

Review of the Civil Legal Aid Scheme
A Submission by the Citizens Information Board
February 2023

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Review of the Civil Legal Aid Scheme. 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 and is a member of the Consultative Panel of the Legal Aid Board (LAB). In addition, CIB collaborates with the Legal Aid Board (LAB) and the Insolvency Service of Ireland (ISI) in the operation of Abhaile, the national mortgage arrears resolution service.

Notwithstanding the many issues raised in relation to the role and operation of the Civil Legal Aid Scheme in this submission and elsewhere, CIB acknowledges the valuable role it has played since its inception in enabling people to assert their legal and human rights and this is despite the many financial and human resources challenges it has faced.

The role of CIB-funded services

CIB-funded services, in many instances, act as a first point of enquiry for members of the public who are seeking information, advice, advocacy and support.¹ While these services, in most cases, can offer immediate and direct assistance to clients, they also refer clients, where appropriate, to other bodies and service providers. CISs, for example, normally make referrals involving around 6% of clients to a broad range of other agencies. These include referrals to FLAC, to the Workplace Relations Commission, to solicitors, to MABS, to the Residential Tenancies Board (RTB), and to the Legal Aid Board.

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. Services also dealt with 39,000 employment rights queries and made almost 10,000 referrals to legal services, clinics, or mediation services during 2022. Many of those who seek assistance from CISs and MABS each year can experience multi-faceted issues with a legal dimension relating to debt, social welfare, employment, discrimination, housing, or family law. Central to many

¹ Citizens Information Services dealt with over three quarters of a million queries from the public in 2022 on all aspects of rights and entitlements to public and social services.

of the queries involving legal and quasi-legal matters is the issue of access to justice in a timely, affordable, and cost-effective manner.

General contextual points

Before addressing the specific consultation questions, CIB wishes to highlight two broad contextual points relating to the central role of both legal advice and mediation in enhancing access to justice.

Legal Advice

While the *Civil Legal Aid Act 1995* (1995 Act) provides for both ‘legal advice’ as defined in Section 25 and ‘legal aid’ as defined in Section 27, there appears to be little focus in practice on the provision of legal advice.² It is noted that there is no data in either the Issues Paper or the Legal Aid Board’s Annual Report 2021 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. 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 CIB³ 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

Mediation can play a significantly important role as an alternative to the court system. For example, mediation can facilitate dispute resolution in the areas of family law, tenancy and employment rights and 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 through the Civil Legal Aid Scheme although it is recognised that it should not substitute for access to the courts system to realise justiciable rights.

Consultation Themes and Questions

Issue 1 – Types of civil law cases

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

CIB believes that the Review needs to fully acknowledge 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

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

³ The Citizens Information Board funds FLAC to provide legal clinics and helpline services through Citizens Information Centres.

available, there appears to be a somewhat narrow lens applied to the types of issues included under specific headings.

Query and casework information from CIB-funded services (CISs, MABS, NAS) points to a wide range of domains that are important to clients, but which are excluded from access to the Civil Legal Aid Scheme. Such exclusion may be due to regulations and/or eligibility criteria. It is also the case that some clients of CIB-funded services are sometimes confused and puzzled as to the basis on which their application is deemed to be ineligible and/or excluded.

CIB believes that the present exclusions, both legislative and administrative, require substantial easing, with access being allowed for a much wider range of case types and applicant circumstances. Specifically, there is a real need to include as eligible and widen eligibility for cases involving social welfare appeals, eviction, and repossession proceedings (where there is a valid defence), employment rights issues, and housing/homelessness issues. Many of these issues are referenced in the European Convention on Human Rights and in aspects of Irish equality legislation that has much of its origins in European law.

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. For example, the HSE National Safeguarding Office Annual Report 2021⁴ indicates that issues of concern relating to those over the age of 65 years and those over the age of 80 years are at a much higher rate than concerns raised for persons between the ages of 18-64 years. That report also shows that the person allegedly causing concern to a person over the age of 65 was, in most cases, an immediate family member or another relative.

It appears that such issues are not, for the most part, included under 'family law' within the legal aid scheme. Also, the relatively significant number of court applications to have a person taken into wardship,⁵ are often taken by the HSE without the person who was the subject of the application having the benefit of independent legal advice and legal aid. On the latter point, the Supreme Court judgement in the AC Case⁶ commented (Par. 239 and Par. 367) on the impact of the lack of legal aid by way of advice or representation in relation to wardship hearings.

It is noted that provision has now been made 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 Act.

⁴ National Safeguarding Office Annual Report 2021, <https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/national-safeguarding-annual-report-2021.pdf>

⁵ The current system of wardship will cease on commencement of the Assisted Decision-Making (Capacity) Act 2015. A recent amendment to the Act means that an application for wardship that has been initiated prior to commencement will not lapse and may continue to conclusion.

⁶ Supreme Court Judgement in AC v Cork University Hospital & others, <https://www.casemine.com/judgement/uk/5dfc6a614653d042431b0cbc>

It is suggested that there would be merit in extending the Civil Legal Aid Scheme to provide representation in the context of civil claims for debt when money/assets are deliberately misappropriated and not used for the benefit of the person who is the owner of the money/assets. While the *Civil Legal Aid Act 1995* does not exclude access to legal aid or representation in such instances, there should be a positive obligation to ensure legal support is available to persons who wish to exercise such rights.

Property rights

Including this category in the Civil Legal Aid Scheme would be important in the context of the UN Convention on the Rights of Persons with Disabilities which stipulates (Article 12.5) that:

Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages, and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

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

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. 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.

CIB is concerned that the challenges that confront people who are socially and economically disadvantaged should be open to being dealt with equitably within the justice system. Many of the people who present to CIB-funded services have problems that are complex and multi-faceted. The issues that they face often exist simultaneously and often involve matters that may have a justice system-based solution. It would appear logical and reasonable that Civil Legal Aid should be available for dealing with the fullest possible range of the issues involved. Many people who are vulnerable can experience multiple legal issues relating to debt, social welfare, employment, discrimination, housing, or family law. However, currently, legal aid is only available to help them address some of these issues and thereby leaving gaps in people's ability to seek redress or access justice.

CIB notes the predominance of family law and childcare cases as a proportion of all cases handled by the Legal Aid Board. 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 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.

CIB believes that there is a valid case for the lifting of the blanket exclusion of group actions under the scheme. While there may be a need to ensure that cases lacking merit are not allowed to enjoy unrestricted access to limited legal aid resources, it 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. Civil legal aid for group actions could be permitted for those who would otherwise qualify for civil legal aid thus helping to remove the barrier to group/class actions.

The commencement of the Assisted Decision Making (Capacity) Act 2015 will have specific implications regarding the legal requirements in relation to supported decision-making. 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 critical importance of a quality support, information, and advice service for initial contact with the Legal Aid Board should be taken fully into account in how the Legal Aid Scheme is structured and implemented. A quality information, advice and advocacy service can identify cases that need urgent attention, can identify, and give immediate information which may divert the person seeking help to other more appropriate service. 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.

Long waiting lists for civil legal aid should not be the norm in that this undermines the basic principle of the scheme which is to provide equality of access to justice for all. A review of the organisational structures and service providing systems and funding is, therefore, required in advance of any expansion of services.

Issue 2 – Jurisdictions covered by the scheme.

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

CIB believes that there is a need to widen the jurisdictions covered by the civil legal aid scheme regarding the provision of aid to persons who are engaging with arbitration and mediation services, and with various quasi-judicial and administrative tribunals.

CIB-funded services frequently encounter clients who need to interact with the Workplace Relations Commission, the Residential Tenancies Board, and a private Family Mediation Service. While legal representation is not necessary in every situation, there are circumstances where it would be beneficial as not every person has the capacity or skills to represent themselves.

While there are arguments as to why administrative tribunals should not become ‘lawyered-up’ and while recognising that many of the quasi-judicial bodies aspire to encouraging and enabling self-advocacy and a ‘user-friendly’ experience, the reality is that in many instances the process is rather legalistic.

The WRC, for example, is a quasi-judicial tribunal at which lay people represent themselves (legal aid is not available). Some cases involve multiple issues and can be very complex and it is not uncommon for clients to face legal teams recruited by employers in WRC hearings, which can be intimidating and place the client at a disadvantage if they are attending on their own. Preparing and presenting a case themselves without legal advice and legal representation can be a significant challenge for individuals.

One of the aims of setting up the WRC was to make the complaints and appeals process easier for a lay person. Even where clients are supported by CIS Information Officers, there are examples from CIS data of where the client remains at a distinct disadvantage and where there is in effect a significant imbalance in the power dynamics. Even with support, the absence of legal aid means that employees sometimes cannot afford the cost of pursuing an employer through the courts for enforcement of a judgement made in their favour.

People having trouble enforcing awards made by the WRC can seek a court order from the District Court (previously it was the Circuit Court). In theory, this enables lay representation and is lower cost, but in practice it can be challenging for some people.

While CIB believes that the information, advice, and advocacy services that are provided by CISs and MABS have a key role to play in supporting people to uphold their rights, there are 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.

It is the CIB view that the exclusion of civil legal aid in quasi-judicial settings should not continue. There is no plausible reason why a person of limited means should be excluded from access to tribunals such as tenancy tribunals, social welfare tribunals, the Labour Court, and other administrative tribunals.

A further area where CIB feels that there is a strong case for amending the present regulations is that of the Small Claims Procedure. In this instance the problem lies not with the Civil Legal Aid provisions but, rather, with the claim limits that apply to the Small Claims Procedure, which at present is set at €2,000. CIB-funded services report many cases where this upper limit denies a client easy access to a just remedy without significant legal expense. It is suggested that the Small Courts Procedure upper limit for claims be increased to €5,000.

Issue 3 – Eligibility

Q 4. How appropriate are the current eligibility thresholds?

The matter of eligibility needs to be radically reconsidered because of changing societal values since 2006 with a greater emphasis on people's legal and human rights. Also, clearly, income levels set in 2006 are no longer appropriate.

CIB is strongly of the view that the present means test is both out-of-date and lacks flexibility and is, therefore, essentially unfair in its implementation. Eligibility for civil legal aid is complex and income thresholds have not kept pace with inflation or changes to the social welfare code, resulting in many on low incomes not being eligible.

People living at the present Civil Legal Aid threshold of €18,000 p.a. disposable income are, in the experience of CIB-funded services, highly likely to be already experiencing substantial economic hardship in making ends meet. The National Minimum Wage is not an adequate reference point.

CIB recommends use of the Living Wage as a reference point for calculation of an acceptable Civil Legal Aid disposable income threshold. The estimated Living Wage for 2022-23 is €13.85 per hour gross wage, which translates to over €28,000 per annum. This would still represent an income that must be considered relatively low by today's standards.

In addition to implementing a considerable increase in the disposable wage amount, it will be necessary to also adjust the range and level of income disregard that will be allowed for expenses to include rental costs, childcare costs, and other essentials.

Recognition will need to be given to the fact that existing welfare benefits such as those received by persons with a disability are, in many cases, failing to keep pace with cost-of-living inflation (including the cost of disability), and with energy costs. In addition, it is evident that many CIS clients are employed in precarious, poorly paid, and often highly uncertain jobs. The ability of these workers, who are often positioned in a poverty trap between welfare and low-pay work, to afford even minimal levels of legal aid is severely limited.

CIB-funded services also report considerable numbers of cases where the calculation of permissible adjustments to the calculation of disposable income appears to be applied in a manner that is inconsistent, lacks transparency, and causes upset and confusion. There is a need to ensure transparency in this regard.

MABS and FLAC have expressed concerns that unsecured debt, such as credit card debt, is excluded as an allowance in the means test. Many people rely on credit cards for day to day living expenses and as a source of ongoing credit.

CIB believes that there is a strong case for doing away with a financial eligibility test for persons who are dependent primarily on social welfare payments for their income.

Q 4(i). How should the financial eligibility threshold be determined to access the scheme or any successor in the future?

To determine the financial eligibility threshold, there is a need for a more flexible approach than has been the case to date and provision for discretion in how the thresholds are applied. Such discretion could be applied in specific cases where a humanitarian approach is called for or where there are borderline cases. A Code of Practice might be developed for this purpose and a Decision Panel constituted, comprised, for example of identified LAB senior managers and a person from outside the LAB.

Another option that should be explored is the adoption of the Reasonable Living Expenses approach as used by the Insolvency Service of Ireland (ISI).⁷ This is based on family size and taking account of items such as social inclusion and participation and the cost of a motor vehicle, which can be a necessary living expense for individual well-being and to combat social isolation. (It is noted that the ISI Guidelines were prepared in consultation with the Minister for Justice, the Minister for Finance, the Minister for Social Protection, and several organisations which included the Legal Aid Board and MABS).

Q 4(ii). Is there a particular figure which you would set?

It is reasonable to suggest that the figure could be set at the level of disposable income around €30,000 (in 2023), net of a certain number of allowances.

⁷ Reasonable Living Expenses Background Information 2022 Effective from 24 November 2022
https://www.isi.gov.ie/en/ISI/RLEs_Background_Information_24_November_2022.pdf/Files/RLEs_Background_Information_24_November_2022.pdf

It is also important that any income benchmark is sufficiently flexible to take account of the fact that discretion will need to be used in some cases. New provisions should also stipulate that no financial eligibility criteria apply in some cases. (See also Answer to Question 6 below).

Q 4 (iii). What is your rationale for that figure?

This figure is calculated on the basis that the Living Wage for 2022-23 is €13.85 per hour gross wage, which translates to over €28,000 per annum.

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

See Answer to Q. 4(i) above.

Q 6. Are there certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test? If so, what types of cases do you believe fall into this category?

Where it is necessary to defend personal rights such as the right to protection of liberty, the right to bodily integrity and the right to have valid consent obtained (for example, in relation to place of care decisions), a person should have access to legal advice and representation without the imposition of any financial eligibility criteria.

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.

The Civil Legal Aid Act 1995, provides that 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. Furthermore, where a relevant person or a ward does not satisfy the criteria in respect of financial eligibility, the Legal Aid Board may seek to recover some or all the costs of providing the Legal Aid to the relevant person or ward. This relates to persons who lack capacity to give relevant information about their own finances.

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.

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

CIB believes that a flexible approach to merit tests should operate. In some cases, it may not be appropriate to have any form of merit test, for example, where there is an obvious concern about a person's legal or human rights.

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

There should be further consideration as to how merit should be defined and as already stated, a wider lens than simply looking at a potential court process should be considered.

The Legal Aid Board should assess the potential systemic impact that a specific issue gives rise to which would indicate the points of principle that should be considered in any definition of 'merit' to qualify for legal assistance/aid.

Issue 4 - Financial Contribution

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

It is suggested that the minimum contribution currently requested by the Legal Aid Board of €30 should remain for legal advice and €130 in cases where full legal representation is provided. It is noted that this minimum contribution is increased depending on the person's ability to pay.

However, the amount of the contribution should not depend on the subject matter of the legal issue or nature of the proceedings but should be calculated based on the individual's financial circumstances.

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

As stated above, the financial contribution should be calculated based on the individual's financial circumstances rather than on the subject matter.

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

While minimum contributions are a necessary feature of a civil legal aid scheme, the present calculation method for contributions is seriously out-of-date and fails to recognise the financial constraints under which people on low incomes and those on social welfare payments live.

CIB believes that there is a strong case for eliminating, or at least minimising to a token amount, the contributions that should be made by certain categories of applicants such as people with disabilities, victims of domestic violence, and representatives/guardians of children. It should also include applicants who are living in situations where economic need can be shown to exist, e.g., people experiencing over-indebtedness.

It is also felt that certain types of cases should attract minimal or token contribution rates. This should continue to include cases involving discrimination, equality issues, and domestic violence.

The fact that additional costs can be incurred by people involved in legal proceedings needs to be considered. Typically, such costs relate to sworn documents, medical reports, and valuations – these costs can be a significant burden on people on low incomes. The most used mechanism for hearing the voice of the child in family law cases involving guardianship is an expert report. The regulations set the cost at €250-€300, significantly below the real cost. The real cost of such reports has been estimated to be between €3,000-€4,000.⁸ Both parties must pay for the expert report, irrespective of means. While people entitled to legal aid can get half of the cost covered by LAB, the remaining half can still be a significant burden.

⁸ FLAC Submission to the Department of Justice on the Family Court Bill (General Scheme) 2020
https://www.flac.ie/assets/files/pdf/flac_submission_to_the_joint_committee_on_justice_on_family_court_bill_general_scheme_2020_74.pdf

Irrespective of how the calculation of contributions is made, it is important that there is provision for instalment payments in each case, and particularly if the matter takes some time to resolution. This may be appropriate where a person is being asked to pay more than the minimum contribution.

Issue 5 – Mode of delivery

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

CIB believes that the present combination of law centres and panels of private solicitors should continue.

However, there is a need to establish dedicated and purpose-built modes of delivery aimed at meeting the needs of groups of potential clients. These would include persons living in institutional settings (including prisons), the Traveller and Roma⁹ 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.

There is, of course, a need to acknowledge, as already stated, that access to justice is broader than equality of access to the courts. Mediation and arbitration services, as well as services that provide information, advice, and advocacy also play an important role. While civil legal aid and advice in court proceedings is often a critical factor, information, advice, and advocacy is an essential part of ensuring due process both in formal judicial system and in quasi-judicial and administrative tribunals. CISs, MABS and NAS 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, 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.

It will also be necessary to ensure that adequate dedicated financial and other resources are made available to both LAB and other agencies to operationalise collaboration and to ensure that non-judicial and/or pre-judicial provisions can be properly provided.

A centrally important point is that, irrespective of what mode of delivery is used, a person seeking legal aid and legal advice has the benefit of lawyers who are expert in law where the service is required.

CIB believes that more use could be made of the *pro bono* service which many firms of private practitioners provide as part of their Corporate Social Responsibility. While it is acknowledged that some legal firms do assist with the FLAC legal advice service, there would be merit in the LAB considering contracting for several *pro bono* hours on an annual basis. Such a service would

⁹ In 2020 FLAC with support from the Community Foundation for Ireland established a dedicated Traveller Legal Service.

complement the FLAC legal advice service as well as the CIS independent information, advice, and advocacy role.

CIB supports and recommends steps already taken to co-locate service provision where appropriate.

Issue 6 – Accessibility

Q 13. What are key barriers to accessing the service?

The specific barriers identified by CIB-funded services include:

- Despite continued investment, demand for civil legal aid continues to outstrip supply. Eligibility for civil legal aid is complex and income thresholds have not kept pace with inflation or changes to the social welfare code, resulting in many on low incomes not being eligible.
- Waiting times can aggravate problems, dishearten applicants, and can result in extended periods of hardship.
- There is both a lack of awareness of alternative dispute resolution mechanisms such as independent advocacy and mediation – demand for mediation services exceeds supply.
- Complex and technical terminology, processes, and procedures for courts as well as physical accessibility and modes of communication can make access to justice particularly difficult for some population cohorts, especially people with disabilities, new communities, and Travellers and other ethnic minorities.
- People in debt, people who are victims of domestic violence and parents with an intellectual disability and/or experiencing mental health difficulties often require additional support to avail of protections available under the law – typically such additional support is not available under the Civil Legal Aid Scheme.
- There is an under-developed awareness of legal rights, responsibilities, and support services. While CIB-funded services and www.citizensinformation.ie play an important role in informing people, raising awareness and directing people to an appropriate service, more needs to be done to educate the public and to provide more self-directed options and information about alternatives.
- Some individuals or communities may have negative perceptions of the legal process that discourage them from seeking legal advice on the basis of a perception that the judicial system, including civil legal aid is ‘not for us’.
- CISs, MABS, NAS and other specialist NGOs play an important role in providing a neutral, independent, and safe space that makes people aware of their rights and provides them with relevant information about how to engage with legal processes. The role of such agencies needs to be given a higher profile in a more integrated access to justice process.
- Educating for diversity and social inclusion and mirroring the communities in which the justice system operates is fundamental to a fair and just system. Accessible services need to be available that enable diverse communities to access justice such as interpretation and translation, Irish Sign Language, and assistive technology, as well as the use of Plain English, gender-neutral forms and language.

A key issue is that there is likely a lack of public awareness about the Legal Aid service. There may well be a view among the public that the LAB only provides a ‘limited’ family law service, some service in relation to employment law and criminal law and a service in relation to groups such as Travellers and people seeking international protection. As already suggested, the LAB needs to provide a

comprehensive Legal Aid Service. This is particularly required for the State to meet its obligations to respect the right of each person to have appropriate access to justice.

There is also significant potential for the LAB to expand its collaboration role with bodies and agencies who provide services to those on low incomes or are disadvantaged.

Another barrier is that there is limited expertise in some areas of law by Legal Aid Board legal practitioners and the panels of private legal practitioners are limited in the areas of law that they deal with. It is important that the Legal Aid Board provides a comprehensive service.

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

Early intervention using advocates, mediation and other alternative dispute resolution mechanisms can make a significant difference to the achievement of positive outcomes in disputes about employment, housing, and family matters and reduce the need for costly court cases. However, as with civil legal aid, demand for such services exceeds supply and delays are a feature of the system. Clearly, a more proactive emphasis on the role of mediation in dispute resolution in areas other than in family relationship breakdown is required. Mediation resolution mechanisms need to be adequately resourced.

Other options need to be considered to enhance accessibility to legal protection mechanisms. For example, online self-help options, such as that provided in the Dutch system¹⁰ which offers interactive decision-trees to help people assess their situation. The decision tree approach is aimed at early identification of multiple problems. Also relevant would be the availability of easy-to-read guides and Question and Answers briefs about common legal problems and possible solutions.

Self-help options should be piloted and assessed by the LAB. Specific and targeted grants to address emerging needs, specialist needs and access for groups is another option worth exploring.

For people with disabilities, a few actions within the courts system and in LAB provision could greatly improve accessibility. These could include:

- ✓ The introduction of intermediaries or court mentors to support people in court, the provision of access officers and assistive technology in courts.
- ✓ The exploration of opportunities for collaborative working between LAB and independent advocates such as NAS and CIS advocates.
- ✓ Ensuring that all LAB solicitors and those engaged by it are trained and competent in communicating with people who communicate differently, those with an intellectual disability and those with reduced decision-making capacity.

A proactive public information campaign is required to create a better understanding among all population cohorts about terminology such as civil legal aid, family mediation, role of intermediaries, mediators, advocates and court advisors, court processes and procedures, alternatives to court, legal rights and entitlements and legislation such as the Assisted Decision-Making (Capacity) Act 2015 and the Domestic Violence Act 2018.

¹⁰Legal Aid in the Netherlands,
https://www.rvr.org/publish/pages/4883/brochure_legal_aid_in_the_netherlands_june_2021.pdf

The addition of an education remit to LAB's work would provide a channel through which greater public awareness raising and education could take place. CIB believes that LAB should become more actively involved in education and research.

Issue 7 – Awareness and assessment of the current scheme

Q 15. What are its benefits?

The current scheme has established on a statutory basis every citizen's right to have access to justice and to be legally represented on an equal basis with others. The provision for legal advice and mediation to help 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 is an important benefit of the scheme.

Q 16. What are its challenges?

The main challenge is the expansion of the scheme to provide a comprehensive service with a range of legal expertise for a much wider grouping in society and to enable people to receive legal information, legal aid, and legal advice in quasi-legal settings within which people seek redress.

Q 17. What are its advantages?

The scheme has the advantage of having in-house legal practitioners and at the same time has access to legal practitioners in private practice. This has the advantage that the Legal Aid Board can tap into a diverse range of legal expertise.

Q 18. What are its disadvantages?

Feedback from CIBs and MABS points to a lack of awareness amongst clients in relation to their legal rights and the services that are available. In the first instance, the experience of CIB-funded services shows that access to high quality information and advice makes people aware of options and helps them to identify pathways to legal services. However, it is reasonable to suggest that there has been a lack strategic planning and investment by the State in building linkages between such services and the legal system and the courts process. The current civil legal aid service has seen little development since it was established. The scheme has not kept fully abreast with new or reformed legislation. While the Legal Aid Board has developed relationships with other bodies and agencies who have an interest in supporting and assisting people to resolve legal issues that affect their lives, more is required in this regard.

There is huge frustration among users of CIB-funded services with the delays in the present system where people are left without a legal service that they require to assert their legal rights or to seek redress.

CIB believes that the Civil Legal Aid Scheme is an essential and invaluable resource for people of low and modest means who wish to access justice. However, the scheme and LAB need to be adequately resourced. Stronger collaborative mechanisms need to be developed and sustained with other independent information, advice and advocacy organisations and a greater emphasis placed on collaboration and information dissemination.

The Civil Legal Aid Scheme is hampered significantly by the restrictions placed on the types of cases that are eligible, the jurisdictions that are covered, and the stringent and outdated financial and means testing procedures that apply at present.

Awareness of the scheme and how it operates is hampered using specialised and sometimes somewhat archaic language and procedures that are frequently inaccessible and incomprehensible to most people. For example, the use of *exclusions* and *exceptions to exclusions* terms in determining eligibility for civil legal aid renders it unnecessarily difficult for people to understand.

Issue 8 – The future

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

See response to Question 13 above.

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

By having a fully comprehensive scheme with a quick response time and ensuring that there is a constant public awareness campaign so that individuals and organisations are aware that there is an easily accessible and prompt service available.

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

- ✓ To provide a comprehensive expert legal aid, legal advice and mediation services for those who are on low incomes and for those who have to defend basic human and legal rights;
To ensure equality before the law for all citizens;
- ✓ To strengthen citizenship and democracy by ensuring the vindication of rights of citizens who are at risk of injustice and/or failure of accountability by public bodies and agencies of the State.

Q 22. What values should underpin it?

- ✓ Ensuring that each citizen has access to justice on an equal basis with others.
- ✓ Respecting the human and legal rights of all citizens.
- ✓ Equality before the law.
- ✓ Resolving conflicts in a timely and in the most appropriate manner.
- ✓ Minimising the need for attendance at court.

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

LAB services should be easily contactable and accessible by co-location with other relevant services such as CISs and Civic Centres.

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

There should be Memoranda of Understanding with such other services and agencies. For example, the Irish Human Rights and Equality Commission (IHREC) offer legal assistance in some legal matters, but it may not be clear to the public what distinction is between the legal assistance that will be

provided by the Legal Aid Board and the IHREC. Memoranda of Understanding should clarify what are the thresholds and criteria for each organisation.

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

It is noted that the Legal Aid Board does carry out a research function, but it is not clear if it highlights areas of law that need updating and reform. There must be many aspects of cases where this issue arises, and it is important that this information is captured and passed on to the Department of Justice.

The Legal Aid Board should take the lead in organising an Annual Conference jointly with bodies such as the IHREC, the Law Reform Commission, the Citizens Information Board, FLAC, the Courts Service, and others.

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

Mediation should be the first option explored in most cases where there is conflict. It can play a very necessary and important role in resolving family issues associated with divorce and separation. It also has the potential to make a significant contribution in matters relating to coercive control where adult children are making decisions against the wishes of their aged parents and/or where there is alleged financial abuse. It can also provide a first-stage resolution of disputes relating to employment rights, housing rights and social welfare appeals. However, mediation should not be a substitute for the protection of legal rights that need to be realised through the courts, for example in situations of child custody, separation and divorce, domestic violence, and coercive control.

Additional Comments and Overview

Access to high quality legal advice helps people to see if their grievances have merit, makes them aware of options, and supports those with legitimate grievances to resolve their problems without having to resort to costly legal proceedings. Costly and inaccessible systems, delays and waiting times undermine the application of justice in its widest sense, both in and out of court.

While Ireland has a public civil legal aid service that is quite progressive in many respects, it is severely hampered by the fact that demand exceeds supply and eligibility has not kept pace with changes to either people's income levels or ever-changing quasi-legal processes relating to employment, housing rights and new laws relating to domestic violence and supported decision-making.

While there are advisory and advocacy services and alternative dispute resolution mechanisms (including mediation) that support people to resolve issues outside the court system, these are not well integrated into the broader dispute resolution system and are under-resourced relative to demand.

In general terms, CIB looks forward to a situation in which those who are seeking legal services will experience the benefits of easier, cheaper and quicker access to civil justice for all, including an increased awareness of their options in relation to legal services; enhanced access to a revised and well-resourced Civil Legal Aid Scheme – particularly for those on low incomes; and increased access

to well-resourced mediation and Alternative Dispute Resolution mechanisms, particularly in relation to all family matters.

Also important is provision for legal advice and legal aid in areas where coercive control or financial abuse is perpetrated on adults who are vulnerable by people who are not in intimate relationships with them. Since the Domestic Violence Act 2018 refers only to people in intimate relationships, people experiencing coercive control or financial abuse by other relatives or “friends” may need to seek redress through the civil law system.

Easy access to civil legal aid is likely to be a key component in protecting the rights of people with disabilities and necessary to comply with the State’s obligations under the UN Convention on the Rights of Persons with Disabilities. It is important in the context of the soon to be commenced Assisted Decision-Making (Capacity) Act 2015 that the Legal Aid Board has access to skilled legal practitioners in this area. It is important that such practitioners are fully conversant with the various arrangements provided for supported decision-making in the 2015 Act and understand the extent of role of various decision-making supporters have in relation to a person whose decision-making capacity is at issue or who lacks the capacity to make a decision.

As is widely known, Section 42 of the Irish Human Rights and Equality Act 2014 introduced the Public Sector Duty by imposing a positive obligation on a broad range of statutory and public bodies to have regard in the performance of their functions – to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff, and persons to whom it provides services. CIB believes that the reform and possible expansion of the Civil Legal Aid Scheme should take cognisance of the implications of the Public Sector Equality and Human Rights Duty for public bodies, and the implementation requirements.

As referenced throughout this submission, many of those who seek assistance from CIB-funded services each year can experience multiple issues relating to debt, social welfare, employment, discrimination, housing, or family law, some of which have a clear legal dimension. While we believe 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 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.

Civil legal aid, to be fully effective in terms of its overarching goal to provide equality of access to justice for all, must be grounded in and based on the issues faced by ordinary citizens living in communities who may experience multi-faceted problems that require some form of legal redress. The Civil Legal Aid Scheme as it currently operates falls short in this regard.

CIB looks forward to playing our own role in collaborating with LAB and other bodies in ensuring that an improved, accessible, and adequately resourced Civil Legal Aid Scheme delivers effective access to justice for people, and especially for those sections of the community who are least well able to seek redress and remedies when their legal and human rights are infringed.