



Community Law & Mediation

Courts Service Digitally-Enabled Long-Term Strategy

Submission to Courts Service on Access to Justice for People with Intellectual Disabilities

Ireland has ratified the United Nations Convention of the Rights of Persons with Disabilities in 2018 and it will come into force on 19 April 2019.

Article 13 provides that: “*State Parties shall ensure effective access to justice on an equal basis including through the provision of procedural and age-appropriate accommodations in order to facilitate their role as direct and indirect participants, including as witnesses, in all legal proceedings [...]*”

The Convention aims to assist persons with intellectual disabilities, both as direct and indirect participants, in legal proceedings. In order to eliminate the barriers presented by the justice system, it is recognised that the relevant services, information and communications should be accessible to persons with disabilities.

The Courts Service Digitally-Enabled Long-Term Strategy is an opportunity to ensure that the Service is fully accessible to persons with intellectual disabilities in vindication of their rights. Community Law and Mediation welcome the opportunity to make these submissions to the Court Service as part of their consultation process. We set out below some of the barriers currently experienced by users of the Courts Service who have an intellectual disability and recommend that such users be consulted fully in the design and implementation of the current project.

Key Priorities

In line with the Courts Service PA Tender Document furnished as part of the consultation and as part of Long-Term Strategy, Community Law and Mediation highlight the following key priorities to address barriers to people with disabilities using the Courts Services.

1. Understanding your service users, i.e. their needs and preferences:

- a. Inclusion of the category of Persons with Disabilities, including Persons with Intellectual Disabilities in the Stakeholder Engagement Plan.
- 2. User Needs and Expectations:**
 - a. Inclusion of the category of Persons with Disabilities, including Persons with Intellectual Disabilities as a discreet group of users in any assessment of User Needs and Expectations.
- 3. User Research and Experience:**
 - a. Persons with Intellectual Disabilities, as a discrete group of users to be consulted in the design and implementation of the project, through organisations such as Inclusion Ireland.
- 4. The Role of Digital as an Enabler:**
 - a. Web accessibility to be ensured in accordance with W3C Standards which enhance the service for all users including persons with disabilities.
 - b. Ensuring inclusive information and communication technologies (ICT) / digital inclusion in the development of all Court Services in line with guidance from organisations such as G3ict.¹
- 5. Data collection and analytics:**
 - a. Inclusion of the category of Persons with Disabilities, including Persons with Intellectual Disabilities in all data collection and data analytics work carried out.
 - b. Collection of data including number of people with intellectual disabilities accessing justice through issuing court proceedings.

Background / Case Study

John² was refused entry from a licensed premises and felt that he had been discriminated against. He was referred to Community Law & Mediation Northside and proceedings were issued on his behalf, claiming that the refusal of entry was discriminatory. Some months later in the District Court, his discrimination claim was heard. Most claims for discrimination come before the Workplace Relations Commission. However, section 19 of the *Intoxicating Liquor Act 2003* transferred claims of discrimination in relation to the point of entry to clubs and licensed premises to the jurisdiction of the District Court.

When John was one year old, he was diagnosed with a rare congenital condition that affects his balance and his speech. As a baby, he experienced delays in motor skills like crawling, walking, balancing, and other motor skills that require the coordination of body parts. Now aged 21, he suffers from jerky, uncoordinated movements, muscle stiffness, and spasms. He also has an intellectual disability, which compounds his difficulties with communication and affects his ability to learn.

While he was very clear that what happened outside the pub wasn't right, John's difficulties with communication meant that, for his lawyers, taking instructions

¹ <https://g3ict.org/>

² Not his real name

required significant time and care. He had suffered significant distress and embarrassment over the incident.

When the matter came before the District Court, it was immediately apparent that John's claim was significantly hampered by his difficulties with communication and comprehension, and the lack of provisions to accommodate those difficulties. This lack of assistance or direction on how to help John to verbally communicate his evidence in the court setting created an impossible situation for everyone, including the judge and the lawyers for both parties to the claim. The judge allowed John's evidence to be put in a sworn affidavit and an adjournment was granted to allow time for this. The barrister for the licensed premises was obliged to cross-examine John and test the evidence, in the interests of fair procedure. Neither the barristers nor the judge appeared to have any guidance to follow on how to approach questioning John, having regard to his level of communication and understanding. An impartial person was allowed to assist John in communicating but there was no guidance on who this should be or what type of qualifications they should have. A former teacher of John's was granted permission to sit with him on the witness stand to help him to communicate. She was allowed to rephrase questions that were put to John so that he could better understand them.

This 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. 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. The court environment was intimidating and challenging for John. Measures to accommodate people like John might include a liaison officer appointed by the court to show him around prior to the hearing and to talk him through the court procedure. The lack of such facilities coupled with an apparent unfamiliarity with dealing with a plaintiff with intellectual disabilities would suggest that such cases are few and far between. No data is collected on the number of people with intellectual disabilities accessing justice through issuing court proceedings.

The legal position

The United Nations Convention on the Rights of Persons with Disabilities was formally ratified by Ireland on 20th March 2018. It will come 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.

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. The Government intends to ratify it following the first reporting cycle under the Convention. 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.

Barriers to justice for people with intellectual disabilities

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, the case study above identifies serious shortcomings in provision for people with intellectual disabilities. The intellectual disability organisation Inclusion Ireland has expressed a number of concerns in cases involving people with intellectual disabilities:

1. Cases are **failing to proceed because the victims are deemed incompetent either before their case can proceed or at hearing.**
2. They have found that **information is rarely provided in a format that is understood** by people with an intellectual disability.
3. The people they work with recount how they have **experienced negative attitudes when they try to complain** or report something.
4. 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.
5. Relatively simple matters such as the **taking of an oath prior to giving oral testimony** can be fraught with difficulty.

In terms of web or other digital services, it is also important to bear in mind the types of barriers that people with intellectual disabilities can experience. They include:³

³ <https://www.w3.org/WAI/people-use-web/abilities-barriers/>

- Complex navigation mechanisms and page layouts that are difficult to understand and use.
- Complex sentences that are difficult to read and unusual words that are difficult to understand.
- Long passages of text without images, graphs, or other illustrations to highlight the context.
- Moving, blinking, or flickering content, and background audio that cannot be turned off.
- Web browsers and media players that do not provide mechanisms to suppress animations and audio.
- Visual page designs that cannot be adapted using web browser controls or custom style sheets.

Community Law & Mediation Proposals

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 UN Convention of the Rights of Persons with Disabilities in Ireland.

Key Priority No. 1-3: Understanding your service users, i.e. their needs and preferences; User Needs & Expectations; User Research and Experience

CLM recommends the inclusion of the category of Persons with Disabilities, including Persons with Intellectual Disabilities in the Stakeholder Engagement Plan. The importance of consultation and co-operation with organisations and with individual service users cannot be overstated. CLM recommends a consultation process with such users and we would be grateful for the opportunity to participate in same.

Key Priority No. 4: The Role of Digital as an Enabler

The Courts Service Digitally-Enabled Long-Term Strategy presents a particular opportunity for enhancement of access to justice for persons with disabilities in terms of the role of digital as an enabler. CLM strongly urges the Courts Service to ensure that any such enhancement enables people with intellectual disabilities. There is much guidance on web accessibility in the shape of W3C Standards. Web accessibility is explained as follows:⁴

Web accessibility means that websites, tools, and technologies are designed and developed so that people with disabilities can use them. More specifically, people can:

- *perceive, understand, navigate, and interact with the Web*
- *contribute to the Web*

Web accessibility encompasses all disabilities that affect access to the Web, including:

- *auditory*
- *cognitive*
- *neurological*

⁴ <https://www.w3.org/WAI/fundamentals/accessibility-intro/>

- *physical*
- *speech*
- *visual*

Web accessibility also benefits people without disabilities, for example:

- *people using mobile phones, smart watches, smart TVs, and other devices with small screens, different input modes, etc.*
- *older people with changing abilities due to ageing*
- *people with “temporary disabilities” such as a broken arm or lost glasses*
- *people with “situational limitations” such as in bright sunlight or in an environment where they cannot listen to audio*
- *people using a slow Internet connection, or who have limited or expensive bandwidth*

Community Law and Mediation propose that the opportunity be taken to enhance fully accessible Courts Service website and related web services.

As per the example of the HM Courts & Tribunals Service, a fully accessible web service also provides an easy first point of contact for persons with disabilities who require court services. Their website sets out in clear language and accessible format the reasonable adjustments (referred to as “reasonable accommodation” in the Irish context) that the HM Courts & Tribunals Service provides to support court and tribunal users with disabilities:⁵

What reasonable adjustments can we provide?

We’re able to do lots of things that mean that people with disabilities can use our services independently wherever possible and in a way that is fair, for example:

- *providing our forms in large print and providing our guidance in audio or easy read*
- *making sure hearing enhancement systems are available in every court and tribunal building*
- *providing a separate waiting area*
- *making sure ramps and lifts are available*

This list doesn’t include everything we can do to help, and we’ll always talk to you first about what you need.

If you need help or support in the hearing room, we will also discuss this with the judge hearing your case. Judges are committed to making sure everyone can give their best evidence and everyone has a fair hearing.

⁵ <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/equality-and-diversity>

According to their website, HM Courts & Tribunals Service provide both technical and physical supports as well as personal support customized to meet the needs of the user where possible, for example a liaison person.

Further assistance is available in relation to information and communication technologies through organisations such as G3ict. G3ict's objectives are aligned with the principles established in the UN Convention of the Rights of Persons with Disabilities:⁶

G3ict's objectives and global outreach are aligned with the dispositions of the Convention on the Rights of Persons with Disabilities (CRPD) on the accessibility of Information Communication Technologies (ICTs) and Assistive Technologies. G3ict's objectives are to:

- **Promote awareness** of the ICT accessibility dispositions of the CRPD and of effective public policies, private sector initiatives, and accessibility standards;
- **Support advocates and policy makers** with capacity building programs, policy development tools and benchmarking;
- **Facilitate and share good practices** and innovation in accessible and assistive technologies;
- **Foster harmonization and standardization** to achieve lower costs and interoperability on a global scale by promoting the work of W3C, ISO, ETSI, ANSI, DAISY/EPUB3, ITU, Public Procurement standards - Section 508, EN 301-549 - and other leading Standards Development Organizations;
- **Define and promote the accessibility profession** through networking, education and certification in order to enable and mainstream the creation of accessible products, content and services.

Article 9 of the Convention on the Rights of Persons with Disabilities incorporates ICTs in its definition of Accessibility. As recognised by G3icts, this places ICTs “*on par with the built environment and transportation*” and “*creates many new obligations for its States Parties which can only be met with the cooperation of multiple stakeholders and by leveraging the latest innovations and standards in ICT accessibility.*” Investment could for example be made in capacity building to assist with ensuring better understanding and best practice in digital inclusion.

Key Priority No. 5: Data Collection & Data Analytics

CLM recommends that disaggregated data on access to the courts by people with intellectual disabilities be collated and made publicly available, through an official data collection system. The current lack of data hampers the development of evidence-based policies and practices to address the needs of people with intellectual disabilities when accessing justice and will hinder the effective monitoring of the implementation of the Convention on the Rights of Persons with Disabilities when the State's record is examined.

⁶ <https://g3ict.org/about-us/our-mission>

Conclusion

Cases like the one discussed in this submission expose the lack of guidance for the Courts Service, solicitors, barristers and judges when dealing with cases taken by or on behalf of people with intellectual disabilities. For this reason, CLM welcomes an opportunity to engage with the Courts Service on its Long-Term Strategy, particularly in the context of the implementation of the Convention on the Rights of Persons with Disabilities. Our submission has underlined the importance of consultation with service-users, in order to fully assess needs. While we recognise the importance of using modern technology to improve access to justice and the experience of individuals of same, there remains no substitute for assessing the individual needs of each person with intellectual disabilities and assigning appropriate resources and crucially, time. We recommend that the consultation with stakeholders look at the possibilities in this regard, for example the appointment of a liaison person to support a person with intellectual disabilities through what can be an intimidating and inflexible system. The current gap in supports means that on a very practical level, legal protections for certain plaintiffs with an intellectual disability mean very little in the current system. They are denied an effective remedy. For plaintiffs like John, the law remains a remote and inaccessible concept with little meaning if they can't enforce their rights.

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