



***Submission on the Review of the
Civil Legal Aid Scheme***

February 2023

About Treoir

Treoir was founded in 1976 and is the national federation of services for unmarried parents and their families. Treoir along with its member agencies, promotes the rights and welfare of unmarried parents and their children by providing specialist information and advocating on their behalf. Treoir recognises the diversity of Irish families and believes that all families, including non-marital families, should be valued equally and receive the same level of protection and support from the state.

Treoir works to achieve this by:

- Providing a National Specialist information Service to parents who are not married to each other, their families and those working with them by providing information through our website, information line and outreach workshops.
- Co-ordinating the National Teen Parent Support Programme.
- Hosting Kinship Care Ireland.
- Promoting and supporting shared parenting.
- Undertaking and promoting research to examine issues that impact non-marital families.

Introduction

Treoir welcomes the opportunity to make a written submission on the review of the Civil legal aid scheme. The legal aid scheme is a vital service to provide access to justice for lower income and marginalised groups. The people who access Treoir's information service would primarily use the legal aid scheme in relation to Family law. We believe that a national legal aid scheme should be adequately funded, transparent and accessible to those who need it.

Access to justice is a fundamental human right and the cornerstone of a democratic society, and there needs to be an adequate mechanism available to support the realisation of that right. Treoir acknowledges the work carried out by the legal aid board and its efforts to operate with a limited budget and an increasing demand for its services.

Key issues

Types of cases

What areas should be covered?

Treoir recommends that the current scheme be extended to issues in relation to housing and social welfare. These areas disproportionately impact low-income and marginalised groups, so from the perspective of equality, and should be covered in the civil legal aid scheme. Many of the people who use our services must deal with issues in these areas as well as navigating family law, and the issue of housing and social welfare cannot be isolated from the family law system and should be included in the scheme.

What types of cases should be prioritised?

Cases involving domestic violence, including coercive control, should be given priority. It is important to note that survivors of domestic violence often need to access the courts for other issues including child maintenance and access arrangements. Even though these are separate issues, they are still victims of domestic violence and should be prioritised and supported; as well as protected from the weaponization of the family court system by the former abuser, to continue abuse post separation. Where a delay in the legal system can be shown to have a detrimental impact on a person or family's wellbeing, special consideration should be given to prioritizing their case.

Eligibility

How appropriate are the current eligibility thresholds?

The criteria for eligibility for the legal aid scheme is overdue for review, the criteria and eligibility thresholds have remained unchanged since 2006. Considering the current cost of living crisis, the need for re-evaluating the criteria has become more acute. The out-of-date thresholds have produced a barrier for many in accessing the scheme. This raises the question of unmet needs and if the scheme is available to those who need it most. Treoir believes that

child maintenance should not be considered as ‘means’ for the assessment of eligibility for accessing the legal aid board scheme. Going forward, Treoir recommends that the eligibility threshold is reviewed periodically to keep in line with the cost of living.

What cases should be approved without financial eligibility?

Domestic violence victims should be approved without a means test. This currently is the case with safety or protection orders etc., however DV survivors need to be given special consideration when accessing the court system for other family law issues.

In the area of Kinship care, where a relative takes over the care of child, there should be no means test. Kinship care providers a valuable social service and legal support should be given with no means test and no fee, in recognition of that service.

In terms of the contribution fee, this should be based on what the client can afford, if people are at risk of, or already living in poverty, the fee should be waived.

Operational issues

Views on the current modes of delivery of civil legal aid.

The current mode of delivery of the civil legal aid is through legal practitioners employed in house by the legal aid board and through panels of private solicitors. In recent years, the number of solicitors on the panel has diminished, this has led to increased waiting lists and difficulty for many people in securing a legal aid solicitor in many areas of the country. Treoir believes that the scheme would benefit from increased funding to grow the number of in-house legal practitioners and increase the number of private practitioners for the panel. Budget restraints should not determine equal access to justice and the legal aid board should be provided with the resources to provide a high-quality service available to those who need it.

Accessibility

What are the barriers to accessing the scheme?

Financial eligibility is one of the main barriers to accessing the scheme, there needs to be

more transparency on the financial eligibility, the contribution to be paid by the client and the appeals process. A lack of understanding of how the scheme works can put many people off applying.

Waiting lists are another barrier for many. These waiting lists vary around the country and depend on the availability of private solicitors on the panel. Many of our service users have reported having difficulty in securing a legal aid solicitor in their district.

How can the delivery of the service be made better?

The very nature of the legal system makes it appear adversarial and daunting. The language and formality of proceedings contribute to a negative experience in a situation that is already distressing. The delivery of the legal aid service should be a system that is easy to navigate, in language that is clear and easy to understand.

The Future

How can awareness and understanding of the system be improved?

There needs to be an awareness campaign, designed in a format that is accessible and easy to understand. For many marginalised groups, the legal language is intimidating, and the process becomes hard to navigate. There may be literacy issues, or English may not be their first language, or simply a lack of confidence in dealing with the formality of the legal system.

This could be delivered through workshops in communities, online or in person. Educational videos, in unambiguous language that lay people can understand. Literature, approved by NALA, to explain step by step the processes. It should be made clear from the start what will happen throughout the process and every step should be clearly explained to ensure the person is not overwhelmed.

How can marginalised groups be supported in accessing justice?

Any legal professional working either directly for the legal aid board or on the panel of private practitioners should be trained to support vulnerable and marginalised groups and their specific needs. Treoir recommends that trauma informed training be given to all solicitors working for the legal aid board.

There needs to be a process of safeguarding vulnerable people through the legal process,

Those with physical or intellectual disabilities, People with mental health issues, and people with literacy issues. Special attention should also be given to support those who have experienced domestic violence, coercive control and sexual or gender-based violence.

What should be the aim of the civil legal aid system?

The aim of a civil legal aid system should be to provide real, timely, and equal access to justice for everyone in the state. The current scheme does not go far enough to provide this. The scheme should empower people to realize their rights and provide them with the support they need to access justice. This is particularly important for marginalised groups who would typically find it difficult to access services.

The system should address an unmet need for legal representation for lower income groups, it should provide a quality, accessible, professional service delivered in an inclusive and compassionate way, allowing for disability, literacy, language, and mental health issues.

What values should underpin the legal aid scheme?

The provision of a quality, professional, timely, and ethical service with consideration given to the specific needs of the people who access the civil legal aid scheme. Equal access to justice must be central to the scheme. There needs to be periodical reviews on the delivery of service to ensure the needs of clients are being met. It should be a client focused delivery which actively seeks feedback from clients and uses this feedback to continue to improve delivery.

What additional roles could the legal aid board have in relation to legal assistance?

Free legal aid advice clinics would have the advantage of informing people prior to legal processes and preparing them before going to court. A free legal advice service prior to mediation would ensure that all parties know what to expect and so get the best result possible from the process.

What should the role of mediation or other alternative dispute resolution be as part of the civil legal aid scheme?

Alternative dispute resolution, where appropriate, is a preferred method of resolution. Mediation is particularly effective in family law issues, but as stated already, legal advice should be given to all parties prior to commencing mediation, to inform all parties of the process, their engagement, and expected outcomes. Investing in alternative dispute resolution

could reduce the number of court appearances and so would reduce waiting lists and overall costs of the scheme. Support should be provided to implement court ordered agreements, as many of Treoir's service users return to court when the agreement is broken or is not adhered to.

