

**CHILDREN'S
RIGHTS
ALLIANCE**

**Submission on the Reform of the Civil Legal
Aid System**

February 2023



Founded in 1995, the Children’s Rights Alliance unites over 140 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Anew
Aoibhneas
AslAm
Association of Occupational Therapists of Ireland (AOTI)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Blossom Ireland
Bodywhys
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Children in Hospital Ireland
Children’s Books Ireland
Children’s Grief Centre
Clarecare
COPE Galway
Cork Life Centre
Cork Migrant Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Early Learning Initiative (National College of Ireland)
Educate Together
EPIC
Equality for Children
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaelscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Helium Arts
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals’ Network
Irish Refugee Council
Irish Second Level Students’ Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
iScoil
Jack and Jill Children’s Foundation
Jigsaw
Katharine Howard Foundation
Kids’ Own Publishing Partnership
Kinship Care
Leap Ireland
Let’s Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers’ Union
My Mind
My Project Minding You
Museum of Childhood Ireland
Music Generation
New Directions
National Childhood Network
National Council for the Blind of Ireland
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children’s Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers’ Association
St. Patrick’s Mental Health Services
TASC
Teachers’ Union of Ireland
Terenure College Rugby Football Club
Transgender Equality Network Ireland
The Anne Sullivan Foundation
The Ark, A Cultural Centre for Children
The Irish Red Cross
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Variety – the Children’s Charity of Ireland
Women’s Aid
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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1. Introduction

The Children’s Rights Alliance unites over 140 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights.

The Children’s Rights Alliance welcomes the opportunity to make a written submission to the review of the Civil Legal Aid Scheme. It is welcome that this review is taking place as it will be the first review of the Scheme in its over forty-year history. It is timely that the review is being undertaken in light of the publication of the Family Justice Strategy in November 2022. The Strategy sets out a new vision for a ‘modern, streamlined and user-friendly family justice system that supports simple, early, fair and – where possible – non-adversarial outcomes’.¹

Children are key stakeholders in the legal system. Too often, the adversarial system of law places two opposing parties’ interests against each other with children often not being central to the proceedings. Accessing legal advice specifically on children’s rights and issues can be almost impossible for most families. Children and young people under 18 have no enforceable right to legal aid or legal advice. Any reform of the civil legal aid system must have children front and centre.

Article 3(1) of the UN Convention on the Rights of the Child (UNCRC) states that the best interests of the child should be a primary consideration in all actions concerning a child:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.²

It is essential that in any reform the best interests of children should be a primary consideration in the process and in the operation of the new system.

The Council of Europe *Guidelines on Child Friendly Justice* has set out that the application of the rule of law with respect to children necessitates that children are provided independent legal assistance, including effective access to a lawyer.³

¹ Department of Justice, *Family Justice Strategy 2022 – 2025* (Government of Ireland 2022).

² UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989), Article 3.

³ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (COE 2010) 46.

2. Eligibility and Costs

Currently, the Scheme provides both legal advice and legal representation for specific legal proceedings for individuals who pass the Scheme's eligibility assessments. In terms of accessing legal aid, the 2019 Joint Committee on Justice and Equality *Report on Reform of the Family Law System* noted that the under-funding of the Legal Aid Board has created lengthy waiting lists for initial consultations, which adds to delays in the courts system.⁴ Further, it notes that many applicants are excluded from eligibility, despite having low disposable income.⁵

To qualify for legal aid, an applicant must meet a merits test which involves the Legal Aid Board assessing whether an average person would be willing to go to court if they were paying for it with their own money, and whether a solicitor or a barrister acting reasonably would recommend that the person would go to court knowing that the applicant was paying for it.⁶ Applicants must also meet the financial eligibility criteria provided in the Civil Legal Aid Regulations 1996 to 2017. In general terms, the Regulations provide that a person's disposable income must be below €18,000 per annum.⁷

Disposable income is assessed by taking gross income and deducting certain allowances. This low qualifying threshold results in many families being excluded from obtaining legal aid and unable to independently fund representation.⁸ Each applicant receives an allowance of €1,600 for each dependent child when calculating their disposable income.⁹ This does not reflect the reality for families raising children and the costs associated with providing adequately for children. The cost of raising children has risen significantly since these thresholds have been set.

Even when an applicant meets the financial threshold for legal aid, it is usually not free except in cases of domestic violence. Regulation 21(14) of the Civil Legal Aid Regulations 1996 to 2017 provides as follows:

No contribution shall be payable by an applicant where the subject matter of the application relates solely to proceedings in the District Court (or on appeal from the District Court to the Circuit Court) where the only remedy sought by the Applicant in those proceedings is an order pursuant to the Domestic Violence Act 1996.

However, in cases other than domestic violence cases, applicants are required to make a financial contribution. Legal aid applicants must make a minimum contribution of €130 for legal aid.¹⁰ If their disposable income is above €11,500, then that contribution amount can rise significantly, adding an additional layer of stress to families in the family justice system.¹¹ The family courts offices do not charge fees for issuing and filing court documents in the same manner as the general civil courts. A similar approach should be considered for the Legal Aid Board, where eligible families are granted legal aid without the need for a financial contribution.

4 Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019).

5 *ibid* 32.

6 Civil Legal Aid Act 1995 (as amended) s.28(2)

7 Civil Legal Aid Regulations 1996 – 2021 SI 248/2021, Reg.13(3)

8 FLAC Opening Statement to the Joint Oireachtas Committee on Justice and Equality, Access to Justice & Costs (November 2019) <<https://bit.ly/3dylzUz>> accessed 22 February 2020.

9 Regulation 16(b) of the Civil Legal Aid Regulations 1996 to 2017.

10 Civil Legal Aid Regulations 1996 – 2021 SI 248/2021, Reg.17(1)(b).

11 Civil Legal Aid Regulations 1996 – 2021 SI 248/2021, Reg. 17(2)(b).

Recommendation:

- Consider updating and amending the civil legal aid financial thresholds for family law cases so that families have access to legal advice and representation.

3. Delays

Ensuring a speedy resolution to matters includes timely access to legal aid for families. According to the Legal Aid Board, in December 2020, the average waiting time for a first, advice only, consultation with a solicitor was 17.5 weeks.¹² The numbers waiting at the end of 2021 for legal services under the Scheme was 1,279. Whilst lower than the preceding year, this is still a strikingly large waiting list.¹³

Delays in accessing legal aid can have a knock-on impact and lengthen proceedings overall. Mediated agreements, already in place, could end up breaking down if not endorsed by a court in a timely manner. A 2012 research project found that where families adopt a low-conflict and co-operative approach after separation, this can alleviate some of the negative effects on children whereas unresolved or continued conflict is likely to have a negative impact on children and families.¹⁴

Recommendation:

- Consideration should be given to increasing the resources of the Legal Aid Board to reduce the waiting times for access to legal aid.

4. Access to Legal Aid for Children and Young People

People who meet the means test set out above can receive legal advice and representation for most (but not all) civil proceedings in Irish Courts and for certain referrals to the European Court of Justice.¹⁵ However, except for before the International Protections Appeals Tribunal, the scheme does not extend to proceedings before administrative tribunals.¹⁶ Children cannot receive legal aid on their own behalf, instead they must go through a third party.¹⁷

The right of children to legal advice and representation –thereby requiring provision of legal assistance – has been found under the European Convention on Human Rights,¹⁸ and the EU Charter on Fundamental Rights.¹⁹ Article 12 of the UNCRC provides that, “*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child [...] for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either*

12 Legal Aid Board, *Law centre waiting times and other statistical information*, December 2020, available at:

<<https://www.legalaidboard.ie/en/our-services/legal-aid-services/waiting-times/>> accessed on 12 February 2021.

13 *ibid*, 29.

14 Fahey, Tony; Keilthy, Patricia; Polek, Ela, *Family Relationships and Family Well-Being: A Study of the Families of Nine Year-Olds in Ireland*, December 2012, available at <<https://researchrepository.ucd.ie/handle/10197/5102>> accessed on 14 January 2021, 60.

15 Civil Legal Aid Act 1995 (as amended) s.27.

16 Civil Legal Aid Regulations 1996 – 2021 SI 248/2021, Reg.21(12).

17 Civil Legal Aid Regulations 1996 – 2021 SI 248/2021, Reg.5(6).

18 European Convention on Human Rights, Article 6; see also *Airey v Ireland* (application no. 6289/73).

19 European Union Charter of Fundamental Rights, Article 47.

directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

According to the Council of Europe’s *Guidelines on Child-Friendly Justice*, at the outset of any legal process, children should be promptly provided with information on their rights, the system and procedures involved. The child’s role should also be explained to them and the parties involved, along with any existing support mechanisms and the appropriateness and possible consequences of using in-Court or out-of-Court proceedings such as mediation for proceedings involving children.²⁰ It has been eight years since the Constitution was amended to include a specific provision on children’s rights and we have yet to see children and young people’s right to access remedies fully realised.

While there is a need for children to be able to access legal aid in their own right for many different types of civil cases, there are areas where it is particularly important. For example, the International Protection Act 2015 provides a statutory framework for family reunification for persons living in Ireland who have an international protection declaration. This entitlement for adults is restricted to spouses, civil partners, and dependent children,²¹ and for children to parents or siblings once under 18 years. There is no state-provided legal aid available for applicants and there is no accessible independent appeals mechanism for those whose application has been refused.

Recommendations:

- Consideration should be given to amending the civil legal aid system to ensure that children can access independent legal advice and representation on matters that affect them.
- Consideration should be given to specifically providing access to legal aid where a child or a young person is applying for family reunification.

²⁰ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (Council of Europe 2010) 20-21.

²¹ Dependent children are classified as those under 18, once they are not married.