The Chief Justice’s Working Group on Access to Justice

Civil Legal Aid Review:

An opportunity to develop a model system in Ireland

Conference: Dublin Castle

24th - 25th February 2023

Organised by the Office of the Chief Justice in conjunction with the Law Society of Ireland, the Bar of Ireland, the Legal Aid Board and FLAC (Free Legal Advice Centres).

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Papers, presentation, and summary of the conference organised by the Office of the Chief Justice in conjunction with the Law Society of Ireland, the Bar of Ireland, the Legal Aid Board, and FLAC (Free Legal Advice Centres)

CONTENTS

Members of the Working Group ***4***

Executive Summary ***5***

Background on the Chief Justice's Working Group on Access to Justice 5

October 2021 Conference 5

Theme, speakers, and format 5

Key points emerging from October 2021 conference 7

February 2023 conference 7

Civil Legal Aid Review 7

Format of the February 2023 conference 8

Day 1: Friday 24th February 2023 .... ***10***

Introductory Session ***11***

Introductory remarks - Mr Justice Donal O'Donnell, Chief Justice 14

Breaking down barriers, building access to justice for all – Simon Harris TD, Minister for Justice 24

The Civil Legal Aid Review: purpose, key issues, and progress - Mr Justice Frank Clarke, Chair of the Civil Legal Aid Review & former Chief Justice 30

The Current System of CIvil Legal Aid in Ireland ***36***

The International Experience ***46***

Mapping the Gap Between the Current System and a Model System in Ireland ***57***

Panel Discussion 1: Alternative Models of Legal Assistance 57

Day 2: Saturday 25th February 2023 .... ***63***

Opening Remarks ***64***

Mapping the Gap Between the Current System and a Model System in Ireland ***67***

Panel Discussion 2: View from the Judiciary and Statutory Bodies 67

Mapping the Gap Between the Current System and a Model System in Ireland ***71***

Panel Discussion 3: Vision for the Future 71

Closing Remarks ***87***

Acknowledgements ***89***

Members of the Chief Justice's Working Group on Access to Justice at the opening of the Conference on Civil Legal Aid Review: An Opportunity to Develop a Model System in Ireland, held in February 2023.

(From L-R): Mr John Lunney, Law Society of Ireland; Mr Joseph O'Sullivan, The Bar of Ireland; The Hon. Mr Justice Donal O'Donnell, Chief Justice; Ms Eilis Barry, FLAC; The Hon. Mr Justice John MacMenamin, former Judge of the Supreme Court; Mr John McDaid, Legal Aid Board.

MEMBERS OF THE WORKING GROUP

At the date of the event, the Working Group was composed of the following members:

- **The Hon. Mr Justice Donal O'Donnell,** Chief Justice;
- **The Hon. Mr Justice John MacMenamin,** former Judge of the Supreme Court;
- **Mr Joseph O'Sullivan BL,** nominated by the Council of the Bar of Ireland;
- **Mr John Lunney,** nominated by the Law Society of Ireland;
- **Mr John McDaid,** CEO, Legal Aid Board;[1]
- **Ms Eilis Barry,** CEO, Free Legal Advice Centres ("FLAC").

Secretariat:

- Sarahrose Murphy, Senior Executive Legal Officer to the Chief Justice;
- Rebecca Murphy, Executive Legal Manager (International) to the Chief Justice;
- Lucy Rowan, Executive Legal Manager (Domestic) to the Chief Justice.

[1] John McDaid completed his term of office as CEO of the Legal Aid Board in March 2023 and was succeeded by Joan Crawford.

EXECUTIVE SUMMARY

Background on the Chief Justice's Working Group on Access to Justice

In January 2021, the former Chief Justice, Mr Justice Frank Clarke, established a working group on access to justice. He and other senior members of the judiciary had spoken on the topic at various events, and there was an interest from the partner organisations on the Working Group to come together and try to advance access to justice in areas where it was possible to do so. The goal of the Working Group is to contribute to improving access to justice.

The Working Group was **originally** made up of:

- Mr Justice Frank Clarke, then Chief Justice;
- Mr Justice John MacMenamin, then judge of the Supreme Court;
- Mr Philip O'Leary, then Chair of the Legal Aid Board;
- Ms Eilis Barry, CEO, FLAC;
- Mr Joseph O'Sullivan BL, nominated by the Council of The Bar of Ireland;
- Ms Attracta O'Regan, nominated by the Law Society of Ireland.

Mr Justice Donal O'Donnell was appointed Chief Justice in October 2021 and committed to continue and build on the work already carried out by the Working Group during his closing remarks at the first conference organised by the Working Group in October 2021.

October 2021 Conference

When the Working Group was established, it was conscious that access to justice is a broad and multi-faceted concept which requires a holistic approach and input from all key stakeholders to identify and remove barriers.

The Working Group decided to host a conference to identify the strands of access to justice that would form the basis of its work. The conference also provided an opportunity for groups and individuals with unmet needs to engage in a conversation about what is needed to make improvements.

Theme, speakers, and format

Owing to the public health restrictions in place at the time, the October 2021 conference took place almost entirely remotely but was anchored to the Law Society where a small number of keynote speakers attended to deliver their remarks. The first day of the conference involved addresses by the following keynote speakers who highlighted the importance of access to justice and the relevant constitutional and European legal principles: former Chief Justice Frank Clarke; Heather Humphreys T.D., then Minister for Justice; Síofra O'Leary, Judge and now President of the European Court of Human Rights; and Angela Denning, CEO of the Courts Service.

A number of initiatives planned or underway in the justice sector were also highlighted by speakers on the first day of the conference, including:

- The Review of the Administration of Civil Justice: Review Group Report (also known as the Kelly Report), just published at the time;
- Courts Service's Long Term Strategic Plan, Supporting Access to Justice in a Modern, Digital Ireland, which is being implemented via its Modernisation Programme;
- The Department of Justice's Supporting a Victim's Journey Plan;
- Family Justice reform, including the Family Courts Bill to establish dedicated family law courts and a purpose-built family law complex at Hammond Lane;
- A commitment by the Department of Justice in its Justice Plan 2021 to carry out a review of the civil legal aid system;
- A Judicial Planning Working Group to consider the number of judges needed in Ireland.

The second day of the October 2021 conference involved a series of breakout workshops which provided a forum for key stakeholders to discuss in more detail some of the issues affecting access to justice in several areas. The themes covered included:

- Awareness and information;
- Access to justice in environmental matters;
- Legal community outreach: advancing access to justice throughout education and awareness;
- Accessibility of courts: court procedures and legal representation;
- Access to legal services for people in poverty and disadvantaged groups; and
- Equal treatment in the court process.

At the beginning of day two, before the breakout sessions began, Eilis Barry delivered an introductory overview of unmet legal needs. The conference was closed with remarks from the then incoming Chief Justice, Mr Justice Donal O'Donnell.

Chief Justice O'Donnell launched a report of the October 2021 conference at the Ballymun Law Centre in March 2022, which provides an overview of the breadth of speakers and topics discussed. The conference attracted hundreds of attendees from a very broad audience, including members of the judiciary, practicing professions (solicitors and barristers), academia, public sector organisations, non-governmental organisations, civil society organisations and charities. As well as highlighting many of the issues facing those seeking to access justice, the event was useful in building a broad 'coalition of reformers' from across many sectors of society.

Key points emerging from October 2021 conference

The key points that emerged from the October 2021 conference are summarised in an executive summary at the beginning of the conference report.

An important point which emerged was that despite the positive work currently underway to improve access to justice, the needs of many are not being met by the current system. One recurring message which emerged throughout the event was the need for a comprehensive review and reform of the civil legal aid system, including a consideration of eligibility criteria, areas of law covered, the functions of the Legal Aid Board and the way in which services are delivered. Judge Síofra O'Leary's keynote address on the first day of the conference provided a useful overview of the relevant EU and European Court of Human Rights case law.

February 2023 conference

Following the October 2021 conference, the Working Group met to consider the themes and issues highlighted throughout the event. It decided to concentrate on the issue of civil legal aid, which was timely given the establishment last year of the Civil Legal Aid Review Group. The second conference took place at The Printworks at Dublin Castle on 24th and 25th February 2023.

Civil Legal Aid Review

Since the first conference took place, the Minister for Justice has established the Civil Legal Aid Review Group to review the current operation of the Civil Legal Aid Scheme and make recommendations in respect of its future. The membership of the Review Group is:

- Mr Justice Frank Clarke (Chair), former Chief Justice
- Eilis Barry, CEO, FLAC;
- Professor Niamh Hourigan, Sociologist and Vice-President of Academic Affairs, Mary Immaculate College, Limerick;
- Thomas O'Mahony, Legal Aid Board;
- Sara Phelan SC, Chair of The Council of the Bar of Ireland;
- Áine Hynes, Law Society of Ireland;
- Professor Frances Ruane, Economist and former Director of the Economic and Social Research Institute;
- Tom O'Malley SC, Associate Professor in Law at the University of Galway;
- Bernard Joyce, Director of the Irish Traveller Movement;
- Liam Coen, Principal Officer at the Department of Justice
- Cillian McBride, Department of Public Expenditure and Reform.

It will be the first review of the Civil Legal Aid Scheme in its 40-year history. The scheme was established in 1979 and is administered by the Legal Aid Board. The website of the Legal Aid Board, including its annual reports, contains a lot of useful

information on the scheme. The establishment of the current scheme came shortly after the publication of the Pringle Committee Report on Civil Legal Aid and Advice in 1977 and the landmark European Court of Human Rights case of *Airey v. Ireland* (1979) 2 EHRR 305 in which Johanna Airey, who was unable to obtain a judicial separation order due to a lack of financial means, successfully brought a case to the ECtHR which held that this was a violation of her right to access a court for determination of her civil rights and obligations under Article 6 of the European Convention on Human Rights.

The Civil Legal Aid Review Group is currently conducting a public consultation. It published an issues paper to assist people wishing to make a submission to it, which contains a useful summary of the current scheme and key issues being considered by the Review Group.

While this conference is independent of the Review Group and its work, it is hoped that it will be of assistance to and inform the work of the Review Group, and there is an overlap of several participants who sit on both the Civil Legal Aid Review Group and the Chief Justice's Working Group.

Format of the February 2023 conference

This conference focused on the civil legal aid system and examined how the review (outlined above) undertaken by the Civil Legal Aid Review Group presents an opportunity to develop a model system in Ireland. The conference took place over the course of a full day on Friday 24th and half day on Saturday 25th February. The conference commenced with an introductory session delivered by:

- The Hon. Mr Justice Donal O'Donnell, Chief Justice, delivered the opening remarks;
- Simon Harris, T.D, Minister for Justice, who spoke on '*Breaking down barriers – building access to justice for all*';
- Mr Justice Frank Clarke, who spoke on '*The civil legal aid review – purpose, key issues and progress*'.

There were three pillars of the conference:

1. Current System
   The first pillar dealt with the current system of civil legal aid in Ireland. Moderated by Muriel Walls, speakers spoke about the experience of the current system and provided an overview of the current scheme and referred to some of its challenges, setting the scene for a discussion of reform.

2. The International Experience
   The second pillar, moderated by David Fennelly BL, provided insights into the international position from experts on the topic so that Ireland can learn from the international experience.

3. Mapping the Gap between the Current System and a Model System in Ireland
   The third pillar of the event drew from the earlier sessions to map out the gap between the current scheme and a model system in Ireland. It was broken into three panels:
   A. Alternative models of legal assistance;
   B. View from the Judiciary and statutory bodies;
   C. A vision for the future.

DAY 1:
FRIDAY 24TH FEBRUARY 2023

INTRODUCTORY SESSION

MC:	Dearbhail McDonald, journalist, author, broadcaster
Speakers:	The Hon. Mr Justice Donal O'Donnell, Chief Justice
	Simon Harris, T.D, Minister for Justice
	The Hon. Mr Justice Frank Clarke, Chair of the Civil Legal Aid Review & former Chief Justice
Rapporteur:[2]	Fionn O'Callaghan, Judicial Assistant

The papers for this session are provided within this report, however a general summary is outlined below.

The Hon. Mr Justice Donal O'Donnell, Chief Justice

The Chief Justice opened the conference by providing some background to the Chief Justice's Working Group on Access to Justice, which was assembled in January 2021 and has since devoted time to promoting and examining access to justice in the Irish Courts. The Chief Justice outlined the positives since the previous conference (held in October 2021), such as the Review of the Administration of Civil Justice: Review Group Report (the Kelly report), the Courts Service's Long Term Strategic Vision and its Modernisation Programme, and Family Justice reform.

The Chief Justice then highlighted the work carried out by Minister Humphreys in the establishment of the Judicial Planning Working Group. In particular, he welcomed the Judicial Planning Working Group Report (that was launched that morning), particularly the recommendation for the appointment of additional judges.

The Chief Justice then introduced the work that has been undertaken by Former Chief Justice Frank Clarke in overseeing the first major review of the civil legal aid system since it was introduced more than 40 years ago. The Chief Justice further outlined the significant changes that have occurred in the Irish legal system since the Pringle

[2] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

Report in 1977 and the eventual introduction of the civil legal aid system and the beneficial advances that have occurred since.

Simon Harris, T.D, Minister for Justice

The next speaker in the introductory session was Simon Harris, T.D., Minister for Justice, who spoke about breaking down barriers and building access to justice for all. He highlighted the need for fair and equal access to justice to be a reality for everyone. He spoke about the advances made in the civil legal aid system over the last few years commenting that he hopes such advances continue and that there would be an increased understanding of the use of alternative dispute resolution methods (such as mediation), which he stated would complement the approach of the Family Justice Strategy published by Minister McEntee last autumn. He highlighted how the Family Justice strategy hoped to create a more family-focused justice system promoting alternatives to litigation and establishing a dedicated family court with specialist judges and ongoing professional training.

At the conference, Minister Harris announced the publication of the Judicial Planning Working Group report, particularly referring to the recommendations for the appointment of new judges. He noted that the report emphasised the importance of developing a more structured system for deploying judicial resources. He also referenced the Civil Justice Efficiencies and Reform Plan, which aims to implement reform to simplify the language in Court Rules and modernise the civil justice services to make it more accessible and affordable. He also mentioned the Courts Service 10-year Modernisation Programme, which aims to deliver a new operating model and provide digital solutions for Court Service users. He concluded by calling for ongoing support and dedication within the sector to ensure the success of all the reforms.

Mr Justice Frank Clarke, Chair of the Civil Legal Aid Review & former Chief Justice

The final speaker of the opening session was former Chief Justice, Mr Justice Frank Clarke, who acknowledged that the Legal Aid Review Group is currently engaged in a consultation process and has received 55 submissions from various stakeholders. The consultation process has been divided into three parts: (1) stakeholder consultation; (2) a general public questionnaire; and (3) a strand of consultation outsourced to experts in the field to reach out to hard-to-reach areas. He then set out the principles of the review and questions that still need to be addressed noting that the needs of Ireland today are significantly more diverse and complex than at the time the last report took place, and a root and branch review of the legal aid system was necessary. He highlighted that a new system would need to ensure it can withstand a legitimate human rights challenge while also delivering the principles identified.

Mr Justice Frank Clarke then proceeded to discuss the two fundamental principles underlying any civil legal aid system, which he believed form part of the access to justice requirement. The first is that legal aid should be delivered in a way that helps people reasonably vindicate their rights in court or through alternative means. The second principle is that the delivery of legal aid must be central to the needs of the user. He further highlighted the barriers that exist to achieving these principles, such as not knowing one's rights, as well as issues related to the legal eco-system, such as the best means of delivering legal aid, the role of NGOs in delivering legal aid, and the possibilities of community groups being occasionally the best place to deliver legal advice. He concluded with reference to "nuts and bolts" issues of the qualification criteria in terms of both finances and merit-based criteria. He drew attention to the issue of having a single financial threshold across the whole range of potential cases ranging from relatively straightforward District Court Hearings to complex High Court matters. He then thanked all those who have contributed to the working group.

Introductory remarks - Mr Justice Donal O'Donnell, Chief Justice

The Hon. Mr Justice Donal O'Donnell, Chief Justice

1. [Thanks to Dearbhail McDonald]

2. This is the second conference organised by the Chief Justice's Working Group on Access to Justice. The idea of establishing a Working Group under the leadership of the Chief Justice was one borrowed from Canada where a small Action Committee on Access to Justice in Civil and Family Matters, established by the Chief Justice of Canada and made up of a number of representatives, was shown to have had considerable success. In this case, the members of our working group include:

    - Myself;
    - Eilis Barry, CEO of FLAC (Free Legal Advice Centres);
    - John McDaid, CEO of the Legal Aid Board;
    - John Lunney, nominee of the Law Society;
    - Joseph O'Sullivan BL representing the Bar Council; and
    - Mr Justice John MacMenamin who has recently retired from the Supreme Court.

3. The first conference organised by the Chief Justice's Working Group was held on 1st and 2nd October 2021. It was effectively a remote conference held over two days and hosted at the Law Society. Notwithstanding the difficult circumstances, that conference gathered together very strong panels of speakers and contributors and attracted an impressively broad attendance from a number of different organisations and areas of society. Among the areas of access to justice considered at the conference were:

    - awareness and information,
    - access to justice in the environmental field,
    - legal community outreach,
    - accessibility of court procedures and legal representation,
    - access to legal services for people in poverty, and

- equal treatment in the court process.

4. The outcome of the conference was an increased recognition that the umbrella phrase "*access to justice*" is not a single issue but is multi-factorial and involves issues such as education and outreach to inform people of the law and their rights, as well as what is traditionally understood as legal assistance and legal aid. It brought it home to me that access to courts and to litigation, as important as that is, forms only a part of access to justice.

5. The conference presented an opportunity to highlight some of the positive work already taking place to improve access to justice, such as the Review of the Administration of Civil Justice and the resulting report (also known as the Kelly Report); the Courts Service's Long Term Strategic Vision and its Modernisation Programme; and family justice reform as part of the Family Justice Strategy 2022-2025. I am very pleased that Minister Harris is here today to speak to the ongoing progress at this wider level in relation to access to justice. His attendance is a real indication of the importance attached by the government to these issues.

6. At the last Access to Justice Working Group conference, the then Minister – Minister Humphreys – referred to the establishment of a Judicial Planning Working Group, which has since been considering the number of judges required to administer justice and ensure timely access to justice in Ireland. That is perhaps the most fundamental aspect of access to justice. The work of the Judicial Planning Working Group ("JPWG"), which is informed by a detailed study carried out by the OECD, is the first evidence-based attempt to assess the demand for judges on an objective and measurable basis and to break the cycle of overloaded court backlogs and crisis. The Court Presidents made a very detailed and, I hope, constructive submission to JPWG and welcome the publication today of the Reports of the JPWG and the OECD. I understand that the Minister will speak to you in relation to the key recommendations of the report of the JPWG, but I very much welcome its acknowledgment of an acute need for more judges in Ireland, its recommendation that a number of additional judges be appointed in the short to medium term, and that there should be ongoing assessment of judicial resource needs and associated judicial support into the future.

7. The Government's immediate acceptance of the JPWG report and its plan, which I understand is to create additional judicial positions and fill them, is also and in itself a very important and welcome development. It is a real and tangible recognition of the fact that a functioning justice system is not a luxury but is a critical component of a modern liberal democratic society which is founded on the rule of law.

8. The 2021 'Access to Justice' conference was a vivid illustration of the fact that while it is undoubtedly immensely challenging to provide high quality decision-making in courtrooms, it cannot be enough to treat that as the sole objective of the justice system. If people do not know about their rights to begin with or if they cannot get a hearing because of delays in the system, if they cannot afford to go to court because it is too expensive to obtain a lawyer or, if as in many cases, lawyers are willing to act but the risk of an adverse costs order is too great, then the quality of the justice in the courtroom falls short of providing the administration of justice that the Constitution requires and that members of the public are entitled to expect.

9. To paraphrase an observation made by Chief Justice Clarke in opening that conference: our laws could be perfect [and we know they are not] and our judges could be latter day Solomons, but it would mean nothing if a party cannot come into court and seek the enforcement of those laws. As he said on that occasion:

> "… *it would little avail a party whose position those laws favoured, if that party has not reasonable access to a court to ensure, if all other means of resolution fail, that their position is vindicated*."

10. And as we say in all the best Supreme Court judgments, I concur, and I would like to acknowledge and pay tribute to the work Frank Clarke did in establishing this Working Group and in driving the organisation of the Working Group and the 2021 conference, held as it was during the pandemic, as he was about to retire from office, and at a time therefore when it would have been easy to let the matter pass.

11. That first conference was, I believe, a considerable success. The papers delivered and the reports of the breakout groups were collated and published in a report which was launched in the Ballymun Civic Centre in association with the Ballymun Law Centre in March of last year. That report is in itself a very useful resource in framing the many issues that arise in the sphere of access to justice, identifying the points of intersection between them, and pointing in the direction of some solutions, or at least in the direction of possible progress.

12. But we are now at a second public conference of the Chief Justice's Working Group on Access to Justice. This is, in legal conference terms, the equivalent of what I think is described in the music business as the difficult "second album syndrome". And to push that analogy a little further (if not to breaking point), the Chief Justice's Access to Justice Working Group is like of one of the Motown groups of the 60s, perhaps the Drifters or perhaps even more appropriately the Supremes, where the name stays the same but the composition of the group changes somewhat. In particular, the artist formerly known as the Chief Justice is now pursuing a successful solo career in the Law Reform Commission and

former Chair of the Legal Aid Board, Philip O'Leary, has retired and so has been replaced by its CEO, John McDaid. But I think, indeed, I believe, that we have stayed true to the values of the original group.

13. The October 2021 conference set out to make a broad survey of the issue of access to justice. This year we had to decide on a specific theme and to pick one area from the many interlocking areas discussed in October 2021 and to focus on it.

14. The obvious issue, and one which was highlighted repeatedly at the last conference, is the civil legal aid system. First, because it is a major and unavoidable component of any system of access to justice, and second, because it is a particularly appropriate and timely subject given that the Minister for Justice has established a Legal Aid Review Group chaired by former Chief Justice Clarke, which is currently undertaking the first major review of the civil legal aid system since it was introduced more than 40 years ago. Part of the first session today will involve an address by Chief Justice Clarke on the development of that Civil Legal Aid Review Group and that in turn will be followed by discussions on the current civil legal system, the international experience, and a panel discussion on alternative methods of legal assistance. Tomorrow will involve sessions providing a view from the judiciary and statutory bodies and a vision for the future.

15. In each case there is an impressive and exciting range of speakers with considerable expertise, both national and international. While inevitably there are different perspectives and insights, there is, I believe, a heartening convergence on some shared aims and objectives and, perhaps most importantly, a shared commitment to the ideal of improving the civil legal aid system. That commitment is evident from the enthusiasm with which speakers, panellists and moderators accepted invitations to be a part of this event; the high volume of attendees from across the justice sector, civil society, and advocacy organisations; and the people who are giving their time to work at the event and be part of what was described at the previous conference as a "coalition of reformers". There is not just a growing demand for change but, it seems to me, a growing willingness in all quarters to contemplate change.

16. I would like to take the opportunity to thank the individual members of the Chief Justice's Working Group for their input into organising this event, and the support provided by the organisations involved (The Bar, Law Society, Legal Aid Board and FLAC). The Working Group is also very grateful to the speakers, moderators and panellists who are generously giving their time and contributing their expertise to this conference. Many thanks also to the Courts Service for its support of the Working Group and in running this event, including to the judicial assistants who are in attendance to report on the sessions so that we can publish a report of the conference.

17. Civil legal aid might indeed have been an obvious focus of the first conference of the Work Group, but I think that it will be helpful that we are addressing that issue following on from the work done at that first conference in October 2021 which involved an initial mapping of the entire area. It means that discussions today and tomorrow can be approached not merely by focusing on the existing system and arguing that greater resources should be applied to it, but by understanding a broader canvas, where civil legal aid must be seen as one part – albeit one of the most substantial parts – of a complex jigsaw. This involves a recognition that there is a whole world of providing information, legal assistance and advice which does not involve proceedings or going to court, and that even within the focus of access to justice in courts, there are a number of alternative aspects to meeting people's needs, such as involving the continued *pro bono* work by schemes such as the Voluntary Assistance Scheme of the Bar Council, by ordinary solicitors and barristers, by possible third party funding and by measures designed to reduce costs of proceedings.

18. I am afraid that I can remember the Pringle Report in 1977 and the eventual introduction of the civil legal aid system and the commentary that surrounded that. It is tempting to recall those days now in a rosy hue and to award campaign medals for those who pressed for a comprehensive legal aid system and criticise the supposed faceless bureaucrats in the civil service who were suspected of resisting the implementation of such a system. However, in truth, the arguments in the late 1970s were really quite simplistic. It was easy in those days for anyone dissatisfied with the system in Ireland to simply look to what happened in the UK and ask why we were not doing the same thing. But as Chief Justice Clarke said at the last conference, we must recognise that there are competing demands for funds and that government does not have a bottomless purse. That was certainly true then. I think that modern day public servants and, indeed, modern economists would be horrified if they had to experience the very limited and constrained budgetary conditions in Ireland in the late 1970s.

19. In the 1970s, it seemed that the welfare system in the United Kingdom was in full bloom, and in truth the envy of most of the world and not just Ireland. To take some interrelated issues, the National Health Service was the jewel in the crown of the welfare state. There had been two or three generations who had the benefit of free third level education with a generous grant system and in the legal field, the UK legal aid system, both civil and criminal, was widely regarded as the gold standard as far as legal aid was concerned.

20. It is both startling and sobering to see how that landscape has changed. The National Health Service in the UK is creaking, third level education is now fee based and student loan funded, and both the civil legal aid system and the criminal legal aid system in the UK have seen dramatic reductions in budgets

that would have seemed inconceivable a few decades ago. These reductions cannot be simply ascribed to ideology. There is, indeed, a more widespread acceptance that whatever changes are made to the system, there can be no return to the open ended, demand led system of the 70s.

21. This means that looking to other countries continues to have a benefit for Ireland, even if the lessons to be drawn are rather more complex and sobering than they might have appeared then. But Ireland now has more resources and more knowledge than it had in the late 1970s, and this conference is an attempt to bring that knowledge together and to help devise an efficient system that is well adapted to today's needs, and which will make the best use of the resources that may be available.

22. It might be tempting for a more pragmatic or perhaps cynical commentator to suggest that as reform of the system will inevitably incur a cost and create a bottomless and demand led system, it will be impossible to achieve significant improvements, and that really it is best left to muddle along and provide what it can. I think that is wrong for at least four reasons.

23. **First**, that assumes that the system can continue to muddle along and will not simply break under the weight of the increasing demands being put upon it to handle a greater volume of what are increasingly complex legal issues.

24. **Second**, as discussed at the October 2021 conference, there is an argument for investing in justice because legal problems can also create consequential problems in other areas such as health, at an additional cost to the taxpayer.

25. **Third**, it should not be assumed that the pace of reform is a matter in the sole control of administrators or even legislators. We are here today in this format precisely because the administration of justice is a shared space. One of the factors identified at the October 2021 conference in the insightful contribution offered by then Judge Síofra O'Leary, now the first Irish President of the Court of Human Rights, was that, to a very large extent, the law on legal aid (both civil and criminal) has been influenced by litigation and court decisions. Civil legal aid was most dramatically influenced by the *Airey*[3] case in the Court of Human Rights, and criminal legal aid by cases such as *The State (Healy) v. Donoghue*,[4] and *Carmody*.[5] As Judge O'Leary pointed out, that position is not merely a matter of Irish constitutional law or the law of the European Convention on Human Rights, but also and increasingly an issue which arises in the field of EU law. A large and increasing proportion of our laws derive from EU law and are governed by standards which apply across Europe, and which increasingly provide for the requirement of legal representation in addressing matters such

[3] *Airey v. Ireland* (1979) 2 EHRR 305.
[4] [1976] IR 325.
[5] *Carmody v. The Minister for Justice, Equality and Law Reform & Ors* [2010] 1 IR.

as applications for asylum and European arrest warrants. Similarly, the impact of European development is being felt most strongly in the field of environmental litigation, as was recently discussed in Mr Justice Brian Murray's judgment for a unanimous Supreme Court in *Heather Hill Management Company v. An Bord Pleanála*.[6]

26. I know that many thoughtful people are rightly uncomfortable with the idea that all social issues can be converted into legal issues. Apart from concerns derived from the separation of powers, there are real and valid concerns which relate to competence and resources. Broadly speaking, litigation shines a very bright light on issues, but does so through a keyhole and has some powerful but essentially crude weapons. It lacks the power, for example, to devise sophisticated administrative schemes, but the administration of justice is expressly provided for in the Constitution, the European Convention on Human Rights, and the treaties establishing the European Union and the Charter of Fundamental Rights. If problems in relation to legal aid cannot be resolved through the administrative and political systems, then it will not be surprising if claims are brought to court in Dublin, Strasbourg, or Luxembourg and possibly all three.

27. The **fourth reason** to reject a policy of inertia or benign neglect is particularly important today. The improvement of the administration of justice through the improvement of the civil legal aid scheme is the right thing to do in its own terms, but it is also arguably essential. It is worth asking why the EU is concerned with access to justice and the administration of justice, and why has the Court of Justice of the European Union delivered a stream of judgments on the question of the independence of the judiciary and the administration of justice, starting with the Portuguese judges' case, and involving as recently as last month, the delivery of an Advocate General's opinion in respect of the appointment of judges in Romania. Why, we should ask ourselves, has this line of case law emphasising the rule of law recently become so prominent?

28. These cases are, I would suggest, examples of an increasing recognition that the administration of justice is not a luxury or a mechanism that can be taken for granted. It is one of the essential features in the structure of society, which binds it together and allows it to function and provide a legal environment in which people can live their lives in freedom in the type of societies we have taken for granted in Western Europe since the Second World War.

29. Again, even when the systemic importance of a functioning legal system is acknowledged, the commentary can be sometimes frustratingly simplistic. Everyone has heard about the importance of checks and balances in the democratic system, and how courts provide a significant check and balance on

[6] [2022] IESC 43.

the power of government and parliament, particularly in a parliamentary system, where the government sits in the legislature. This, so far as it goes, is in recognition of an important and vital feature of our constitutional balance. It is also true that it is increasingly recognised that in an international world, a legal system that is demonstrably impartial, competent and efficient is an essential component of an economy that seeks to attract international investment. But important though these things are, they are an insufficient and incomplete justification for the existence of a court system.

30. There are currently 170 judges in Ireland. In truth, it can be said that only the nine members of the Supreme Court regularly encounter fundamental issues of separation of powers and checks and balances, and even for them it is not in truth a daily occurrence. Fewer cases involve international investment. Most cases are more prosaic, but the District Court, for example, is by far the busiest court in terms of throughput, and apart from dealing with routine matters and processing cases for trial in the Circuit Court and the Central Criminal Court, the District Court deals mostly with what might be described as minor crime and increasingly large amounts of family and child law. Crime and what can be broadly called 'family law' consume a lot of the legal aid budget.

31. These cases are not small or trivial matters. They may well be the only time people come before the courts, and people doing so need to believe that they will obtain justice. An important part of that is that they should feel that their side of the case will be presented and will be heard, and that if the case is decided against them, it is not because of an imbalance in legal representation. That belief in the justice process is a critical part of the bonds that hold a society together. Loss of faith in that system ultimately undermines belief in and commitment to the State itself. Maintaining a fair and accessible system in which disputes large and small can be resolved is not therefore, as I have said before, a luxury or an optional extra. It is in truth the business of the State, and it has always been the business of the State. The famous American lawyer Dean Wigmore said more than 100 years ago that the State has been in the business of law long before it entered the business of health or education. That is because civilisations with perhaps fractions of the resources now available in the modern world recognised that a functioning justice system was an essential service that had to be provided by any society which wished to endure, and in today's much more complex world, a fair and efficient court system is an essential component in any state which respects the rule of law. It is more difficult to deliver that demonstrable fairness if parties who may have to come before courts cannot access assistance advice and representation.

32. We have to find smarter, more efficient, and fundamentally better ways of providing information, advice, assistance and representation to people in this State. That is something which demands the attention, energy, and

commitment of everyone here, and I hope – as I think we all should – that the outcome of this conference will significantly enrich the discussions and reflections of the Civil Legal Aid Review Group and will contribute to well thought out, beneficial and effective reform of our civil legal aid system.

The Hon. Mr Justice Donal O'Donnell, Chief Justice, delivering his opening address at the conference on Civil Legal Aid Review: An Opportunity to develop a model system in Ireland, 24th February 2023

Breaking down barriers, building access to justice for all – Simon Harris TD, Minister for Justice

Simon Harris, T.D., Minister for Justice

Introduction

Good morning everyone, and thank you for having me here today.

Thanks in particular to Chief Justice Donal O'Donnell, and his colleagues on the Access to Justice Working Group for inviting me to join you.

I am very much looking forward to hearing about the insights, ideas and actions to come out of the next two days' engagement. The programme for the conference is certainly expansive, and will be of huge benefit, I'm sure, to the Civil Legal Aid Review.

It's a privilege to be here today among all those of you who work at the frontline of civil and family justice.

I thank you, sincerely, for all that you do to vindicate and uphold the rights of those you represent and serve.

Events like this are an important opportunity to come together and explore how we can make the system better for everyone. So thank you for making the time to be here today.

It is vital that fair and equal access to justice is a reality for everyone – not just those with the privilege of means or education.

To that end, I would like to share with you some of the actions I am prioritising during my time as Minister for Justice.

Civil Legal Aid Review

The civil legal aid system is the main way in which people on lower incomes can access legal support to resolve disputes, primarily those relating to family issues such as divorce, separation, child custody and maintenance. Both the Legal Aid Board, since 1979, and the Civil Legal Aid Act of 1995 have served the public well. The staff and panels of the Legal Aid Board do their best to advise and represent many thousands of people every year and I'm told that more than half of those seeking advice can access it reasonably quickly, especially for those issues relating to children.

In the 44 years since 1979, our society has grown and changed significantly. Rights have evolved and laws have developed. In response to all these changes, and in response to calls from successive Boards, the Government committed to undertaking a historic, independent review of the Civil Legal Aid Scheme and I'm pleased that the former Chief Justice Frank Clarke, agreed to oversee the Review.

As Frank is speaking next, I'll leave it to him speak in detail about the review and the work he and his fellow members are undertaking.

However, I would like to mention that the Group have extended the deadline for inputs to the public consultation. So, I encourage any organisation represented here today who have not yet made a submission to do so as soon as possible.

In order to provide effective access to justice, we must understand the challenges faced by those who engage with our systems.

I am conscious that the room is full of lawyers, and I'm also conscious that a proportion of disputes will only be resolved in court. But I do hope that through this process that proportion will be made smaller - by increased understanding and use of mediation and other alternative dispute resolution methods in this space.

This is especially true in family situations, or indeed a dispute within a business, where people often need to maintain an ongoing relationship with the other party.

Family Court Bill and Family Justice Strategy

This would complement the approach of the first Family Justice Strategy published by my colleague, Minister Helen McEntee, last autumn.

The Strategy sets out a clear vision for a coordinated, consistent and user-focused family justice system, which helps children and families obtain earlier, appropriate resolutions in a more effective way. It aims to achieve this through the implementation of over 50 actions across nine goals.

The Strategy is foundational in nature, recognising the many issues that currently exist within the family justice system, but outlining the steps needed to move towards a better, more user-friendly system.

I know the development of the Strategy was informed by the work and submissions of many of you here today, and I know your ongoing input will be crucial to success as the actions are implemented over the next three years.

There are many goals in the Strategy that I could emphasise here this morning, but the first – Supporting Children – is one which I think is particularly critical. It contains

a number of actions which stress the importance of children in the family justice system. The best interests of each child must be heard and considered - articulated by children themselves. Children must be supported through their own journey, rather than simply being some passive observer of a dispute which impacts them.

In short, children must be central to the process which will impact the rest of their lives. To make the family justice system less adversarial, the Strategy also seeks to promote greater use of alternatives to litigation. It emphasises the importance of promoting more co-operative means for people to resolve disputes.

There are a number of actions to further this goal, including increasing greater awareness of, and information about, Alternative Dispute Resolution, ensuring court processes provide opportunities for parties to access ADR at different stages of their cases, and establishing a private panel of family mediators to support existing provision by the Legal Aid Board.

In step with this approach, the Family Courts Bill 2022 encourage alternatives to litigation as part of its guiding principles.

But recognising that some disputes will need recourse to court, the Bill will create a new dedicated family court, within the existing courts structure, where Family Court judges with specialist training will be assigned on a full-time basis.

Ongoing professional training in the area of family law will be required for these judges. The training will, also, focus on non-court solutions where appropriate. The Judicial Appointments Commission Bill will also introduce a requirement for a candidate for judicial office or promotion to demonstrate ongoing professional training.

The Family Court Bill is progressing well. After publication December last, the Bill passed second stage in the Seanad earlier this month. With the cooperation of the Houses of the Oireachtas, I look forward to bringing this Bill forward over the coming months.

There are a range of other measures underway to support the delivery of system-wide reform, not least the Judicial Appointments Commission Bill which I intend to bring to enactment this year.

The ongoing modernisation programme in the Courts Service is funded to deliver on its huge potential and the forthcoming development of the Hammond Lane Complex in Dublin will be a modern facility where family law cases can be held in a dignified, secure and non-threatening environment – with a range of support services at hand.

Judicial Planning Working Group

The creation of new court divisions, and Ireland's shifting demographics, pose fundamental questions in relation to how our courts function and how timely access to justice can be delivered.

The Programme for Government committed to establishing the Judicial Planning Working Group. In 2021, Minister McEntee established the group to bring a more strategic focus to judicial recruitment. Its role was to consider the number and type of judges required to ensure the efficient administration of justice over the next five years.

To help inform the work, the OECD was commissioned to prepare an independent review of judicial resource needs, which has been published by the OECD and is available on their website.

I am very pleased to have received Government approval this week to publish the Working Group's report and to introduce the first phase of large-scale reform of Ireland's judicial resourcing.

I'm sure you are all eager to read the report but allow me to share with you some of the key recommendations.

The report has highlighted an acute need for additional judges. The Group recommends that the judiciary should be expanded in at least two phases of appointments - 24 additional judges in the first phase and 20 additional judges in a second, later, phase. I was very pleased to receive the support of my Government colleagues for phase 1.

Phase 1 will increase the number of judges by 24 – an additional eight judges in each of the District and Circuit Courts, six additional judges in the High Court and two in the Court of Appeal.

The plan is for a further increase of 20 judges in Phase 2, following a detailed assessment of the impact of the first phase.

The Report also highlights the importance of developing a more structured system for planning and deploying judicial resources.

Both the Working Group and the OECD have highlighted the need for extensive data collection and management and pointed out that a substantial programme of change and improvement initiatives is needed alongside the recruitment of additional judicial resources. I understand conversations have started in this regards, which is welcome, and an action plan will be published later this year.

I look forward to supporting the judiciary and the Courts Service as we move forward with this momentous period of growth and reform.

I would like to take this opportunity to thank the members of the Judicial Planning Working Group, chaired by the former Secretary General of the Department of Education, Ms Brigid McManus, for all their dedication and hard work over the last two years.

Efficiencies and Reform Plan

As I mentioned a few moments ago, one of the Government's goals is, to make access to justice quicker, easier and cheaper. Reforming our judiciary and justice systems are part of that, but we must also focus on the day-to-day practice of civil law.

Last May, Minister McEntee published the Civil Justice Efficiencies and Reform Plan for implementing the 90 recommendations made by in Judge Peter Kelly's seminal report - a document which maps out how the most significant reform to civil law in the history of the State will be achieved.

These reforms include tackling the high cost of litigation and extended timeframes involved in legal cases.

They also include simplifying the language used in the Rules of Court and harnessing digital technology, all with a view to making civil justice services accessible and affordable to anyone who needs them.

The reforms will not only help those who need legal services. They will also help legal professionals, the Courts Service and the judiciary do their best work and be future facing in how they approach their duties.

An implementation group, chaired by my Department, is already up and running. This group will ensure that implementation takes place on a phased basis and provide progress reports to Government annually.

I've mentioned Courts Modernisation a few times and this is part of my Department's ambition to support and drive modernisation and digitisation across the entire Justice sector.

The Courts Service 10-year Modernisation Programme will deliver a new operating model for the Service – designed around the user and delivered through digital solutions.

I'm glad to see that significant progress has already been made. For example, the Courts Service invested over €2.2 million to increase the number of technology-enabled courtrooms from 55 in 2020 to 118 at the end of 2022.

These courtrooms support remote and hybrid hearings, allowing parties, witnesses, prisoners or police to dial in to a physical courtroom and support digital evidence display.

A further investment of €3.1m was put in place last year to support a new three-year programme to provide 54 more technology-enabled courtrooms.

Not only do these facilities increase efficiencies and reduce costs, they also allow vulnerable witnesses to give evidence without fear of intimidation. This is a simple, but effective step taken to ensure that the justice system is more empathetic and less adversarial. It is also emblematic of the system we are all working to put in place – one which works for those it serves.

Conclusion

When I look around me at the people in this room, I see a group of people with the power to do tremendous good and to make people's lives better.

All of the reforms we are working on together will not be possible without your skill, commitment and dedication.

The success of our work will be measured by the ease with which the most vulnerable in our society seek and access justice.

Given the breadth of the reform measures I have outlined today, I think there is cause for optimism that the years ahead will see us improve our performance on this key measure.

But doing so will require the ongoing support of everyone in this room and across the wider sector.
Our ambition must be to continue to break down barriers wherever they exist.
And to build a path for all to access the justice they need.

Thank you.

The Civil Legal Aid Review: purpose, key issues, and progress - Mr Justice Frank Clarke, Chair of the Civil Legal Aid Review & former Chief Justice

Mr Justice Frank Clarke, Former Chief Justice

When the review of Civil Legal Aid was announced there was much comment that it was the first time that there was to be a comprehensive look at the need for a Civil Legal Aid system since the Pringle Report more than 40 years ago in 1977. That fact alone suggests that this review needs to be both comprehensive but also to identify the underlying principles which should guide the assessment of any such scheme and thus determine the parameters of what the review group should recommend. Amongst others there are three very significant reasons why this review is timely.

First, we all know that the Ireland of today is much changed from that which formed the backdrop to the recommendations of the Pringle Report. Recommendations which were fit for purpose then may well no longer be such. The population and demographics of the State are much changed. Our society, its culture and our laws are more complex. Issues such as immigration, the Environment and many others which then were non-existent, or marginal are now mainstream.

Second, the recommendations of the Pringle Committee were only partly implemented. Even if there were no need to alter the parameters of an ideal Legal Aid system to reflect modern conditions, we would still have to consider those parts of Pringle which have not been implemented.

Third, there is the Human Rights dimension. The partial implementation of Pringle which occurred with the establishment of the Legal Aid Board in 1980 occurred after the *Airey* case in the ECHR. However, the Human Rights landscape has evolved significantly in the intervening years not least by the specific reference to Legal Aid in the EU Charter of Human Rights.

I suggest that there are two fundamental concepts which must underly any review of Civil Legal Aid. The first is Access to Justice. That is a term that is often used but its meaning is not always carefully understood. At its most obvious it refers to the entitlement (recognised in almost all relevant human rights instruments) for parties to have access to a fair and impartial court or tribunal to determine disputed rights and entitlements and for such courts or tribunals to have the power to enforce any rights or entitlements established and provide appropriate remedies. Indeed, that basic right has often been described as being the most fundamental right, for without it, all other

rights may be of limited value. Of course, many persons or bodies (public and private) will naturally obey the Constitution and the Law and will respect rights and entitlements without the need to be brought to court. However, there may be disputes about where the legal rights and wrongs of any situation may lie and, in any event, the fact that there is ultimately recourse to a court or tribunal with the power to enforce entitlements established is a powerful persuader.

There are few formal barriers to access to courts or tribunals in this jurisdiction although there can, from time to time, be debates about rules such as those relating to the standing needed to bring certain types of cases. However, the fact that there may be only very limited formal barriers to access to courts or tribunals does not mean that there may not be many practical barriers in place. Where a person could not reasonably be expected to pursue a court or tribunal process without assistance than the absence of a formal barrier may still mean that access to justice is denied or impaired. There are likely also to be cases where the availability of a legal solution to problems may not be known to some or all of those involved so that they may not be sufficiently aware that there may be justice to be accessed.

However, while knowing about and having the practical means to ensure the availability to have rights and entitlements decided and enforced by a court or tribunal is both the backstop to and an important component of access to justice, I suggest that a proper approach to providing enhanced access to justice goes well beyond the court or tribunal.

What people seek are effective solutions to their problems. Not all problems have a legal aspect. I may have a problem with my neighbour and the feeling may be mutual. However, unless one or other (or indeed both) of us breaks some law then our undoubted problem has no legal component and thus the law has nothing to offer as a solution. As we are dealing with “Legal” Aid I suggest that we are dealing with problems which may have a legal component and thus at least some legal aspect to their potential solutions.

However, not every problem with a legal component requires a court or tribunal to provide a solution. Once a solution can be found which provides justice in accordance with law then access to justice is served. It is worth pausing on that phrase “justice in accordance with law”. It is likely that most persons would see a solution which provided access to justice as requiring that solution to be fair. Indeed, to be just. However, there can often be debate about just what is fair. Many laws seek to strike a balance either between private individuals amongst themselves or between individuals and the state. However, not everyone will agree that the balances struck are fair. In some cases, there may be questions about whether the balance struck is allowed under the

Constitution but unless there is a finding of inconsistency with the Constitution then all concerned (be they judges or parties) are bound by the law whether they agree with it or not. It follows that in some cases there may be those who do not think of the outcome as fair or just. However, where the parties have had a reasonable opportunity to know or their legal rights and entitlements and to have those rights and entitlements decided and enforced in accordance with valid law then it can reasonably be said that they have had access to justice.

As has been suggested such legal solutions do not necessarily require a final decision by a court although there will always be situations where no other practical route to a solution may be available. Access to justice is enhanced when it is timely and where it places the minimum burden (whether financial or personal) on those involved. Any system or process which fails to recognise that requirement runs the risk of diminishing rather than enhancing justice.

It must, of course, be recognised that Civil Legal Aid is not the only way in which access to justice can be enhanced. Effective information programs to inform all (and especially those who may not readily think of their problems as having legal solutions) of their rights and entitlements and, importantly, how they can be enforced in practice, can play a most important role. Such programs may exist within or outside a Legal Aid scheme but wherever situated they remain important. Effective and accessible systems of Alternative Dispute Resolution can play a role. Legal Aid may well be important in enhancing the effectiveness of ADR. Court processes and procedures which are made more straightforward can undoubtedly enhance access to justice. Other examples could be given. It is important to emphasise that this review is about Civil Legal Aid and the role which it can play in enhancing access to justice and is not, at least directly, concerned with all of those other elements which impact on the quality of access to justice. However, it is necessary to consider those other elements at least insofar as they impact on Civil Legal Aid. For example, it is important to consider the extent to which Civil Legal Aid should encompass information and outreach to those who may have limited knowledge of the availability of legal solutions. To what extent and in what way might Legal Aid facilitate effective Alternative Dispute Resolution? How might better court and tribunal processes (which may be under consideration or implementation by other bodies) help in reducing the costs of providing Legal Aid and, perhaps and in some circumstances, in making it possible for persons to effectively pursue at least some types of claims with perhaps assistance rather than representation. These and other similar questions must necessarily inform any recommendations about an ideal Civil Legal Aid system even though it is beyond the scope of this revue to examine and make recommendations about the factors (other than Civil Legal Aid) which impact on access to justice.

There is a sense in which it is necessary to consider what might be described as the legal ecosystem and the role which Legal Aid may play in that system. Furthermore, we must recognize that, as things have evolved since the creation of the Legal Aid Board, other agencies, and bodies (both public and private and where private sometimes publicly funded) have taken up some roles within that ecosystem. It is important to assess whether the current range of delivery optimises access to justice and delivers appropriate responses to the needs of clients. It must also be recognized that state bodies may not always be the best route particularly for groups who may not regard the state and its agencies as obvious places to go for help.

If playing its appropriate role in enhancing access to justice is a key component of any Civil Legal Aid system, it must also be recognised that it is vital that that role is designed in a way which is led by the needs of those whom it is designed to serve. The reason for this is clear. As has been suggested the underlying principle stems from the requirement to ensure so far as possible that those who may have legal solutions to their problems can avail of those solutions in a manner of which they are or become informed, in a way which allows such solutions to be delivered without any unnecessary barriers whether formal or practical and does so, so far as possible, in a timely, efficient, and cost-effective way. It is solutions which are at the centre of that requirement. Those solutions, however delivered, must strive to do justice in accordance with law.

However, what is clearly required are solutions to the problems of those who may avail of legal aid. It follows that the methods by which the provision of legal aid seeks to assist in the delivery of those solutions must be led by the reasonable requirements of those who might potentially avail of legal aid.

I have already noted that not every problem has a legal component. However, it may take some time and effort for an adviser to identify whether that is so. What is needed is a system which allows for an early identification of whether there may be a legal aspect to the issues presented by a client followed by a route map to delivering the best pathway to providing any potential solution. Indeed, even if there is no legal aspect to the problem it would be useful if clients could be directed to any other organisations or resources which might help.

Against those general principles there are very many questions of implementation and detail which need to be explored. The existing model must be assessed to determine how it measures up to the task of playing the role which those principles demand in the context of the Ireland of today. Likewise, the identification of an ideal system for the future must be guided by those principles. However, as with any publicly funded scheme, there is the essential requirement that the taxpayer gets value for money in the sense in this case of any enhancement in access to justice being secured in a

cost-effective way. In addition, it is necessary to address the proportionality of any gain in such access by reference to the cost but also recognising that the gain may need to be judged against broad and flexible criteria. The question of the entitlement to a minor welfare benefit might be of extremely marginal relevance to the overall well-being of one person but critical to another.

It must also be acknowledged that, as in all areas of public expenditure, there will never be sufficient resources to deliver the perfect system. In addition, there will inevitably be the need, for practical and logistical reasons, to deliver some changes over a reasonable timeframe (although some changes should be capable of being implemented within a very short period resources permitting). In identifying an ideal end of the road, it will also be important to specify priorities and appropriate sequencing.

In approaching all of the many issues which arise the devil will often (although perhaps not always) be in the detail. For many questions such as any financial thresholds, the scope of cases which may be the subject of advice or assistance and the application of any merits or financial criteria in particular cases will be the most important question. To the person refused legal aid because of being the wrong side of a financial threshold the principles may be all well and good, but that threshold may be understandably their only real focus.

It is hoped that this report will expand on the detail of and the justification for the principles identified and analyse how they may best inform a system of Civil Legal Aid which is designed for the Ireland of today. It is then hoped that this analysis can lead to the description of the scope and parameters of such an ideal system and identify the best route to moving towards the goal of delivering that system.

Minister for Justice, Simon Harris TD, delivering his keynote address at the opening day of the Chief Justice's Working Group Conference on Access to Justice, 24th February 2023

THE CURRENT SYSTEM OF CIVIL LEGAL AID IN IRELAND

Moderator:	Muriel Walls, solicitor & former Chair of the Legal Aid Board
Speakers:	John McDaid, CEO, Legal Aid Board
	Keith Walsh SC, Solicitor
	Deirdre Lynch, BL
	Doncha O'Sullivan, Deputy Secretary General, Department of Justice
Rapporteur:[7]	Chloe Dalton, Judicial Assistant

Introduction

The second session of the conference provided an overview of civil legal aid at present as well as some of the pressing issues the system is currently experiencing. This session was moderated by Muriel Walls, Partner at Spain, Twomey and Walls Solicitors and former Chair of the Legal Aid Board.

John McDaid, CEO, Legal Aid Board

Mr John McDaid provided an insightful discussion on the historical development of civil legal aid in Ireland and the current issues with the system. Mr McDaid opened by stating there is no jurisdiction which has developed a perfect solution for the delivery of civil legal aid and remarked that this conference provides an opportunity to review the Irish civil legal aid system.

The current civil legal aid system has been in place since 1979, and while Ireland started with a model that was exclusively "law-centre" based, it is now a mixed model. However, the law centre model remains the point of entry into the civil legal aid system for most matters; the main exception is services provided through the Abhaile Scheme to individuals at risk of losing their homes because of mortgage arrears. Since the establishment of the civil legal aid scheme, the majority of persons seeking services have done so in relation to family matters (although, in recent times there has been an increase in international protection). This has led to the perception that the Legal Aid

[7] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

Board only provides services for family law when, in fact, there are relatively few areas of law where Civil Legal Aid is not available, such as ordinary conveyancing matters, defamation, group actions and disputes concerning interests over land. Some of the legal challenges faced by individuals of limited means, such as employment matters or social welfare entitlements, are not outside the scope of the legislation.

However, legislation concerning Civil Legal Aid provides that legal representation can only be provided before certain courts, namely, the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court, along with certain referrals to the Court of Justice of the European Union, the Coroner's Court and any other court or tribunal prescribed by the Minister for Justice with the consent of the Minister for Public Expenditure. At present, the only court or tribunal that has been so prescribed has been the International Protection Appeals Tribunal and its predecessor. This means that an applicant is entitled to apply for legal advice in relation to an employment law matter, for instance, but will not receive legal aid for a case before the Workplace Relations Commission. This highlights that the expansion of civil legal aid to quasi-judicial tribunals does not require amending primary legislation, but rather a decision to prescribe that body on foot of the legislation.

Mr McDaid noted that the Legal Aid Board is not the exclusive provider of civil legal aid services. For example, the Mental Health Commission has its own scheme to allow for the representation of individuals who are the subject of an application to be detained involuntarily. Recently, the Parole Board has set up a scheme in which it administers legal representation for parole hearings.

Turning to the issue of financial eligibility, Mr McDaid noted that the criteria are set out in the regulations made under the Civil Legal Aid Act. There are both income and capital criteria, the latter of which provides that a person's home is excluded from eligibility. The income criteria are likely to be the key element in determining eligibility. The criteria are based on a disposable income threshold (currently €18,000), which was last set in 2006. A person's eligibility is determined by taking their gross income and applying a range of deductions: for example, for a dependant spouse, children, and mortgage or rent payments. A person's disposable income must be less than €11,500 in order to qualify for the minimum financial contribution. The minimum contribution for legal advice is €30, and €130 for legal aid. There are provisions to have the contribution reduced, waived, or paid in instalments. The contribution does not have regard to the nature of the advice or the dispute, nor does it have regard to the court's jurisdiction. It is a single contribution to a particular matter.

In more recent years, the role of the Legal Aid Board has expanded beyond the provision of legal advice and representation. In 2011, a legislative amendment transferred responsibility to the Legal Aid Board for the provision of the State's family

mediation services. Since then, around half of the family mediation services have been co-located with law centres, with the objective of building better relationships and encouraging persons who are suitable to mediate their dispute to try and do so. It is notable that there are no financial eligibility criteria for mediation, it is universally available, and there are no financial contributions.

Mr McDaid further considered some of the challenges relating to civil legal aid. He noted that the Legal Aid Board feels strongly about advocating for the needs of the client, or potential client, and has made submissions on financial eligibility in 2017, which have not progressed substantially since. Another important issue is awareness of the services provided by the Legal Aid Board. While the Legal Aid Board regularly meets with stakeholder bodies and uses this network to raise awareness of services, there has never been a significant publicity campaign to date. A related challenge is the waiting times, which the Legal Aid Board has always regarded as a critical effectiveness measure. However, there has been improvement in this area, and it is important to emphasise that urgent case types, such as domestic violence and childcare matters are always prioritised.

There are also some ‘supply-side’ challenges. The Legal Aid Board’s business is to supply legal and family mediation services. It does this using employed staff: solicitors, paralegals, mediators, and support staff, all of whom are civil servants, and also by retaining private solicitors, very recently private mediators, barristers, and experts on a fee per case basis. The Legal Aid Board requires the consent of the Minister for Justice and the Minister for Public Expenditure to the terms and conditions on which it retains private solicitors, barristers, mediators, and experts.

Recruitment is generally challenging but is exceptionally so when trying to employ solicitors in Dublin. It was unacceptable that it took close to five years to get some form of a solution to the fact that the Legal Aid Board was limited to advertising salary figures for solicitors that were €12,599 less than what the Chief State Solicitor’s Office, the DPP’s office, Revenue and some other public bodies were potentially offering. Mr McDaid believes that this has significantly damaged the organisation notably in Dublin and it undermined morale as it implied an unfair hierarchy. The Legal Aid Board are still advertising a maximum salary that is €3,651 less than the offices mentioned, and recruitment of lawyers remains problematic. At the moment private solicitors are paid €339 for a domestic violence or an access case in the District Court. This is a set fee, regardless of how long a case takes, and there are no refresher fees. These fees were last set in 2008 and were subject to the Financial Emergency Measures in the Public Interest (“FEMPI”) cuts. Since the fees were originally set, we have had a constitutional referendum regarding the voice of the child that has undoubtedly and properly added to the time that these cases take. In recent times, private solicitors have left or are leaving the Legal Aid Board panel or are choosing to remain on the panel but only take

certain cases. There are now counties in Ireland where there is hardly more than one active private solicitor taking District Court legal aid work. The solicitor firms on this panel are not big firms but operate as small businesses. A submission to improve the Legal Aid Board's fee structure remains long outstanding.

Mr McDaid raised these issues to observe that there is no point in seeking to expand the civil legal aid scheme if the supply-side challenges are not addressed. This will only put increased pressure on an already pressurised system. It is not just about having a sufficient budget: there has to be better engagement in relation to the issues mentioned.

Mr McDaid concluded by stating that it is important to acknowledge a number of the positive aspects of our system. Unlike in some other jurisdictions where the state legal aid organisation acts primarily to fund third-sector service delivery, in Ireland, the Legal Aid Board takes responsibility for ensuring that an applicant is provided with a service. There are other countries where the phrase 'advice deserts' is not infrequently used, and Mr McDaid does not believe we have these, which is not to dismiss earlier comments about awareness. A person who needs an urgent service will get that service. Most applicants get a swift service. There are private solicitors doing civil legal aid work for the highest motives, as well as the Legal Aid Board, which has committed and dedicated staff working in law centres, family mediation centres, and support functions. Mr McDaid noted that in 2022, the Legal Aid Board undertook some research with clients and found the feedback was positive in terms of the client service once they entered the system.

Keith Walsh SC, Solicitor

Mr Keith Walsh provided a summary of barriers to accessing legal aid generally. In discussing problems with the current Private Practitioner Panel, the most significant issue with the current modes of delivery of civil legal aid through family law centres and private solicitors is because of the remuneration. The remuneration payable to solicitors employed in the law centres and the level of fees payable to the private panel of solicitors do not remotely reflect the market rate for legal services in either the public or private sector.

In the latest report of the Legal Aid Board, published in 2021, Nuala Jackson SC, Chairperson of the Board, stated:

> "A significant challenge the Board experienced in 2021 was around recruitment and in particular the recruitment of solicitors. The Board was compelled by public pay policy to advertise for new <u>solicitors on the first point of the applicable pay scale and in a manner and at a remuneration level distinct from other public</u>

> bodies that employ solicitors. As a result, the Board found it increasingly difficult to recruit solicitors."

Mr Walsh acknowledged that there remains a serious shortage of available solicitors who will accept the reduced payment available in the Legal Aid Board. The shortages of staff have also led to a vicious circle being created, whereby those who remain are increasingly overworked, yet paid the same, which can lead to reduced morale. The Legal Aid Board is not authorised to set the rate payable to private practitioners, this must be approved by the Department of Public Expenditure and Reform. The rate of payment for the Legal Aid Board Private Practitioner scheme in the District Court is completely non-economical and has led to a flight of solicitors from the Legal Aid Board panel, causing difficulty for litigants in accessing legal services. In the Dublin region, there is one firm of solicitors who have dedicated themselves to the District Court and will appear there every day. There are a small number of other firms of solicitors who appear with regularity in the District Court.

Mr Walsh outlined that the solution proposed for dealing with these remuneration-related problems is that the Legal Aid Board be permitted to set the rate of pay for solicitors it employs, or alternatively, that the rate of pay is linked to the rate of pay for solicitors in the Attorney General's office, the Chief State Solicitors office, or the Director of Public Prosecution's office. Currently, the Legal Aid Board remuneration is much less for similarly qualified solicitors. Additionally, there should be a restructuring of the private practitioner scheme to make it viable, whereby the Board could set the rate for solicitors and barristers.

On the topic of restructuring, the Law Society wrote to the Legal Aid Board in 2018, identifying structural issues with the Private Practitioner Scheme as it operated in the District Court in family law cases. These structural issues include the increased complexity of District Court family law cases, particularly after: (1) the introduction of Article 42A to the Irish Constitution and the passing of the Children and Family Relationships Act 2015; (2) the lack of any change to the structure of the Private Practitioners' Scheme in the last 12 years except for a reduction in fees to practitioners by 12%; and (3) the unrestricted access to the Private Practitioners' Panel. Some proposed solutions to these systemic challenges are having a Private Practitioner Scheme, which properly reflects the complexity of District Court proceedings and the new reality of multiple court appearances for applications and having restricted access to the panel for a certain number of specialist solicitors who will increase their skills as well as providing benefit to those seeking legal aid.

Mr Walsh drew attention to the Mental Health Legal Aid Scheme, which differs from the Legal Aid Board Private Practitioner Scheme for District Court matters in various significant ways. It is a closed scheme, entry to which is facilitated by an application

and interview process and the panel is relatively small, meaning that legal representatives get more work per head and develop expertise in the area. According to the Mental Health Commission website, there are currently 81 legal representatives for the country, with there being 2,548 involuntary detentions in 2021. It is submitted that the Private Practitioners' Family Law Scheme should be reconstituted along similar lines.

Turning to the key barriers to accessing the legal aid service, some of the most pressing issues are inadequate resourcing, which causes long delays; accessing a solicitor given the reduction in the number of solicitors on the Private Practitioners Panel; the financial contribution; the financial eligibility criteria; the merits test; and the lack of public knowledge of individual rights and the legal aid system. On the issue of awareness, Mr Walsh acknowledged that it is important to recognise the work done by the Community Law Centres, FLAC, and NGOs, but more resources and greater involvement of the Legal Aid Board is required.

Deirdre Lynch, BL

Ms Deirdre Lynch BL provided insights into the experience of a barrister working in this area, particularly when being instructed by the Legal Aid Board. In addressing some of the current challenges experienced by barristers practicing these areas, Ms Lynch noted that there are two main topics to be addressed: (1) the overstretched and, at times, undertrained staff within the Legal Aid Board; and (2) the significant inequality of arms in the system. In discussing these issues, Ms Lynch highlighted that it is vital to emphasise that these issues are not the fault of the Legal Aid Board itself or its staff, and these comments are not intended to be levelled as criticism directed towards either of them.

Ms Lynch noted that it is important that we do not lose sight of who the client is in these proceedings: often clients are some of the most marginalised people who have experienced social issues such as addiction, may have learning difficulties, or may have been in care as children themselves. These individuals are entitled to the very best service of representation. Despite the immense impact of having a child or children removed from a parent or guardian's care by the State, there are remarkably fewer resources available for those who may find themselves as a respondent to such proceedings when compared with the legal aid supports available for even minor offences in the criminal sphere. The level of representation that the Criminal Legal Aid Board has the budget to fund those at risk of going to prison for a year is far superior to any person whose child is at risk of being removed from their care.

Ms Lynch argued that barristers practicing in this area of law would adopt a different approach to that of what Keith Walsh SC has suggested in relation to a small pool of practitioners taking on cases. The ethos of the Bar of Ireland is that every barrister is

willing to accept instructions from any law centre or private practitioner who has received a legal aid certificate to defend parties in childcare proceedings. If all barristers were to accept instructions from the Legal Aid Board, then, in theory, there would be fewer difficulties in terms of remuneration. Whilst that is the aspiration of the independent referral bar system, the experience of barristers is that they are often not willing to accept instructions from what is an under-resourced system which does not allow them to provide a high-quality service. Additionally, the low level of the fees is such that barristers often consider it to be *pro bono* work.

Ms Lynch noted that it has been acknowledged that there is an issue with adequate staffing and resourcing within the Legal Aid Board centres; therefore, when barristers have been engaged on a case, it is not uncommon that barristers are expected to deal with the case in its entirety. It is not that the solicitors do not have the skills necessary to prepare a distilled brief in terms of what issues are to be raised in the proceedings, they simply do not have sufficient time or resources. A barrister may be expected to conduct consultations with the client, draft the solicitors' letters, as well as writing legal submissions and representing the client in court – this is not providing the appropriate level of service for clients. Additionally, there are some issues in relation to the training of law centre staff: due to the workload, new recruits to law centres may be expected to hit the ground running. This leads to a situation where barristers may have to provide law centre staff with information in relation to the system of child protection law.

Ms Lynch then moved on to the second issue of the inequality of arms between the legally aided client and the State. In child protection proceedings, the applicant tends to be Tusla - Child and Family Agency, with the respondent generally being the parents or guardians of the child. The private law firms representing the State are being paid significantly more and pay their counsel higher fees than legal practitioners acting for legally aided clients. Ms Lynch referred to the Chief Justice's comment, made earlier at the conference, that the litigant receiving legal aid got the outcome because it was the correct outcome, not because they did not have the same level of representation as the opposing side, but within the current childcare system this is not always the feeling of a particular litigant. Furthermore, within the system of childcare proceedings, often the State agency puts forward expert evidence, which may recommend the removal of a child; the only way to challenge this is by having an equal expert for the respondent. This cannot always be achieved, particularly where the Legal Aid Board is only authorised to pay fees which are considerably less than the market value. Therefore, the pool of experts willing to do this work is very small.

Finally, Ms Lynch acknowledged that it should be noted that, unlike social workers who have access to a corporate law firm advisory service, parents or guardians who have had a visit from a social worker do not have any comparable facility. Arguably, if there was an advisory service immediately available at an early stage to parents or guardians before proceedings commenced, this could be an appropriate remedy and minimise the number of children taken into care.

Doncha O’Sullivan, Deputy Secretary General - Department of Justice

Mr Doncha O’Sullivan provided a perspective on the current issues within the civil legal aid system in Ireland. He acknowledged that this conference provides a unique opportunity to gain insight into the challenges faced in the current system of civil legal aid provision and that it is important to maintain momentum across key strategic developments to improve access to justice in Ireland.

Mr O’Sullivan started his discussion with some of the financial issues and highlighted that the Department of Justice is engaging with the Department for Public Expenditure to address issues in relation to the supply-side issues concerning fees and availability of lawyers for panels, which have been raised by the Legal Aid Board. Another important supply-side issue is the question of salaries which the Legal Aid Board is authorised to offer, which some progress has been made on but needs to be kept under review. On the demand side, there are questions on eligibility criteria particularly due to the rise of the cost of living in recent times, and recommendations have been made to look at this. Ahead of the Budget 2024, it is important to examine the benefits which increased funding in this area could have, and it will be helpful to get a sense of the recommendations likely to emerge from the review of the Civil Legal Aid Scheme.

Mr O’Sullivan noted that in recent years there has been scope to grow the public service, and he hoped it would be possible to continue to do this (however, there are limits as to what can be achieved). Of course, regard needs to be had to review how this funding can best be deployed in terms of the impact on service delivery, users, access to justice and value for money in how we meet needs.

Mr O’Sullivan highlighted that it is a key part of the Department of Justice’s values to improve access to justice, which is more than just the mechanics of funding the Courts Service or the Legal Aid Board, but where the Department is working with stakeholders and users to produce better outcomes. The review of the Civil Legal Aid scheme is of course a key component in this, and Mr O’Sullivan agreed with what has been said already this morning about it being an overdue opportunity. Ultimately the review should map out a future for the Scheme. What is needed is a modern, flexible service that has, as far as possible, the capacity and resources to respond to the priority legal assistance needs of those of insufficient means.

Capturing the views of those who have unmet legal needs is an important part of the Group’s work. As such, part of the review process involves significant consultation and engagement to ensure that the insights of a range of stakeholders, including groups who are traditionally considered hard-to-reach, are captured. It is good to see that there are focused workshops looking at this.

The recommendations will be of important strategic direction. The Department expects to engage on the question of eligibility limits and fora, as a number of people have said during the morning. An important prism will be the impact and return on investment in terms of improved services. Mr O'Sullivan added that there are other interesting issues to look at around designing good citizen-facing services, including people with legal needs, the design of those services, improving access to information, and promoting alternative dispute resolution where appropriate. A further key point is that this review is not happening in isolation.

Mr O'Sullivan noted that the new Family Justice Strategy is a game-changer in laying strategy and creating accountability. Additionally, it is closely linked with associated domestic violence and gender-based violence strategy. Other important modernisation is taking place on foot of the recommendations of the Judicial Planning Working Group, the Review of Administration of Civil Justice, and the Courts Service's own modernisation programme. To conclude, Mr O'Sullivan mentioned that the Department of Justice is listening to and engaging with stakeholders to address the current issues of the civil legal aid system.

The panel from the session on "The Current System of Civil Legal Aid in Ireland",

24th February 2023

THE INTERNATIONAL EXPERIENCE

Moderator:	David Fennelly, BL, Chairperson of FLAC
Speakers:	Professor Pascoe Pleasence, Professor of Empirical Legal Studies, UCL
	Professor Dame Hazel Genn, Professor of Socio-Legal Studies, UCL
	Mark Benton, K.C., former CEO of Legal Aid BC, Canada
Rapporteur:[8]	Oisín Mag Fhógartaigh, Judicial Assistant

Introduction

The purpose of this session was to examine civil legal aid from a broader, international perspective to demonstrate the value of data-led and research-based reform.

David Fennelly, BL, Chairperson of FLAC

Mr David Fennelly opened this session by discussing the importance of considering international perspectives and experiences when thinking about reforming civil systems and access to justice generally. Mr Fennelly explained that evidence-based analysis and data-based research are very important to the development of any area of law. He stated that while we often base the development of our systems on the valuable experience of invested actors, we also base it on anecdotes and assumptions. Mr Fennelly outlined that this session will provide a method of examining the gaps that we have in assessing our own model of civil legal aid by providing us with more data and evidence to compare with and account for.

Mr Fennelly provided two points of caution when examining international perspectives, stating that we must resist the idea of transposing another state's model of legal aid directly, stressing that while the comparative model is useful in gathering data, there is no perfect model. Moreover, Mr Fennelly emphasised that reform must be viewed as a process rather than a single event. Mr Fennelly, in this respect, mentioned the Pringle Report, stating that while it had looked at international perspectives, it was a

[8] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

creature of its time, and was not fully implemented. Mr Fennelly cautioned against leaving the development and reform of civil legal aid to moments such as the Pringle Report but instead urged that it should be a continuous process of development. Mr Fennelly referred to the comment made by Mr Justice Frank Clarke in his opening remarks, i.e., that reform of civil legal aid should not be susceptible to human rights challenges. He also referred to the presentation by Ms Justice Síofra O'Leary given at the previous conference (2021 conference), which also referred to the importance of development within the obligations under the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union.

Professor Pascoe Pleasence, Professor of Empirical Legal Studies, UCL

Professor Pleasence's presentation demonstrated the importance of using data and research to build solutions to legal problems from the perspective of users who are experiencing those problems with reference to their capabilities and circumstances. Professor Pleasence acknowledged that examining issues of civil legal aid policy from the perspective of courts alone provides us with a warped idea of the issues of justice that people actually experience in their everyday life. What is required, he claims, is not this 'top-down' perspective we often utilise but rather the development of a 'bottom-up' viewpoint which re-imagines these issues from the perspective of how ordinary people experience these problems and how they realistically interact and access the formal legal processes which are available to them. Doing this will assist in creating a superior system which deals more effectively with such legal problems.

Professor Pleasence grounded his data in the many 'legal needs' surveys conducted worldwide since 1993. He stated that the findings were clear: legal or justiciable problems are common across the world. There is a great disparity in how those problems are experienced, and by whom; however, a consistent message from the data is that social disadvantage is a key determinant of problem experience. Social disadvantage has a bearing on a person's capabilities to solve justiciable problems insofar as it creates geographical, physical, cultural, and economic barriers and makes those problems more burdensome due to fewer available resources, which furthermore makes it more difficult to mitigate or avoid the problems arising altogether.

Such justiciable problems, moreover, are additive and occur in clusters. Professor Pleasence explained that if you experience one justiciable problem, you are mathematically more likely to experience another. These problems compound one another, and in turn, social disadvantage. There are equally some problems which only arise in the context of disadvantage: for example, a person would not have problems accessing welfare benefits if that person was not entitled to those benefits. Certain populations (such as those of a certain age, race, or social class equally) experience unique problems exclusive to that population. In light of the additive nature

of justiciable problems, Professor Pleasance concluded that the data suggest that a significant number of justiciable problems are experienced by relatively few people; those sitting at the intersection of many of these problem-experiencing groups, such as, for example, a single parent on welfare benefits living in an isolated area.

Professor Pleasence stated that the data suggests that the result of such disadvantage is that individuals who experience legal problems in that context learn to behave ineffectively when faced with fresh problems. As the problems are many, they often evoke a sense that they are insurmountable. As such, many begin to take no action to solve their problems, even where they should, developing a sense of what Professor Pleasence calls ‘frustrated resignation’. Professor Pleasance stressed that it is not that the problems are not serious, but that their ability to reach appropriate and effective help via support and legal services becomes too difficult.

A further issue addressed by Professor Pleasence is that there is widespread systematic ignorance as to the nature of law and justiciable problems. In particular, such systematic ignorance leads to people setting out on the wrong pathways to achieve justice. The data suggests that people do not know where to go for legal assistance and are often signposted to inefficient pathways. Moreover, once people have taken an action, they are likely to act the same way in the future, even if they are unsuccessful. Professor Pleasence, providing data obtained from a survey conducted in Argentina (with a proviso that such data may have been gathered anywhere), demonstrated that it is overwhelmingly the case that people do not know what to do when presented with a justiciable problem or believe that it cannot be resolved, be that out of fear or lack of confidence in capabilities. The inaccessibility of legal services exacerbates this issue. Professor Pleasence states that, while the data on the economic impact of justiciable problems have been substantial, problematically, the importance of fixing them is low on the pecking order of political concern.

Professor Pleasence stated that it is the lack of capabilities that people have which should be focused on to improve the overall solving of the problems. In this respect, Professor Pleasence stated that technology can be used to advance capabilities and access legal services. He cautioned, however, that the provision of access to technology which provides help with justiciable problems is only effective when people are also provided with the capabilities to use the technology. Education as to how to use those digital resources is just as important as the provision of those resources. In demonstrating this, Professor Pleasence showed that data suggests that while young people have the highest level of access to digital resources, they are no more likely to use them than any other groups. Education instils confidence in individuals that the system can provide a solution that they are seeking and that they have sought out the right place to address it.

Professor Pleasence, therefore, concluded that to properly address justiciable issues, the justice system should be designed from the perspective of its users, where public legal assistance services are targeted to specific groups, and outreach services exist to reach those in the most legal need. In this respect, defining what legal problems people have and detailing their additive effect and the experience thereof through data allows us to see the stronger links between justiciable problems and non-legal problems, such as issues with healthcare. Professor Pleasence furthermore concluded that it is clear that for the policymaker, clustered problems require clustered solutions, but those solutions do not need to be visibly clustered from a user's perspective. It may be preferable to have a seamless mechanism where there is no 'wrong door' for the user to step through. Intervention should be timely, and services and processes alike should fit with and be capability appropriate.

Professor Pleasence finally pointed the conference attendees to additional resources: namely the UN Handbook on Governance Statistics, 'Legal Needs Surveys and Access to Justice', published by the OECD, and 'Reshaping Legal Assistance Services: Building on the Evidence Base – A Discussion Paper' published by the Law and Justice Foundation of New South Wales, written by Professor Pleasence himself.

Professor Dame Hazel Genn, Professor of Socio-Legal Studies, UCL

Professor Genn expanded on the principles set out by Professor Pleasence and examined on both an individual and societal level, what access to justice is for, what people want and need from it, and the fundamentals of making access effective. She then looked at a case-study of how legal aid and thinking has developed in England and Wales.

Professor Genn stated that legal aid, properly oriented, exists to support social order, economic activity, social justice, and the rule of law through control of the executive. Access to justice is a basic principle of the rule of law. In its absence, people are unable to have their voices heard, exercise their rights, challenge discrimination, or hold decision-makers accountable. Access to justice, therefore, is a social good, which Professor Genn states measures the health of democracy. It is not, however, to be considered an outcome, but rather an ongoing process. In this respect, Professor Genn stressed that one cannot understand access to justice by reference solely to what opportunities are provided for people to address legal problems. What is required, rather, are opportunities which are accessible by pathways which are used by individuals. Reforming legal aid requires us to examine what rights we give to people, and what opportunities we provide to the public to make good on those rights, those being opportunities to prevent problems interfering with those rights entirely or opportunities at a stage before they reach crisis by the intervention of both formal court processes and non-court dispute resolution structures.

Effective access can only be truly provided to a society that is aware of its rights, is equipped to avoid problems, has knowledge of its options and is able to access and engage meaningfully with those options, where the system is conducted with fair procedures. Referring to Lord Reed in *R (UNISON) v. Lord Chancellor* [2017] UKSC 51, Professor Genn stated that in order for courts to ensure that laws are applied and enforced, the people must, in principle, have access to them.

A problem, however, arises because access to justice has many barriers. Not everyone who experiences a legal problem has the same capabilities. For example, they may go to the wrong places for help, or they may be unable to afford the cost of legal services. Professor Genn emphasised that not all legal problems are 'heroic' and that many legal problems blight the everyday lives of ordinary people. When those people cannot get advice, their options are either to do nothing or do it themselves, and often times the latter is more than people can manage. However, she highlighted that even those who can 'self-serve' need advice and support, though overall legal problems are disproportionately experienced by those with the least capability to resolve them. Social welfare legal support is critical for gaining access to safety net rights and services among these vulnerable and often low-income groups.

She recommends that to support everyone and provide access effectively, the processes of legal aid services ought to be easy to use, cheap, and quick (within reason). It is equally important to ensure that the processes are seen to be, and actually are, authoritative and fair. Moreover, she stated that effective access requires legal aid providers to achieve upstream integrated delivery of that aid which targets the hardest to reach, those with the most complicated legal problems and the least resources to deal with them, so that downstream socio-economic costs of unresolved legal problems, which appear in other public expenditure budgets, are avoided.

Professor Genn then explained how, as a consequence of the Legal Aid, the Sentencing and Punishment of Offenders Act 2012 provided that the comprehensive scheme of civil and criminal legal aid available in England and Wales was dismantled, reducing the number of free legal service providers by around 50%, and in particular removing social welfare legal aid from the scope of the scheme. Professor Genn stated that this affected the most vulnerable and disadvantaged, who faced the most complex legal challenges. This change inspired a number of reports. The Low Commission Report of January 2014 produced a list of guiding principles for the commission of effective legal aid. Such principles included early intervention and provision of advice, investment in the prevention of legal problems, tailoring services to the needs experienced, triaging, and navigating people to services which are most appropriate to their needs, having worked to embed appropriate advice in areas where people actually go to seek out that advice rather than placing the onus on the person

themselves to figure that much out themselves. The Bach Commission Report on 'The Right to Justice' which followed in 2017 advocated for the necessity of the right to justice and the establishment of a justice commission to address the ongoing crises in access to justice, similarly, concluding that legal aid provision ought to be reintroduced for children, those on welfare and those experiencing matters relating to immigration. Despite these suggestions, Professor Genn stated that unsurprisingly, the justice system of England and Wales has not returned to a level of operation as that seen in pre-2012 legislation.

Further conclusions of the Bach Commission Report were that universally accessible advice was required and that a national public legal education strategy ought to be introduced to ensure that those accessing advice had capabilities to utilise it well. In service of these aims, the Commission also concluded that legal aid ought to be brought into and integrated within existing structures within communities, where trusted and identifiable intermediaries already exist. Professor Genn asserted that a key reason that people fail to access legal services is that they simply do not know where to go to access them. Integration, therefore, somewhere such as a doctor's surgery, has a twofold benefit: (1) it provides the individual with a clear door to enter for help, and (2) it provokes the individual to address legal problems which covary with non-legal issues such as health.

Following the example of doctor's surgeries, Professor Genn explained that there is a significant connection between unmet legal needs and health. Only 20% of health status relates to biological factors or healthcare provision. The remaining 80% is determined by social factors, which in turn are greatly affected and influenced by the existence of legal problems. In the post-covid era, there has been a renewed focus on these social determinants of health and the inequalities which stem from them, owing to the impact of post-covid financial crises on the needs of individuals accessing healthcare. This focus has demonstrated that income security, employment, housing, social inclusion, involvement in crime, education received, and early life experiences are great determinants of health and issues for which the law provides protections. Legal provisions, such as social welfare, housing, and community care exist which allow people to avoid health-harming unmet legal needs. Law also can provide avenues to address issues with employment, domestic abuse, violence, family matters and immigration status.

Collaborations between practitioners and welfare rights services for low income and vulnerable groups are therefore of great and obvious importance to address these health-harming needs. The data suggest that often the first-place people talk about legal problems that they can identify themselves is at a GP surgery or in A&E. If legal support was embedded into multidisciplinary teams which combine legal and health tools, doctors can be trained to better identify those health-harming unmet legal needs

so that individuals that suffer from them are reached earlier, improving their mental and physical wellbeing. Professor Genn states that members of the health service are ‘critical noticers’. They are people in a good position to know if the physical or mental health problems of an individual are biological or rather being caused by an underlying legal problem. So, the transformation of community health services to include the public provision of legal services is of clear benefit. Such programs have begun being developed in the UK, via their Health & Care Act 2022 (UK), which provided statutory provision for non-medical interventions to promote health and reduce inequalities, create integrated care systems and enshrined statutory duties to collaborate and create such cross-sector partnerships with community and voluntary sectors. Such programs have also been developed in the USA, Canada, and Australia. Such collaborations are best placed to avoid the downstream costs of unresolved legal problems, both at a systemic and individual level. However, Professor Genn did note that given the fact that public resources remain limited, it remains necessary to improve data on the needs of individuals so the provision of these services may be improved by way of focusing and applying those funds to specific targets.

Drawing her presentation to a close, Professor Genn referred to the UK’s own Civil Legal Aid Review, which is being conducted this year. The Review seeks, through comparative and economic data-driven analysis, to make a more effective, efficient, and sustainable system for legal providers and those who rely on legal aid. The post-covid support approach by the UK Ministry of Justice is to approach legal problems with a view to achieving early resolution through targeted assistance integrated with welfare, with co-located services so that ‘referral fatigue’ is minimised. This strategic focus seeks to provide service delivery which better meets needs, which is provided locally, helping people navigate to a resolution early in their experience of a problem.

In her concluding remarks, Professor Genn stated that legal aid can either be a fence at a cliff preventing people from falling over, or it can be an ambulance at the bottom of that same cliff bringing them to be healed. It is better to have fences which deal with upstream threats rather than ambulances which deal with downstream consequences, but both are necessary for a healthy system.

Mark Benton KC, former CEO of Legal Aid BC, Canada

Mark Benton discussed lessons from the Canadian jurisprudence on civil legal aid, giving a background to the history of its development, its successes, and the problems which remain necessary to resolve in furtherance of more effective and efficient legal aid in that jurisdiction. Mr Benton began his presentation by remarking that the provision of legal aid is a deeply cultural thing and must be contextualised as such. In his view, however, when we orient ourselves to put the people who use the system at the centre, he stipulated that we could measure any such enterprise’s effectiveness in

doing justice by reference to how timely, costly, and simple it is for that person to resolve their legal problem. He also noted that access to justice should be understood to encompass a broader range of services than simply legal representation, stating that information and advice too are central in engaging and resolving legal problems.

Mr Benton's explained the development and current state of the Canadian legal aid system and how it is funded. He explained that the Canadian legal framework of legal aid is built on the pillars of procedural justice, social justice, and politics, each led by different actors: legal institutions, non-partisan communities and the government. The Canadian framework has been heavily influenced by American media and institutional culture, where criminal legal aid was the predominant focus when the enterprise first emerged. As the sensibility to general social justice grew in both jurisdictions, in 1974, the Canadian Department of Health provided funding government funding for the provision of aid to doctors. Mr Benton noted that while this started well, it became quickly understood that doctors could not be the primary providers of this kind of care.

These origins created an environment where a less holistic approach to legal aid was taken. Such was also caused by the differing governance and social models employed across Canada's 13 legal aid jurisdictions. Each jurisdiction has its own legal aid service providers within them, working across two different official languages. Mr Benton noted that there is no consistency in how these services are run, for example, most boards are separate from the state. One board however is a member of its jurisdiction's government. Statutory 'law foundations' exist, which act as legal clinics and are funded by the pooled interests of the lawyers running them. Most legal aid service providers are governed by boards and headed by a CEO. Each provides different methods of service coverage, delivery, governance, criteria for eligibility, staffing and financing. Financing in particular, Mr Benton stated, is variable in each province. 90% of legal said service providers' funding is provided by the government and is highly dependent on governmental interest and political support for providing criminal or civil legal aid, and in what proportion. Generally, funding has improved since major cuts which occurred in 2001 but remains subject to interest rates.

Turning then to lessons that can be learned from the Canadian experience, Mr Benton elucidated that the Canadian Bar Association and the Association of Legal Aid Plans have collaborated to create benchmarks for the provision of effective legal aid. The first benchmark is sustainable funding. Mr Benton does, however, note that it is unlikely that any legal aid plan can claim it meets this benchmark. Many of these benchmarks, he explained, are aspirational and primarily exist to attract funds and incentivise behaviours. One of the biggest problems Mr Benton identified with the Canadian system is that it is increasingly the case that legal aid service providers compete for limited public funding, where in times gone by, they once relied on funding

from the Attorney General, the Chief Justice or the lawyers themselves, which does not occur as much in recent times.

The second benchmark is the provision of services which are tailored to be culturally appropriate. Mr Benton explained the non-legal work that legal aid boards are doing in Canada which seeks to do capacity-building work. He discussed a graphic novel commissioned by the legal aid services society of British Columbia which was designed to inform people about the issue of domestic violence and build their capacities in responding when presented with it themselves. The novel, which reached 60,000 people, was inspired by a similar piece published in the healthcare setting promoting access and capabilities for indigenous peoples.

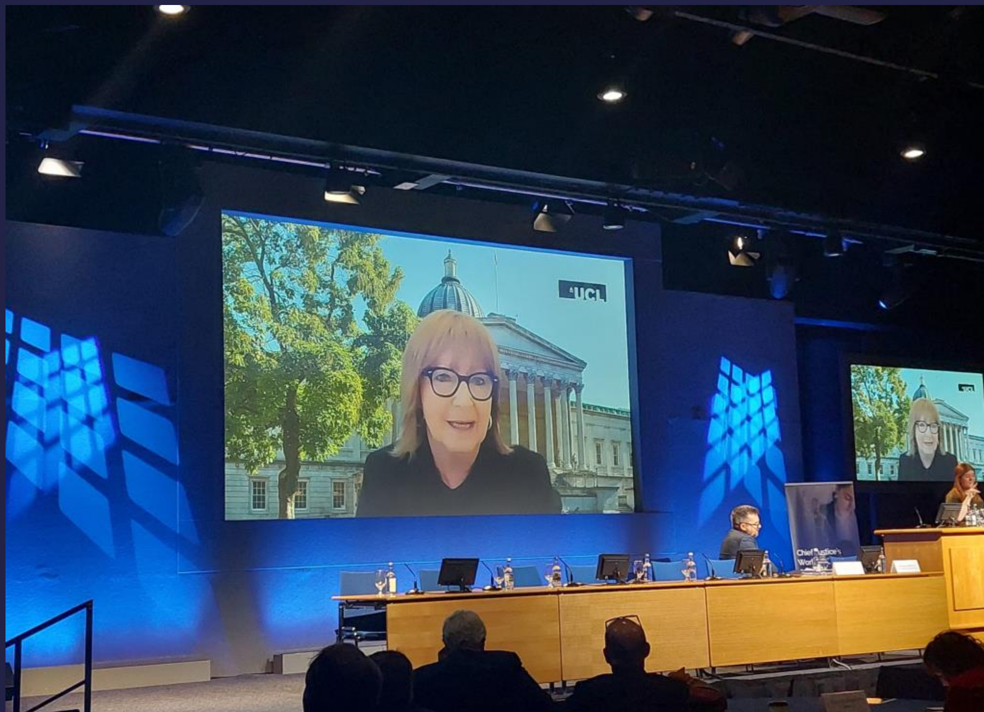
The third benchmark is the provision of effective, accessible access to those with serious legal problems. Mr Benton claimed is not getting enough traction at the moment. Mr Benton exposited the use of a 'guided pathways' approach to digital services in British Columbia, which allows individuals to gather information and make their own basic legal documents with the use of templates rather than engaging legal representation. He explains that this is relatively inexpensive but is tempered by the individual's capabilities to access it. The legal aid services society in British Columbia, therefore, he explained, also seeks to provide targeted services, which target the causes of legal problems alongside their role in providing advocacy when those problems arise. By way of example, Mr Benton explained how the legal aid services society has developed a 15-million-dollar program with a view to reducing the number of indigenous children taken into care, having recognised that despite indigenous people only amounting to 6% of the Canadian population, 60% of the children in care are indigenous. This is also connected with the fourth benchmark of delivering services which work collaboratively, which place and address legal problems in its social context so that fair, equitable and empowering services are provided.

In this respect, Mr Benton explained that the legal aid services society of British Columbia have invoked a methodology to build relations between lawyers, paralegals, and social workers in order to be able to intervene early in these childcare scenarios, providing better resources to the parents so that better support and care is given in a preventative capacity so that the problems which lead to the child being taken into care are curtailed before the children are taken into care. Mr Benton did, however, recognise that the more non-legal expertise required in legal aid delivery places more pressure on legal aid plans generally and insofar as it requires them to rely more on coordination and collaboration, which can often be messy and difficult.

Overall, Mr Benton stated that legal aid plans ought to be innovative system leaders who contribute to a more effective, efficient justice system, which achieves better

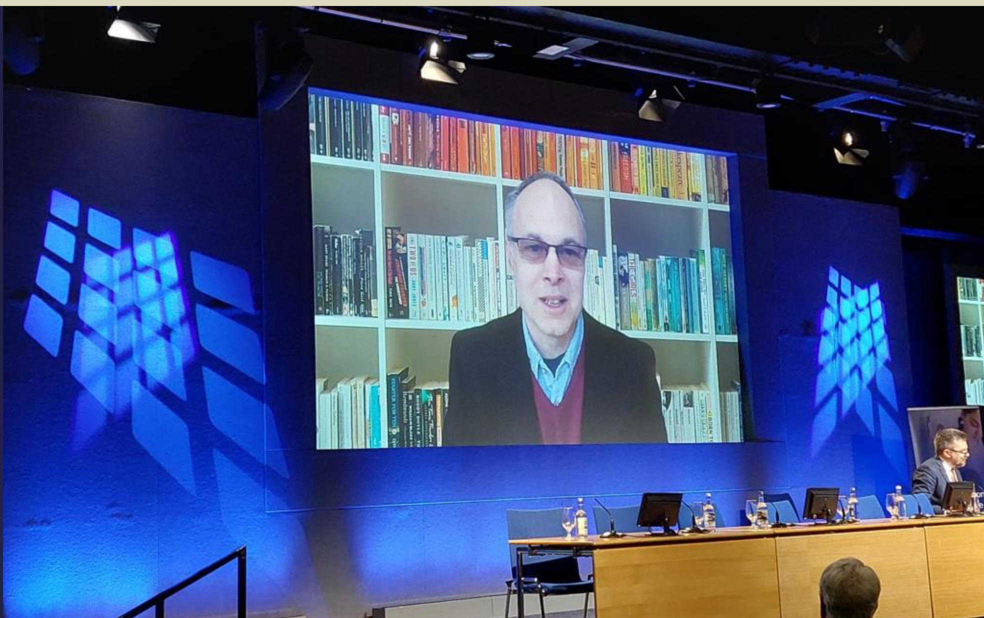
social outcomes for clients. The collaborative methodology is beneficial for the lawyers insofar as it teaches them a new perspective. It is important, Mr Benton stated, to view legal aid from the perspective of what happens to people within the system. In this respect, he paid reference to the 16th Sustainable Development Goal, which seeks to promote the rule of law and ensure equal access to justice for all, seeking to set as a benchmark that a person who experiences a legal problem within the last 2 years could access appropriate information or expert help. Mr Benton states that coherence with the sustainable development goals is vital to keep in focus. Collection and examination of data ensures this much and allows for a more targeted form of intervention designed to get more timely and lasting resolutions while empowering people to shape the outcomes achieved.

Nonetheless, Mr Benton cautioned that as competition for public funding increases, it is increasingly important for legal aid to be adept at demonstrating and communicating to the public, the public value of legal aid services. Concluding his presentation, Mr Benton emphasised the importance of legal aid programs and civil society agencies to partner with government and other public services to improve access to justice and the well-being of the community. The Bar, the Judiciary, NGOs, and the Government need to collaborate and align to create a whole-system approach to justice needs. The achievement of this much, however, does not have a clear path forward.



Speakers from the session on “The International Experiences” delivering their presentations remotely,

24th February 2023



MAPPING THE GAP BETWEEN THE CURRENT SYSTEM AND A MODEL SYSTEM IN IRELAND

Panel Discussion 1: Alternative Models of Legal Assistance

Moderator:	Gary Lee, Office of the General Solicitor for Minors and Wards of Court, Courts Service, former Managing Solicitor, Ballymun Law Centre
Panellists:	Sinead Lucey, Managing Solicitor, FLAC
	Farzana Choudhury, Community Law and Human Rights Advocate, Australia
	Catherine Cosgrave, Managing Solicitor, Immigrant Council of Ireland
	Jane O'Sullivan, Managing Solicitor, Community Law and Mediation
	Aoife Kelly-Desmond, Managing Solicitor, Mercy Law Centre
Rapporteur:[9]	Caoimhe Gethings, Judicial Assistant

Introduction

This panel discussion explored various alternative models of legal assistance, highlighting the various organisations that fill in the gaps in the Civil Legal Aid scheme and the models under which they operate. In addition, the panel discussion highlighted some of the barriers faced by their organisations in providing their services. Overall, the panellists emphasised the need for an interdisciplinary and flexible approach in seeking to provide legal advice and support to individuals and communities who most need it.

[9] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

Sinead Lucey, Managing Solicitor, FLAC

Ms Sinead Lucey began by giving an overview of the work undertaken by the Free Legal Advice Centres ("FLAC"). FLAC, established in 1969, aimed to provide access to legal advice and representation given the lack of a comprehensive Civil Legal Aid scheme. The services provided by FLAC are conducted through a telephone information line, which fields general queries, and the running of volunteer-led legal advice clinics, which provide more specific advice. Ms Lucey then went on to elaborate on some of the areas that FLAC is currently involved with. Priority groups include the Travelling, Roma and LGBTQI communities respectively, and FLAC runs specialised clinics and/or services for each group. Ms Lucey noted the roles of funding and the degree to which certain groups are marginalised as key to shaping FLAC's case work. Further projects being undertaken by FLAC are their Equal Access Project, which was founded to address the collapse in the number of cases taken on race grounds following the establishment of the Workplace Relations Commission ("WRC") and the Traveller Equality & Justice Project, which is in partnership with University College Cork. Ms Lucey concluded by noting that FLAC, like many other independent law centres, can do so much more if they have sufficient resources.

Farzana Choudhury, Community Law and Human Rights Advocate, Australia

Ms Farzana Choudhury, a community lawyer based in Canberra, Australia, began by outlining some models of community law that she has worked with as part of Canberra Community Law, a community legal centre that provides free legal assistance to people who are on low incomes or facing significant disadvantage, as well as community education and policy/law reform advocacy work. Firstly, she dealt with the 'socio-legal practice model', which involves a solicitor and a social worker working in tandem to support those in need. The role of the social worker is to assist the solicitor in providing trauma informed legal advice, meaning that the advice given accounts for a person's environment and experiences, which can impact their ability to understand and access a given legal system. For example, she explained that regular communication between herself and a social worker helped "Sally" (name changed to protect anonymity) to source accessible social housing. Amongst other matters, the social worker provided literacy and emotional support in order to help "Sally" and to ensure effective legal advice from Ms Choudhury.

Secondly, Ms Choudhury outlined the work of Disability Justice Liaison Officers, who typically have a background working with people with disabilities and who support the solicitors and their clients. Ms Choudhury gave the example of how this model assisted "Brad" (name changed to protect anonymity) as the Disability Justice Liaison Officer helped to inform the nature of "Brad's" background and disability and helped facilitate communication. In the Australian Capital Territory, there are nine Disability Justice

Liaison Officers at various justice agencies including Legal Aid, policing, victims support services, care and protection, and the adult prison.

Ms Choudhury noted that the Disability Justice Liaison Officers work together as part of a Community of Practice that meets regularly to share their experiences and provide input on for to make the justice system more accessible. So importantly there is a focus on both individual client outcomes and broader systemic reform.

Finally, Ms Choudhury briefly outlined the work of the Mental Health Justice Clinic, which provides which provides socio-economic rights focused legal services to support people with lived experience of mental ill-health. She noted that the Clinic recently partnered with a local inclusive theatre group in Canberra to deliver interactive training sessions that explore issues faced by people with lived experience of severe mental health challenges and their interactions with the legal system. The script for the production was prepared by a person with lived experience of mental ill-health and is performed by actors who also have lived experience. The feedback received was very positive. Co-designing and delivering the training with people with lived experience has ensured that sessions have been authentic in drawing directly on the insights of those who have first-hand understandings of the stigma and challenges that people in these circumstances experience every day.

Catherine Cosgrave, Managing Solicitor, Immigrant Council of Ireland

Ms Catherine Cosgrave opened with an outline of the work done by the Immigrant Council of Ireland. She explained that the Immigrant Council of Ireland ("the Council") was established to address the unmet legal need of immigrants for purposes other than international protection. The Council, as a result, deals with issues such as immigrants in Ireland seeking for their family to join them, or seeking services for family overseas, employment issues and those brought here as a result of human trafficking. Ms Cosgrave noted that the Council is not a legal aid centre in the traditional sense, as it is not financially means tested but open to everyone.

Ms Cosgrave then discussed two broad areas: firstly, the areas of civil law that should be covered by legal aid, and secondly, reflections on alternative models of legal assistance. Beginning with the first area, Ms Cosgrave noted that immigrants will often face practical barriers to accessing legal aid and that this must be addressed. Such practical barriers include the fact that, for example, the Legal Aid Board operates from 9-5, but immigrants will often arrive in Ireland outside of those hours and decisions to refuse entry may result in detention (in mainstream prison) despite no criminal charges. A further barrier Ms Cosgrave mentioned is that, once international protection status is granted, a person is no longer entitled to civil legal aid. She noted that this was a problem, particularly for children who wished to engage in a family reunification

process but had no access to civil legal aid. She concluded by voicing her concerns that victims of human trafficking are also not entitled to civil legal aid in many circumstances and that these people are acutely vulnerable. Secondly, reflecting on alternative models of legal assistance, Ms Cosgrave explained the importance of collaboration with frontline service providers such as social workers, health workers and the staff of women's shelters. She explained that this collaboration was necessary because often the people in greatest need of legal services either do not realise that they've been victims of a crime, or they do not realise there are services available. Consequently, it is important for the Council to work with frontline service providers so that they can refer clients to them.

Jane O'Sullivan, Managing Solicitor, Community Law and Mediation

Ms Jane O'Sullivan discussed the work of the Community Law and Mediation ("CLM") organisation. The work undertaken by CLM involves community education, law reform, legal casework, providing information and a mediation/conflict coaching service. She noted that CLM's case areas are very much shaped by what comes into their clinic, which then shapes the outreach to groups who have difficulties accessing justice.

Moving to a discussion of areas of law that should be covered by a reformed Civil Legal Aid scheme, Ms O'Sullivan started by stating that legal aid should be dependent on specific areas, but rather by need. She highlighted the current lack of civil legal aid available to people dealing with the WRC or equality matters, such as parents of children with severe disabilities. She gave further examples of the lack of civil legal aid available in social welfare matters and matters involving the Residential Tenancies Board ("RTB"), noting that both areas involve very complex areas of law and could see individuals facing an expansive legal team with no legal support of their own. Further areas highlighted included the need for children in care to have their own legal advice (rather than through their guardians) and environmental matters, noting especially in relation to the latter area that if people cannot take challenges on environmental matters, the laws regarding the environmental sphere are basically ineffective.

Finally, Ms O'Sullivan outlined CLM's operating model and the role of strategic litigation. Regarding CLM's operating model, Ms O'Sullivan explained that outreach is a huge part of CLM's work and the importance of having in-person clinics. She further noted that while strategic litigation is extremely important, greater support is required for litigants as there is still a great deal of personal risk assumed in taking those challenges. Ms O'Sullivan concluded by stating that there is little point in having laws or regulations if people cannot use them or are not aware of them, and this must be addressed.

Aoife Kelly-Desmond, Managing Solicitor, Mercy Law Centre

Ms Kelly-Desmond opened by discussing the community law model on which Mercy Law Resource Centre ("Mercy Law") is based. She noted that Mercy Law specifically focuses on issues related to homelessness, an area which has become increasingly acute with the denials of access to emergency housing. She explained that while homeless people are not fully excluded from Civil Legal Aid, many of Mercy's homeless clients cannot access legal aid. Certain services provided by Mercy Law include a legal advice line, a legal representation service, legal support and training service and the production of policy reports which contribute to a review of policies.

Turning to the engagement with Mercy Law's client base, Ms Kelly-Desmond noted that while the clients are generally from lower socio-economic backgrounds, each person has individual needs and requirements and therefore community law centres must be aware of supporting the individual in front of them, rather than the idea of what person should be based on their background. In terms of how Mercy Law reaches clients, she explained that the COVID-19 pandemic altered how that took place, with remote provision of services bringing some benefits in terms of Mercy Law's greater geographical reach but also restricted access for others, resulting in a client profile shift to those with good literacy and IT skills and good English.

In conclusion, Ms Kelly-Desmond summarised the main issues facing Mercy Law and the services it provides. Firstly, she noted an overreliance on written documents that tended to be complicated in nature. As a result, she explained the importance of using plain language with clients and noted that Mercy Law worked in partnership with the National Literacy Service in order to do so. Secondly, she noted the issues that language barriers were posing in dealing with clients and the importance of engaging translation services to remedy this. Finally, she flagged the accessibility of appointments and the impact of this on the delivery of Mercy Law's services as an ongoing issue. She concluded by stating that there is no single solution to these problems as there is no single barrier to accessibility – rather, any solution will involve overlapping measures and organisational awareness of the need for flexibility.

Contribution from the floor

Note: During the discussion on the floor following the speeches, Lewis Mooney BL spoke briefly about the work of the Bar of Ireland's Voluntary Assistance Scheme, through which barristers provide professional services at no cost to the client.

Minister for Justice, Simon Harris TD, delivered a keynote address on the opening day of the Chief Justice's Working Group Conference on Access to Justice. The Minister also launched the Judicial Planning Working Group Report at the conference.

DAY 2:
SATURDAY 25TH FEBRUARY 2023

OPENING REMARKS

MC:	Dearbhail McDonald, journalist, author, broadcaster
Speaker:	Professor Luke Clements, Chair in Law and Social Justice, University of Leeds
Rapporteur:[10]	Amanda Tso, Judicial Assistant

Day two of the conference began with a welcome address from the Master of Ceremonies, Dearbhail McDonald, where she introduced Professor Luke Clements, Chair in Law, and Social Justice at the University of Leeds to give the opening remarks.

Professor Luke Clements, University of Leeds

Professor Luke Clements began by referencing one of his recent publications, entitled Clustered Injustice and the level green, which focuses on the legal problems specifically encountered by people living with disadvantage. He mentioned that he drew inspiration from author and legal scholar Stephen Wexler, who wrote a 1971 article entitled 'Practicing Law for Poor People', which focuses on the reality that poor people are likely to experience a multitude of legal issues at any one time.

He referred to this as a 'cluster of synchronous legal problems' whereby people who live with disadvantage are (as Stephen Wexler explained) always 'bumping into sharp legal things. Professor Clements notably pointed out that Wexler's insight is not limited to poor persons, or those who are socially excluded— but includes people who are 'disadvantaged' which he defines people who 'have need for a level of support from the state (support that a 'responsive state' should legitimately provide) and the state has failed to meet this need' for example, many people with disabilities and their carers: people who will almost certainly encounter a variety of legal issues regarding sufficient access to education, work opportunities (and by extension financial predicaments), healthcare, and a myriad of other issues. He emphasised that, to this end, it is impractical for legal aid systems to compartmentalize these problems and only provide 'siloed' aid addressing individual injustices, given that they are all interrelated.

[10] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of this presentation.

Professor Clements explained that a more effective way of addressing this issue as a whole is to follow the business theory of ‘systems thinking’, which in this case requires the practitioner to ‘zoom out’ and examine the bigger picture. Doing so effectively simplifies the understanding of the relationship between individual issues, while maintaining the overall image.

He referred to, what he labelled, the ‘call centre approach’, which requires individuals who are seeking help with a particular problem, to first navigate their way past a call centre – a barrier of non-experts working to a set script. For people with interconnected ‘messy’ problems, call centres simply aggravate their disadvantage: their need is to speak to an expert with wide experience: someone capable of seeing the bigger picture. He argued that in such cases improving the quality of legal assistance required that these experts are located in the front office (not barricaded in the back office). Quoting the work of John Seddon, he explained that this approach also made financial sense: that administrative systems that focus on cost (rather than quality) actually drive costs up’.

He further suggested that to provide quality legal assistance, providers should consider a technique used by Health & Safety accident investigators – of asking ‘why’ five times, when trying to identify the root cause of a particular problem. He gave the example (described by a colleague) of a person who came to a Law Centre seeking a housing lawyer: when asked ‘why’ she said she was threatened with eviction; when asked ‘why’ she said she was in rent arrears; when asked ‘why’ she said that she had lost her job; when asked ‘why’ she said that she was pregnant.

Professor Clements wrapped up his remarks by praising a criminal defence service in New York – the ‘Bronx Defenders’. He explained that in their first interview, applicants meet with a senior practitioner who asks about a wide range of questions, often starting with ‘where were you born’ and then having a conversation about their childhood and life experiences - from which it was often apparent that they have struggled with abusive childhoods, substance misuse, family breakdown, acute financial struggles, and more. He noted that, by learning this information, practitioners could uncover the root of their legal issues as opposed to isolating them individually, which is essentially putting a ‘band-aid’ over the issue. With the probing approach, the organisation was able to provide more effective legal aid and (among many benefits) saving New York taxpayers an estimated $165 million in a ten-year period, without undermining public safety.

He ended his speaking time by re-emphasising that improving the quality of legal aid reaps benefits for everyone—not just the individuals seeking legal assistance. It

ultimately leads to a more prosperous society with increased public safety and a reduced strain on public resources.

MAPPING THE GAP BETWEEN THE CURRENT SYSTEM AND A MODEL SYSTEM IN IRELAND

Panel Discussion 2: View from the Judiciary and Statutory Bodies

Moderator:	His Honour Judge Colin Daly, Circuit Court judge and former President of the District Court
Panellists:	Judge Susan Fay, Judge of the District Court
	His Honour Judge Paul Kelly, President of the District Court
	Sharon Dillon-Lyons BL
	Sinead Gibney, Chief Commissioner, Irish Human Rights & Equality Commission
Rapporteur:[11]	Maria Murray, Judicial Assistant

Introduction

This session was moderated by His Honour Judge Colin Daly, judge of the Circuit Court and former President of the District Court. Based on their experiences, the judges in this session commented on what works well in the current system of civil legal aid, why it works and how it could work better. This session considered the perspective of the judiciary and a barrister working regularly in the Workplace Relations Commission and explored the areas in which civil legal aid is currently being delivered, the impact it has where it is being delivered, and the impact it might make if it were to be extended to areas not currently covered.

Judge Daly opened the discussion by reflecting on his experience as a Circuit Court Judge (and also as former President of the District Court). He discussed potential methods of bridging the gaps between the current system of legal aid and the model system and emphasised the importance of community law centres as a means of improving access to legal aid. He drew upon his personal practice background in Coolock Law Centre and noted the many ways that community law centres can act as a means of responding to unmet legal needs, law reform, and community needs. In

[11] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

particular, Judge Daly referred to two significant cases taken by the Coolock Law Centre; ((1) *McCann v. Monaghan District Court & Ors* [2009] IEHC 276 and (2) *Humphries v. Westwood Fitness* Centre). He noted these cases as examples of instances where individual rights are interfered with as a consequence of insufficient access to legal aid, highlighting the existing gaps in the legal aid system.

His Honour Judge Paul Kelly, President of the District Court

President Paul Kelly discussed his experience of over 12 years as a District Court judge and the importance of legal aid in the context of the courts' function. He explained the legal aid system in the context of criminal law and its effectiveness, where assessments of means are carried out by judges and allocated in court, stating that reduced bureaucracy allows justice to be served well in most instances.

President Paul Kelly contrasted the effective and expedient nature of legal aid in criminal law with the current system of civil legal aid (particularly within family law). In family law cases, judges are not permitted to allocate legal aid or assign solicitors even when it is necessary. Lengthy delays in accessing legal aid can range from three to fifty-four weeks, often resulting in litigants being forced to appear unrepresented. President Paul Kelly stated that it is the rights of children which are often the most effected as a result, as such delays interfere with children's rights to be properly provided for and restrict access to their parents.

President Paul Kelly identified mediation and alternate dispute resolution as effective methods of increasing access to justice, which are more effective when attempted early (as a preventative measure). Using methods of alternate dispute resolution could reduce practitioners' caseloads and improve the quality of legal aid services. On this point, President Paul Kelly echoed the sentiments of a previous panellist that "*defence at the top of a cliff is better than the ambulance at the bottom*".

In conclusion, President Paul Kelly summarised his perspective on a model system of legal aid; namely, a system which permitted judges to decide entitlement of legal aid and immediately assign solicitors; where a judge had the ability to waive contributions in civil legal aid cases; and where children's rights and the right of access to justice would be vindicated.

Sinead Gibney, Chief Commissioner, Irish Human Rights & Equality Commission

Ms Sinéad Gibney discussed how the work of the Irish Human Rights and Equality Commission sits within the provision of legal aid generally and shared her perspectives on the structural barriers groups face when they seek to vindicate their rights. Ms. Gibney stated that access to legal aid involves more than simply access to courtroom hearings, but that it also extends the ability of individuals to vindicate their rights with the benefit of the relevant legal and procedural knowledge, and without fear of an excessive financial burden. The IHREC provides assistance in line with Article 40 of the Irish Human Rights and Equality Commission Act 2014 in order to expand the boundaries of access to justice for vulnerable and marginalised groups. Ms Gibney identified barriers to access to justice, including financial barriers, a lack of knowledge of the process, difficulty accessing legal aid and lengthy waiting times. The current system of civil legal aid is largely absorbed by family law, however, it fails to adequately provide for ethnic minorities, such as the travelling community.

Ms Gibney discussed how the current system of civil legal aid does not reflect today's economic reality for vulnerable and low-income groups. Barriers to access to justice include extensive waiting periods for access to a solicitor and the restrictive nature of legal aid which does not extend to administrative processes and Workplace Relation Commission tribunals (a key issue for victims of labour trafficking). In discussing the deficiencies in the current system of civil legal aid, Ms Gibney emphasised that "*justice delayed is justice denied*", and the importance of considering how best we can create a legal aid system which can deliver effective support in a timely manner.

Ms Gibney stated that, as Ireland recovers and rebuilds from the Covid-19 pandemic, there is still an ongoing housing crisis, and economic inequality, and the IHREC's focus is on improving protection for the poorest in society – where everyone in society is entitled to live with security, central to this is a civil legal aid scheme for all.

Sharon Dillon-Lyons BL

Ms Sharon Dillon-Lyons discussed how employment issues are an area where the legal aid board can advise but not represent and provided insights as to how this works in practice. A key issue is that legal aid does not extend to representation in the Workplace Relations Commission ("WRC"). The WRC deals with complaints based on legislation, and Ms Dillon-Lyons proposed that the division between employment and equality law is a hindrance to the provision of legal aid and promoting access to justice.

In the Supreme Court decision *Zalewski v. Adjudication Officer and the Workplace Relations Commission, Ireland and The Attorney General* [2021] IESC 24, it was held

that both the WRC and the Labour Court carry out the administration of justice. Ms Dillon-Lyons discussed the contradiction between this determination and the restriction on the provision of legal aid within these spheres. This rule is a barrier to access to justice, particularly in the context of unfair dismissal cases where the livelihood of individuals is at issue. Moreover, legal aid is not provided for complaints of sexual harassment under the Employment Equality Act made in the WRC, despite commonalities across complaints, there remains unequal access to legal aid. Ms Dillon-Lyons discussed the factors which, if individuals are aware of legal aid, are barriers to access of justice in these areas – including the expectation for persons to engage in legal representation where compensation awarded is not high enough to justify pursuing claims. One suggested method to improve access to justice in the employment law sphere was the introduction of an internal appeal mechanism if legal aid is refused in the first instance, thus allowing the consideration of exceptional cases on an individual basis.

Judge Susan Fay, Judge of the District Court

Judge Susan Fay shared her observations on the impact of legal aid from the perspective of the judiciary. Firstly, she discussed her insights before her appointment to the bench and suggested areas for consideration when envisaging a model system of civil legal aid. This included a collective responsibility with everyone in the justice system (particularly practitioners) to endeavour to collaborate with NGOs in order to improve access to justice and overcome barriers to legal aid. Outreach work is even more accessible to practitioners following the Covid-19 pandemic considering the advancement of remote working. Judge Fay shared her experience of volunteering with various NGOs, such as the Offaly Traveller Movement.

In her experience from the bench, Judge Fay outlined the impact which insufficient legal aid has in childcare and family law cases. Despite the best efforts of Legal Aid Board staff and private practitioners, the quality of the service provided remains impacted, resulting in delays in accessing legal aid, which is particularly pertinent to families who do not fall within the legal aid means-based test. This often results in cases being postponed for months at a time, and children and families being left in limbo.

Judge Fay described her model system of civil legal aid as one in which sufficient resources are provided to bodies of legal aid services. Furthermore, a model system of civil legal aid would acknowledge the importance of early, culturally appropriate, legal advice in childcare cases, and address the overrepresentation of traveller children in the care system. Judge Fay noted that it is important to acknowledge that financial considerations are a key barrier to attaining legal aid and that the societal benefit of a representative legal system is far better value for money.

MAPPING THE GAP BETWEEN THE CURRENT SYSTEM AND A MODEL SYSTEM IN IRELAND

Panel Discussion 3: Vision for the Future

Moderator:	Philip O'Leary, Consultant Solicitor & former Chair of the Legal Aid Board
Panellists:	Nuala Jackson SC, Chair, Legal Aid Board
	Eilis Barry, Chief Executive, FLAC
	Maura Derivan, President of the Law Society of Ireland
	Gerry Whyte, Professor of Law, Trinity College Dublin
	Sara Phelan, SC, Chair of the Bar of Ireland
	Fiona Coyne, Chief Executive, Citizens Information Board
Rapporteur:[12]	Laura Hogan, Judicial Assistant

Introduction

The final panel discussion of the conference discussed a vision for the future for access to justice issues and, in particular, civil legal aid based on the panellists' experiences in leadership positions in the legal professions, public sector bodies, civil society organisations, and academia. The panel considered alternative models for assessing eligibility and priority for civil legal aid and how the challenges of deployment of legal aid to prospective recipients can be overcome. The discussion also drew from the earlier sessions of the conference and brought together the lessons and gaps identified in access to justice issues and the international experience.

Philip O'Leary, Consultant Solicitor & former Chair of the Legal Aid Board

Mr Philip O'Leary opened this panel discussion by acknowledging the work of Mr John McDaid in the Legal Aid Board and commented that Mr McDaid, over the course of his tenure, looked at civil legal aid issues through the prism of the end user. Mr O'Leary

[12] Note: the rapporteur provided a summary of the session, and it is not a verbatim account of each presentation.

commented that this is an approach which we should all have in mind when discussing these issues. Reflecting on the discussion of the conference, Mr O'Leary stated that a lesson of the conference has been that access to justice is a journey, and not a destination – and that journey is uphill.

Nuala Jackson SC, Chair, Legal Aid Board

Ms Nuala Jackson set out four key questions regarding access to justice and civil legal aid:

1. *Who should have access to justice and how it should be facilitated?*

Ms Jackson commented that access to civil legal aid and who is entitled to receive civil legal aid is highly regulated. The threshold for receiving civil legal aid has substantially unchanged since 2006 in circumstances where there has been a change in the value of money and cost of living in excess of 27%.

The existing civil legal aid eligibility criteria are rigid. Where adjustments are needed, by the time new regulations are in place the criteria are already out of date. Ms Jackson argued that there ought to be a facility in the governing law to alter eligibility without requiring new regulations. What is needed is a *flexible* methodology to calculate and assess eligibility.

2. *Who will provide the service?*

Ms Jackson commented that the mixed model of service provision of civil legal aid currently works well as it is flexible. The model provides for a core group with expertise working in the Civil Legal Aid Board full-time, but extra support can be brought in when required. However, it has become more difficult to employ solicitors and, moreover, private solicitors who provide support are less willing to participate in the private practitioner scheme, as it is not as financially feasible as it once was. The remuneration is rigidly regulated, and Ms Jackson contended that remuneration conditions ought to move with the times and be capable of changing without the need to seek new regulations.

3. *What disputes are included and excluded from a civil legal aid service?*

Speaking on the disputes that are excluded from civil legal aid presently, Ms Jackson commented that it must be acknowledged that complex legal matters are dealt with by quasi-judicial tribunals, and ought to be included in a civil legal aid scheme.

4. *How are people informed about the services available?*

Ms Jackson argued that access to justice will not happen if people are not aware of the services available to them. She noted that the Civil Legal Aid Board has made huge bounds in that respect, in particular, locating services where recipients will be, (for example, in District Court Offices).

Ms Jackson also commented that there ought to be a national campaign to advertise mediation services to encourage early use from the parties (i.e., when starting a dispute rather than in the middle of the dispute).

Eilis Barry, Chief Executive, FLAC[13]

Ms Eilis Barry commented that FLAC regards this review as a golden opportunity for fundamental reform of our public legal assistance system. This has been FLAC's reason for being for over fifty years, and it has proved incredibly hard to get it on anyone's agenda. FLAC, together with over forty-five civil society groups, campaigned for this review of the legal aid system.

Ms Barry stressed that her and FLAC's vision for the future of civil legal aid is not about making some minor adjustments to the current restrictive system, but rather creating a new principle-based, user-focused, preventative body which has the fundamental or overarching goal of promoting access to justice. This involves a conceptual shift that moves the focus away from the provision of legal representation to the client in discrete cases to a new system that is outcome-focused, starts with prevention, engages in early and timely information and advice, public legal education, advocacy, and training, and has timely resolution as its goal and views litigation as a last resort.

The new 'legal assistance authority' should aim to equip disadvantaged individuals and communities with four basic tools:

1. awareness of rights and entitlements;
2. awareness of ways to avoid or resolve legal problems in a timely way;
3. the ability to effectively use court and non-court dispute resolution systems; and
4. the ability to effectively participate in the resolution process to achieve just outcomes.

Ms Barry noted that FLAC's vision is based on its experience over the last fifty-plus years of providing different forms of public legal assistance, which it does through its hugely oversubscribed telephone information line, network of legal advice clinics,

[13] Note: Ms Eilis Barry was speaking as Chief Executive of FLAC and was not speaking on behalf of the Civil Legal Aid Review group and that these views were FLAC's and not those of the review group.

PILA's pro bono referral scheme, specialised Traveller legal service, Roma clinic, LGBTQIA+ clinic, the training of lay advocates, second tier advice to MABs and Citizens Information Centres, research and policy work, including on unmet legal need. Ms Barry argued that the following principles should underpin the new scheme of public legal assistance: access to justice, the user at the heart of the system, equality and human rights, preventative justice, best practices of flexibility and innovation, and coordination and joined up services.

Access to justice:

Ms Barry contended that the overarching principle of ensuring access to justice, underpinned by the rule of law, should be the explicit aim of a new public legal assistance body. This is present in the British Columbia model.

Ms Barry argued that since *Airey* there are obvious legal requirements to access to justice, but there are also social and economic aspects to access to justice. In addition to access to justice being a right in and of itself, access to justice is a vital anti-poverty and social inclusion measure and as we are learning, can improve health outcomes as Professor Hazel Genn outlined. Just this week we saw two reports one about the link between Traveller suicide and the experience of discrimination, and the Mercy Law Centre's report on mental health and homelessness.

Access to justice is vital to holding the State, public bodies and local authorities to account and is vital for democracy and the rule of law. If rights are not enforced this renders the legislation meaningless. Access to justice is also a gateway to other key rights.

There are many natural concerns about resources for legal assistance, but it is important to remind people of what was heard at the last access to justice conference. There is a growing body of research to the effect that access to justice is an economic investment and, in fact, saves the State money. Professor Farrow pointed out at the last conference that for every dollar spend the state recoups between 9 to 15 dollars. Plus, there is a huge unmeasured cost to the State of unmet legal needs that must be put front and centre into the resources debate.

Ms Barry recounted a conversation she had with Sue James, Director of the Legal Action Group, about a hospital doctor who was repeatedly treating the same patients, who kept coming for extensive periods in hospital with very expensive treatment and the doctor kept discharging them to substandard accommodation. The doctor got the patient legal advice. The patient got better housing and benefits, which they were entitled to, their health improved greatly, their hospital stays ended, and the savings

in the hospital budget were significant, and far in excess of the cost of providing advocacy.

The user at the heart of the system:

As a preliminary aspect to the principle of putting the user at the heart of the system, Ms Barry noted that it is essential to measure unmet legal needs. As Pascoe Pleasance stated earlier in the conference, legal problems are not randomly distributed across populations but disproportionately affect disadvantaged groups and individuals and can create and exacerbate disadvantage. There is also an additive element, the greater the disadvantage the greater the number of legal issues or "clustered injustice" as described by Luke Clements.

Firstly, and this is essential for an evidence-based system that can target and prioritise the greatest areas of needs, Ms Barry argued that we need to measure both known and more critically unknown unmet legal need and legal capabilities. Legal capability includes the knowledge and confidence that are needed to cope with day-to-day legal situations, alongside the awareness of legal and political mechanisms for effective reform. Ms Barry commented that FLAC knows from its telephone information line there is a huge unmet legal need in family law and employment law. Far more people attempt to contact the phone line than FLAC can assist. Moreover, FLAC is aware from its Traveller Legal Service of the huge unmet need in housing, welfare, and discrimination and from their second-tier legal advice, the unmet need in the area of debt. There are further areas of unmet needs, such as housing and homelessness that FLAC cannot provide with their resources. Then there are areas like disability, that are not really being dealt with comprehensively by the Legal Aid Board or independent law centres.

Ms Barry noted that Pascoe Pleasance's work with the OECD has demonstrated how to measure legal needs and carry out legal needs surveys. Therefore, there is no need to reinvent the wheel. Once we measure, then it is necessary to target resources in the areas of greatest need. The regular measurement of unmet legal needs amongst people living in poverty and deprivation must be a function of the new legal assistance body – the British Columbia model of the Legal Services Society in British Columbia, which has the overall aim of promoting access to justice, is required by legislation to give priority to assessing and identifying legal needs of low-income individuals. Ms Barry argued that the new public legal assistance system has to be designed from the perspective of the user and potential user. It is also necessary to bring the services to the user. Once it is known what the needs are, then the requisite targeted outreach services can be provided, such as local advice and advocacy services, community law centres, specialised legal services, including a properly resourced Traveller legal service, disability law service and joined up solutions involving community and other agencies.

The user and potential user should also include disadvantaged communities and groups who come within the discriminatory grounds in the equality legislation. Using the human-centred design approach, which is now a government requirement, a number of potential users should be identified, and their journey should be mapped from how they get from legal information to legal resolution, including legal representation (if necessary).

Ms Barry suggested, based on FLAC's work, that users may include: a homeless person, a Roma person denied social welfare and housing support, a person with language and or literacy issues, a person with an intellectual disability living in residential care, a prisoner looking for family law advice, a Traveller looking for Traveller specific accommodation, people in direct provision, a transgender person seeking appropriate health care, local authority tenants seeking to complain about substandard accommodation, residents complaining about pollution damaging their children's health, a person living in a rural area with limited public transport and no access to private transport.

Equality and Human Rights:

Ms Barry commented that the new legal assistance body needs to be firmly rooted in equality and human rights standards. The current civil legal aid scheme has been subject to criticism by many UN and European human rights bodies. Its restrictive scope has been repeatedly criticised by international human rights bodies, in particular, for its disproportionate negative impact on vulnerable and marginalised communities.

Ms Barry suggested that it is likely that the current system of civil legal aid is, in a number of respects, in breach of Ireland's obligations of the ECHR, the EU Charter, Article 19(3) of the EU Treaty, principles of effective judicial protection and the Aarhus Convention, among others. It also falls short of a number of international legal standards and guidelines. Recent judgments of the Supreme Court have also highlighted flaws with the current system.

There are potentially far-reaching human rights standards and obligations regarding legal aid, which are in no way theoretical but extremely practical. These standards are relevant to the scope and exemptions; the use of any means and/or merits tests, the forms, and procedures for applying for legal aid and appeal mechanisms against refusals of legal aid; the quality of the legal aid; and the collection of appropriate data.

Ms Barry contended that according to these equality and human rights standards, some of which were detailed by Judge Síofra O Leary at the last conference, the right to civil legal aid should be decided on a case-by-case basis and the relevant body be obliged to consider the specific circumstances of each applicant under the established criteria. A requirement to provide legal aid will depend on factors such as the importance of what is at stake for the applicant; the vulnerability of the applicant; the emotional involvement of the applicant, which impedes the degree of objectivity required by advocacy in court; the complexity of the relevant law or procedure; the need to establish facts through expert evidence and the examination of witnesses; the applicant's capacity to represent him or herself effectively; and the overall costs of the proceedings, particularly where initiating or defending legal proceedings would otherwise be prohibitively expensive. Applying these standards would mean a very different system than what exists now in terms of scope and exemptions. It also means no blanket exemptions in areas of law.

In relation to the means test, Ms Barry argued that there should be no means test, for example, for people in receipt of means tested Social Welfare payments, and in certain cases where a means test is applied, it should be flexible with simpler forms and procedures. Decision makers should also have an overarching discretion to take account of the matters referred to above. Similarly, in terms of a merits test, there should be no merits test in some cases and a less stringent merits test again having regard to the circumstance of each case. Human rights standards require quality control for legal aid services, including lawyers who are properly trained, more detailed data collection and an appeal mechanism to an independent body against refusals of legal aid.

Preventative justice:

Ms Barry contended that the new public legal assistance body needs to have an explicit preventative justice function. This would involve early legal advice and intervention to address problems before they escalate which can prevent cases from going to court. Early intervention can address an unknown or unmet legal need at an early stage so that there is a focus which includes information about legal rights, public and community legal education, and integrated connected community-based service delivery. It needs to be accessible and tailored to the needs of particular disadvantaged groups and individuals. The new body also must be able to provide advocacy and training, including the training of lay advocates, as not every legal issue needs a practicing lawyer.

Best practice: flexibility and innovation:

Ms Barry noted that the British Columbia model is required by its governing legislation to be flexible and innovative in how it carries out its services. She contended that in

FLAC's experience, there is no single best practice model. Best practice requires flexibility and innovation. This allows services to respond and adapt to the specific needs of communities. Best practice involves different models, from a telephone information line to education programmes and accessible advice clinics. In FLAC's research, it came across examples of legal advice buses, kiosks, and even legal advice boats. The Legal Health Check is a resource designed to equip non-legal professionals to ask the right questions and identify legal needs.

Ms Barry noted that FLAC believes that a network of community law centres in every disadvantaged community and specialised law centres to assist vulnerable communities are best practice, but they need to be better resourced so that they can employ relevant support staff, like social workers or disability liaison officers. The reality is that FLAC's small network of independent law centres operate on a shoestring and are completely dependent on the pro bono culture, with barristers and others acting pro bono.

There will be a need for legal representation in addition to community law centres and specialised law centres. Keith Walsh SC yesterday spoke of closed panels of highly trained, properly paid panel lawyers - that is the model that FLAC would favour.

Coordination and joined up services:

Ms Barry noted that the British Columbia model requires its body to coordinate legal aid with other aspects of the justice system and community services. A new public assistance body needs to be able to coordinate with bodies like the Citizens Information Board, the Workplace Relations Commission and the Irish Human Rights and Equality Commission in terms of their information and advocacy functions.

It needs to be able to establish or resource the co-location of services in health and community settings and support or engage in health justice partnerships as described by Dame Hazel Genn.

Ms Barry further contended that a new body needs to be flexible enough to work with and harness the growing, more structured culture of pro bono and hopefully a growing culture of practical clinical legal education in the colleges like the Traveller project in UCC.

Finally, Ms Barry commented that FLAC believes that the new legal assistance authority should have a research and policy function and carry out research into unmet legal needs, but also derive policy and law reform proposals from the work it carries

out. Ultimately, Ms Barry contended there is no access to justice without fair and just laws.

Maura Derivan, President of the Law Society of Ireland

Ms Maura Derivan set out some of the challenges for access to justice, arguing that it is essential that these be addressed so that any civil legal aid system could be successful going forward. There are a multitude of barriers to access justice, which include a lack of knowledge about legal aid and how to access legal assistance; low eligibility thresholds; language and cultural barriers; and lack of accessibility to private practitioners. Ms Derivan also contended that urgent investment is needed in resources and personnel in the Courts Service.

Ms Derivan noted that there are also geographical and physical barriers to access to justice, including the distances of communities from free legal advice centres or limited transport options available to them. Ms Derivan also highlighted the Law Society's continued position that access to justice for all in society should be prioritised.

On behalf of the Law Society, Ms Derivan advocated for the extension of civil legal aid to other areas of law. Expansion should include local authority housing disputes, mortgage possession proceedings, social welfare appeals, and Adoption Authority hearings. To achieve this, Ms Derivan proposed that there would be transparent criteria for eligibility for civil legal aid, as opposed to a prescriptive list whereby certain types of claims are excluded.

Furthermore, Ms Derivan contended that family law cases must be prioritised under any scheme of civil legal aid to ensure the voice of the child is heard. Domestic violence cases, gender-based violence cases, and child protection matters should continue to have priority under any scheme.

Ms Derivan stated that the waiting times reported by the Legal Aid Board countrywide speak for themselves. She argued that community law centres and the Legal Aid Board must be adequately resourced with funding and staff to provide access to legal aid in a timely manner.

Ms Derivan also highlighted the role of sole practitioners and small firms in enabling access to justice, noting that solicitors regularly do not charge people and fund basic medical reports without charge. This money previously came out of the war chest of the firm. However, since the outbreak of the COVID-19 pandemic, that war chest has become a purse. Consequently, this model has become unsustainable for some sole practitioners and firms.

Gerry Whyte, Professor of Law, Trinity College Dublin

In his contribution to the panel, Professor Whyte made the case for greater use of a strategic model of legal aid in delivering civil legal aid in Ireland. He noted that in 1977, the Pringle Committee on Civil Legal Aid and Advice identified four barriers to individuals availing of legal services:

1. cost;
2. unawareness of individuals of their rights;
3. psychological barrier;
4. geographical issues.

The COVID-19 pandemic has highlighted a further barrier consisting of digital exclusion, whereby individuals cannot access or lack the knowledge to use technology.

There are two categories of responses to these barriers:

1. The twentieth-century service model of legal aid, which focuses on the individual client. The objective of this model is to ensure that the individual who has a legal need, is given support to address their problem. However, this response suffers from two limitations, it does not address unawareness of legal services or psychological barriers and it operates at the micro-level in that it assists one individual.
2. The strategic model, which emerged in the 1960s in the United States, focuses on addressing community needs, of which the individual client is the representative of the community.

Professor Whyte argued that the strategic model has two advantages over the service model. Firstly, the strategic model better addresses the barriers to access to legal aid than the service model. On cost, the strategic model, like the service model, is free. The strategic model also seeks to provide programmes of legal education which addresses the lack of awareness barrier. The strategic model is also delivered to address the psychological barrier in geographic neighbourhoods or constituencies of interest. Secondly, the strategic model seeks to achieve reform at the macro level. This model looks beyond the individual case and seeks to influence social and legal reform. Examples of this model in action include the campaigns of FLAC to modernise Irish family law, consumer law, and employment law in test cases such as *State (Healy) v. Donoghue* [1976] I.R. 325*, Foy v. An tÁrd Chláraitheoir* [2007] IEHC 470, [2012] 2 I.R. 1*,* and *Sinnott v. Minister for Environment* [2017] IEHC 214, [2017] 2 I.R. 570*.*

Professor Whyte noted that the Legal Aid Board, for most of its existence, has been constrained to operate a service model of legal aid. However, there have been several interesting developments within the Legal Aid Board recently. The first is the establishment of a Research Oversight Group in 2018 and the appointment of a research manager and the second is the Traveller legal service which also appears to raise awareness of legal rights amongst the Traveller Community and contributes to policy development in relation to issues of concern to the Traveller Community.

Professor Whyte's vision for the future of civil legal aid is the continued service work of the Legal Aid Board but also the strategic model coming into play, and services seeking to achieve legal and social reform at the macro level. Moreover, his vision involves greater collaboration between the Legal Aid Board and voluntary legal aid services.

Sara Phelan, SC, Chair of the Bar of Ireland

Ms Sara Phelan said that originally, her theme for the panel's discussion was 'community outreach – empowering communities' but this has become a theme for the conference, so in addition to discussing empowering communities, she gave herself "permission to dream". Ms Phelan proposed to look at how a civil legal aid service might be reimagined to serve the Ireland of today and beyond. Ms Phelan drew on themes and strands which had been discussed throughout the conference.

Ms Phelan noted that the Ireland of 2023 is a far more diverse society than it was in 1977 when the Pringle Report was published; or in 1979 when the ECtHR upheld Josie Airey's claim and the Legal Aid Board was established on a non-statutory footing; or in 1995 when the Civil Legal Aid Act commenced. In the present day compared with 1970, the population has increased by some 35%; unemployment is at 4% rather than 8.2% in 1978 and 16.3% in 1988; ethnic and racial minorities make up about 12% of the population of Ireland (a proportion that doubled in the first decade of the 21st century); Irish Travellers account for approximately 0.6% of the Irish population; there are approximately 60,000 Ukrainians currently residing in the State – a portion of whom will no doubt proceed to full citizenship; and approximately 35,000 other immigrants (outside of EU, UK, Ukrainian and returning Irish nationals) currently reside in the State.

In considering what empowering communities might mean, Ms Phelan posed three questions: what communities are we talking about? What is empowerment? What does empowerment look like?

What communities are we talking about?

Ms Phelan argued that a community may be geographical, identity-based, or need based. Geographical communities are easier to identify, and this is the model traditionally used by the Legal Aid Board, where there are Law Centres in all but 3 of the 26 counties with Carlow, Leitrim, and Roscommon being the exceptions.

However, Ms Phelan argued that it is the communities based on identity and need that can benefit from outreach programmes, including Travellers, Roma, migrants, LGBTQIA+, those experiencing homeless, those experiencing poverty, those experiencing mental health issues, those experiencing addiction, people with disabilities, people with communication issues, people with an intellectual disability, older people, lone parents, children in care, prisoners, international protection applicants, victims of human trafficking, victims of domestic, sexual and gender-based violence, and that list is not exhaustive. What unites all of these communities is that in one way or another, they are marginalised, disadvantaged, peripheral, isolated, vulnerable, threatened, exploited, discriminated against, and powerless. A number of different organisations in Ireland reach out to various communities at present, and some of these organisations were represented at this conference.

However, Ms Phelan's dream is that a reimagined civil legal aid system will serve these communities so that access to justice is without barriers and is available for all in a meaningful and effective way, where rights can be vindicated, and wrongs remedied whether via litigation or otherwise. This "dream regime" is built from the grassroots upwards rather than simply tweaking the current system.

What is empowerment and what does it look like?

Turning to empowerment, Ms Phelan noted that one definition of empowerment is the process of becoming stronger and more confident, especially in controlling one's life and claiming one's rights. Knowledge and information are two key factors in empowering communities and individuals within that community, and education is the pathway to knowledge and information. Therefore, at its most basic level, Ms Phelan's dream regime starts with education about rights to make the law accessible, tangible, and relevant. Particularly, as is the case in many of the communities mentioned, the law may be seen through a negative lens, and can be equated with enforcement and crime, the threat of eviction and the threat of deportation. Ms Phelan argued that law and legal aid should be promoted in its positive manifestation as a tool of empowerment, and not just come into play when someone is 'in trouble' or enveloped in the criminal justice sphere.

Thus, Ms Phelan contended that education must be available at as many points as possible where communities interact with services, in social welfare offices, Intreo

offices, citizen's information centres, MABS offices, doctors' surgeries, health clinics, direct provision centres, women's refuges, community centres, day centres, hostels for the homeless, garda stations, law centres (legal aid board and community), schools, youth reach, and courthouses, and with public health nurses, and so on. In other words, education must be as widely available and as accessible as possible. This requires that a legal aid system and the legal system understand the needs of the community and understand how best that community, and individuals within that community, access information.

A system being user-centric means that there is no point in providing telephone services to someone who does not have access to a phone, is frightened about being overheard or to someone who communicates better face-to-face. Similarly, there is no point in chatting or consulting with someone in an environment in which they feel uncomfortable. Therefore, Ms Phelan argued that the primary key to the success of outreach programmes is the involvement of the community that the programme is intended to support, or to use the slogan, nothing about us without us.

Ms Phelan's dream regime has the involvement of community representatives at the outset in order to understand the needs of that community, their involvement in the design and setting up of the service, and their inclusion on boards and steering groups. This is so that the service gains capital within the community, the service is considered a safe place, which it will be if it is community based, understands the identity of the user, the service is used and supported by the community, and is respected by the community.

Ms Phelan highlighted the greatest irony in the unmet legal need, which is that those individuals and groups who need assistance most are those least likely to access it. Even when a service is accessed, it may not be a holistic service but rather one which is issue-based. It could be said that from a marginalised or vulnerable community perspective, an issue-based service is only a half-baked service. Ms Phelan's dream regime is one that would provide a holistic service, a one-stop-shop within the community where respect and compassion is to the fore, and where someone looking for information about, for example, a social welfare issue, might also be gently and sensitively asked, for example, about their housing situation, financial situation, domestic situation, and how their children or family are doing with a view to pointing them in the right direction to access information, advice and, if necessary, legal representation. This system would also be connected to services that they need, including access to legal education, information, and advice, MABS or a lawyer. Ms Phelan noted that access to a lawyer does not equate to litigation, and early intervention may avoid the need for litigation.

Ms Phelan concluded that her dream regime is like a jigsaw, with each piece of the jigsaw relying on, and interlinking with the other pieces of the jigsaw to form the whole, and where the whole is infinitely greater than the sum of its parts.

Fiona Coyne, Chief Executive, Citizens Information Board

Ms Fiona Coyne set out the role of the Citizens Information Board ("CIB"), which is the statutory agency with the responsibility for information and advice, including money advice and advocacy. CIB directly provide services to the public through its websites and, in particular, citizensinformation.ie. CIB also provides funding and supports to the national network of Citizens Information Services, the Money Advice and Budgeting Services, the National Advocacy Service for people with disabilities, the Sign Language Interpreting Service, and the Register of Irish Sign Language Interpreters. Through CIB's work with the funded services, it receives feedback and insights on the issues that people are experiencing in accessing their rights and entitlements. Ms Coyne focussed on those insights relating to accessing and understanding the civil legal aid system with a view to improving it for the future.

Ms Coyne acknowledged the work in the funded services in enabling access to justice. Through the provision of information, advice and advocacy to people delivered online, in person, and by phone individuals are accessing a free, impartial, and confidential service. This access can also be through the more specialised services of SLIS and NAS, or in the delivery of advocacy services for people with a disability and in their interactions with statutory services. CIB also contributes to the funding of the Free Legal Advice Centres ("FLAC") to provide information and advice on legal matters with many face-to-face legal advice clinics being provided in Citizens Information Centres over the years. CIB also continues to collaborate with the Legal Aid Board and the Insolvency Service of Ireland in the operation of Abhaile, the national mortgage arrears resolution service and insolvency solutions such as the Debt Relief Notice process through MABS approved intermediaries.

Ms Coyne noted that thousands of people across the country seek help from these services every day. CISs dealt with over three-quarters of a million queries from the public in 2022. During 2022, CISs dealt with almost 20,000 justice-related queries, with the key focus of these being legal aid and advice. They assisted clients with a further 18,000 queries concerned with Birth, Family and Relationships – covering issues such as separation and divorce, custody and access to children, maintenance, and domestic violence – and dealt with 32,000 employment rights queries. Almost half the queries to CISs concern social welfare rights with over 75,000 related to housing issues last year. Within these many interactions, CIB sees that access to justice in a timely and affordable manner is key among the options and rights that are explained to people.

Ms Coyne highlighted that any of those accessing services will be experiencing a range of difficulties concerning multiple and often complex issues such as social welfare appeals, employment rights, discrimination, debt, housing need or family law. Some of these issues will have a clear legal dimension for the clients and many will be unable to seek redress and remedies when their legal and human rights are infringed. There is often confusion around the avenues open to the person to have their issues addressed with a lack of knowledge relating to how to take the next step.

Ms Coyne argued that the crucial work of the services is to highlight that access to justice is broader than equality of access to the courts. Many people simply need accurate and relevant information in a timely manner, in order to deal with a matter. Query and casework data from CIB-funded services shows that CISs, MABS and NAS play a pivotal role in supporting people to uphold their rights and in enabling access to justice. Notwithstanding this information, advocacy and representative interventions, there are circumstances where access to legal advice and legal representation is necessary. This is to ensure a fair balance between the individual and the other party who may have engaged their own legal representation. The majority of clients that access the services would not have the means to retain their own legal advisors and there is often a lack of understanding that there is a means test to access civil legal aid in Ireland.

People are unaware of the distinction between free legal aid for criminal cases and the operation of the civil legal aid process. Ms Coyne contended that a key message for any future system is that there is a definite need for greater awareness raising among the public around what civil legal aid is and how and when it can be accessed.

Ms Coyne noted that the services CIB funds can and do provide representation for clients in quasi-judicial and administrative tribunals such as the Social Welfare Appeals Office, the Residential Tenancies Board, and the Workplace Relations Commission, but cannot move into formal legal proceedings. The lack of sufficient resourcing and promotion of mediation services as another alternative resolution method is also something that should be factored in any new system.

Therefore, while acknowledging the very valuable role that the Civil Legal Aid Scheme plays in enabling people to assert their legal and human rights, the experience of CIB's supported services indicates that it is severely hampered by the fact that demand exceeds supply. This is particularly the case in certain areas of the country, and that has an impact on the equality of access which needs to be tackled in the future.

Ms Coyne further emphasised that people experience the eligibility criteria as complex and inflexible with income thresholds that have not kept pace with inflation or changes to the social welfare code since 2006. Services locally see the results of this with many clients on low incomes, who are experiencing multi-faceted problems that require some form of legal redress, deemed ineligible for support. This can be very difficult to explain to people particularly when their issue may be urgent or not covered by the existing scheme such as in the case of housing and homelessness.

Other barriers that people experience in accessing the scheme include waiting times that dishearten applicants and can result in extended periods of hardship. Moreover, there is complex and technical terminology, processes and procedures that can make access to justice particularly difficult for some population cohorts such as people with disabilities, Travellers and other ethnic minorities; people in debt, victims of domestic violence and parents with an intellectual disability and/or experiencing mental health difficulties often require additional support in order to avail of protections available under the law typically such additional support is not available under the Civil Legal Aid Scheme. Ms Coyne argued that should be possible to ensure that group actions involving the rights of disadvantaged groups, such as disabled persons, homeless people, or other such sections of the population who may experience discrimination or exploitation, can be supported, and enabled.

In looking to develop a future scheme, Ms Coyne argued that it is important that these issues be considered to ensure that the widest possible range of people can access the scheme to support their legal rights and entitlements. Currently, it is clear that financial barriers, delays and waiting times undermine the application of justice in its widest sense, both in and out of court. Practically, CIB would recommend the use of the Living Wage as a reference point for calculation of an acceptable Civil Legal Aid disposable income threshold. Also, consideration should be given to adjusting the range and level of income disregards, allowing for discretion, flexibility, and transparency. The new system could adopt the Reasonable Living Expenses approach as used by the Insolvency Service of Ireland.

Ms Coyne concluded by stating that CIB looks forward to playing their own particular role in collaborating with the Legal Aid Board, FLAC, and other bodies in ensuring that an improved, accessible, and adequately resourced Civil Legal Aid Scheme delivers effective access to justice to people.

CLOSING REMARKS

MC:	Dearbhail McDonald, journalist, author, broadcaster
Speaker:	Mr Justice John MacMenamin, former judge of the Supreme Court
Rapporteur:	Amanda Tso, Judicial Assistant[14]

The closing remarks were delivered by Mr Justice MacMenamin. He began by thanking everyone involved in the organisation of the conference, including the Chief Justice, the staff of the Office of the Chief Justice, the Chief Justice Working Group on Access to Justice, the master of ceremonies, Dearbhail McDonald, speakers, interpreters, building staff, judicial assistants, and the chair people.

Mr Justice John MacMenamin, former Judge of the Supreme Court

He then explained that his closing remarks would address two distinct points. First, Mr Justice MacMenamin noted that we should not delude ourselves into thinking that there is an immediate fix; this is a continuous process. He emphasised that pressure needs to be put on politicians, and he noted that it would have been great if politicians had attended this conference to see that not all lawyers are fixated on working at big firms; many are passionate about providing legal aid to those in need, and this area of lawyering needs greater acknowledgment. He added that the moral takeaway is to recall the landmark case *Gideon v. Wainwright* 372 U.S. 335, which established a constitutional right to legal aid. To that end, behind every legal aid client is a potentially leading case that could be examining fundamental constitutional issues. He then raised three rhetorical questions:

- Why isn't there a better criminal and family law legal aid system if there is a constitutional right to legal aid?
- What are the constitutional rights of women seeking custody of children?
- Regarding the second question, what are the constitutional rights of children in those situations?

The second point raised by Mr Justice MacMenamin began by asking a series of questions: Would the world end if judges ruled that certain family law cases needed legal aid? And what would be the harm? What is stopping this? He stated that these questions are essential to consider as they are a fundamental issue of democracy. He

[14] Note: the rapporteur provided a summary of this session, and it is not a verbatim account of this discussion.

emphasised that everyone must be equal before the law, and effective legal aid must be available accordingly. He explained that granting legal aid must not be viewed as a business decision; if people cannot assert their rights, there is no democracy. In other words, a democratic society does not want its legal aid granters to be seen as abusing their power or as organisations that give too much money to certain recipients. In short, 'viable, effective legal aid systems' are needed for the sake of society.

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