

Courts Service Strategic Plan 2024-2027

A Submission by the Citizens Information Board

Introduction

The Citizen's Information Board (CIB) welcomes the opportunity to make a submission on the development of the Courts Service's Strategic Plan for the period 2024-2027. CIB recognises that enabling and supporting access to justice for all in a modern, digital, and multi-cultural Ireland presents many challenges for the Courts Service.

Provision of information in relation to access to justice and related legal services continues to be an 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 CISs and is a member of the external Consultative Panel of the Legal Aid Board (LAB). In addition, CIB collaborates with LAB and the Insolvency Service of Ireland (ISI) in the operation of Abhaile, the national mortgage arrears resolution service.

The role of CIB-funded services

CIB-funded services, in many instances, function as a first point of enquiry for members of the public who are seeking information, advice, advocacy and support. 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. These include referrals to FLAC, to the Workplace Relations Commission (WRC), to solicitors, to MABS, to the Residential Tenancies Board (RTB), to the Legal Aid Board and the Courts Service. CIB receives feedback from our funded services which provides insights on the issues that people are experiencing in accessing their rights and entitlements and asserting their human and legal rights which is relayed to policy makers in the form of policy submissions, responses to consultations and commissioned research reports.

Each year, the CISs and CIPS receive over three quarters of a million queries from over half a million people on all aspects of their rights and entitlements. CISs received in the region of 20,000 queries about justice matters in 2023 with over half of these relating to legal aid and advice. In addition, services received 18,000 queries about legal issues related to families and relationships covering issues such as separation and divorce, custody and access to children, maintenance, problems with relationships and domestic violence. Services dealt with a further 48,000 employment related queries with rights and conditions representing 60% (+29,000) of these queries and made significant referrals to legal services, redress bodies, clinics, mediation services, and specialist support organisations during 2023. Legal aid and advice features in the top 10 query categories that CISs deal with each year.

In order to illustrate the range and spread of queries to CISs under the Justice category of query, in addition to the over a half relating to issues of legal aid and advice; one in eight are concerned with the law and rights and civil law; smaller proportions are concerned with the court system and courtrooms, matters concerning the prison system, accessing a lawyer, giving evidence, Garda vetting, naturalisation and other such areas. CISs regularly encounter clients with literacy (including digital literacy) difficulties, English

language proficiency and mental health challenges that impact on their ability to access and effectively engage with the justice system.

Family law information queries are categorised by CISs under the Birth, Family and Relationships category. Around 20,000 queries are dealt with under this category each year. The majority relate to family relationships and cover issues such as separation and divorce, guardianship, custody and access to children, maintenance, problems with relationships and domestic violence. Many family-related queries are also captured under the Legal Aid and Advice category. A number of queries, under all categories, concern clients who wish to self-represent in their dealings with the legal system.

While the information, advice, and advocacy services that are provided by CISs, MABS and NAS have a role to play in supporting people to access information on rights and entitlement to public service, there are many circumstances where access to legal information, advice and legal representation provided by legal practitioners is necessary in order to ensure a fair balance between the client and the other party who may have, as a matter of course, engaged legal representation.

Courts Service strategic focus

CIB fully agrees that a core principle that should underpin the Court Services Strategy is that people's ability to use the courts system to enforce the law is fundamental to their ability to access justice. CIB is in broad agreement with the strategic objectives outlined in the current strategy and believes that these should be replicated in the next strategy, in particular,

- User-centric with an enhanced experience for court users
- Services delivered through a range of appropriate channels
- Simplified provision of access to justice for individuals and organisations through reduced complexity and associated cost, particularly in lower value/lower complexity cases, with people only having to come to court to have their case dealt with where necessary
- The progress of cases through the courts system optimised, with cases not unduly delayed due to administrative or case management issues

The Courts Service Modernisation Programme which aims to bring new digital technology and modern ways of working to the administration of justice, making access to justice easier and quicker to navigate, and better responding to the needs of court users is central to the provision of a streamlined and service. The commitment in the 2021-2023 Strategy to working closely with Government to ensure the implementation of the new structure for family justice identified in the Programme for Government and set out in the Family Justice Strategy 2023 – 2025¹ is an important one and should be retained in the next Strategy.

The Family Justice Strategy 2022-2025² focuses on many areas which understandably are relevant to the Courts Service. It identifies a number of areas where reform is needed – information provision, access to the courts and the costs involved, and the need for a more empathetic system. It sets out nine key goals and related actions as a foundation for a more accessible family justice system. These goals have widespread implications for the Courts Service either directly or indirectly – in particular, Alternative

¹ [Family Justice Strategy 2023 – 2025](#)

² <https://assets.gov.ie/239772/7a41d453-19b8-403d-8022-296322e796f8.pdf>

Dispute Resolution; the creation of specialist family courts; information and co-located services in courthouses; and a digital environment.

The strategy points to the need for research and learning for future actions in a number of areas, including research on the needs of ethnic minorities and children with severe difficulties; the role of Child Liaison Officers in other jurisdictions and the potential of such a role in Ireland; and the operation of the *In Camera* rule.

The Courts Service will evidently need to factor in the goals of the Family Justice Strategy into its own next strategy and develop related goals for itself in accordance with the resources available.

Other commitments in the 2021-2023 Strategy such as adopting new collaborative ways of working, taking a court-user centred approach, to provide improved and enhanced service delivery should remain integral to the new Strategy.

Context within which the Court Services Strategic Development takes place

The Courts Service will be fully aware that the Review of the Administration of Civil Justice Report ('the Kelly report')³ made extensive and detailed recommendations concerning the overall civil justice system that are relevant to the Courts Service. These include advice on changes to court procedure and practice; and on improved physical and ICT facilities and new administrative arrangements. The report also made the important point that the wardship jurisdiction (now obsolete) was to be exercised in accordance with fair procedures and constitutional justice which may not always have been the case to date. The Supreme Court judgement in the AC case⁴ stated that the decision to deprive a person of legal capacity affects the autonomy of the individual in a fundamental way, and that such a decision should not be made upon the basis of evidence that cannot be challenged by the person concerned. (Par. 374).

Goal 2 of the Department of Justice Statement of Strategy 2021-2023⁵ was to improve access to justice and to modernise the courts system. Its accompanying Action Plan included a number of actions in that regard, among them a commitment to review the civil legal aid scheme and bring forward proposals for reform.

The Oireachtas Joint Committee on Disability Matters Report, Ensuring Independent Living, and the United Nations Convention on the Rights of Persons with Disabilities,⁶ expressed concern (Paragraph 197) about the lack of up-to-date Irish data in respect of people with psychosocial disabilities in the criminal justice system.

The Courts Services Strategy will evidently seek to give effect to relevant legislative provisions. The Criminal Justice (Victims of Crime) Act 2017 transposes the EU Victims' Directive⁷ on the rights of victims of crime into Irish law and broadly mirrors the content of the EU Directive. The Directive sets out broad provisions on the right to access information. It includes a right to understand and to be understood

³<https://assets.gov.ie/100652/b58fe900-812e-43f2-ad8d-409a86e7c871.pdf>

⁴<https://www.casemine.com/judgement/uk/5dfc6a614653d042431b0cbc>

⁵<https://assets.gov.ie/124340/54320908-ffb2-4279-9d85-b3d40368b569.pdf>

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https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_disability_matters/reports/2022/2022-03-10_report-on-ensuring-independent-living-and-the-united-nations-convention-on-the-rights-of-persons-with-disabilities_en.pdf

⁷<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

(Article 3), a right to information about victims' rights (Article 4), a right to be informed when making a complaint and about the case (Articles 5 and 6) and a right to interpretation and translation (Article 7).

Article 3 (2) of the Directive indicates that any information should be provided in '*simple and accessible language orally or in writing*' having regard to the '*personal characteristics*' of the victim and any disability which '*may*' affect their ability to understand. Article 4 requires that victims are offered without unnecessary delay a set of information from their first contact with competent authorities.

The Directive considerably strengthens the rights of victims and their family members to information, support, and protection. It further strengthens the victims' procedural rights in criminal proceedings. The Directive also requires that EU countries ensure appropriate training on victims' needs for those officials who are likely to come into contact with victims.

The enactment of the 2017 legislation was the first major step in putting victims at the heart of the Irish criminal justice system. The Act places obligations on key state agencies, including the Courts Service, to uphold minimum rights, supports and protections for victims of crime, including, in particular,

- The right to be given detailed information about the criminal justice system
- The right to be given information on victim support services
- The right to be kept informed of the progress of the investigation and any court proceedings
- The right to have protection needs assessed and have measures put in place to stop further victimisation and intimidation
- The right to be told of a decision not to prosecute and the right to ask for a review of that decision
- The right to be given information in clear language and to have access to interpretation and translation services if needed

Section 22 (1) of the 2017 Act stipulates that any communication, both oral or in writing, with a victim must be in 'simple and accessible language' and have regard to the personal characteristics of the victim, including any disability that the victim may have. Section 22(3) of the Act stipulates that where a victim needs assistance to be understood, then the victim should get access to an interpreter or translator, as the case may be where (a) a victim requests assistance (Section 22 (3)(a)); (b) where it appears to a member of the Garda or DPP that assistance is required (Section 22 (3)(b); or where the court directs (Section 22 (3)(c).

Access to services such as interpretation and translation services, Irish Sign Language, and assistive technology, and the use of gender-neutral forms, Plain English and multi-lingual signposting would enable better access to justice by diverse communities.

The legislation also requires that the particular vulnerability of victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crimes and victims with disabilities should be taken into account.

Arising from the above legislative provisions, CIB identifies the following specific areas where ongoing strategic development and action implementation are required by the Courts Service:

- Provision for specialist training (in relation to disability) for all those working in the field of administration of justice as provided for under Article 13 of the UNCRPD

- Enabling the court processes to better facilitate people with different types of disability, e.g., language used, timely availability of documents, pace of court hearings
- Exploring how the role of the Courts Service Disability Access Officer could be enhanced
- Easier access to civil legal aid generally for all adults
- A greater emphasis on resolving disputes before courts processes commence – this would reflect the principle of minimum intervention, which is a core tenet of the assisted decision-making legislation commenced in April 2023
- Additional provision for participation by independent advocates throughout the whole of the judicial process

Family law

Many queries to CISs are from people trying to resolve family law issues, such as access and maintenance orders and who are attempting to navigate the court system without legal representation. They struggle with inaccessible court forms, court fees and court procedures. The gap in provision of support services to lay litigants is a matter of concern especially in the light of the introduction of complex legislation such as the Children and Family Relationship Act 2015 and the Domestic Violence Act 2018.

Council of Europe guidelines relating to child-friendly justice⁸ set out basic rules for European states to follow when adapting their justice systems to the specific needs of children. They apply to all circumstances in which children are likely, on any ground and in any capacity, to be in contact with the criminal, civil or administrative justice system. While the Guidelines recommend the use of a specialist family law system, in Ireland, most cases concerning children continue to be heard in the general courts system by judges who generally do not specialise in family law. It is generally acknowledged that these courts are not suitable settings for such sensitive matters because of lack of privacy and space. CIB acknowledges that this almost certainly presents major challenges for the Courts Service in terms of achieving the standards to which it aspires.

The Family Courts Bill 2022 provides for a dedicated Family Law Court system, based within the existing court structure, which will enable family cases to be heard separately from other hearings. It will also provide for less adversarial dispute resolution mechanisms. The establishment of a purpose-designed and built Children and Family Law court complex in Dublin has been important. This model of best practice needs to be replicated elsewhere across the country.

Mechanisms to hear the voice of the child are underdeveloped and a Guardian ad Litem may or may not be appointed. The Child Care (Amendment) Act 2022 was signed into law in July 2022 and aims to strengthen the voice of children in childcare law proceedings by creating a national standardised Guardian ad Litem service. Children can be interviewed directly by judges with the child’s consent, but it is not known in how many cases judges opt to interview children directly.

People with disabilities

People with disabilities may have difficulty physically and otherwise accessing the various premises and locations in which the courts and ancillary activities are located. Barriers include cost, modes of communication (including access to sign language interpreters and Plain English/ easy-to-read documents), physical access and an underdeveloped use of assistive technology. The court modernisation

⁸ <https://www.coe.int/en/web/children/child-friendly-justice>

programme and the introduction of new technologies has improved matters considerably. There is a strong argument for the wider use of remote hearings than has been the case to date.

The *modus operandi* of NAS is to place the person's will and preference at the centre of all its engagements with clients. This applies in particular to Wards of Court cases. Under the Assisted Decision-Making (Capacity) Act 2015, the current Wards of Court system is being phased out and many people will need advocacy support to withdraw from wardship. This is a matter which, CIB suggests, should be given particular attention by the Courts Service in the coming years.

There is a need to continue to provide and to extend the provision of intermediaries or court mentors in civil proceedings to support people with disabilities, people with mental health difficulties and people who communicate differently. The role of court access officers and assistive technology to help people with disabilities to access the courts is centrally important.

The Courts Service clearly has a major role in ensuring that not only its own personnel, but also all other actors and agents within the court system, are trained and competent in communicating with people who communicate differently including those with an intellectual disability and people with acquired brain injury. The role of disability access officers is particularly important, and more resources should be available for this role.

Assisted Decision Making (Capacity) Acts

The Assisted Decision-Making (Capacity) Acts 2015 and 2022, which have been commenced since April 2023, are a watershed piece of legislation which sets out to modernise a whole area of law for a very vulnerable population. Its implementation will present the courts and the legal system with many challenges which will almost certainly require substantial attitudinal transition as well as a process of adapting to new processes and ways of working.

The legislation provides an important understanding of what is required in order to ensure that all people, irrespective of their decision-making capacity, have access to justice. The Acts create a new decision-making system and approach that will be of particular importance to many people. The legislation has significant implications for the justice system in general, including the Courts Service, in that it includes a presumption of capacity and provides for supported decision-making to enable and give effect to this.

The critical baseline principle underpinning the Act is that everyone is presumed to have capacity unless the contrary is shown in accordance with the provisions of the Act (Section 8(2)). This ensures that each person is treated individually, and that no cohort of people is automatically deemed to lack capacity.

The legal requirement to engage in supported decision-making mechanisms and related provisions envisaged in the Act provides a robust system for ensuring that people are empowered to take control of their affairs to the greatest extent possible, including in their dealings with judicial processes.

The concept of legal capacity means that the law should recognise people's capacity to be the bearers of rights. In other words, persons who have reduced decision-making capacity due to age, disability or other factors have the same legal rights as persons whose decision-making capacity is not in doubt. This is a critically important point that may not always have been well understood in judicial processes until more recently.

How the Assisted Decision-Making (Capacity) Act is implemented in practice will depend on the extent to which the cultural and attitudinal change envisaged in the legislation takes place in practice, both in the

courts system and elsewhere. The quality of education and training of those involved in judicial processes who are tasked with its implementation at all levels will be of utmost importance.

CIB is of the view that the process of change (both cultural and procedural) that will be required over the coming years in order to achieve a successful transition to the new reality envisioned in this legislation is such as to require that it be given prominent and specific strategic importance by the Courts Service.

Legal aid

CIB recognises that not all the measures which are needed to improve access to justice are within the remit of the Courts Services. However, there is nevertheless a need for the Courts Service to take account of those functions that are outside its remit when considering its own strategic approach.

In this context, CIB recognises that the issue of legal aid does not fall under the remit of the Courts Service. However, CIB is strongly of the view that the issue of legal aid, its availability, and limits, and in particular the matter of delays in accessing legal aid, are factors that impinge on and have an impact on aspects of access to justice that are within the remit of the Courts Service. CIB notes the relatively low – by European standards – income threshold for legal aid in Ireland in civil cases. We appreciate that matters pertaining to access to civil legal aid in Ireland are still under review and we look forward to the deliberations of the Review Group.

It is often the case that people have no option but to represent themselves or allow judgement to be entered in default of a response to a claim. In some cases, people with good claims will be left with no option but to abandon the matter unless they choose to speak for themselves. Understanding and dealing with the court process without representation can be difficult and complex for the individual. It can add significant delay to court hearings. Litigation of this type often arises out of family law and debt disputes involving vulnerable litigants. The result is poor access to justice for some and compromised access to justice for others. As such, it is important that the development of the new Courts Service Strategic Plan strives to minimise the negative effects of factors which in themselves are outside the remit of the Courts Service.

Personal litigants

CIB notes an increasing trend toward self-representation or a wish to self-represent on the part of people who may need to access the justice system. This presents both challenges and opportunities. There is a need, therefore, for a structured approach to meeting and facilitating such a demand.

The process for an in-person litigant is not linear, with people accessing help at different points and requiring support tailored to their specific legal matter and wider needs. There is a need to ensure that those who choose that route can access the right type of support, at the earliest point so that they know what support is available to them; that they can access appropriate practical and emotional support; and that the legal system is responsive to and understanding of the needs of in-person litigants.

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 system⁹ which offers interactive decision-trees to help people assess their situation. The decision tree approach is aimed at early

⁹Legal Aid in the Netherlands,
https://www.rvr.org/publish/pages/4883/brochure_legal_aid_in_the_netherlands_june_2021.pdf

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.

It is suggested that self-help options should be piloted and assessed by the Courts Service. Specific and targeted grants to address emerging needs, specialist needs and access for particular groups is another option worth exploring. The Courts Service should, therefore, continue with its programme of improving accessibility through on-line access, and other means. The following measures are likely to be required:

- Expanded and improved website content
- Accessible guidelines for lay litigants
- All legal documentation, templates, and court forms in accessible formats
- Pilot online self-help options such as that provided in the Dutch system which offers interactive decision-trees to help people assess their situation
- Ensure that the *Court: Best Practice Guidance*¹⁰ is adhered to in all court childcare proceedings

There is a need also to accelerate accessibility measures and the use of technology in courts, including Wi-Fi, remote hearings, and assistive technology, for all people and for people with disabilities and other vulnerable groups. It is also important that there is clarity for the public about how to request interpretation, Irish Sign Language or translation services within court and the timeframes required to process such requests.

Cultural issues and challenges

Ireland is now a culturally diverse nation. In the 2022 Census, 631,785 residents had non-Irish citizenship representing 12% of the population. This was an 18% increase since Census 2016. 24% of callers to CISs in 2023 had a country of origin outside Ireland.¹¹

Many sectors of the economy rely on migrant workers and the number of asylum seekers grows each year. For some, English is not their first language and others have little or no English.

People may mistrust or fear the justice system because of their immigration status. People from other countries may be unaware of laws that protect their rights, for example in housing, employment, and consumer protection.

Some communities have a negative perception of the justice system because of their experience of engaging directly with it, for example, people fleeing harsh regimes, or because of ongoing patterns of over-representation in the criminal justice system, for example Travellers.

CIB identifies two questions relevant to the Courts Services strategic deliberations.

- 1) How does the Irish justice system respond a growing multi-cultural population?
- 2) Are all cultures and communities of interest adequately represented within the justice system?

It is important that the courts system recognises and addresses the challenges that arise from the changing demographic of Irish society, and that it equips itself and its various actors with the information, skills and

¹⁰ [Court Report Guidance \(tusla.ie\)](https://www.tusla.ie/court-report-guidance)

¹¹ While county of origin is a non-mandatory field on the electronic data system used by Citizens Information Services related data is recorded for over 60% of callers to the network.

understandings needed in order to ensure that equal justice can be delivered to all those who access and use the justice system.

Digitalisation and communications

CIB acknowledges and commends the considerable progress made by the Courts Service in implementing its Modernisation Programme and in particular in moving to a digital mode of operating.

The experience of CIB-funded services indicates that there is a considerable population of people in need of access to the courts in order to seek redress who are poorly equipped with digital skills and/or resources. Low digital literacy among some population cohorts continues to be a serious issue. Tasks that are considered simple and easy by many people, such as completing a form, are experienced as difficult, stressful, and sometimes impossible by many others. CIB recognises that there is a concern that the drive to digital could create a new class of disadvantaged and excluded people.

The Courts Service will, therefore, need to continue to recognise and cater for the needs of this cohort of the population who have underdeveloped digital literacy skills.

Data collection

There is at present a dearth of comprehensive data regarding the various caseloads and types that are dealt with by the court system; waiting times and delays; access to legal aid; levels of self-litigations and participation by persons with disabilities in the justice system. CIB is of the view that the Courts Service, in its strategic planning process should, as far as possible, strive to ensure that it gathers, processes, and publishes high quality and useful data regarding its work.

A collaborative approach

CIB is of the view that there is much to be gained from collaboration between the Courts Service and other agencies and organisations whose work intersects with the role of the Courts Service, and we welcome the various forums facilitated by the Courts Services. CIB would welcome any opportunity to engage with the Courts Service on aspects of access to justice particularly, but not solely, where disadvantaged groups are concerned.

Concluding Observations

Costly and inaccessible systems, delays and waiting times undermine the execution of justice in its widest sense, both in and out of court. CIB notes recent important improvements and the allocation of additional resources¹² to the Courts Service aimed at reducing backlogs and waiting times. Waiting times mean that the many people for whom access to justice is a matter of urgency are most likely to face prolonged disadvantage. Continued attention will need to be paid to ensuring speedy delivery of access to justice.

¹² <https://www.gov.ie/en/press-release/af8f8-significant-increase-in-judicial-resources-to-improve-access-to-justice-announced-by-minister-harris/>

CIB notes and supports the various recommendations made in a recent OECD report,¹³ particularly regarding accessibility and justice pathways, case management, data collection and innovative co-ordination arrangements across institutions and external partnerships.

¹³ OECD (2023), *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*, OECD Publishing, Paris, <https://doi.org/10.1787/8a5c52d0-en>.