case Study

Employment Law – Employment rights of part-time workers

Mary had been a long-term, part-time employee for 27 years. She had never received a contract of employment. Her employment situation was never regularised and she was not receiving annual leave and increments etc. that her full-time counterparts had. Despite numerous attempts over the years on her part to regularise her situation and establish terms and conditions, she was ignored by her employer.

We engaged in correspondence with the client's employer and negotiated on her behalf, pointing out the employee's rights and the employer's obligations. We advised Mary of the legal avenues open to her in the event that her employer refuse to engage and compensate her for the unequal treatment. Mary was still an employee and wished to continue with her job, which she enjoyed. For this reason, she was eager to reach an amicable settlement with her employer rather than engage in protracted legal proceedings.

When Mary first attended CLM's legal advice clinic, she was going through a very stressful period in her life. She had done a lot of research herself into her rights but had hit a brick wall in her attempts to compel her employer to acknowledge the unfair and unlawful treatment and regularise her employment. Mary received a payment compensating her for the unequal treatment and now enjoys improved terms and conditions, as well as stability in her employment situation.

3. Indirect discrimination by under-valuing the contribution of unpaid care-givers to the economy

Another issue we regularly encounter in our legal advice clinics, and which is a matter of policy, is the fact that the contribution to the economy of unpaid care-givers and the economic and societal pressure their work alleviates is consistently under-valued. We are of the view that the failure to recognise periodic gaps in employment for reasons of parenting or care-giving constitutes indirect discrimination which continues to affect women as they grow older.

According to research by the Irish Human Rights and Equality Commission (IHREC) and the Economic and Social Research Institute (ESRI), *Caring and Unpaid Work in Ireland*, there is a significant imbalance in Ireland between men and women when it comes to unpaid work and caring - on average, women spend double the time of men on caring and more than twice as much time on housework.¹ The lack of recognition of care-giving and parenting affects women's choices and opportunities for employment and thus their potential to move out of poverty. Issues arise such as poverty in old age, being economically dependent and less able to escape domestic violence and having incomplete access to Pay Related Social Insurance (PRSI) when working in caring and atypical work situations.

4. The State Pension (Contributory) and discrimination against older women

The Home Carers' Scheme, signed into law in December 2018 under the Social Welfare, Pensions and Civil Registrations Act 2018, provides that a person who reached pension age on or after 1 September 2012 (i.e. those born on or after 1 September 1946) has a right to have 'homecaring periods' (weeks out of the workplace due to caring responsibilities) counted in the calculation of their yearly average contributions. However, by excluding those born before 1 September 1946, the scheme discriminates against older women and is incompatible with the ECHR and Article 40.1 of the Constitution. Those who remain excluded are most likely to be female as, historically, women were obliged to give up work upon marriage. The Scheme should be extended to pensioners born before 1 September 1946.

¹ <https://www.ihrec.ie/new-study-shows-significant-weight-of-care-and-unpaid-work-responsibilities/>

Recommendations

CLM recommends the following:

1. Urgently review the Civil Legal Aid Scheme to ensure that women can access justice in relation to discrimination on the basis of gender. The Scheme must be properly resourced and the financial means test must be more inclusive.
2. Improve access to the WRC for those experiencing gender discrimination in the workplace by increasing the time period within which claims must be lodged. Provide guidance and assistance to individual claimants in relation to front-loaded written submissions in equality cases.
3. The root causes of why a disproportionate amount of women work in precarious and low paid work must be considered from a wider social policy perspective – one which examines childcare, employment and social welfare policy, as well as the gender pay gap. CLM echoes the call by IHREC and the ESRI for changes in social and employment policies that support carers and facilitate the combination of care and employment.
4. The state pension scheme should not penalise those (predominantly women) who took time out of the workplace to care for children. The Home Carers' Scheme, signed into law in December 2018 under the Social Welfare, Pensions and Civil Registrations Act 2018, should be extended to those born before 1 September 1946.

ENDS