

Submission on the Review of the Civil Legal Aid Scheme by *Community Law & Mediation*

Executive Summary

Community Law & Mediation welcomes the opportunity to make a submission on the review of the Civil Legal Aid Scheme and we are delighted that this submission and the recommendations contained in it have been reviewed and endorsed by Age Action, AsIAM, Ballymun Community Law Centre, Disability Federation of Ireland, EPIC, Inclusion Ireland, the Irish Cancer Society, the Irish Penal Reform Trust, the Irish National Organisation of the Unemployed, the Jesuit Centre for Faith and Justice, Mental Health Reform, Northside Partnership, Novas, One Family, Robert Emmet CDP, Society of St Vincent de Paul, Threshold and Treoir.

As an Independent Law Centre (ILC), Community Law & Mediation is governed by S.I. No. 103/2006 - the Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations, 2006. Our two community law centres (Dublin and Limerick) have been granted charitable status by the charities regulator and we provide, amongst other services, free legal advice and, in some circumstances, legal representation.

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.

In the absence of access to justice, challenging incorrect decisions or unfair practices by an arm of the State or other bodies would be more difficult, more distressing, or just impossible, particularly for marginalised groups or at vulnerable times in a person's life.

Many of the services of Community Law & Mediation and the ILCs are focused on areas which are critical to social inclusion e.g. preventing homelessness, assisting with accessing social welfare, education and other services, preventing job loss and challenging discrimination.

This submission discusses our practical experiences of the Civil Legal Aid Scheme and its impact on the individuals and communities we work with, including people who are unemployed or on low incomes, families who are homeless or at risk of homelessness, family carers, children in care and young care leavers, people with physical or intellectual disabilities, Travellers, older people, migrant groups and others.

Focusing on the limitations of the existing Civil Legal Aid Scheme and opportunities offered by the community law centre model, this submission makes the case for an expanded system of civil legal aid and, as recommended by the Pringle Report of 1977, the inclusion of legal education and law reform functions, to include strategic public interest litigation. The submission also makes recommendations in relation to resourcing of the Scheme and improving access to the courts.

We have briefly summarised our recommendations and viewpoints on the questions posed in the Submission Issues Paper below.



*Signatories of this review of the civil legal aid scheme submission

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Introduction

Community Law & Mediation – first independent, community-based law centre in Ireland

Before addressing the questions set out in the Stakeholder consultation, we wish to briefly share our perspective on the importance of this review.

Community Law & Mediation (CLM)'s history is closely interlinked with the movement for civil legal aid in Ireland. Previously Coolock Community Law Centre, CLM was established in Coolock in 1975 as the first independent, community-based law centre in Ireland. It was modelled on the American neighbourhood law centre (now known in Ireland as the community law centre model) and its purpose initially was to serve as a prototype law centre and campaign tool in the movement for civil legal aid.

This model has a number of important characteristics. Services are free of charge, making them as accessible as possible; community education - creating an awareness of rights and the law - is a critical part of the work; and a focus on law reform ensures that the issues being raised in our services inform and influence change in policy and legislation.

The Pringle Report to Government in 1977 recommended a similarly expanded system of civil legal aid, including public information and education services on legal rights as well as representation for all types of civil proceedings.

Despite the fact that the Civil Legal Aid Scheme ("the Scheme"), introduced in 1979, saw the establishment of a different and more limited model under the Legal Aid Board, CLM has continued to grow and expand its services, working to remove barriers to the law on the basis that all people should be able to access basic legal information and advice regardless of their income and background. It continues to work to identify and unlock the legalities, regulations, policies, and procedures that manifest as barriers and obstacles to a fair and better life for all individuals in the community.

The model under which we operate enables us to respond and adapt to changing needs in the community, and we have provided new services in the areas of mediation, and more recently in children's law and environmental justice. Our community law centre in Limerick responds to the particular needs of the communities of Southill, St Mary's Park, Moyross and Ballinacurra Weston. Over the years, we have taken important strategic cases.

Crucially, community law centres meet a gap in State provision for legal aid in Ireland as they provide legal advocacy and representation in areas of law not catered, or adequately catered for, by the Scheme, including housing, debt, social welfare, equality, employment, children's law and environmental law.

This review is a welcome opportunity to address the barriers that for too long have prevented people on low incomes, marginalised groups and others from accessing justice. Our submission will call for a range of reforms, including removal of the statutory limitations of the Scheme and urgent adjustments to the financial means test. We will also make the case for a community based model in the provision of civil legal aid going forward.

It is important to note the vital role played by FLAC in spearheading the campaign for access to justice in Ireland, and that of the independent law centres.

The Right of Access to Justice

The right of access to justice is enshrined in Articles 6 and 13 of the European Convention of Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights. Access to justice is also reflected in our constitutional system of justice¹ and is recognised as fundamental to the achievement of the UN Sustainable Development Goals.

In 1979, the European Court of Human Rights in the case of *Airey*,² found that Ireland had violated Josie Airey's rights under the European Convention of Human Rights, in failing to provide her with legal aid.

While the right to legal aid is not absolute, the Courts have held that 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 on matters such as:

- The importance of what is at stake for the applicant³, taking into account the vulnerability of the applicant⁴
- The emotional involvement of the applicant which impedes the degree of objectivity required by advocacy in court⁵
- The complexity of the relevant law or procedure⁶
- The need to establish facts through expert evidence and the examination of witnesses⁷
- The applicant's capacity to represent him or her effectively⁸

Article 47 of the European Charter of Human Rights (Charter) develops that right in relation to cases that involve European law, as follows: "Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice." It should be noted here that much of Ireland's employment and equality legislation, for example, emanates from European law and it is our experience that written submissions in Workplace Relations Commission (WRC) cases involving employment law, equality and anti-discrimination invariably rely on aspects of European law. The same is true of environmental, immigration, social welfare and housing cases. Cases in many of these areas are determined in quasi-judicial tribunals (IPAT, SWAO, WRC,) and with the exception of IPAT⁹, quasi-judicial tribunal cases are excluded from legal aid under the legal aid scheme¹⁰.

Article 47 is directly applicable in this jurisdiction. Therefore, we submit that there is a Charter obligation to provide legal aid if a claim involves European law, if it is necessary to ensure effective access to the court. This clear, directly applicable right is not reflected in the current provision of legal aid and this requires immediate reform.

¹ The right of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights which guarantee the rights to a fair trial, to an effective remedy and to legal aid to those who lack sufficient resources so far as this is necessary to ensure effective access to justice.

² *Airey v Ireland* 32 Eur Ct HR Ser A (1979): [1979] 2 E.H.R.R. 305

³ *Steel and Morris v The United Kingdom*, no 68416/01, 15 February 2005

⁴ *Nemov v Bulgaria*, no 33738/02, 16 July 2002

⁵ *Ibid* n.2

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ Civil Legal Aid (International Protection Appeals Tribunal) Order 2017, S.I. No. 81/2017

¹⁰ See Civil Legal Aid Act, 1995 s.27 and the orders made thereunder.

Fundamentally, if an applicant for legal aid is not deemed financially eligible, even marginally, or if the area of law is excluded and they don't fall within the exemptions listed at section 28(9)(c) of the Civil Legal Aid Act 1995, they will not be entitled to legal aid. This leaves them at sea, regardless of their capacity to represent themselves, the complex nature of the case and the resources of the employer, the State, the landlord, the public body – whoever the Respondent might be.

Issue 1 – Types of civil law cases

1. Considering the current operation of the Scheme and the areas of civil law that are currently covered, what areas of civil law do you think it should cover? What is your reasoning for this?

All areas of law should be covered by the Scheme, to ensure people are able to have their voice heard, exercise their rights, challenge discrimination and hold decision-makers accountable. The Pringle Report in 1977 recommended that a civil legal aid scheme should offer legal representation for all types of civil proceedings and should have a legal education and law reform function. However, the current Scheme falls far short of these recommendations and as a result, fails to adequately provide for access to justice.

The right of access to justice is accepted as a constitutional principle and a right under the ECHR. It is also recognised as fundamental to the achievement of the UN Sustainable Development Goals.. It is a basic tenet of a functioning, democratic society.

There are also clear economic benefits to expanding the Scheme to include those areas of law not currently covered by the Scheme:

- In 2019, the International Bar Association (IBA) Access to Justice and Legal Aid Committee and the World Bank jointly published a report entitled *A Tool for Justice: A Cost Benefit Analysis of Legal Aid*¹¹. The report notes that “legal aid is intrinsically tied to the concept of the state and its duty to guarantee equality of arms as an element of equality under the law.”¹²
- Research shows that legal needs internationally are predominately civil in nature. The most common types of problems for which legal aid services are sought relate to consumer rights, government benefits, housing, employment issues, land and property disputes, family issues, conflicts with neighbours, and debt relief.¹³
- Several studies demonstrate that legal aid can deliver substantial savings to government by reducing expenditure on other public services or by avoiding or limiting the use of state resources. For example, a study by the National Association of Citizens Advice Bureau in the UK showed how adverse consequences associated with civil justice problems, and the downstream costs for other public services, can be mitigated by legal advice.¹⁴ Using data from the justice survey and the outcome data from legal aid work, the study finds, in relation employment law specifically, that for every £1 of legal aid expenditure on employment advice, the state saves £7.13. The Report posits the cost benefit of legal aid and the potential “win-win” for service-users and the economy that could be achieved through the provision of civil legal aid and proposes that a monetary value be attached to all costs and benefits of policies under consideration, thereby allowing for the direct

¹¹ [A Tool for Justice: A Cost Benefit Analysis of Legal Aid](https://documents.worldbank.org/en/publication/documents-reports/documentdetail/592901569218028553/a-tool-for-justice-the-cost-benefit-analysis-of-legal-aid). Report available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/592901569218028553/a-tool-for-justice-the-cost-benefit-analysis-of-legal-aid>

¹² *Ibid*, p. 7

¹³ Pascoe Pleasence, Nigel J. Balmer and Rebecca L. Sandefur, *Paths to Justice: A Past, Present and Future Road Map*, 2013

¹⁴ See The National Association of Citizens Advice Bureau, *Towards a business case for legal aid*, July 2010, available at https://www.accesstojusticeactiongroup.co.uk/wp-content/uploads/2011/07/towards_a_business_case_for_legal_aid.pdf

comparison of suggested policy interventions along a common scale. It is recognised in the Report that not all costs and benefits (particularly intangible benefits) of a civil legal aid scheme can be captured but it suggests that cost benefit analyses can offer insight on not just financial performance of a programme, but also its general economic effect. It further submits that empowerment through provision of legal information, by way of workshops and clinics, can also produce cost significant savings.¹⁵

The following areas of law are examples of areas which are currently excluded from the operation of the Scheme but should be included to effectively bridge the gap of the unmet legal need in Irish society:

Employment and equality claims before the Workplace Relations Commission

Under the Civil Legal Aid Act 1995, the remit of the Legal Aid Board does not extend to providing people with legal representation before quasi-judicial tribunals and bodies, including the Workplace Relations Commission (WRC). This is particularly concerning as many employers, service-providers, or public bodies will have legal representation during these cases, with those challenging discrimination in the workplace or in accessing services often having to navigate complex employment and equality laws without legal assistance. This creates a serious unmet legal need in such cases, raising concerns around the inequality of arms. Outside of the family relationship, the employment relationship is often the one that people invest most in. There can be a huge degree at stake for individuals in such cases, who very often are vulnerable to and faced with a huge disparity between their position and that of the Respondent party. Any individual's capacity to represent themselves is consequently impacted by not only what is at stake, but also the related emotional involvement, not to mention the ever-increasing complexity of the relevant (national and EU) law.¹⁶

There is no logical reason why the availability of legal aid should be determined by area of law rather than need or why tribunals, such as the WRC, should be excluded from legal aid, particularly in view of the Supreme Court's finding in the *Zalewski* case that the WRC is indeed engaged in the administration of justice. The following quote by Justice McMenamin in that case is pertinent - he said, referring to the employee litigant: "*Throughout the process he has been ably represented by his lawyers. The events in this case prompt a question as to how the appellant could have vindicated his rights if he had not been legally represented?*".¹⁷ A person's job and their ability to access accommodation and other goods and services are critical to social inclusion and when threatened, there are significant adverse consequences not just for the individual themselves but also for their family.

¹⁵ Report available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/592901569218028553/a-tool-for-justice-the-cost-benefit-analysis-of-legal-aid>

¹⁶ See footnotes 3, 4, 5, 6

¹⁷ *Zalewski -v- Adjudication Office & ors* [2021] IESC 24, para. 54

Case study 1 on the practical difficulties faced in cases challenging discrimination

Lisa (not her real name) came to CLM after her case against her employer, alleging racial discrimination and harassment, had failed before the WRC. She was racially harassed by her manager and called names in front of staff and customers in the fast-food shop she worked in. She made a complaint to senior management and was promptly sacked the following day. However, the Adjudication Officer at the WRC found against Lisa. We reviewed the Adjudication Officer's decision, and we advised Lisa to appeal it. The decision made assumptions about Lisa and without any evidence, found that the comments weren't racially motivated. Her claim for victimisation wasn't examined at all.

Lisa told us about her experience and said that she found the case intimidating and demoralising. Her first language is not English, and she did not have an interpreter in the WRC. We appealed the decision to the Labour Court on Lisa's behalf and requested an interpreter for Lisa. The Labour Court part-heard her appeal and the employer conceded at that hearing that the racially abusive language had indeed been used. Ultimately, her employer engaged with us and agreed to pay her compensation for discrimination.

Lisa was very clear that she would have found the whole process impossible to navigate alone.

Case study 2 on the practical difficulties faced in cases challenging discrimination

Margaret came to Community Law & Mediation as she felt she had been discriminated against by her car insurance provider on the basis of her age.

Despite having been with the same insurance provider for over forty years, Margaret's insurance premium was increased substantially from the previous year without due cause. She believed that the change was due to her age as she was 84 years old.

Margaret lodged a complaint with the insurance provider and was told that the increase in premium was due to the increasing number of fraudulent claims across the Irish insurance market. She was told on a call to the insurance provider's customer service line that these increases were not sustained equally across all groups insured with the insurance provider. Margaret decided to seek redress under the Equal Status Acts, alleging age discrimination and CLM submitted a complaint to the WRC on her behalf. The matter was settled in advance of the scheduled hearing with a payment of compensation.

Social welfare appeals before the Social Welfare Appeals Office

Overseen by the Department of Social Protection (DSP), social welfare entitlements are a central piece of both protection against poverty and employment protection in the State. Those experiencing unemployment and those who cannot work or can only work part-time due to illness, disability, or caring responsibilities rely on these essential supports.

As seen year on year, there is a significantly high success rate on appeal where a social welfare payment has been refused to a person ¹⁸:

- Percentage of appeals resulting in a favourable outcome: 54.8%
- Percentage of appeals resulting in a favourable outcome where those appeals relate to illness, disability or carer payment: 58.37%
- Percentage of appeals resulting in a favourable outcome where those appeals relate to children's payments: 57.29%

¹⁸ See pages 21 and 30, Social Welfare Appeals Office Annual Report 2021 available at:

<https://www.gov.ie/en/publication/888e0f-social-welfare-appeals-office-annual-report-2018/#2021>

Of particular note is the increased likelihood of success on appeal where an oral hearing is held by the SWAO.

- Percentage of decisions revised by Appeals Officer (Favourable Outcome) where an Oral Hearing took place: 69.8%¹⁹

Our experience at CLM in the area of social welfare appeals is that there is very limited knowledge or understanding of the social welfare appeals system, while the high success rate raises serious questions about the adequacy of decision making, in the first instance, on social welfare applications. Availability of legal information and advice on social welfare is essential to ensure people are protected against poverty and social exclusion. Availability of supports is not consistent across the country and is currently limited to Citizen's Information offices, MABS, NGOs and the very limited number of independent law centres working in this area of law.

In terms of legal representation in social welfare appeals, as with the WRC, the quasi-judicial organ of the DSP – the Social Welfare Appeals Office (SWAO) – falls outside of the remit of the Legal Aid Board under the Civil Legal Aid Act 1995.

This situation requires urgent reform. Civil legal aid should be made available for social welfare appeals where representation is necessary either for oral hearings or making written submissions or both. Further detail is provided below in relation to the complexity of EU and domestic law in relation to social welfare and the inequality of arms in taking a social welfare appeal.²⁰

The need for civil legal aid in appeals where the DSP asserts an overpayment of social welfare is particularly urgent. With no allegation of fraud against the person, one can be deemed to have been overpaid tens of thousands of euro in social welfare payments. The same appeals process is in place for overpayments, however a person does not automatically receive all copies of all records relating to their alleged overpayment. Where there is a criminal prosecution of fraudulent social welfare claims, criminal legal aid is available, however this is not the case where the DSP determines an overpayment absent fraud and seeks to recover the funds. The Ombudsman's Office carried out an investigation into the handling of overpayments in 2019 and was critical that –

- the DSP had little or no documentary evidence of the overpayment;
- there were inconsistencies across the country as to how overpayments were being dealt with;
- overpayments were deducted from inappropriate sources;
- there was no evidence that the DSP 'poverty-proofed' the recipient's circumstances before starting deductions; and
- there was no communication from the DSP with some recipients for years after an overpayment had been discovered.²¹

¹⁹ See page 21, Social Welfare Appeals Office Annual Report 2021 available at:

<https://www.gov.ie/en/publication/888e0f-social-welfare-appeals-office-annual-report-2018/#2021>

²⁰ The withdrawal of legal aid in social welfare appeals in 2013 has been criticized in England & Wales; in particular the Bar Council of England and Wales have called for the urgent introduction of early access to legal advice for social welfare issues <https://committees.parliament.uk/writtenevidence/13784/html/>

²¹ See <https://www.ombudsman.ie/news/ombudsman-concerned-over/> and <https://www.ombudsman.ie/publications/reports/fair-recovery/FairRecovery-Overpayments.pdf>

Despite the positive engagement noted by the Ombudsman, CLM continues to receive requests for legal advice in the area of overpayments and has serious concerns at the lack of civil legal aid in the area where large sums are at stake and legal submissions are required.

Case study illustrating the need for legal representation in some social welfare appeals

CLM was contacted for legal advice in 2021 in relation to money the Department of Social Protection (DSP) was seeking to recover from a woman who was in receipt of Invalidity Pension. The DSP asserted that the woman had been overpaid some €55,000 over the course of five years. CLM provided legal representation to this woman as a result of the manner in which the matter had been dealt with to date by the DSP and Social Welfare Appeals Office (SWAO) and the very significant level of debt asserted by the DSP.

The client was 51 years of age. She had ceased working in 2013 and was eligible for Invalidity Pension. In 2016, the client took up the opportunity of a course in Care for the Elderly and was subsequently offered part-time employment in a nursing home for 2/3 days per week. She informed her Intreo Officer of this work and had understood that she should stay on the Invalidity Pension and that she would be put in a higher tax bracket as a result. Unfortunately, there was no evidence of the communication with her Intreo Officer about her return to work. However, documentary evidence supported her assertion that she was upfront with the Department of Social Protection and Revenue about her employment and at no time between 2016 and 2021 was she informed that she could not be in employment while in receipt of Invalidity Pension. The overpayment only emerged in 2021, when the woman became aware that the correct payment she should have been receiving during this time was Partial Capacity Benefit (PCB) and she contacted the DSP to apply for same. She however had to stop work at this time due to ill health and so remained on Invalidity Pension rather than transferring to PCB.

Our client was informed in September 2021 of an overpayment of €55,000 due to receipt of Invalidity Pension. She appealed this decision, but her appeal was refused. The DSP started to reduce her weekly payment of €177 by 15% in order to recover the alleged overpayment. It was at this stage that CLM began to act on her behalf.

We discovered that even though the appeal turned on our client's credibility, the SWAO Appeals Officer did not afford her the benefit of an oral hearing. Neither did they seek information from the Department employee as to the advice given or consider whether such advice as was given might have been innocently misunderstood. Instead, the Appeals Officer found: *"It is standard practice for a Case Officer of the Department to outline options available to a person in receipt of a Social Welfare payment and this would not include telling a person that they were entitled to work and claim Invalidity Pension at the same time."*

After careful legal consideration of the case, written submissions were drafted and made to the SWAO and an oral hearing requested. Without such legal assistance, the level of debt would have gone unchallenged and the client would have been required to repay a sum of €55,000. Deductions from her weekly social welfare payments would have continued to cause our client extreme financial hardship and, upon her death, our client's estate would be liable for any sums unpaid. However as a result of legal representation, the sum has now been reduced on appeal to €28,000 and CLM continues to act on behalf of the client in the matter.

Homelessness and housing

The Civil Legal Aid Act 1995 provides that legal aid shall not be granted in *"disputes concerning rights and interests in or over land"*²². The Act goes on to allow for an exception where the subject matter of the dispute is the applicant's home (or would be the home but for the dispute), and the Legal Aid Board considers that the applicant suffers from infirmity of mind or body or the applicant may have been subjected to duress, undue influence or fraud, and the refusal to grant legal aid would cause hardship to the applicant.²³

²² Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995

²³ Section 28(9)(c)(iii) of the 1995 Act

In our experience, there is a fundamental lack of clarity as to how these sections are applied to housing law matters such as access to social housing or emergency accommodation. The lack of clarity has resulted in a huge unmet legal need in the area of housing, which is felt most acutely by vulnerable and socially excluded communities in Ireland and those most acutely impacted by the ongoing housing crisis. These communities include lower income households, households in receipt of social housing supports, people who are homeless or at risk of being made homeless, Travellers and individuals fleeing domestic violence.

This unmet legal need is clearly evident in the work of CLM. Housing related queries consistently constitute a high proportion of the queries CLM sees in its legal advice clinics. During the Covid-19 crisis, CLM saw a sharp (40%) increase in housing-related queries.²⁴ This level of demand has continued to date. The issues arising in our legal advice clinics are of an acute, complex and urgent nature, generally requiring expert legal advice, advocacy and representation. By way of example, CLM's clients experience:

- unlawful evictions;
- unlawful refusals of emergency accommodation;
- inadequate and substandard living conditions in social housing;
- discrimination in accessing social housing supports.

The lack of clarity surrounding the availability of legal aid for housing related matters is hugely concerning and has left many people navigating complex areas of law without any legal assistance.

A particular barrier to justice arising from the 1995 Act is the absence of civil legal aid for people facing eviction (subject to the above referenced exception), whether in private rented accommodation, social housing or the owner occupier sector. The loss of a home is primarily a traumatic event for the person or family who experiences it. Moreover, it is a justice matter where an eviction is unlawful. In addition, it has significant financial implications for the State. People who lack the financial resources to access legal representation during eviction proceedings are more likely to call upon State resources in the form of emergency accommodation once the eviction takes place. In the last week of November 2022, **11,542** people accessed local authority managed emergency accommodation.²⁵ Legal advice in the early stages of a housing matter can result in a more favourable outcome for all parties and legal representation and advice during eviction proceedings is an effective measure in reducing homelessness. Jurisdictions where a 'right to counsel' scheme has been introduced for evictions have found that it is an effective measure in reducing evictions.²⁶

Legal aid for a wide range of housing related matters is available in England and Wales, including for possession proceedings brought by a landlord or mortgage lender, loss of the home due to bankruptcy and judicial review of public authority decisions. Furthermore, the UK government recently announced its intention to introduce a new Housing Loss Prevention Advice Service, to replace the current Housing Possession Court Duty Schemes. Under this new service, individuals facing possession proceedings can access emergency face-to-face advice, advocacy and

²⁴ 233 of the 1,493 queries CLM Northside received in 2020 and 231 of the 864 queries received by CLM Limerick related to housing matters. In 2019, 151 of the 1,481 queries CLM Northside received and 181 of the 561 queries received by CLM Limerick related to housing matters.

²⁵ [gov.ie - Homeless Report - November 2022 \(www.gov.ie\)](https://www.gov.ie/en/publications-and-statistics/publications/homeless-report-november-2022/)

²⁶ [Right to Counsel \(nyc.gov\)](https://www.nyc.gov/right-to-counsel/)

representation on the day of their hearing, as well as early legal advice services before court. Furthermore, the scope of legal aid will be extended to offer early legal advice in social welfare law matters to individuals who have received a notice seeking possession of their home.²⁷

Certain groups are disproportionately impacted by the absence of legal aid in disputes concerning land. One example is members of the Traveller community who can find themselves involved in complex legal proceedings against well-funded, legally represented opponents. According to the 2021 FLAC Annual report, 42% of case files which were opened during 2021 were opened on behalf of clients of FLAC's Traveller Legal Service.²⁸ This statistic highlights the deficiencies in the current legal aid regime in meeting the legal needs of Ireland's marginalised communities and the continuing barriers in accessing justice, which are constant themes of our work.

Case study illustrating the barriers to vindicating housing-related rights

CLM Northside represented a client who attended one of our free legal advice clinics looking for support around his housing situation. CLM provided him with support on a number of issues. In particular, at the time, he had no fixed place of address and was "couch surfing" between friends' homes. He previously lived with his partner in social housing until they separated. He then lived with his parents until he was asked to leave. The client has a young son with whom he has overnight access for two nights a week. However, due to his circumstances, he was unable to arrange this access on a regular basis. The client attended the Homeless Section of his local authority to apply to be recognised as homeless. He was refused homeless status on the grounds that he had not accessed emergency accommodation.

CLM wrote to the local authority and their legal agent calling for a review of the decision and noting that utilisation of emergency accommodation is not a prerequisite to homeless status in circumstances where the applicant is unable to provide accommodation from his own resources and there is no accommodation available in which he can reasonably be expected to reside. After several letters, the local authority still refused to recognise our client as homeless. CLM briefed counsel and commenced the process of initiating judicial review proceedings. With the assistance of counsel, CLM issued warning letters confirming that it was prepared to initiate judicial review proceedings if matters were not addressed. On the day of the leave application, the local authority agreed to review the decision to refuse to recognise our client as homeless.

As a result of CLM's intervention, the local authority agreed to examine our client's circumstances and review its decision. The client was invited to an interview where he could outline his circumstances and demonstrate that although he had not accessed emergency accommodation, he was in fact homeless. This case highlights that accessing emergency accommodation is not necessarily a prerequisite to homeless status. Furthermore, more broadly, it highlights the acutely complex and precarious housing situations people can find themselves in, and the necessity for expert and urgent legal advice, advocacy and representation.

Trends from our legal advice clinics also indicate that discrimination on housing assistance grounds is systemic. People who find themselves discriminated against on grounds of housing assistance are trying to secure or maintain a rented home, and face the risk of being made homeless. People who find themselves in such circumstances are often unable to bring a case to the WRC for discrimination without legal assistance.²⁹

²⁷ Further information can be found here: <https://www.gov.uk/government/consultations/housing-legal-aid-the-way-forward> - accessed on 11/01/2023

²⁸ Free Legal Advice Centres, FLAC Annual Report 2021 Towards Equal Access to Justice, <https://www.flac.ie/publications/flac-annual-report-2021/> (accessed 06/01/2023)

²⁹ For further information, please see "Housing Assistance and Discrimination, Scoping Study on the 'Housing Assistance Ground' under the Equal Status Acts 2000-2018" as published by the Irish Human Rights and Equality Commission (available here: [Housing Assistance and Discrimination \(ihrec.ie\)](https://www.ihrec.ie/Housing-Assistance-and-Discrimination))

In light of the above, it is crucial that the Scheme be expanded to clearly provide both advice and representation, in housing-related matters. Civil legal aid should include issues relating to social housing supports, emergency accommodation and disputes before quasi-judicial bodies, including the Residential Tenancies Board (RTB) and the WRC. In addition, civil legal aid should be available where a person faces the loss of their primary residence via legal process and in circumstances where evictions are threatened other than in accordance with law. We recommend that this expansion should include the provision of advice and representation before the RTB where there is a reasonable prospect that the person would become homeless as a result of the Notice of Termination.

Moreover, we recommend that civil legal aid in the form of specialist advice and representation in the areas of forced evictions and discrimination experienced by Travellers is provided for in order to ensure equal access to justice in the area of accommodation.

These measures would address a huge unmet legal need which is currently affecting the very communities the Scheme was intended to support.

Children's rights

It is currently unclear in what circumstances and how the services of the Legal Aid Board can be availed of by those under 18 years of age or on their behalf. As per the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (COE Guidelines on Child-Friendly Justice):³⁰

- Children have a right to receive legal information and advice in understandable language, adapted to age, maturity and abilities. (Guideline 2)
- Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties. (Guideline 37)
- Children should have access to free legal aid, under the same or more lenient conditions as adults. (Guideline 38)

CLM recommends the development of a clear policy on how children can access the services of the Legal Aid Board that accords with the COE Guidelines on Child-Friendly Justice and ensure that all staff receive appropriate training in how to communicate with children and on the COE Guidelines on Child-Friendly Justice.

Access to justice for children and young people cannot be dependent on the means or support of their guardians.

In some instances, a young person's legal guardian may not be supportive of the young person's legal concern or complaint. Through our work, we are aware that a young person may need advice or representation relating to LGBT+ rights, in particular discrimination on the grounds of gender or sexual orientation and may not enjoy the support of legal guardians in obtaining that legal advice or representation. It is therefore necessary that legal aid can be assessed in certain circumstances

³⁰ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice available at <https://rm.coe.int/16804b2cf3>

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

In other instances, legal representation is required to vindicate the fundamental rights of a child. In considering circumstances where legal aid should be available to vindicate fundamental rights, CLM recommends that special consideration be given to children's rights. Research into best practice in the area may be considered to ensure Ireland comply with its commitment to the COE Guidelines on Child-Friendly Justice and Guideline 38: *Children should have access to free legal aid, under the same or more lenient conditions as adults.*

Case study illustrating the need for legal representation to vindicate children's fundamental rights

Daniel (not his real name) and his parents sought legal advice from CLM on his rights as a student with a visual impairment and access to Leaving Certificate exam papers. Daniel is legally blind and had been educated since fourth class with the support of assistive technology. The family's efforts to secure digital format Leaving Certificate exam papers from the State Examination Commission (SEC) had not proved successful. Should our client have had to use the traditional hardcopy exam papers, his maths paper for example would have been enlarged on the day of the exam to such an extent that it would run to approximately 52 A3 pages.

CLM advised Daniel and his parents on constitutional rights and equality law in the area of education. The barriers presented our client in sitting his Leaving Certificate exams appeared to breach his fundamental rights with very serious repercussions for this young person and his future. The family were assisted with their Freedom of Information request and in their communications with the SEC and the Department of Education. CLM instructed Counsel on their behalf and issued a letter to the SEC requesting that they provide digital format Leaving Certificate exam papers to our client, warning that plenary proceedings would be issued if they failed to do so. Our solicitor ensured that all communication was straightforward and appropriate for a young person. CLM's staff are trained in the principles of child-friendly justice and reflect the principles in their engagements.

In October 2022, SEC published the scheme of Reasonable Accommodations at Certificate Examinations for 2023. The scheme included examinations papers in PDF for visually impaired Leaving Certificate students for the first time. More particularly, on a pilot basis, the SEC will provide examination papers in read-only PDF format to Leaving Certificate candidates who are being provided with reasonable accommodation on the grounds of visual impairment.

Daniel can now sit his exams in a format that is accessible to him and accords with how he has used assistive technology throughout his secondary education. For his parents, they found the assistance navigating the law and advocating on behalf of their family made the difference in vindicating their child's rights.

Environmental issues

We are in a Dáil-declared climate and biodiversity emergency. There are many and significant environmental protections and obligations contained in national and EU law but without access to justice in this area, such laws are without enforcement, implementation and accountability—something which is a key feature of environmental injustice, and which comes up regularly in CLM's legal work.

Access to environmental justice is recognised as a right in international environmental law. Principle 10 of the Rio Declaration, the Aarhus Convention, CJEU judgments and European Commission communications accord a central importance to access to justice in achieving the goal of environmental protection.

Ireland has been criticised by the EU Commission as being the most expensive member state in which to make an environmental claim before the courts and while individuals are not specifically excluded from legal aid in environmental matters, certain exclusions within the Legal Aid Scheme may prevent legal aid from being granted. These exclusions include disputes relating to rights and interests over land, actions representing a group and actions looking to establish precedents on a particular point of law. Furthermore, the Scheme, as recently confirmed by the High Court (currently under appeal) does not provide legal aid for organisations, including Environmental NGOs³¹.

To ensure effective access to justice in line with the Aarhus Convention, Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention on Human Rights, the Civil Legal Aid Scheme should be amended to provide for legal aid for plaintiffs, including environmental NGOs, seeking to challenge environmental decisions. This should include the amendment of the express restriction on civil legal aid being granted in public interest and multi-party actions, as set out in Section 28(9) of the Civil Legal Aid 1995. Representative or multi-party actions are an effective way for marginalised persons to vindicate their rights in court. In its consultation paper on multi-party litigation, the Law Reform Commission recommended that the 1995 Act be interpreted as allowing legal aid for representative actions. Despite such reform being desirable in terms of access to justice, increased efficiency and greater consistency in the law, this recommendation has not been followed.

We note the recently published Planning and Development Bill 2023 contains a commitment to “bring forward an administrative scheme to deal with costs associated with initiating any proceedings relating to non-compliance with national law relating to the environment¹⁴”. We await further detail of this important measure with great interest.

Assisted Decision Making (Capacity) Act 2015

One further example, among many, is the provision of legal aid under the new Assisted Decision-Making Act. Currently, it is not envisaged that there will be legal aid available to those who wish to establish an enduring power of attorney or an advanced healthcare directive under the new Assisted Decision Making Act. These legal documents cannot be executed without the assistance of a solicitor and making this service an additional role of the Legal Aid Board would allow those who wish to have these documents in place, but cannot afford the legal fees, to do so. We recommend that the Legal Aid Board provide this service.

In relation to the provision of Legal Aid under Part 5 and Part 6 of the Assisted Decision-Making (Capacity) Act 2015 when the applicant is someone other than the relevant person or ward. In many cases, the applicant will be a family member of the relevant person or ward seeking to resolve the question of capacity and secure appropriate decision support arrangements. Family carers

³¹ In *Friends of the Irish Environment v Legal Aid Board* [2020] IEHC 454 the court held that the Legal Aid Act, 1995 applies only to natural persons and was not intended to apply to legal persons such as the applicant.

seeking to make complex applications to the Circuit Court and High Court under the Assisted Decision-Making (Capacity) Act 2015, and sourcing documentation and experts reports to support the application, should be able to access legal aid under the Scheme.

Recommendations by the Immigrant Council of Ireland

We support the position of the Immigrant Council of Ireland and their recommendation submitted as part of the Review to broaden the remit of legal aid in immigration matters beyond international protection. In particular, we are aware of the legal assistance required by certain groups, such as unaccompanied minors, those facing deportation, and victims of trafficking in order to ensure vindication of their rights. It is necessary for people in precarious circumstances such as these to be aware of and have access to specialised legal advice and representation and in the main do not have sufficient resources to access a private solicitor.

In conclusion, we recommend that the Scheme be expanded to cover all areas of law. However, in the interim, we recommend that the Legal Aid Board maintain detailed records of all refusals of legal aid and the specific reasons for any such refusal. As highlighted above, the extent to which the services of the Legal Aid Board can be accessed in many areas of law is unclear. Publicly available records capturing all refusals of legal aid and the reasons for any such refusal, would provide further clarity on the implementation of the Scheme in practice and its current limitations.

2. Do you have any particular views on how types of cases should be prioritised for support, advice and representation in the future under the Scheme?

The majority (an aggregate of 79.1%) of Legal Aid Board cases last year were in the area of general family law and divorce/separation with only 20.9% relating to other civil matters.³² This statistic is not reflective of the need for advice, support and representation in areas such as employment, equality, housing, debt, social welfare and environment, which are common issues that present to community law centres such as CLM.³³

It is our recommendation that priority for support, advice and representation should not be based on the area of law a case centres on, but rather on the need for legal aid of the individual when assessed under a revised means and merit test, as discussed below. Some cases have a level of urgency which requires prioritisation, and a revised Scheme should provide for triage. In our own experience, our free legal advice clinics perform this function very well, allowing us prioritise urgent matters, for example, where there is an impending statute date or where a family is at immediate risk of homelessness.

³² <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/annual-report-2021.pdf>

³³ The top five areas for CLM Northside this year: Family (20%) Employment (16%) Housing (14%) Debt (10%) and Social Welfare (6%). In CLM Limerick: Housing (30%) Employment (17%) Family (16%) Homelessness (8%) Wills/probate (5%)

Issue 1 – Types of civil law cases <i>Summary of recommendations</i>	
Considering the current operation of the Scheme and the areas of civil law that are currently covered, what areas of civil law do you think it should cover? What is your reasoning for this?	
All areas of law should be covered by the Scheme, to ensure people are able to have their voice heard, exercise their rights, challenge discrimination and hold decision-makers accountable. The following areas which are currently excluded (or de facto excluded) from the operation of the Scheme should be included to effectively bridge the gap of the unmet legal need in Irish society:	
1	Employment and equality claims before the Workplace Relations Commission
2	Social welfare appeals where representation is necessary either for oral hearings or making written submissions or both; and where the Department of Social Protection asserts an overpayment of social welfare.
3	Advice and representation in housing-related matters, focusing on issues relating to social housing supports, emergency accommodation and disputes before quasi-judicial bodies, including the Residential Tenancies Board (RTB) and the WRC; where a person faces the loss of their primary residence via legal process and in circumstances where evictions are threatened other than in accordance with law; and specialist advice and representation in the areas of forced evictions and discrimination experienced by Travellers.
4	Children’s rights - develop a clear policy on how children can access the services of the Legal Aid Board that accords with the COE Guidelines on Child-Friendly Justice and ensure that all staff receive appropriate training in how to communicate with children and on the COE Guidelines on Child-Friendly Justice.
5	Environmental issues - provide for legal aid for plaintiffs, including environmental NGOs, seeking to challenge environmental decisions; amend the express restriction on civil legal aid being granted in public interest and multi-party actions, as set out in Section 28(9) of the 1995 Act.
6	Family carers seeking to make complex applications to the Circuit Court and High Court under the Assisted Decision-Making (Capacity) Act 2015, and sourcing documentation and experts reports to support the application, should be able to access legal aid under the Scheme.
7	The Legal Aid Board should maintain detailed records of all refusals of legal aid and the specific reasons for any such refusal. Publicly available records capturing all refusals of legal aid and the reasons for any such refusal, would provide further clarity on the implementation of the Scheme in practice and its current limitations.
Do you have any particular views on how types of cases should be prioritised for support, advice and representation in the future under the Scheme?	
8	Priority for support, advice and representation should not be based on the area of law a case centres on, but rather on the need for legal aid of the individual when assessed under a revised means and merit test.
9	We support the recommendation of the Immigrant Council of Ireland to broaden the remit of legal aid in immigration matters beyond international protection. In particular, we are aware of the legal assistance required by certain groups such as unaccompanied minors, those facing deportation, and victims of trafficking in order to ensure vindication of their rights. It is necessary for people in precarious circumstances such as these to be aware of and have access to specialised legal advice and representation and in the main do not have sufficient resources to access a private solicitor

Issue 2 – Jurisdictions covered by the Scheme

3. Should the current exclusion of proceedings before quasi-judicial settings continue to apply? Why? /Why not?

Proceedings before quasi-judicial settings should not be excluded from legal aid.

Workplace relations Commission (WRC)

CLM has particular experience in representing clients before the WRC and thus we hope our perspective will be of use to the Review Committee. The WRC plays a key role in ensuring that justice is done in the employment and equality context.³⁴

Unfortunately, there are many procedural barriers at present for those trying to bring a claim under the Equal Status or Employment Equality Acts:

- Foremost among these is the lack of civil legal aid available in cases before the WRC. Under the Civil Aid Act 1995, the remit of the Legal Aid Board does not extend to providing people with legal representation before quasi-judicial tribunals and bodies, including the WRC.³⁵ This is particularly concerning, as those challenging discrimination in the workplace or in accessing services often have to navigate complex employment and equality laws without legal assistance.³⁶ This creates a serious unmet legal need in such cases, raising concerns around the inequality of arms where an individual complainant is representing themselves against a large employer or a State body with the benefit of a legal team. The laws are complex and technical and in practical terms, wholly inaccessible to people who do not have an advocate, union representation or cannot afford to pay for a private solicitor. Many workers and particularly those working in low paid, precarious jobs, simply can't afford the services of a lawyer. Most are either forced to represent themselves, often across the table from the employer's or service-provider's legal team, or they do not pursue a case at all. It is simply too much to expect people in cases involving sexual harassment, pregnancy discrimination or complex equal pay cases to have the resources or capacity to represent themselves.
- Complex legal concepts including reaching the standard of a *prima facie* case and establishing a comparator, as well as the operation and application of various EU Directives, for example the Race Directive, pose challenges to practitioners in the area, never mind individuals whose expertise lies elsewhere.

These procedural barriers raise serious concerns about access to an effective remedy. If a person has a moderate or low salary, it will be difficult to get a solicitor to act for them, in circumstances where a successful complainant will not be awarded costs. The records of the WRC show that very few equal pay claims are being brought despite the fact we still have a concerning gender pay gap. Similarly, there are very few Employment Equality and Equal Status cases taken under the Traveller Community ground, despite the disproportionate discrimination experienced by Travellers. These cases are complex and the absence of legal aid creates a huge barrier to achieving equality in the area.

³⁴ CLM Submission to the WRC on Remote Hearings during the COVID-19 restrictions 2020, pg. 4.

³⁵ Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee, 2021, pg. 62.

³⁶ CLM Submission on a new National Action Plan against Racism for Ireland, pg.12.

The intention in creating the WRC was to remove the need for lawyers but, in practice, employers, service-providers and public bodies are more often legally represented, which is concerning from the point of view of the balance of power and natural justice. The WRC Annual Report for 2021 shows that 1,255 parties (45%) were self-represented, which broke down as follows: 716 (57%) complainants and 539 (43%) respondents.³⁷

There are also clear economic benefits to expanding the Scheme to include employment and equality law, as evidenced by the above-referenced report entitled *A Tool for Justice: A Cost Benefit Analysis of Legal Aid*³⁸.

It is submitted that the availability of legal aid should be determined by need, rather than area of law. The WRC should not be excluded from the Scheme, particularly in view of the Supreme Court's finding in the *Zalewski* case that the WRC is indeed engaged in the administration of justice. The findings of the Supreme Court in *Zalewski* put the WRC far above an "administrative or quasi-judicial tribunal" which are, arguably justifiably depending on the definition, excluded.

In addition, the Court held in *Zalewski* that the functions of the WRC are the administration of justice, pursuant to Article 37. In delivering his judgement Mr Justice O'Donnell (as he was then) stated that in such proceedings "the standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34". If the standard of justice administered under Article 37 cannot be less than the standard delivered under Article 34 then it must follow that the rules relating to legal aid should also be the same. If legal aid is available, as it is, for matters pertaining to Article 34, then it should be available to matters pertaining to Article 37.

In this context, we see no legal rationale for the exclusion of employment and equality law from a State-funded scheme which is specifically constituted to "make provision for the grant by the state of legal aid and advice to persons of insufficient means in civil cases."³⁹

We propose the Scheme be expanded to cover cases taken to the WRC under employment, employment equality and equal status legislation. We note that the Law Society has previously, in its submission to the Public Consultation on a New National Action Plan Against Racism for Ireland,⁴⁰ highlighted the absence of State-funded legal aid to represent complainants before the WRC. This absence is irrespective of the complexity of the case, the vulnerability of the complainant or whether the respondent is legally represented.

In practical terms, individuals face an uphill battle in enforcing their rights under the EEA and the ESA before the WRC. Complex legal concepts, as well as the operation and application of EU law, coupled with the obligations to provide detailed written submissions, pose challenges to practitioners in the area, never mind people without that particular expertise. Advocacy

³⁷ https://www.workplacelrelations.ie/en/publications_forms/corporate_matters/annual_reports_reviews/annual-report-2021.pdf

³⁸ *A Tool for Justice: A Cost Benefit Analysis of Legal Aid*. Report available at

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/592901569218028553/a-tool-for-justice-the-cost-benefit-analysis-of-legal-aid>

³⁹ Civil Legal Aid Act 14995

⁴⁰ <https://www.lawsociety.ie/globalassets/documents/submissions/2021-submission-national-action-plan-against-racism.pdf>

organisations such as AsIAM and Mental Health Reform have emphasised the importance of legal aid in cases involving disability.

Social Welfare Appeals Office

In terms of legal representation in social welfare appeals, as with the WRC, the quasi-judicial organ of the DSP – the Social Welfare Appeals Office (SWAO) – falls outside of the remit of the Legal Aid Board under the Civil Legal Aid Act 1995.

Social welfare appeals concern complex areas of law and often involve aspects of EU law. As highlighted above at Issue 1, there are potential issues with first instance decisions and the likelihood of success is greatly increased where an oral hearing is held in an appeal (the success rate on appeal in 2021 was 54.8% which increased to 69.8% where an oral hearing took place). It is possible that the increased chance of success in oral hearing is related to the appellant having representation or advocacy support in the hearing. On last enquiry, the SWAO did not record the instances of representation in appeals and therefore this statement cannot be confirmed.

While the appeal process is intended to be accessible and informal, the absence of legal advice and representation can make it extremely difficult for people to identify why they are failing to secure a payment they consider themselves entitled to. Fair procedures are fundamental to social welfare appeals and there is a considerable inequality of arms in the appeals process. The appeals process has been criticised as lacking in transparency, failing to publish decisions, and having a perception of bias⁴¹ insofar as the SWAO stands within the DSP, which places appellants at a further disadvantage. In the main, those appealing a social welfare decision do not have the means to engage a private solicitor and do not even consider social welfare as an area governed by legal rights.

CLM recommends that the Legal Aid Board provide early stage legal advice in social welfare appeals and provide legal representation before the SWAO where necessary, either for oral hearings or for making written submissions or both.

Collaboration with advocacy services supporting people in social welfare matters should also be coordinated to ensure there is access to legal advice and legal aid where necessary. Proper funding of such services should be provided and consistency of service across the country should be available.

Residential Tenancies Board (RTB)

Private tenants who wish to have a dispute adjudicated before the RTB are not eligible for civil legal aid. The threat of losing one's home, privacy and dignity as a result of a dispute with a landlord is hugely stressful and can have a detrimental impact on families. Without access to legal aid in cases before the RTB, tenants are denied access to legal information, advice and remedies and representation.

⁴¹ FLAC: Not Fair Enough – Making the case for reform of the social welfare appeals system, 2012. Available at: [not_fair_enough_final.pdf \(flac.ie\)](https://www.flac.ie/sites/default/files/2012/12/not_fair_enough_final.pdf)

The Independent law centres are meeting that gap in services but, in the context of the current housing crisis and the rising figures of homelessness, it is vital that civil legal aid be available to private tenants who wish to bring a complaint before the RTB for adjudication, in particular where there is a dispute on the facts that may require submissions and/or cross-examination.

Issue 2 – Jurisdictions covered by the Scheme <i>Summary of recommendations</i>	
Should the current exclusion of proceedings before quasi-judicial settings continue to apply? Why? /Why not?	
Proceedings before quasi-judicial settings should not be excluded from legal aid.	
1	We propose the Scheme be expanded to cover cases taken to the WRC under employment, employment equality and equal status legislation.
2	We propose that the Legal Aid Board provide early stage legal advice in social welfare appeals and legal representation before the SWAO where necessary, either for oral hearings or for making written submissions or both.
3	Collaboration with advocacy services supporting people in social welfare matters should also be coordinated to ensure there is access to legal advice and legal aid where necessary. Proper funding of such services should be provided and consistency of service across the country should be available.
4	It is vital that civil legal aid be available to private tenants who wish to bring a complaint before the RTB for adjudication, in particular where there is a dispute on the facts that may require submissions and/or cross-examination.

Issue 3 – Eligibility

4. How appropriate are the current eligibility thresholds?

The Legal Aid Board is the statutory, independent body responsible for the provision of civil legal aid and advice to persons of “modest means” in accordance with the provisions of the Civil Legal Aid Act 1995. In its 2021 Annual Report, it states: *“The financial eligibility criteria for legal aid and advice have not been substantially changed since 2006. There is no discretion or capacity to provide services to persons who may be marginally outside the financial limits. This effectively reduces access to our services over time.”*

The current eligibility thresholds to qualify for legal aid and advice, and the allowances against income, are inappropriate and out of touch with the reality of the cost of living. We regularly meet people at our legal advice clinics who cannot afford a solicitor but who also do not meet the current thresholds for legal aid, due to the overly strict means test.

Engagement with Social Justice Ireland in relation to the eligibility thresholds

In developing and reviewing the eligibility thresholds, we recommend that organisations like Social Justice Ireland⁴² should be consulted with. In preparing for this submission, we engaged with Social Justice Ireland, and we are grateful for their expertise when considering the area of eligibility assessments in this section of our paper.

The insights provided by Social Justice Ireland in relation to the eligibility criteria to access civil legal aid are set out in italics below.

Means

The current means test thresholds were prescribed by the Civil Legal Aid Regulations 2006 (the Regulations). The Regulations provide that the applicant must have a disposable income not exceeding €18,000, where “disposable income” refers to all income less allowances and “income” refers to all income received by the applicant other than child maintenance, Child Benefit and certain Supplementary Welfare payments and charitable payments.

The allowances, also provided for in the Regulations, are as follows:

- *Spouse: €3,500*
- *Child or other dependent: €1,600*
- *Childcare per child: €6,000*
- *Accommodation: €8,000*
- *Ex gratia allowance: €1,040*
- *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.

⁴² Social Justice Ireland is an independent think tank and justice advocacy organisation that advances the lives of people and communities through providing independent social analysis and effective policy development.

Capital

Capital owned by the applicant is also assessed and subject to a maximum value threshold of €100,000, not including the family home.

Overall Disposable Income Threshold

As stated above, the current maximum disposable income permitted is €18,000 once allowances are considered. In 2023, the rate of the National Minimum Wage will be €11.30 per hour, or €22,995.73 gross annually for a 39-hour week. After tax and social insurance contributions, the take home pay of an employee earning the National Minimum Wage will be €20,766. This is over 15 per cent higher than the current disposable income threshold meaning an applicant earning the National Minimum Wage and who is ineligible to apply any allowances other than income tax and social insurance would be over the income threshold.

If we apply the rate of the Living Wage for a single adult, as calculated by the Living Wage Technical Group⁴³, of €13.85 per hour, this equates to €28,185.03 gross per annum for a 39-hour week, or €24,476 after income tax and social insurance. This is almost 36 per cent higher than the income threshold.

In 2006, when the disposable income limit was set, average weekly industrial earnings were €601.21⁴⁴. Preliminary estimates for Q3 2022 indicate that average weekly earnings have increased to €864.32, or 44 per cent. Applying a similar rate of inflation to the disposable income threshold would equate to €25,920.

We therefore submit that increasing the disposable income threshold to at least €21,000 would be appropriate.

Allowances

A return to spending post-Covid, the pandemic-related supply-chain disruption, and the impact of Russia's invasion of Ukraine have all contributed to a spike in inflation over the past year, with the cost of all goods and services increasing by 9.2 per cent in the year to October 2022⁴⁵. Research by the Central Bank of Ireland⁴⁶ and the Central Statistics Office⁴⁷ 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.

Childcare Allowance

According to Pobal's Annual Early Year's Sector Profile Report 2020/2021⁴⁸, the average weekly cost of full-time childcare in Ireland was €186.84, or €9,715.68 per annum. This is almost 62 per cent higher than the childcare allowance threshold. While some moves have been made by Government

⁴³ [Living Wage Technical Group, 2022, Living Wage 2022/2023](#)

⁴⁴ [CSO, 2007, Statistical Yearbook of Ireland 2007](#)

⁴⁵ CSO, 2022, Consumer Price Index October 2022

⁴⁶ [Central Bank of Ireland, 2022, Household Characteristics, Irish Inflation and the cost of living](#)

⁴⁷ [CSO, 2022, Estimated Inflation by Household Characteristics March 2022](#)

⁴⁸ [Pobal, 2022, Annual Early Year's Sector Profile Report 2020/2021](#)

to reduce these costs to families, the reality is that for many accessing full-time childcare these measures have not gone far enough and costs continue to rise in line with inflation.

We therefore submit that increasing the childcare allowance to at least €9,000 would be appropriate.

Accommodation Allowance

Ireland is experiencing a housing crisis. For homeowners, the Residential Property Price Index indicates that national property prices increased by 10.8 per cent in the year to September 2022, with prices in Dublin increasing by 9.4 per cent and outside of Dublin increasing by 11.9 per cent⁴⁹. The median price of a home in Ireland in September 2022 was €299,500. The cost of servicing a mortgage on such a property, with a Loan-to-Value of 90 per cent over a 30-year term, ranges from €1,029.29 to €1,553.46 depending on the lender and product chosen⁵⁰. This equates to between €12,351.48 to €18,641.52 annually.

The cost of renting has also increased significantly since 2006. The latest RTB Rent Index indicates that standardised average rents in new tenancies were €1,464 per month nationally in Q2 2022, €1,091 outside the Greater Dublin Area, and €2,011 in Dublin⁵¹. Taking the average national figure of €1,464, this equates to €17,568 annually.

While the exclusion of rent subsidies such as the Housing Assistance Payment (HAP) from the income calculation is very welcome, this does nothing to address the inadequacy of the accommodation allowance in today's market when low-income tenants in receipt of HAP are supplementing their rent through 'HAP top-ups'. A 2019 survey found that 48 per cent of tenants who in receipt of HAP who were surveyed by Threshold were paying a top-up directly to their landlord⁵². These top-ups ranged from €20 to €575 per month, with an average of €177 per month. This is in addition to the differential rent paid by a tenant in receipt of HAP, which averaged €223 per month at the time. These payments combined come to an annual average of €4,800 in addition to HAP. In Q1 2019, at the time this survey was undertaken, average rents in new tenancies were €1,169, according to the RTB Rent Index of the time⁵³. Rents have increased by over 25 per cent since then.

We therefore submit that an accommodation allowance of €16,000 would be more appropriate in the current housing climate.

An Alternative Method – the Reasonable Living Expenses approach

Section 29 of the Civil Legal Aid Act, 1995 (the 1995 Act), which provides for the establishment of financial eligibility assessments does not detail what form those assessments should take or the nature of allowances. This is at the discretion of the Minister using the powers conferred by section 37 of the 1995 Act. It is therefore open to the Minister to devise an alternative method of determining financial eligibility.

⁴⁹ [CSO, 2022, Residential Property Price Index September 2022](#)

⁵⁰ Calculated using the CCPC's mortgage repayment calculator tool available on www.ccpc.ie, correct as at 02 December 2022

⁵¹ [RTB, 2022, Rent Index Q2 2022](#)

⁵² [Threshold, 2019, The Housing Assistance Payment \(HAP\): making the right impact?](#)

⁵³ [RTB, 2019, Quarterly Rent Index](#)

One such alternative currently exists within the remit of the Department of Justice, that of the Reasonable Living Expenses for the purpose of the Personal Insolvency Act, 2012 (as amended) (the 2012 Act).

Section 23 of the 2012 Act provides for the Insolvency Service to draft and adopt Guidelines, in consultation with the Minister for Justice, the Minister for Finance, the Minister for Social Protection and such other persons or bodies as the Insolvency Service considers appropriate or as the Minister may direct, as to what constitutes a reasonable standard of living and reasonable living expenses. In developing these Guidelines, the Insolvency Service has drawn from the work of the Vincentian Partnership for Social Justice⁵⁴ on a Minimum Essential Standard of Living⁵⁵. While the 'Reasonable Living Expenses' do not include everything included in the Minimum Essential Standard of Living, they are more reflective of living costs than the allowances for Civil Legal Aid. In addition, the Reasonable Living Expenses do not proscribe the cost of accommodation, childcare or 'special circumstances' (medical expenses, expenses associated with caring duties and so on)⁵⁶. The applicant is required to provide evidence to vouch for the amount actually paid under each of these three headings, which is then added to the set expenses for the household type. If vouched expenses seem excessive, the ISI may query them and retains the option of refusing an application unless these expenses are reduced.

The Guidelines setting out the set expenses are reviewed annually, which allows them to adapt to situations such as over-heating in the property market or cost of living increases.

Cost of Disability including Cost of Cancer and other serious illnesses

When considering eligibility thresholds for legal aid, attention should also be paid to the real cost of disability and the cost of cancer or other serious illnesses. These costs were captured in recent research by the Department of Social Protection (<https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/>) and by the Irish Cancer Society (<https://www.cancer.ie/about-us/about-the-irish-cancer-society/what-we-do/cancer-advocacy/real-cost-of-cancer>).

We recommend that health and disability representative bodies be consulted with in relation to eligibility thresholds.

⁵⁴ Now the Vincentian MESL Research Centre

⁵⁵ www.budgeting.ie

⁵⁶ For more information, see [Back on Track | Reasonable Living Expenses Calculator - Back on Track](#)

Case study on the impact of the financial eligibility test

CLM recently took a judicial review on behalf of a client who had been excluded from accessing legal aid because their Housing Assistance Payment pushed them over the financial threshold.

The client had emerged from a situation of domestic violence and was a lone parent who was out of work and caring for young children. However, they were unable to access legal aid to pursue family law reliefs because their HAP payment, which is paid directly to the landlord by the local authority as a social housing support, was assessed as income by the Legal Aid Board.

Shortly after we took the judicial review on behalf of our client, the Department of Justice then announced that Housing Assistance Payment and other social housing support measures – Rental Accommodation Scheme, Rent Supplement, Mortgage Interest Supplement and Rent Allowance – would be excluded from the calculation of entitlement to legal aid. These changes brought great relief to many individuals and families who may be dealing with difficult situations at work or domestic violence in the home, but who cannot afford to pay for legal representation of their own.

We welcome this change and commend the proactive approach of the Legal Aid Board in its aftermath, in reaching out to people who had previously been refused legal aid because their HAP payment brought them over the financial threshold.

5. Are there other allowances or considerations, which should be made in determining eligibility (financial or otherwise) for the Scheme?

In any assessment of the correct thresholds for financial eligibility, consideration should be given to the real cost of legal representation in this country, in order to provide meaningful context to the figures discussed above. Also see submissions below in relation to instances where CLM recommends waiving the eligibility requirements in strategic public interest litigation and cases involving fundamental personal rights. Crucially, the eligibility test should be regularly reviewed to reflect the real cost of living.

See also the paragraph above on considerations around Cost of Disability, including Cost of Cancer and other serious illnesses.

6. Are there 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? If so, what types of cases do you believe fall into this category?

The Scheme and strategic public interest litigation

In line with the community law centre model we have advocated above, a Scheme should perform a strong public interest litigation function. As already stated, the express restriction on civil legal aid being granted in public interest and multi-party actions, as set out in Section 28(9) of the 1995 Act, should be removed. Note also the recommendations of the Review of the Administration of Civil Justice in 2021 that a scheme for multi-party actions be put in place.

CLM further recommends that strategic cases taken in the public interest should be eligible for a waiver of the financial eligibility test. This is in circumstances where an applicant may expose themselves to serious financial risk in pursuing the case, sometimes with little or no individual benefit or compensation.

An example of this would be a judicial review of a discriminatory decision by a public body which affects a wider group, where the individual complainant places themselves at risk of a High Court costs order being made against them if the case is unsuccessful.

Decisions on the application of such a waiver should be made by the Legal Aid Board as part of a strategic public interest function, which should be informed by ongoing collaborative consultation with advocacy organisations currently engaging in strategic litigation, including ILCs.

The courts recognise that these cases are necessary to test and ensure that the rights guaranteed by law and by our Constitution are protected. Indeed, we regularly see courts choosing not to award costs against an unsuccessful litigant, where a law has been clarified or tested. In England, for example, there is funding available for any case of “significant wider public interest” defined as a case where there are “(a) real benefits to the public at large, other than those which normally flow from cases of the type in question; and (b) benefits for an identifiable class of individuals, other than the individual to whom civil legal services may be provided or members of that individual’s family”.⁵⁷

Cases fundamental to the rights of the individual?

We acknowledge that 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. For example, in family law cases involving domestic violence, the financial eligibility test for civil legal aid is based on the shared assets/means of a married couple. This may not be a true reflection of the disposable income available to each individual within the couple. In this regard, we welcome the waiver of the financial contribution in such cases.

We note that there is recent precedent for exempting individuals/groups from financial eligibility requirements. For example, in relation to Coroners’ Inquests, the Board operates a private practitioner panel for the provision of legal aid to family members in respect of inquests relating to certain deaths which are prescribed in the Coroners Acts (usually deaths in custody or maternal deaths). Typically, the numbers of legal aid certificates issued per year for these cases is low. Under the authority conferred by section 24 of the Coroners Act 1962, the Attorney General ordered that fresh inquests be held into the deaths of 48 people who died at the Stardust Nightclub on the night of 14th February 1981. We note that during 2021, the Minister for Justice signed regulations exempting the family members who are being represented in this inquest from the legal aid financial eligibility requirements and the Board issued legal aid certificates to all 48 family members. These inquests are set to begin in April 2023.

Another area in which financial eligibility tests are dispensed with is the *Abhaile* scheme, which is fully funded by the State. CLM was involved in the development of *Abhaile* at its initial stages. If a borrower qualifies for the *Abhaile* Scheme, there is no cost for them to use the services provided.

⁵⁷ Civil Legal Aid (Merits Criteria) Regulations 2013, reg 6(1)

To qualify the applicant must meet all four of the following conditions:

- Be in mortgage arrears on their home.
- Be insolvent (as defined under the Personal Insolvency Act 2012).
- Be at risk of losing their home due to arrears.
- The home is reasonable to the person's needs

In terms of international best practice, we note that eligibility for assistance by way of representation before a court or tribunal in Scotland is not subject to a financial eligibility test in certain prescribed matters.

We recommend that a similar list be agreed and reviewed periodically, to include for example claims involving discrimination and/or harassment/sexual harassment and cases where the applicant's sole source of income is social welfare.

7. Should some form of merits test apply to the cases at 6? If so, what should that look like?

We are of the view that a form of merits test should still apply to the public interest litigation referred to in section 6 above. However, such a merits test should consider both the public interest role played by the Legal Aid Board in such cases and the fact that such litigation might involve advancing novel arguments. It is important that weight also be given in such a test to the question of whether a successful outcome might be achieved for the client through a settlement, a strategic issue advanced, or a discriminatory policy challenged, rather than a merits test narrowly focused on likelihood of winning a case.

8. Do you agree with how merit is defined and what matters should be included in the merits test?

We understand that the current merits test involves the Legal Aid Board assessing whether an average person would be willing to go to court if they were paying for it with their own money and whether a solicitor or a barrister acting reasonably would recommend that the person would go to court, knowing that the applicant was paying for it and based on the facts of the case. Our comments in question 7 in relation to public interest litigation are relevant here - a merits test should consider both the public interest role played by the Legal Aid Board in such cases and the fact that such litigation might involve advancing novel arguments before the Courts.

Our understanding is that the following factors are also considered when judging the merits of a case:

- Do you have grounds for taking the case, or defending the case the other person is taking against you?
- Is it the best way of solving your dispute?
- Would you be likely to win your case?
- The cost to the taxpayer against the benefit you might receive if you win.

The last item in this list may imply quantification of two very disparate sets of circumstances and requires further clarification. For example, it is difficult to determine what the cost benefit of a successful constitutional challenge on the right to education for a child may be. CLM recommends here that either this should be removed or limited to a fixed cohort of cases.

Issue 3 – Eligibility Summary of recommendations	
How appropriate are the current eligibility thresholds?	
The current eligibility thresholds to qualify for legal aid and advice, and the allowances against income, are inappropriate and out of touch with the reality of the cost of living.	
1	In developing and reviewing the eligibility thresholds, organisations such as Social Justice Ireland (SJI) should be consulted with to ensure that disposable income thresholds and accommodation and childcare allowances reflect the reality of the cost of living. We further recommend that eligibility thresholds be subject to regular review.
2	When considering eligibility thresholds for legal aid, attention should also be paid to the real cost of disability and the cost of cancer or other serious illnesses. We recommend that health and disability representative bodies be consulted with in relation to eligibility thresholds.
Are there other allowances or considerations, which should be made in determining eligibility (financial or otherwise) for the Scheme?	
3	In any assessment of the correct thresholds for financial eligibility, consideration should be given to the real cost of legal representation in this country. The eligibility test should be regularly reviewed to reflect the real cost of living.
Are there 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? If so, what types of cases do you believe fall into this category?	
4	Strategic cases taken in the public interest should be eligible for a waiver of the financial eligibility test.
5	Certain types of cases are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test. For example, in discrimination and family law cases involving domestic violence.
Should some form of merits test apply to the cases at 6? If so, what should that look like?	
6	Any merits test should take into consideration the public interest role the Legal Aid Board plays in advancing such cases, the fact that they often raise novel arguments and the benefits involved in taking the case outside of a 'win' for the client.
Do you agree with how merit is defined and what matters should be included in the merits test?	
7	The merits test should be reviewed in relation to public interest and fundamental rights cases to reflect the public interest role of the Legal Aid Board and the importance of raising important issues before the Courts.

Issue 4 - Financial Contribution

9. How appropriate are the current levels of financial contributions?

The legal services provided by the LAB are subject in most cases to the applicant paying a financial contribution and thus are not 'free'. The legal advice contribution is assessed on the applicant's disposable income, i.e. income after certain deductions. The legal aid contribution is assessed on the applicant's disposable income and disposable capital. The minimum contribution is €30 for legal advice and €130 for legal aid. The maximum contribution is €150 for legal advice and for legal aid the contribution is 25 per cent of the amount of their disposable income over €11,500 plus €130. Depending on the value of the applicant's capital assets, they may also be liable to pay a capital contribution toward legal aid.

In limited circumstances, no contribution is payable, or the contribution may be waived. While, in the event that a person recovers money or property arising from the case, the Legal Aid Board may seek to recover the cost of providing legal services to the client.

CLM submits that, in principle, no contribution should be required from individuals, once they satisfy the financial eligibility test and the merits test. It is our position that once a means test has been applied, a financial contribution is not justifiable and should not be required. In this regard, we welcome the removal of the financial contribution in cases involving domestic violence, referred to above.

As regards the current LAB discretion to waive an applicant's legal fees where payment would cause hardship, we are not aware of any statistics on the number of applications made for such a waiver. We submit that the availability of a waiver should be communicated to each applicant who is above the financial eligibility threshold, as a matter of course.

10. Should the financial contribution be assessed differently in respect of different types of subject matter?

Financial contribution, if there is to be one, should be based on the ability of the person to pay it. The waiver applying to cases involving domestic violence cases should be retained and expanded.

11. If so, should an individual pay a contribution based on the complexity of the subject matter and pay that in instalments over the length of the case as the case is progressed on his/her behalf?

See above.

Issue 4 – Financial Contribution <i>Summary of recommendations</i>	
How appropriate are the current levels of financial contributions?	
1	In principle, no contribution should be required from individuals, once they satisfy the financial eligibility test and the merits test.
2	The availability of any waiver of fees should be communicated to each applicant who is above the financial eligibility threshold as a matter of course.
Should the financial contribution be assessed differently in respect of different types of subject matter?	
3	Financial contribution, if there is to be one, should be based on the ability of the person to pay it. The waiver applying to cases involving domestic violence cases should be retained and expanded.
If so, should an individual pay a contribution based on the complexity of the subject matter and pay that in instalments over the length of the case as the case is progressed on his/her behalf?	
4	See above.

Issue 5 – Mode of delivery

12. What are your views on the current modes of delivery of civil legal aid (i.e., through family law centres and private panel of solicitors)? Are there additional modes you would suggest?

We recommend that the Civil Legal Aid Scheme is restructured in line with the community law centre model to include a public legal education and law reform function. In the interim, greater funding security should be ensured for independent law centres, who continue to meet the gap in State provision for legal aid in Ireland as they provide legal advocacy and representation in areas of law not catered or adequately catered for by the Scheme, including housing, debt, social welfare, equality and employment law.

Community law centres work to reduce and remove barriers to the law on the basis that all people should be able to access basic legal information and advice regardless of their income and background. They work to identify and unlock the legalities, regulations, policies, and procedures that manifest as barriers and obstacles to a fair and better life for all individuals in that community.

We recommend that the mode of delivery of civil legal aid be informed by targeted services for vulnerable, marginalised and often hard to reach individuals and groups such as prisoners, members of ethnic minorities, people with disabilities etc. A strategic model of delivery could target specific issues facing communities. An example of this is the opening of CLM's Centre for Environmental Justice.

Where the use of a panel of private practitioners is the model of delivering legal aid, it is vital that participants in any panel recognise and respond to the increased needs of many of the individuals who will avail of legal aid. Recipients of legal aid are proportionally more likely to have greater support needs, whether due to poor literacy skills, language, disability, or particular vulnerability arising from heightened family conflict or family crisis in circumstances of homelessness or other housing insecurity, socio-economic disadvantage, unemployment etc. In light of the complex needs of many recipients of legal aid, oversight of the quality of service received by all recipients of legal aid is essential.

CLM recommends that a survey be carried out of user experience that identifies separately the experience of users represented by Legal Aid Board solicitors and the experience of users represented by private practitioners. Such a survey should include details of any barriers experienced by users in availing of these services.

Issue 5 – Mode of delivery <i>Summary of recommendations</i>	
What are your views on the current modes of delivery of civil legal aid (i.e., through family law centres and private panel of solicitors)? Are there additional modes you would suggest?	
1	The Scheme should be restructured in line with the community law centre model to include a public legal education and law reform function.
2	In the interim, greater funding security should be ensured for independent law centres, who continue to meet the gap in State provision for legal aid in Ireland.
3	We recommend that the mode of delivery of civil legal aid be informed by targeted services for vulnerable, marginalised and often hard to reach individuals and groups such as prisoners, members of ethnic minorities, people with disabilities etc.
4	We recommend that a survey be carried out of user experience that identifies separately the experience of users represented by Legal Aid Board solicitors and the experience of users represented by private practitioners.

Issue 6 – Accessibility

13. What are key barriers to accessing the service?

The barriers to accessing justice were first identified in Ireland by the Pringle Report published in 1977, and its conclusions were echoed in Susan Gogan's research on unmet legal need in Ballymun in 2005,⁵⁸ FLAC's 2009 report *Civil Legal Aid in Ireland: 40 Years On*⁵⁹ and in a report compiled by CLM in 2013 on unmet legal need in Limerick,⁶⁰ some 35 years after the Pringle Report was published.

These reports found that the obstacles facing those living in disadvantage, in need of legal services, are not just cost and include:

- Intimidation of the legal world;
- Inaccessibility of legal services;
- Lack of awareness of rights and the law most relevant to disadvantaged communities including amongst the legal profession;
- Fear of not being taken seriously or of retaliation if legal action is taken; and
- Time, including waiting times for legal aid and the time it takes for a case to be heard.

In the community law centre model, hurdles are overcome through outreach, partnerships, collaboration and legal education and training.

The physical location of Legal Aid Board Law Centres, the development of outreach services with organisations embedded in the community, the provision of education on rights, the law and the services the Legal Aid Board provide, as well as proper resourcing of the Legal Aid Board services so as to reduce waiting times, would assist in overcoming the aforementioned barriers.

Despite ratification of the UNCRPD, the law remains a remote and inaccessible concept for many, particularly those with intellectual disabilities. The system is complex and often unsuitable for those who have difficulties with adversarial forms of communication.

Some of the barriers that CLM has encountered in its casework include:

- A lack of guidance provided to legal professionals when dealing with cases taken by or on behalf of people with intellectual disabilities
- Information being provided in an unsuitable format to be understood by people with intellectual disabilities
- Failure to provide appropriate non-adversarial arrangements in cases taken by or on behalf of people with intellectual disabilities

⁵⁸ Gogan, Susan, Law from a Community Perspective Unmet Legal Need in Ballymun BCLC 2005.

⁵⁹ https://www.flac.ie/assets/files/pdf/cla_in_ireland_40_years_on_final.pdf?issuusl=ignore

⁶⁰ Limerick Community Law & Mediation Centre, Community Consultation Report: Unmet Legal Need in Limerick, 2013. [LCLMC-Community-Consultation-Report-Unmet-Legal-Need-in-Limerick-Final-1.pdf](https://www.communitylawandmediation.ie/LCLMC-Community-Consultation-Report-Unmet-Legal-Need-in-Limerick-Final-1.pdf) ([communitylawandmediation.ie](https://www.communitylawandmediation.ie))

Through our casework, we have identified 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.

Given that disability is one of the grounds for discrimination under both the ESA and EEA, it is very important that proper measures and clear guidance are introduced to ensure people with physical and intellectual disabilities, as well as mental health difficulties, can be supported and represented in challenging discrimination etc. With the commencement of the Assisted Decision Making Act, many people with intellectual disabilities will have support decision makers, and a key focus of the Scheme should be on the provision of tailored and appropriate legal guidance and services to those with intellectual disabilities and their support decision maker where the person wants them included in the process.

Case Study: Barriers to justice for people with intellectual disabilities

CLM 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 the client.

Ultimately, the judge found that in this 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. 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.

14. How can the administration and delivery of the service be made to work better for the individual users, NGOs and communities?

In 12 above, we recommend that a community law centre model be adopted. We submit that the administration and delivery of the current service could benefit from the following features of the community law centre model, in order to work better for the individual users, NGOs and communities:

1. Firstly, their services are free and embedded in the community, making them as accessible as possible. Many of their information talks and legal advice clinics are delivered on an outreach basis in locations where the community is already congregating e.g. in community organisations, public libraries and parish halls. Also, local organisations and interest groups are represented on their Board and Advisory Committees to ensure their services are responsive to and shaped by the needs of the community.
2. Secondly, community education is a critical part of the work of community law centres. Access to justice begins long before anyone steps inside a courtroom, it begins with creating an awareness of rights and the law so that the community are more empowered to use the law to enforce those rights. Community law centres often encounter a lack of awareness of how the law can assist in situations of homelessness or refusal of social welfare, issues that are critical to social inclusion as they most affect a person's ability to participate fully in society. Mr Justice O'Donnell said in March that the law becomes "dangerously disconnected" from the public it is meant to serve if people do not have adequate access to information about their legal rights and the courts – *"Sometimes I think that people see the law, and understandably so, as something that does something to them, and yet I think CLM and other similar organisations show that the law can be a weapon for you to utilise in improving your situation"*. Former Chief Justice Clarke also commented that

“There are a range of reasons why people don’t get access to justice, sometimes it’s financial but sometimes it’s just a disconnect, and you need organisations that have a reach into the community, particularly into those parts of the community who wouldn’t naturally go to a solicitor. Therefore, being able to build on something like a community-based operation which has that kind of outreach is certainly, I think, part of the model by which you can better deliver justice.”

3. Thirdly, the community is empowered to use the law through the legal advice and representation service of community law centres. For example, CLM partners with other organisations to provide outreach legal advice clinics, around the country, and its legal representation work is focused on areas of law which disproportionately affect those living in disadvantage or which are not catered for by the Scheme – these include employment, equality, social welfare, debt, education, environmental and housing.
4. Finally, community law centres campaign for law reform, and for the safeguarding of rights already enshrined in law. Their priorities for law reform are directly linked to the issues being raised by the community at clinics.

In addition to the above, we echo FLAC’s recommendation that continuous and systemic research on unmet legal needs, including proactive engagement with low income, vulnerable and marginalised groups should shape and inform services.

Furthermore, while digitalisation of the complaints and courts system has brought welcome efficiencies, attention should also be paid to ensuring the system is as accessible as possible for older people, people with intellectual disabilities, people without digital access, and people for whom English is not their first language. The right supports must be in place to meet the needs of such individuals, while also ensuring fair procedure and due process.

Through our work with the Irish Cancer Society, Family Carers Ireland and the Disability Federation of Ireland, we have seen the added strain that complex application procedures and paperwork can place on people who, due to illness or disability, need to access social welfare payments, medical cards etc. Similarly, a vouched expenses model, although more reflective of actual living costs, could place undue pressure on a person who is going through treatment, or who is living with a disability.

We recommend that health and disability representative bodies be consulted with to ensure the application process to access legal aid is less onerous.

Issue 6 – Accessibility Summary of recommendations	
What are key barriers to accessing the service?	
1	The physical location of Legal Aid Board Law Centres, the development of outreach services with organisations embedded in the community, the provision of education on rights, the law and the services the Legal Aid Board provide as well as proper resourcing of the Legal Aid Board services so as to reduce waiting times, would assist in overcoming barriers such as Intimidation of the legal world; inaccessibility of legal services; lack of awareness of rights and the law most relevant to disadvantaged communities including amongst the legal profession; fear of not being taken seriously or of retaliation if legal

	action is taken; and time, including waiting times for legal aid and the time it takes for a case to be heard
How can the administration and delivery of the service be made to work better for the individual users, NGOs and communities?	
2	We recommend that a community law centre model be adopted in order to work better for the individual users, NGOs and communities.
3	We echo FLAC's recommendation that continuous and systemic research on unmet legal needs, including proactive engagement with low income, vulnerable and marginalised groups should shape and inform services.
4	While digitalisation of the complaints and courts system has brought welcome efficiencies, attention should also be paid to ensuring the system is as accessible as possible for older people, people with intellectual disabilities, people without digital access and people for whom English is not their first language.
5	Health and disability representative bodies be consulted with to ensure the application process to access legal aid is less onerous.

Issue 7 – Awareness and assessment of the current Scheme

15. What are its benefits?

The current Scheme largely fulfils its designated function, albeit within its very limited remit that does not address many pressing barriers to justice and with the challenges posed by under-resourcing.

CLM, along with several other charities, exists because of the unmet legal need resulting from the limited parameters of the current Scheme. However, we neither have the regional spread or resources to meet this unmet legal need across the country. Where legal aid is currently made available to an applicant it can make the world of difference in their lives and the lives of those around them.

CLM partners with a number of organisations to provide outreach legal services to particular groups. One such example is our partnership with EPIC (Empowering People in Care) to provide legal advice to children in care and young care leavers. The issues advised on are broad-ranging and at times include difficulties a young person who had previously been in care themselves has in keeping custody of their own children in turn. It is very helpful when such a person is eligible for civil legal aid and gets the legal support they need from the Legal Aid Board and this was clearly seen in the case study below.

Case study on the benefit of LAB services in people's lives

In December 2021, CLM advised a young care leaver who had lost full custody of her children over the course of a very difficult time in her life. The relationship with the father had broken down and the children had moved to live with him and his mother, the paternal grandmother, during this difficult time. The young woman had come through this period and was taking all the steps necessary to get her life back on track in order to be able to care for her children again. She had been granted legal aid and representation by a private practitioner. However, she was not satisfied with the legal representation provided by the solicitor and made a complaint in that regard. No other panel solicitors were available in the town due to capacity, or a conflict of interest and she had been on the waiting list for legal aid since August 2021.

As result of the lack of representation, the young woman was having to represent herself in court when trying to have the children returned to her. The father had left his mother's home and the children were being cared for by the paternal grandmother with no legal basis for the arrangement. Despite the young woman's efforts to advocate for herself and despite taking all the steps indicated by the District Court judge to regain care of her children, proceedings were going very badly, and it was looking increasingly possible that they would remain in the care of the paternal grandmother.

Through engagement by EPIC and CLM, the urgency of the young woman's case was pursued with the local Legal Aid Board (LAB) office. It was identified that there were persistent recruitment issues at the office. The impact of the extremely long waiting list on this young woman and her children was that they could not get on with their lives and be reunited as a family, despite no welfare concerns being presented against the mother.

Finally in March 2022, a LAB solicitor was appointed to the case. From the outset the young woman found the quality of representation she received excellent. A section 20 report, requested as a result of LAB engagement, spoke in glowing terms about the young woman. By April 2022, the young woman was returned full custody of her children.

16. What are its challenges?

The under-resourcing of the Legal Aid Board (LAB) is a substantial challenge to the effectiveness of the current Scheme and results in long waiting times for a first consultation - 16 weeks in Clondalkin in Dublin and up to 35 weeks in Newbridge as at September 2022.⁶¹ This is simply too long to wait 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.

The Scheme is also challenged by the fact that it is not clear to the average member of the public which legal services they can access through the Scheme. For example, many would not be aware that they can receive legal aid for certain social housing issues and other areas of the law outside of family law, which is the most commonly provided area of service by the LAB. By broadening the scope of the Scheme to include all areas of law, the assumption that legal aid is solely available for family law issues would dissipate.

Further, the current Scheme fails to address some of the barriers to access to justice identified in the Pringle Report, including the fact that a person may not identify their issue as a legal one which could benefit from the input of a solicitor.

The problems and limitations of the Scheme raise the question as to whether the State has complied fully with its obligations under Article 6 of the European Convention on Human Rights and, in cases involving European law, the EU Charter of Fundamental Rights and Freedoms, as there are most certainly people of limited means who have complex legal issues and are unable to obtain legal aid from the State.

17. What are its advantages?

A major advantage of the current Scheme is its status as a state-funded service, as opposed to a charity-based model. In a reformed Scheme, where the scope of state-funded legal services would be broadened, this advantage would further facilitate improved access to justice.

A further advantage is the geographical reach of the Scheme, with local law centres in almost every county. It is a strength that the LAB has the means with which to employ solicitors in each of its law centres and engage the services of others in private practice on a case-by-case basis and this facility should be broadened through the provision of increased government funding.

We welcome the developments in the provision of services under the Scheme in recent years, including:

- the provision of telephone and video consultations, where beneficial, particularly throughout the Covid-19 pandemic;
- the commencement of a Traveller-specific service and continued engagement by the LAB with other minority groups and community organisations;
- the provision of services in the area of international protection through a number of dedicated law centres and private solicitors;

⁶¹ [Website Totals Sheets 2022.xlsx \(legalaidboard.ie\)](#)

- dedicated units dealing with personal injury and/ or medical negligence cases and cases involving children at risk;
- the specialised Refugee Documentation Centre, which provides an independent and professional research and library service for all of the main bodies involved in the international protection process;
- family mediation services provided through dedicated mediation offices; and
- participation in the *Abhaile* Scheme which facilitates the provision of legal advice, and in certain limited circumstances legal aid, to persons who are insolvent and at risk of losing their family home.

We encourage the provision of legal aid and advice in a broadened range of specialised areas of law under the Scheme.

We acknowledge and commend the expertise and commitment of the staff of the Legal Aid Board in providing legal services to those who need them, and in endeavouring to expand the service and make it more accessible, despite the limited resources made available.

18. What are its disadvantages?

The chief disadvantage of the current Scheme is its limited scope and its model of service delivery, which leads to a serious problem with unmet legal need. This has been repeatedly flagged by CLM and other organisations such as FLAC and other ILCs and is discussed in detail in this submission. It is clear that cost inhibits those experiencing disadvantage from accessing legal services due to the limited nature of the Scheme as things stand.⁶² CLM has time and time again advocated that unmet legal need most persistently arises in employment, equality, housing and social welfare issues,⁶³ all of which overwhelmingly lie within the remit of quasi-judicial bodies. However, despite cost-benefit analyses of legal aid suggesting “*overwhelmingly that the benefits of legal aid investments greatly outweigh the costs*”,⁶⁴ Ireland almost exclusively omits to provide access to legal aid in these fora.

FLAC has noted that that in employment cases, “*the complexity or sensitivity of the issue, the capacity of the person to represent him/herself and the resources of the individual’ bear no import under [the Scheme] as it stands.*”⁶⁵ These concerns predate even the 1995 Act, with the Irish Commission for Justice and Peace highlighting that quasi-judicial bodies, in particular the Employment Appeals Tribunal (now the WRC), could be “*quite legalistic and the unrepresented claimants can be placed at a serious disadvantage as a result*”.⁶⁶

Furthermore, the current Scheme omits to focus on access to information and legal education, the benefits of which are detailed in the aforementioned IBA Report.

⁶² Limerick Community Law & Mediation Centre, ‘Community Consultation Report – Unmet Legal Need in Limerick’ (2013), p19

⁶³ Community Law & Mediation, ‘Opening Statement by Community Law & Mediation to Joint Oireachtas Committee on Justice & Equality – Access to Justice’ (2019), p2

⁶⁴ World Bank, ‘A Tool for Justice – The Cost Benefit Analysis of Legal Aid’ (2019), p40

⁶⁵ FLAC, ‘FLAC Submission to The Workplace Relations Commission on the “Consultation Paper on Remote Hearing and Written Submissions Dealing with Adjudication Complaints During the Period of Covid-19 related Restrictions”’ (2020), p9

⁶⁶ Irish Commission for Justice and Peace, ‘Civil Legal Aid’ (1992), p8

Issue 8 – The future

The current Scheme was placed on a statutory basis in 1995, marking a huge step forward in terms of access to justice in Ireland. Unfortunately, the Scheme fell short of the recommendations made in the Pringle report. While the Scheme has certainly been improved and expanded over the years, which we discuss elsewhere in this paper, there are serious shortcomings which create critical legal need in our communities. It is vital that the State accepts its clear obligation to provide an accessible Scheme for the provision of legal aid - one that is prioritised in terms of investment and continued resourcing.

We acknowledge that the reforms suggested would require significantly increased funding but the benefits, including economic benefits, are discussed elsewhere in this paper. This unmet legal need is met to a certain extent by the independent law centres, of which CLM operates two. However, we can only fulfill a small portion of the need that we see, in view of a lack of resources and continued precarity of funding. As an independent law centre providing free legal services to those who need them, we hope that some of our experience and our strategy might be of use to the review committee.

Ideally, under the reformed Scheme, all of the actors involved in providing legal information and support – state bodies, independent law centres and advocacy organisations – would be recognised and valued and would work in a more cohesive manner.

19. How can an individual's awareness and understanding about justiciable problems or legal disputes be raised?

Outreach and education are key to improved access to justice and to empowerment. Operating through the community law centre model, CLM works to improve awareness and understanding on these issues through the provision of legal resources such as:

- Information guides, podcasts and use of digital tools
- *Casebase*: *Casebase* is the only publicly accessible database of reports on decisions of the Social Welfare Appeals Office. These include reports on cases taken by CLM and other advocacy organisations such as FLAC, MABS and Citizens Information.
- Outreach work and community education: CLM is involved in the delivery of talks to students in local schools and to other groups which are tailored to meet the needs and interests of the audience. These talks are delivered free to the community, to help people learn about and understand their rights in a range of areas. The talks are usually delivered in libraries and other accessible locations, in partnership with groups and organisations such as Men's Sheds, Sage Advocacy, Family Carers Ireland, Opendoor and others.
- Collaboration with organisations: CLM collaborates with other organisations in the delivery of legal advice clinics and community education. This includes delivering such services on an outreach basis. CLM also provides support to organisations such as MABS ND, the National Advocacy Service and others.
- Provision of free legal advice clinics

We recommend that similar initiatives form part of the functions of the Legal Aid Board.

20. How should individuals on low incomes and other marginalised groups be supported to access justice in the future?

The community law centre model is proven to be an effective way of supporting those in disadvantaged and marginalised communities to access legal services. If the Scheme was to be rolled out under a similar, publicly funded model it is our opinion that a greater proportion of disadvantaged and marginalised communities would benefit from its services. Our experience is that outreach is key to ensuring access to justice for marginalised groups. Such groups can be underrepresented in availing of legal services and for this reason, a concerted and consultative effort is required to target those most in need.

21. What should the aim of a civil legal aid scheme be?

The aim should be to achieve real access to justice for everyone in the State. Indeed, a reformed Scheme would bring Ireland in line with several UN recommendations. Namely, in 2011, the UN Special Rapporteur on Extreme Poverty and Human Rights noted concern that “*several areas of law that are particularly relevant for people living in poverty*” are excluded from the scope of the Legal Aid Board.⁶⁷ In 2015, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) highlighted that the limited scope of the current Scheme “*prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits.*”⁶⁸ and recommended that the remit of the LAB be expanded as well as the legal areas covered by the Scheme.

The Universal Periodic Review (UPR) of December 2021 called on Ireland to:

- Undertake a comprehensive and independent review of the Civil Legal Aid Scheme (CLAS) to ensure equality
- Consider reforms of said CLAS
- Broaden its efforts for migrants, asylum seekers and the vulnerable in accessing justice in equality and social welfare issues
- Review and emplace a ‘mechanism’ to ensure the disadvantaged / marginalised benefit from better access to justice.⁶⁹

This review of the current Scheme is timely, and is essential to ensuring that Ireland is fulfilling its domestic and international obligations.

22. What values should underpin it?

The Legal Aid Board Customer Charter sets out the LAB vision as follows: *To facilitate access to justice through providing for resolution of civil disputes 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 and further to manage the provision of criminal legal aid in an efficient, effective and accountable manner.*

⁶⁷ Office of the High Commissioner for Human Rights, ‘Report of the UN Independent Expert on Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona to the Human Rights Council’ (2011), p4

⁶⁸ UN Committee on Economic, Social and Cultural Rights, ‘Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland’ (2015), p8

⁶⁹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - Ireland’ (2022)

The values of the Legal Aid Board are set out as follows:

- High professional and ethical standards in the provision of all our services
- Having the client and access to justice as central to our services
- A focus on innovation in the delivery of services
- Responsiveness to an ever-changing legal and social environment
- Effective leadership at all levels
- Providing good value for money
- Transparency
- A culture which promotes a team ethic and respect for the human dignity of the client and the colleague
- Effective governance and accountability relationships and structures with the Department of Justice and Equality, Government and the public.

We submit that these values are very much aligned with our proposals around reform of the Scheme. We would suggest the following values be adopted to reflect a focus on outreach, education and targeting vulnerable groups:

- Empowerment – empowering people to actively participate in society.
- Impact – ensuring the Scheme has a positive impact on the communities and clients it serves.
- Accessibility – ensuring that services are accessible by all those who need them.
- Community Engagement and Outreach – ensuring services are driven by, and reflect, the needs of the community by means of targeting hard to reach groups.
- Partnership - working in partnership and collaboration with others to achieve the Scheme's objectives.

It is worth noting section 42 of the Irish Human Rights and Equality Commission Act 2014 which imposes obligations on statutory bodies such as the Legal Aid Board, 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.

23. How can the service best be targeted or prioritised for recipients in the future?

Our experience is that outreach is key to ensuring access to justice for marginalised groups who are less likely to be aware of or to access services, for a variety of reasons. The service should be proactive in ensuring that these groups are reached. Methods of outreach are discussed elsewhere in this paper. Specifically in terms of targeting or prioritising a service, stakeholder mapping and regular structured consultation are key. Organisations working on the ground with particular groups are well-placed to assist in identifying both the groups/individuals most in need, and the issues that recur most frequently. Based on our own experience, we recommend integrating this partnership/collaboration model into the day-to-day workplans of staff delivering the Scheme. Central to an effectively targeted Scheme is its agility, and its ability to remain connected with service-providers and advocacy organisations on the ground.

24. What should the Scheme's relationship be to other forms of publicly-funded/part publicly-funded legal assistance initiatives

The Scheme should have a close relationship with other forms of publicly-funded/part publicly-funded legal assistance initiatives, particularly those currently working in areas of law not covered by the current Scheme. There is significant expertise that can be shared in relation to areas of law, representing vulnerable clients and operating an outreach/community law centre model. We submit that publicly-funded/part publicly-funded legal assistance initiatives should be consulted on an ongoing basis regarding the Scheme and its administration.

25. What additional roles should or could the Legal Aid Board have, if any, in relation to public legal assistance?

The Legal Aid Board's geographical range and State-funded status enable it to provide a far-reaching information and education service, to ensure public awareness of their services and perform a parallel function of reaching hard-to-reach groups. Outreach is key to access to justice.

We welcome the Board's provision of legal representation to clients with intellectual difficulties who previously would have come under the wardship system, as detailed in a case study in their 2021 Annual Report (p. 31). We note that in that case, the Board made representations to the Court arguing that making the client a ward of court would not benefit him and seeking an interim solution that could be put in place until the commencement of the new Act. The Court agreed with the Board's submissions and proposed a mechanism to protect the client's family home while awaiting the commencement of the new act, leaving interim supports in place and, most importantly, not making the client a ward of court. We submit that the Board has a significant role to play now the Act has been signed into law and we would encourage outreach work with advocacy organisations, together with a community education role.

The Legal Aid Board should also be empowered and resourced to engage in public information campaigns and in community education and outreach, in order to best determine the needs of an ever-evolving community.

Another key role of the Legal Aid Board should be ensuring that practitioners are recruited and trained to work in public interest litigation and legal aid. Training, recruiting and retaining specialised staff is key to the sustainable provision of legal aid.

26. Is there a role for mediation and/or other alternative dispute resolution processes as part of a civil legal aid scheme or similar support system in the future? If not, why not? If so, what should the role be?

Yes, mediation should have a role as part of a civil legal aid scheme. We have seen, through our own mediation service, the need in the community for an alternative dispute resolution process to the legal system, which can be expensive, protracted, and difficult to access. Mediation is particularly valuable in situations where relationships matter e.g., in the neighbourhood, family and workplace. Even in cases where full settlement is not reached, key 'turning points' or 'shifts' in thinking are often achieved. This is an excellent basis for ongoing progress. However it is important to emphasise that mediation should always remain a voluntary process and is not suitable or appropriate for every issue.

Issue 8 – Awareness and assessment of the current Scheme <i>Summary of recommendations</i>	
How can an individual’s awareness and understanding about justiciable problems or legal disputes be raised?	
1	Outreach and education are key to improved access to justice and to empowerment. We recommend that they form part of the functions of the Legal Aid Board.
How should individuals on low incomes and other marginalised groups be supported to access justice in the future?	
2	The community law centre model is proven to be an effective way of supporting those in disadvantaged and marginalised communities to access legal services. If the Scheme was to be rolled out under a similar, publicly funded model it is our opinion that a greater proportion of disadvantaged and marginalised communities would benefit from its services.
What should the aim of a civil legal aid scheme be?	
3	The aim should be to achieve real access to justice for everyone in the State.
What values should underpin it?	
4	<p>The values of the Legal Aid Board are very much aligned with our proposals around reform of the Scheme. We would suggest the following values be adopted to reflect a focus on outreach, education and targeting vulnerable groups:</p> <p>Empowerment – empowering people to actively participate in society. Impact – ensuring the Scheme has a positive impact on the communities and clients it serves. Accessibility – ensuring that services are accessible by all those who need them. Community Engagement and Outreach – ensuring services are driven by, and reflect, the needs of the community by means of targeting hard to reach groups. Partnership - working in partnership and collaboration with others to achieve the Scheme’s objectives.</p>
How can the service best be targeted or prioritised for recipients in the future?	
5	Our experience is that outreach is key to ensuring access to justice for marginalised groups. The service should be proactive in ensuring that these groups are reached. Specifically in terms of targeting or prioritising a service, stakeholder mapping and regular structured consultation are key.
6	Organisations working on the ground with particular groups are well-placed to assist in identifying both the groups/individuals most in need, and the issues that recur most frequently. We recommend integrating this partnership/collaboration model into the day-to-day workplans of staff delivering the Scheme.
What should the Scheme’s relationship be to other forms of publicly-funded/part publicly-funded legal assistance initiatives?	

7	The Scheme should have a close relationship with other forms of publicly-funded/part publicly-funded legal assistance initiatives, particularly those currently working in areas of law not covered by the current Scheme. We submit that publicly-funded/part publicly-funded legal assistance initiatives should be consulted on an ongoing basis regarding the Scheme and its administration.
What additional roles should or could the Legal Aid Board have, if any, in relation to public legal assistance?	
8	One example, among many, is the provision of legal aid under the new Assisted Decision-Making Act. Legal aid should be available to those who wish to establish an enduring power of attorney or an advanced healthcare directive but cannot afford the legal fees.
9	We submit that the Board has a significant role to play now the Act has been signed into law and we would encourage outreach work with advocacy organisations, together with a community education role.
10	The Legal Aid Board should also be empowered and resourced to engage in public information campaigns and in community education and outreach, in order to best determine the needs of an ever-evolving community.
11	Another key role of the Legal Aid Board should be ensuring that practitioners are recruited and trained to work in public interest litigation and legal aid.
Is there a role for mediation and/or other alternative dispute resolution processes as part of a civil legal aid scheme or similar support system in the future? If not, why not? If so, what should the role be?	
12	Yes, mediation should have a role as part of a civil legal aid scheme. However, it is important to emphasise that mediation should always remain a voluntary process and is not suitable or appropriate for every issue.