



Submission by Community Law & Mediation to the Department of Justice and Equality's consultation on the National Disability Inclusion Strategy (mid-term review)

Executive Summary

- Community Law & Mediation (CLM) was established in 1975 as the first independent, community-based law centre in Ireland. It represents and advocates for people with disabilities.
- The United Nations Convention on the Rights of Persons with Disabilities came into force in Ireland on 19th April 2019. Articles 5 and 12 of the Convention recognise and guarantee the equal rights of persons with disabilities before the law and their entitlement to the protection and benefit of the law.
- Despite ratification of the UNCRPD, the law remains a remote and inaccessible concept for many, particularly those with intellectual disabilities. Some of the barriers to justice that CLM has encountered in its casework are outlined in this paper, along with recommendations on how these might be addressed. These include:
 - The immediate barrier created for people with intellectual disabilities by the adversarial nature of much of our justice system.
 - Solicitors, barristers and judges being provided with limited guidance when dealing with cases taken by or on behalf of people with intellectual disabilities.
 - Many cases involving people with intellectual disabilities failing to proceed because the victims are deemed incompetent either before their case can proceed or at hearing.
 - Information rarely being provided in a court setting in a format that is understood by people with intellectual disabilities.

Introduction

Community Law & Mediation (CLM) welcomes the opportunity to make a submission to the Department of Justice and Equality's consultation on the National Disability Inclusion Strategy, based on our experience representing and advocating for people with disabilities.

CLM was established in 1975 as the first independent, community-based law centre in Ireland. Today, CLM supports more than 3,000 people annually through its services, which include free legal advice and representation; information and education; mediation and conflict coaching; and law reform. It operates two Community Law Centres, CLM North side (Dublin) and CLM Limerick, and partners with other organisations to provide outreach advice clinics around Ireland.

Barriers to justice for people with intellectual disabilities

Despite ratification of the UNCRPD, the law remains a remote and inaccessible concept for many, particularly those with intellectual disabilities. Some examples are provided below:

- The adversarial nature of much of our justice system creates an immediate barrier for people with intellectual disabilities. As it currently stands, the system is not designed to cater for people with particular vulnerabilities and often quite complex needs.
- While the requirements on public service providers introduced by the Disability Act 2005 have led to improved access to courthouses through additions such as wheelchair ramps and induction loop systems, there continues to be serious shortcomings in provision for people with intellectual disabilities. The intellectual disability organisation, Inclusion Ireland, posits that many cases involving people with intellectual disabilities are failing to proceed because the victims are deemed incompetent either before their case can proceed or at hearing. They have found that information is rarely provided in a format that is understood by people with an intellectual disability and the people they work with recount how they have experienced negative attitudes when they try to complain or report something.
- Many complainants and witnesses with intellectual disabilities have difficulties with adversarial forms of communication, meaning that cross-examination can be distressing for them. The adversarial process can act as a barrier, given its emphasis on testing the evidence through robust questioning, which may be perceived by a more vulnerable witness as confrontational and overwhelming. This can be particularly difficult for those, for example who have difficulty with long or short term memory recall, with communicating effectively and with cognitive overload. Relatively simple matters such as the taking of an oath prior to giving oral testimony can be fraught with difficulty. Striking a balance between the needs

of such individuals and the fundamental elements of fair procedure and due process is central to the implementation of the Convention in Ireland.

Case Study

Community Law & Mediation recently represented a young man with physical and intellectual difficulties before the District Court. Proceedings were issued on his behalf by CLM, claiming that the refusal of entry to a pub was discriminatory.

Our client had a rare congenital condition that affected his balance and his speech and he had difficulties with communication and comprehension. While he was very clear that what happened outside the pub wasn't right, our client's difficulties with communication meant that, for his lawyers, taking instructions required significant time and care. Neither the barristers nor the judge appeared to have any guidance to follow on how to approach questioning him. His case was significantly hampered as a result. Overall, the court environment was intimidating and challenging for John.

Ultimately, the judge found that in John's case, a *prima facie* case of discrimination had not been made out and the case was dismissed. The case exposed an unmet need for guidance or assistance on how to make any part of the process more accessible and manageable for people with intellectual disabilities. While there was certainly an attempt to step back from the cut and thrust of the adversarial process, this was very much on an ad hoc basis.

This gap in supports means that legal protections for certain plaintiffs mean very little in the current system. Furthermore, taking a claim to the District Court means paying court fees and having to pay the legal costs of the other side if your case is unsuccessful. It has had a chilling effect on discrimination claims and for plaintiffs like our client, the law remains a remote and inaccessible concept.

Measures to accommodate people might include a liaison officer appointed by the court to show them around prior to the hearing and talk him through the court procedure.

The legal position

The United Nations Convention on the Rights of Persons with Disabilities was formally ratified by Ireland on 20th March 2018. It came into force in Ireland on 19th April 2019. Articles 5 and 12 of the Convention recognise and guarantee the equal rights of persons with disabilities before the law and their entitlement to the protection and benefit of the law and to equal and effective legal protection against discrimination on all grounds.

Very importantly, Article 13 provides that:

1. *States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their*

effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

- 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*

The Department of Justice and Equality has recognised the Optional Protocol to the Convention as providing a high degree of accountability. This part of the Convention has yet to be ratified in Ireland. This Optional Protocol allows for individuals or groups to communicate violations of the Convention directly to the UN Committee on the Rights of Persons with Disabilities.

Recommendations

- Develop guidance and assistance for barristers, solicitors and judges on how to make the courts process accessible and manageable for people with intellectual disabilities (Note: In 2011, a guide was published by the Committee for Judicial Studies for the Irish judiciary, called *The Equal Treatment of Persons in Court: guidance for the judiciary*. This is an internal document and is not available to the public.)
- A court-appointed liaison officer should be available to accompany people with intellectual disabilities, show them around the courtroom prior to the hearing and talk them through the court procedure.
- Collect data on the number of people with intellectual disabilities accessing justice through issuing court proceedings.

Conclusion

Many barriers to justice continue to persist for people with disabilities.

CLM hopes that in preparing for the next phase of its National Disability Inclusion Strategy, the Department of Justice and Equality will focus on removing the barriers outlined above and ensuring that the rights of people with disabilities are recognised and guaranteed before the law.

ENDS