



Community Law & Mediation

An independent community law centre and charity, providing free legal advice, advocacy and mediation services since 1975 to communities experiencing disadvantage.

Pre-Budget Submission 2021

The right of access to justice is accepted as a constitutional principle and a right under the European Convention on Human Rights. Without it, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. It is a basic tenet of a functioning, democratic society and it is vital for social inclusion. Since the Covid-19 crisis began, demand for Community Law & Mediation's legal advice and advocacy services has been beyond capacity. To meet the demand, we have increased our weekly legal advice clinics and we have successfully transferred our mediation services online to help families and communities in crisis.

CLM has identified the following budgetary priorities arising from the issues coming through our services:

- 1 Access to legal aid:** Make the financial means test to access legal aid more inclusive and invest in the Legal Aid Board so that it can employ and retain staff and so that waiting times to access legal aid and family mediation services can be reduced.
- 2 Fully commence the Assisted Decision-Making (Capacity) Act 2015 and prioritise funding to enable the Decision Support Service to be fully operational** so that people, whose decision-making capacity is impaired, are afforded the fundamental human right to make their own decisions, as far as possible, about their personal and financial affairs.
- 3 Ensure that the State Pension (Contributory) does not discriminate against older women** by extending the Home Carers' Scheme to pensioners born before 1 September 1946.
- 4 Invest adequately in Just Transition** to ensure protection for the families and communities who are most vulnerable to the impact of climate change. Look to the example of Just Transition related to the wind-down of the coal industry in Northern Spain.
- 5 Benchmark social welfare payments against the cost of a Minimum Essential Standard of Living, as calculated by the Vincentian Partnership for Social Justice.** Such benchmarking should correspond with the timeframe of the Roadmap for Social Inclusion and Programme for Government.

1

Access to legal aid

The inadequacies of the Civil Legal Aid Scheme have been brought into sharp focus by the Covid-19 crisis. CLM's free legal advice clinics have been inundated with queries from individuals, families, workers whose situations have been exacerbated by Covid-19 and who cannot afford to pay for legal representation.

We are calling for the following areas to be prioritised in Budget 2021:

1. Make the financial means test to access legal aid more inclusive.

The existing means test is overly strict and out of touch with the reality of the cost of living, with the result that people on low incomes, who cannot afford a solicitor, are denied access to legal aid.

2. Ensure the Legal Aid Board is adequately resourced.

So that it can employ and retain staff and so that waiting times to access legal aid and family mediation services can be reduced. Waiting times for a first consultation can be an average of 38 weeks in some parts of the country. This is simply too long and can cause issues for those seeking legal remedies with strict time limits such as Judicial Review, which has an effective time limit of three months.

3. Remove the statutory limitations of the existing Civil Legal Aid Scheme.

So that people can access legal aid in all areas of law, including before the Workplace Relations Commission, Labour Court and the Social Welfare Appeals Office. For example, a person experiencing discrimination in the workplace cannot currently apply for legal aid for employment and equality cases before the Workplace Relations Commission.

4. Government review of access to justice must be revisited

A review of access to justice by the Joint Oireachtas Committee on Justice & Equality began last December but unfortunately was halted when the General Election was called. This review must be revisited when the new Committee is in place.

2

Fully commence the Assisted Decision-Making (Capacity) Act 2015

The reforms introduced by the Assisted Decision-Making (Capacity) Act 2015 will help to ensure that, through the Decision Support Service, people whose decision-making capacity is impaired are afforded the fundamental human right to make their own decisions, as far as possible, about their personal and financial affairs.

However, the Act has not been fully commenced and the Victorian concept of Wardship still applies through the Regulation of Lunacy (Ireland) Act, 1871. The Assisted Decision-Making (Capacity) Act 2015 should be fully commenced as a matter of urgency and funding for the Decision Support Service must be prioritised so that it can be fully operational.

3 Access to the State Pension (Contributory)

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, 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) discounted 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.

4 Invest adequately in Just Transition

We welcome the commitment in the Programme for Government to engage in genuine consultation in relation to a Just Transition, to work with communities to design and deliver goals in a fair way and to ensure protection for the vulnerable families and communities least equipped to make the transformation.

However, there must be significant investment in Just Transition initiatives to ensure protection for the families and communities who are most vulnerable to the impact of climate change and also to develop regions and increase living standards in the long-term.

To avoid opposition to vital climate action initiatives, the Government must adequately resource the Just Transition Commissioner and invest in Just Transition.

5 The impact of the Covid-19 pandemic has been significant for our whole society. The introduction of the Pandemic Unemployment Payment was a swift and effective step to protect people during the initial months and reflected the high cost of living in Ireland. Unemployment will no doubt continue to rise in the uncertain times ahead and it is essential that each member of society is protected against a fall into poverty, particularly the unemployed, children and people with disabilities, including those with health conditions that will preclude them from working while the pandemic persists.

In this context, social welfare payments should be benchmarked against the cost of a Minimum Essential Standard of Living, as calculated by the Vincentian Partnership for Social Justice. Such benchmarking should correspond with the timeframe of the Roadmap for Social Inclusion and Programme for Government.