

Development of Legal Aid Board Strategy

Submission by the Citizens Information Board – September 2023

Introduction

The Citizens Information Board (CIB), as a member of the Legal Aid Board (LAB) External Consultative Panel, welcomes the opportunity to make a submission regarding the development of the LAB new Strategy. Enabling access to justice and related legal services continues to be a core element of the work of CIB-funded services—the Citizens Information Services (CISs), the Citizens Information Phone Service (CIPS), the Money Advice and Budgeting Service (MABS) and the National Advocacy Service (NAS) for people with disabilities. CIB has contributed to the funding of the Free Legal Advice Centres (FLAC) to provide information and advice clinics on legal matters. In addition, CIB collaborates with the LAB and the Insolvency Service of Ireland (ISI) in the operation of Abhaile, the national mortgage arrears resolution service with MABS as the gateway service to accessing provisions under the scheme.

CIB has a particular interest in the work of the LAB. During 2022, CISs dealt with over 18,000 justice related queries, with the key focus of these being legal aid and advice. In addition, services assisted clients with around 20,000 queries under the Birth, Family and Relationships category – with the majority relating to family relationships and covering issues such as separation and divorce, custody and access to children, maintenance, problems with relationships and domestic violence.

The National Advocacy Service (for people with disabilities) (NAS) is funded and supported by CIB and its work sometimes involves supporting parents with an intellectual disability and/or experiencing mental health difficulties involved in court child protection proceedings where there is also an involvement by LAB solicitors. As the Assisted Decision-Making (Capacity) Acts 2015 and 2022 become more embedded in the system of dealing with people with reduced decision-making capacity who require capacity assessments, there will almost certainly be an increased role for NAS in working with LAB.

A number of issues with the Civil Legal Aid Scheme generally have been identified by CIB in our Submission to the Review Group.¹ We are mindful that these limitations impact on the role and operation of LAB at present. Notwithstanding these issues, CIB acknowledges the valuable role that LAB has played since its inception in enabling people to assert their legal and human rights.

CIB recognises the considerable resource constraints (relative to service demands) within which the LAB has been operating over the years which arise from both its legislative remit and its lack of resources commensurate with demand. Civil legal aid and advice services, despite substantial investment over the years, continue to labour under an expanding caseload, waiting lists and

¹https://www.citizensinformationboard.ie/downloads/social_policy/submissions2023/Review-of-civil-legal-aid-scheme-citizens-information-board-submission.docx

restrictive eligibility criteria. CIB recognises that the LAB has to operate within the parameters of its statutory functions and the resources allocated by Government at any given time. CIB also acknowledges that there are many embedded shortcomings of the civil legal aid system which the Legal Aid Board on its own cannot address.

CIB wishes to highlight a number of broad areas that it believes are important in developing the new LAB Strategy.

Legal advice

While the Civil Legal Aid Act 1995 provides for both 'legal advice' as defined in Section 25 and 'legal aid' as defined in Section 27, the provision of legal advice remains very much under-developed. For example, it is noted that there is no data in the Legal Aid Board's Annual Report 2021² in respect of the number or type of cases where legal advice was provided.

The availability of appropriate legal advice in a timely manner can avoid the escalation of issues and related stress and costs to the individual and would almost certainly have clear financial advantages for the State in reducing the need for costly court litigation. Many people simply need accurate and relevant/appropriate legal information and advice to deal with a matter and the availability of such a service as part of an integrated LAB infrastructure should be viewed as cost effective. In this regard, we believe that there is potential for further collaboration between the Legal Aid Board and the CIB.

There is potential for greater integration between free legal advice provided by FLAC and Community Law Centres and the provision of legal advice under the Civil Legal Aid Scheme. FLAC legal advice phone clinics are available on a limited basis, in conjunction with CIB and CISs, and provide first stop assistance, basic legal information, advice, such as the next steps a person needs to take and a referral to another appropriate service.

Mediation

It is widely acknowledged that early and appropriate intervention through mediation can make a substantial difference to the achievement of positive outcomes without recourse to the courts. However, its availability in Ireland tends to be patchy in provision and not well integrated, resourced or understood. Mediation services provided by LAB are limited in practice to couples who have decided to separate or divorce or who have already separated, to come to agreement in relation to decisions about the children, the family home, finances, and the future. There is clear potential for a much wider application of mediation while recognising that it should not substitute for access to the courts system to realise justiciable rights.

There is value in focusing more closely on the potential for the family mediation services provided by the LAB to become more central to its overall offering to persons in family breakdown situations who may otherwise assume that often adversarial court proceedings are the only viable option.

Types of cases included/excluded

In developing the new Strategy and pending any change in legislation that might take place, there is a need to take into account the fact that many of the areas for civil legal aid that are stated or implied in the 1995 Act are not included in practice. There is minimal or no service being provided in many civil law areas, including homelessness, housing, social welfare, employment, equality, discrimination, children's rights, or environmental issues. Even where civil legal aid is available, there appears to be a somewhat narrow lens applied to the types of issues included under specific

² Legal Aid Board Annual Report 2021, <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/annual-report-2021.pdf>

headings. It is also the case that some clients of CIB-funded services are confused and puzzled as to the basis on which their application for civil legal aid is deemed to be ineligible and/or excluded.

While family-related issues are a significant component of the work of the LAB and the application of the Civil Legal Aid Scheme, there are aspects of legal protection relating to family matters that are not typically the subject of civil legal aid. These include, for example, where an older person or person with intellectual disability whose decision-making capacity may be in question is subject to coercive control, financial abuse, or other abuses by a family member. It appears that such issues are not, for the most part, included under 'family law' within the legal aid scheme.

Assisted decision-making (capacity) legislation

Prior to the commencement of the Assisted Decision-Making Capacity Acts 2015 and 2022 in April of this year, applications for wardship were often taken by the HSE or by another party without the person who was the subject of the application having the benefit of independent legal advice and legal aid. The provision in the Assisted Decision-Making (Capacity) Act 2015 (as amended by the Assisted Decision-Making (Capacity) (Amendment) Act 2022) to amend the Civil Legal Aid Act 1995 to provide for legal aid for applications to court under Parts 5 and 6 of the Act³ is a significant one and will have implications for the way LAB solicitors carry out their role. This applies in particular to ensuring that the person in question is assisted and supported to have their voice heard by means of the least restrictive form of decision-making support in the context of their current decision-making capacity.

It is noted that the Assisted Decision-Making (Capacity) Act 2015, as amended by the Assisted Decision-Making (Capacity) (Amendment) Act 2022, provides for the amendment of the Civil Legal Aid Act 1995 under which a relevant person and a ward of court (as defined in the 2015 Act) do not have to satisfy the criteria in respect of financial eligibility specified in Section 29 of the 1995 Act.

This will require a new approach by the LAB. Indeed, there is a strong argument that this approach should be adopted much more widely and include those who are over-indebted, those who are living in violent or abusive domestic situations so that delays in trying to establish financial eligibility can be avoided and a person can obtain immediate early legal advice and legal aid where it is urgent and necessary.

There will be a need to ensure that legal practitioners operating within the Civil Legal Aid Scheme are trained and competent in communicating with people who lack decision-making capacity or whose decision-making capacity may be in question. There is a need to develop best practice guidelines for LAB solicitors and private solicitors engaged by the LAB in this regard.

The new LAB Strategy will need to make provision for ensuring that all LAB solicitors working directly or indirectly for LAB are appropriately educated and trained in the complex and detailed provisions of the assisted decision-making legislation. The legislation has brought about a sea-change in the way people with reduced decision-making capacity are to be regarded and the onus is on LAB solicitors representing such people to ensure that this happens.

Prioritising cases

In considering how cases should be prioritised for support, advice and representation, CIB is of the view that continued priority will need to be given to cases involving family law and childcare.

³ These refer to persons who are the subject of applications under Part 5 (capacity application) and Part 6 (review of wards of court).

However, there should also be an emphasis on cases and case types involving groups and individuals who are socially and economically disadvantaged and/or excluded. Factors such as the importance of the issue (both for the individual and for a wider group), the complexity of the case, the capacity (psychological and financial) of the individual to manage their case and engage with the system, and the urgency of the matter in hand, all need to be considered.

As already noted, there is a predominance of family law and childcare cases as a proportion of all cases handled by the LAB. CIB acknowledges the importance of supporting people who may need access to the courts in such circumstances. However, CIB is also aware of the risk that the lack of diversity in the range of case types may result in LAB support becoming perceived by the public as only existing in relation to family matters. While this aspect of the Legal Aid Scheme is obviously important, its remit and operation in practice needs to be much broader and understood by the public as such.

Targeted delivery of LAB services

CIB believes that there is a need to establish dedicated and purpose-built modes of delivery aimed at meeting the needs of specific groups who may require civil legal aid. These would include persons living in institutional settings (including prisons), the Traveller and Roma communities, persons seeking international protection, and homeless people. These client groups could be directly served through dedicated and specialised channels that could involve existing specialist advocacy and support organisations as well as expanding community law centre provision.

Collaboration and linkages

While civil legal aid and advice in court proceedings is often a critical factor, information, advice, and advocacy is also an essential part of ensuring due process in quasi-judicial and administrative tribunals. CISs, MABS and NAS and the range of specialist NGOs and advocacy bodies can also be important referral pathways for clients who may ultimately require civil legal aid.

It is important that the LAB continues to build, strengthen, and develop effective relationships with these bodies, in order that clients can be efficiently and confidently assisted along their pathways to justice. There may be a case in this regard for an examination of how best these relationships can be progressed, (whilst acknowledging the various positive collaborative measures that LAB has put in place, including the external consultative panel) and for the identification of measures that need to be taken across and within these various domains to deliver best results. There is an obvious need for better linkages between the LAB, CISs, and Community Law Centres.

Key factors to be taken into account in developing the new Strategy

- The LAB will have an important role in ensuring that the findings of the ongoing review of the Civil Legal Aid Scheme and any related updating of the Civil Legal Aid Act 1995 are kept to the forefront of policy and debate.
- The LAB has a critical role in contributing to the development of legislation, policies and practices that are effective and responsive in improving citizen's experience of the legal system.
- The LAB also has a role in identifying and highlight emerging areas of need and unmet need for legal aid and legal advice.

- The LAB should explore the concept of a ‘triage’ system and its feasibility in respect of prioritising cases.
- An online easy-to-use problem-solving process should also be put in place which would identify pathways to different options and alternatives to court – this could be done in partnership with CIB, FLAC, and Community Law Centres its services.
- There should also be some focus on mechanisms to address geographic or socio-demographic inequalities and imbalances.
- There is potential for LAB to play an enhanced role in research and related public awareness raising and education in respect of the following:
 - The Civil Legal Aid Scheme and the role of the LAB therein, including, in particular, mediation;
 - The role of other legal advice intermediaries such as FLAC, Community Law, and Independent Law Centres;
 - The role and contribution of CISs, MABS and other community specialist networks in dispute resolution mechanisms;
- There is potential to develop easy to read guides with Questions and Answers (in print and on-line) about common legal problems and possible solutions, taking into account the role of the LAB and other actors in the justice system.
- The concept of piloting an on-line self-help option in relation to pathways to free legal aid and advice should be explored with particular reference to dispute resolution mechanisms other than the courts.
- The public should have clarity about how to request interpretation, Irish Sign Language, or translation services in the legal aid system.
- All LAB solicitors and private solicitors engaged by the LAB should be fully trained and competent in communicating with people with reduced decision-making capacity and people who communicate differently – this is particularly important in the context of implement the assisted decision-making legislation.
- The LAB should explore the greater use of intermediaries (e.g., independent advocates) to assist both LAB clients and legal practitioners in ensuring that people with reduced decision-making capacity are treated equally by the legal system.
- The new LAB Strategy should provide for developing further collaborative working relationships between LAB and independent advocates.

Concluding points

CIB believes that the information, advice, and advocacy services that are provided by CISs, MABS and NAS have a key role to play in supporting people to uphold their rights. There are, however, circumstances where access to legal advice and legal representation is necessary to ensure a fair

balance between the client and the other party who may have, as a matter of course, engaged legal representation. The role of the LAB is critical in achieving this balance.

CIB and its funded services are committed to collaborating and cooperating with the LAB and other relevant bodies and agencies in ensuring that access to justice is made available to all sections of Irish society. CIB looks forward to working with the LAB in developing innovative mechanisms for the dissemination of information to the public, as well as collaborating on research relating to civil legal aid, access, and affordability, as part of CIB's social policy remit.⁴

⁴ A forthcoming CIB report – 'A Citizens Information Perspective on Access to Justice and Legal Aid and Advice' profiles legal rights queries to CIB supported services.