

National Report - Ireland

ILAG Conference

Civil Legal Aid and the establishment of the Legal Aid Board

The Scheme of Civil Legal Aid and Advice was introduced in 1979 following the decision at the European Court in the case of Airey - v - Ireland E.C.H.R. 9/10/1979, 6/2/1 981 (1979) ECHR 305 and the recommendations made by the Pringle Committee which had been set up by the Minister for Justice to advise him on the introduction of such a scheme. An independent body, the Legal Aid Board, was established to administer the scheme the purpose of which is to make the services of solicitors and, where necessary barristers available to persons of modest means. The service continued on an administrative basis until 11 October, 1996 when the Civil Legal Aid Act, 1995 was brought into effect.

Provision of Legal Services by the Legal Aid Board

Legal services are mainly provided by solicitors in the full-time employment of the Board, working in Law Centres established by the Board. In addition to the network of 33 full time Law Centres, legal services are also provided through 12 part-time law centres and a varying number of information clinics. Three of the full time clinics and most of the information clinics are dedicated to asylum cases.

Legal services are also provided through private solicitors on panels. There are three panels at the moment. The first is a panel for divorce and separation cases. This panel was introduced on a permanent basis on the 1st October 2006. All solicitors who applied for this panel were interviewed by the Board in order to ensure their suitability. The second panel relates to family law matters at District (local) Court level. It is the board's intention to move to a situation where admission to this panel is by interview. The third panel provides for representation by private solicitors in cases before the Refugee Appeals Tribunal.

The use of private practitioners is designed to improve access to legal aid services in situations where a law centre is not in a position to provide a timely service.

The services of barristers are provided in accordance with the terms of an agreement between the General Council of the Bar of Ireland and the Board, however the scheme that involves private solicitors for divorce and separation cases provides for one fee only. It is a matter for the solicitor whether they wish to retain a barrister and pay the barrister from the single fee.

Scope of legal aid services

The Act makes provision for the "*grant by the State of legal aid and advice to persons of insufficient means in civil cases*".

The Act allows for the provision of legal advice and legal aid to persons who satisfy the financial eligibility and merits test laid down in the Act and Regulations.

Legal Advice:

Legal advice is available to persons on the application of Irish Law to any particular circumstances which have arisen in relation to the person seeking legal services. It also includes any steps that a person might appropriately take having regard to the application of the law of the State to those circumstances (other than the institution or conduct, including defence, of civil proceedings).

Legal Aid:

Legal aid (representation in Court) is available to persons in civil proceedings (other than certain excluded matters) in any Irish court of law and also for proceedings before the European Court of Justice. With the exception of representation of asylum applicants before the Refugee Appeals Tribunal, legal aid is not available for the conduct of proceedings before an administrative tribunal. Advice and assistance can, however, be given to persons who are contemplating taking tribunal proceedings.

As mentioned above, most of the Board's work is in the area of family law. The Board is actively promoting dispute resolution models that do not involve contested court proceedings. The Board has recently facilitated further training in one of these models namely collaborative law.

Statistics on cases:

In 2005, approximately 90% of the litigation services provided by the Board to its clients was in the family law area leaving aside the area of asylum. The legal services provided by the Board can cover most types of non-family civil law matters, except for excluded matters, which are outlined below. The range of non-family law matters dealt with by the Board include professional negligence, medical negligence, personal injury, contract.

Expenditure per capita of the population:

The Board's Grant-in-Aid for 2007 is *€24.288m*. The Grant-in-Aid of €24.288 for 2007 represents an increase of 11% on the amount for 2006 (€21.913m.) and an increase of 14% on the amount for 2005 (€21.362m.) excluding the Refugee Legal Service. There is a further €9.11m for asylum cases provided through the Refugee Legal Service. There are approximately 4.24 million persons living in the Republic of Ireland. The expenditure per capita on civil legal aid in respect of the Board is approximately €5.73, and €7.89 including asylum cases.

Eligibility

Under the Civil Legal Aid Act, 1995 and Regulations made thereunder, there are two basic tests of eligibility:

(a) a financial test and, (b) a test of merits.

(a) Financial test

An individual will satisfy the financial test if his/her disposable income is under a figure prescribed from time to time by the Minister for Justice, Equality and Law Reform with the consent of the Minister for Finance. Disposable income is the applicant's gross income from all sources less various allowances in respect of dependants, mortgage, tax etc. The current disposable income limit is €18,000 per annum. Capital resources are treated separately. An applicant whose disposable capital exceeds €320,000 is ineligible for legal services. If a person's disposable income is less than €11,000 they are charged the minimum contribution for legal advice which is €10. If the value of their assets excluding their home does not exceed €4,000, they pay the minimum legal aid contribution which is €50.

(b) Test of merits

The second basic requirement is that the Board must be satisfied that it is reasonable to take or defend proceedings having regard, for example, to the legal merits of the case and the likely outcome.

The criteria include prospects of success; reasonable grounds for taking or defending proceedings; the availability of any other method other than court proceedings for dealing satisfactorily with the problem (e.g. mediation or negotiation of a settlement) and the possibility of the person obtaining legal representation outside the scheme.

Exclusions

Legal representation is not available before tribunals, with the exception of refugee cases. In addition, certain matters have been designated in the Act as being outside the scope of legal services as follows:

- defamation
- disputes concerning rights or interests in or over land other than those exceptions which are allowed by the Act
- civil matters within the jurisdictions of the District Court (Small Claims Procedure) Rules
- licensing
- conveyancing (not connected to a matter for which legal services were provided)
- election petitions
- applications made in a representative, fiduciary or official capacity
- group actions

Refugee Legal Service:

The Refugee Legal Service (RLS) was established by the Board in 1999 as a specialised unit to provide legal advice and assistance at all stages of the asylum process to persons applying for asylum in Ireland. To complement the staff based service of the RLS, the Board engages the services of solicitors in private practice and barristers to submit appeals on behalf of legally aided asylum applicants and represent them before the Refugee Appeals Tribunal.

Other legal aid schemes in Ireland

Criminal Legal Aid

The Criminal Justice Legal Aid Act, 1962 and the Regulations made thereunder provide that free legal aid may be granted for the defence of persons of insufficient means in criminal proceedings. The decision as to whether or not persons are granted free legal aid is made by the courts. Services are provided through panels of solicitors and barristers who are paid on a fee basis.

Mental Health Legal Aid

The Mental Health Act, 2001 provides for the establishment of a scheme of legal aid for the granting by the Mental Health Commission of legal aid free of charge to patients challenging the legality of their detention before a Mental Health Tribunal and in appeals before the Circuit Court. This scheme of legal aid came into operation in November 2006. Services are provided to patients through a panel of solicitors who are paid on a fee basis.

Attorney General's Scheme

In certain circumstances, where a party cannot afford to pay fees, the legal costs of such a person may be defrayed from funds administered by the Attorney General's Office, on the recommendation of a court, under a scheme that is referred to as the Attorney General's Scheme.

The Scheme applies to the following forms of litigation:

- (a) habeas corpus applications;
 - (b) bail motions
 - (c) Judicial Reviews that consist of or include certiorari, mandamus or prohibition
- And
- (d) applications under S 50 of the Extradition Act, 1965

A person seeking a recommendation from the court that the Scheme be applied to their situation must make an application to the court (personally or through his/her lawyer) at the commencement of the proceedings, The court must satisfy itself as to the financial situation of the applicant, and that the case warrants the assignment of counsel and/or solicitor. Where there is more than one applicant, but only one matter is at issue before the court, the solicitor and counsel assigned shall represent all applicants

Community Law Centres

In addition to the services provided by the Board, there are a number of independent community law centres. A community law centre is an independent and community-based service which provides legal aid and advice to individuals and groups. They may provide court and tribunal representation and usually concentrate on areas of law such as housing, debt, employment law, welfare rights, equality issues and family law. There are two community law centres in Ireland – both in Dublin

Legal needs survey

A pilot survey of legal needs is currently being undertaken.