



FLAC Submission to the Department of Justice on the Family Court Bill (General Scheme) 2020

February 2021

About FLAC

FLAC (Free Legal Advice Centres) is a voluntary independent human rights organisation which exists to promote equal access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights. We work particularly in the areas of the protection of economic, social and cultural rights. We identify and make policy proposals on laws that impact on marginalised and disadvantaged people, with a particular focus on social welfare law, personal debt & credit law and civil legal aid.

FLAC produces policy papers on relevant issues to ensure that Government, decisionmakers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, Government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

FLAC sits on the External Consultative Panel to the Legal Aid Board. This operates to provide a forum to enable stakeholders to provide feedback to the Board on the services which they provide.

You can download/read FLAC's policy papers at

<https://www.flac.ie/publications/>

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Introduction

FLAC operates a telephone legal information and referral line and runs a network of legal advice clinics where volunteer lawyers provide basic free legal advice. FLAC has also provided specialist legal advice to advisers in MABS and CISs. FLAC works to improve access to justice for marginalised and vulnerable individuals and communities.

FLAC also operates PILA, the Public Interest Law Alliance, which operates a Pro Bono Referral Scheme for NGOs, community groups and independent law centres. FLAC runs a clinic for the Roma community and a dedicated legal service for Travellers. FLAC is also an independent law centre and engages in litigation in the public interest seeking to achieve outcomes which will have benefit beyond the individual, and which may test and possibly bring about change in law and practice. The focus on these services as a way of enabling individuals and groups to assert their rights is a fundamental aspect of FLAC's work in promoting access to justice.

FLAC participates as a member of the External Consultative Panel to the Legal Aid Board, providing feedback and assistance to the Board on the Board's services from the perspective and informed position of the stakeholder.¹ FLAC is also a member of the newly established umbrella group of NGOs working on matters concerning one parent families, the National One Parent Family Alliance (NOPFA).

Since its establishment in 1969, FLAC has had a role in providing advice and information in family law cases in Ireland. More than 26,000 people received free legal advice or information from FLAC in 2019 through the telephone information line and the network of legal advice clinics at 72 locations around Ireland.

During 2019, FLAC provided legal information to 12,469 callers to the telephone information and referral line. Of the 12,469 calls, 24.1% of these were specifically related to family law matters. Of those calls, 41% of callers were enquiring about a divorce or separation; 25% wished to discuss custody, access or guardianship; 20% had a query about maintenance; and around 10% related to domestic violence and the family home. There was a 23% increase in calls related to domestic violence from the previous year.

¹ <https://www.legalaidboard.ie/en/about-the-board/external-consultative-panel/> [accessed 17.02.21]

The FLAC telephone information line regularly receives calls from lay litigants who are endeavouring to represent themselves in complex court cases and who are desperately in need of assistance, advice and representation which FLAC does not have the resources to provide. Lay litigants made up approximately 4% of callers to the information line in 2019. Of the lay litigants who contacted FLAC, 48% had a family law issue. It is worth noting that not all callers to the line seeking information on family law matters may disclose their status as a lay litigant.

In 2019, approximately 2,500 free legal advice clinics took place at 72 locations around the country, where volunteer lawyers provided 14,526 basic free legal advice consultations to members of the public. Of the 14,526 consultations that took place, almost 5,000 of these were family law queries (34%). Of the total family law queries, half were related to divorce or separation; 25% were about custody, access or guardianship, and 20% were about maintenance. Domestic violence queries increased by almost 11% compared with the previous year and accounted for 9% of the family law queries. FLAC's work in providing information and advice to the public means that we act as a bridge for those who cannot afford access to the law, in light of the desperately underfunded and stretched state services providing assistance. The large numbers of individuals who turn to FLAC for guidance in family law matters is a testament to this. During Covid 19 our telephone Information line has been overwhelmed with queries on family law and employment law.

FLAC's public interest law project PILA has facilitated the establishment of an impact project between Women's Aid and a major law firm which provides legal assistance on family law to victims of domestic violence who are ineligible for legal aid

FLAC engages in policy and research on areas of law that most impact on vulnerable and marginalised groups such as social welfare, legal aid and debt. In 2017, FLAC campaigned successfully to have the financial contribution requirement for legal aid removed for victims of domestic violence. It has been campaigning for some time for a root and branch review of the system of legal aid and this was reflected by the previous Joint Committee in its report. FLAC made a detailed submission to the Joint Oireachtas Committee on Justice and Equality on the Reform of the Family Law System Report in October 2019 which is [available here](#). A number of its recommendations were taken on board by that committee such as

- 24. The Committee recommends that a full review of the legal aid scheme be conducted, with particular regard to means test rates, contribution requirements and eligibility, in order to ensure that the scheme is meeting the needs of those most vulnerable in society. It believes that the current threshold for legal aid needs to be raised significantly.
- 25. Given the delays and volume of cases facing the Legal Aid Board, and the barriers to access facing the public, the Committee strongly recommends that a thorough needs analysis and review be conducted of the funding requirements of the Legal Aid Board, with a view to reducing waiting times for consultations with a solicitor and ensuring that cases are progressed within acceptable timeframes that minimises stress on children in particular"

FLAC also made a detailed submission to the Joint Oireachtas Committee on Legal Aid and Costs which is [available here](#). It also made detailed submission on the work programme of the Courts Service.

FLAC welcomes the opportunity to make a submission to the Department of Justice on the *Family Court Bill (General Scheme) 2020*. This submission makes recommendations informed by our experience in working on access to justice issues and human rights in Ireland. FLAC is fully supportive of and eager to be involved in any aims to rectify the current difficulties within the family law system.

Family Law is a vitally important area of law which has a fundamental effect on how our society is organised. It is socially protective legislation which provides important protection for victims of abuse and vulnerable dependent family members. A centrally important theme in Family Law is the best interests of the child and the voice of the child. Given its importance to society, it has not had the necessary resources dedicated to it in the Court system. There is a stark contrast between the environment where commercial disputes are resolved in the Four Courts and nearby Dolphin House. FLAC has participated in a multi-agency campaign, *Courting Disaster*, which called upon the government to allocate funding for a dedicated family law court at Hammond Lane, recognising that the current court facilities are wholly unsuitable for the purpose of hearing family law cases.²

² The campaign included Barnardos, Children's Rights Alliance, Community Law and Mediation, Dublin Rape Crisis Centre, Family Lawyers Association, FLAC, National Women's Council Ireland, One Family, The Bar of Ireland, The Law Society and Women's Aid.

Recommendations

- ***FLAC recommends making the Public Sector Duty a core consideration in the process of developing, implementing and monitoring reforms of the family law system. Head 5 of the Scheme sets out guiding principles and should reflect the obligations imposed by the Public Sector Duty. In particular the rules of court for family law proceedings should reflect these obligations..***
- **Access to justice should be included in one of the guiding principles in Head 5.**
- **FLAC recommends that any provision concerning the operation of mediation be equality proofed to ensure that it remains truly voluntary. Additionally, any developments concerning mediation must not be presented as an answer to the lack of funding for civil legal aid and the Courts in Ireland.**
- **The Bill should contain a commitment to provide all of the ancillary necessary services that were recommended by the Report of the Oireachtas Committee:- such as legal aid and mediation services, as well as the courts and courts offices, should all be housed under one roof. Accommodation should incorporate appropriate areas for private consultation, child and welfare assessment services, ADR facilities, child-friendly spaces, crèche facilities, disability access and supports and guides for navigation through the process for lay-litigants. Translators should be readily available to courts to avoid lengthy delays when there are language problems.**
- **FLAC recommends that a Family Court Strategy and Implementation Plan be published that provides details as to the level of resources that will be allocated, and the projected time frame.**
- **FLAC further recommends the implementation of the recommendation of the Joint Oireachtas Committee which stated that legislation must, in turn, be backed up with the necessary resources and implementation.**
- **The review of the legal aid system should begin as a matter of urgency and should be treated as integral to the reform of the family law system**
- **FLAC recommends that the Courts Services and the Legal Aid Board should work together to ensure that there is clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme available from the Courts Services and staff.**
- **It also recommends the Legal Aid Board would be provided with an office within the new family court to provide information about its services and process applications.**
- **Research in Northern Ireland and the UK on litigants in person should inform the development of the new family law system. FLAC recommends introduction of a statutory obligation upon the Courts Service to ensure that lay litigant services are**

provided by the Courts. Information and advice services for lay litigant should be integral to the new family court system and should be provided as a vital ancillary services to be accommodated within the new structures. This should include establishing liaison person roles for persons at Court sittings who could provide practical information to assist lay litigants.

- FLAC recommends that legislative provisions giving effect to Article 42A be reviewed and consolidated with a view to vindicating the child's right to be heard in family law proceedings. Appropriate funding should accompany any legislative changes.
- The membership of the Rules Committee should be expanded to include groups like the Legal Aid Board, IHREC, FLAC and others who work with people experiencing poverty and who are regularly in contact with lay litigants.
- The Rules Committee should be tasked with ensuring that rules and procedures are equality, human rights and poverty proofed and are accessible including for people with disabilities, lay litigants and people with language and literacy issues and in plain English.
- The proposed change in jurisdiction needs to be explained, needs assessed and equality, human rights and poverty proofed to ensure that such a change is in the best interests of family law clients. In any event such a proposal should not commence until there has been significant resources allocated for the family law courts and hearings and that all of the ancillary services are available.

Public Sector Duty

Section 42 of the Irish Human Rights and Equality Act 2014, introduced the Public Sector Duty, providing one of the most important national mechanisms for mainstreaming equality and human rights. It imposes a positive obligation on a broad range of statutory and public bodies to have regard to in the performance of their functions, the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services.

The reform of the family law system in Ireland is a key instance in which the Public Sector Duty will apply. FLAC suggests that initiatives designed to improve the family law system such as this Bill should be underpinned by the Public Sector Duty and be reflected in the subsequent recommendations.

Recommendation:

FLAC recommends making the Public Sector Duty a core consideration in the process of developing, implementing and monitoring reforms of the family law system. Head 5 of the Scheme sets out guiding principles and should reflect the obligations imposed by the Public Sector Duty. In particular the rules of court for family law proceedings should reflect these obligations.

We believe that this would go some way to improving equality in access to the courts, the experiences of service users in engaging with family law matters, and overall access to justice.

Access to Justice

Access to justice is a fundamental human right, recognised as such under a range of regional and international human rights instruments including the European Convention on Human Rights,³ the Charter of Fundamental Rights of the European Union⁴ and the International Covenant on Civil and Political Rights.⁵ Access to justice includes access to legal information, advice, legal aid or representation, access to the courts, access to an effective remedy and fair and just laws. It encompasses access to fair systems of redress and the states' obligations to vindicate and protect human rights. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decisionmakers accountable.

Socially excluded groups within the general population are more likely to suffer justiciable problems (*meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework*) and the lack of effective and accessible mechanisms for resolving legal disputes prevents individuals from protecting and asserting their rights. Unless the right of access to justice, in all spheres of law, is vindicated, the risk of social and economic exclusion particularly for marginalised or vulnerable communities is greatly increased. Access to justice on a truly equal basis will be signified by equality of outcome regardless of resources. This is no less true for matters of family law.

Currently, civil litigation within a family law setting is more easily navigated by persons with the financial resources to access legal representation. Beyond this, there is a general expectation that the impecunious litigant will either manage with a low level of support through legal aid or become a lay litigant. Applicants for legal aid are often directed to the remedy which will be available in the lowest court. This is antithetical to access to justice.

Equal access to justice means that everyone should have equal access to the court and legal system alternatives to court as a matter of law, and as a mechanism of social inclusion and cohesion. Access to justice means more than access to civil legal aid and an appointment with a lawyer. It is about meeting equally the legal needs of marginalised communities in Ireland. It is about access to the courts and lawmakers, to service providers and basic information on legal rights and entitlements, and to the ancillary services required to resolve family law disputes.

Access to justice is also fundamental to democracy. Substantial unmet legal need continues to exist and the objective of protecting and promoting the right of access to justice should be at the core of all reforms to the family law system.

Recommendation

Access to justice should be included in one of the guiding principles in Head 5.

³ Article 6(1) and Article 13 of the European Convention on Human Rights

⁴ Article 47 of the Charter of Fundamental Rights of the European Union

⁵ Article 14(1) of the International Covenant on Civil and Political Rights.

Mediation

It is noted that one of the Guiding principles in Head 5 is *“encouraging and facilitating as far as possible the resolution of issues in dispute by means of alternative resolution methods, such as mediation, unless resolution by such means would not be appropriate due to the nature of the proceedings”*

The Mediation Act 2017 imposes requirements on the providers of legal services to make a Statutory Declaration confirming that they have advised separating clients (Section 5 and 6 of the 1989 Act) and divorcing clients (Section 6 and 7 of the Family Law (Divorce) Act 1996) that they have discussed and advised their clients about, inter alia, reconciliation, engaging in mediation, effecting a separation by means of deed or agreement and furnishing clients with appropriate contact details. FLAC agrees that ADR should be encouraged and facilitated in suitable cases by legal practitioners and by the Courts in the context of case management.

Mediation can be a useful mechanism for families to resolve matters outside of the court structures. It has the potential to address the significant costs and delays that may be involved within the court setting. It can be less costly and work well in moving away from adversarial approaches. However it is only one solution and should be easily accessible and available and one of the ancillary services available. Given the socially protective nature of family law and the often significant disparity in power and resources between parties any alternative dispute mechanism, including mediation, should not dilute the vindication of rights. However, meaningful access to justice should ensure that while mediation is available and used where appropriate; access to the courts and legal advice and representation should also be available where mediation is not going to be an appropriate mechanism to resolve a family law issue.

Some cases are wholly unsuitable for mediation, where there is abuse including coercive control or a significant power imbalance. Even with mediation you will need lawyers in the background to advise on matters such as failure to financially disclose, the implications of a pension adjustment order, the implications of a settlement on social welfare entitlements.

Mediation works best when it is truly voluntary, when the parties bona fide agree to come together to resolve their disputes. It should never be imposed on parties who have rights in need of protection and enforcement. While mediation can and should be encouraged it should not be imposed on parties who refuse to mediate.

FLAC has serious concerns that the legal aid system and the Courts system which are fundamental to the administration of Justice have been inadequately resourced to date. FLAC is concerned that mediation is seen as a way to reduce the need for adequate resourcing of the Courts and legal aid system. It is not and should not be the purpose of mediation to mitigate the need for adequate court and legal aid services. Mediation should be viewed as one solution but not the solution or the dominant solution to access to the courts to enforce protective rights.

Expanding mediation services has the potential to be a positive development, but it will not address the overall remaining problem of a lack of access to state funded civil legal aid for those who need it but fall outside of the eligibility criteria and participate as lay litigants because they cannot afford legal fees. Participation in mediation should be voluntary rather than a last resort or imposed solution for those seeking to access the courts.

Recommendation

FLAC recommends that any provision concerning the operation of mediation be equality proofed to ensure that it remains truly voluntary. Additionally, any developments concerning mediation must not be presented as an answer to the lack of funding for civil legal aid and the Courts in Ireland.

Establishing a Family Court - An Access to Justice Issue

In 2020, we welcomed the Programme for Government's Commitment to enact a Family Court Bill to create a new dedicated Family Court within the existing court structure and provide for court procedures that support a less adversarial resolution of disputes. FLAC also welcomed the commitment to build a new Family Law Court building in Dublin and ensure that court facilities across the country are suitable for family law hearings so that these can be held separately from other cases.⁶ FLAC is broadly supportive of establishing a Family Court as a division of the existing court structure.

While the proposal to establish a distinct court for Family Law is to be welcomed and has great potential; given no budgetary information or implementation strategy has been published, it is not clear from the General Scheme of the Bill as published how it will have a meaningful impact on the matters of waiting times, developing effective mechanisms for hearing the voice of the child, improvements in court facilities, access to the courts, and provision of ancillary services.

While the proposed General Scheme may provide a framework in which to establish a new Family Court, if it is to be functional and not simply replicate or worsen the problems of the existing court system, then there must be a serious exploration of establishing a statutory obligation to provide ancillary services to which the family courts must have, that would ensure meaningful access to justice. A new Family Court structure needs ancillary social services where individuals might access parenting information, domestic violence support and resources, anger management programmes, family therapy and addiction counselling spaces, facilities to monitor custody and access orders, and translation services. There must be appropriate consultation and negotiation rooms. The courts must also have access to suitably qualified persons providing Section 32 and Section 47 reports on both the wishes of the children and the best interests of the children.

In addition, this must be underpinned by a fully-functioning, well-resourced and fit for purpose scheme of civil legal aid that ensures that there is equality of arms for persons litigating family law cases.

Recommendation

The Bill should contain a commitment to provide all of the ancillary necessary services that were recommended by the Report of the Oireachtas Committee:- such as legal aid and mediation services, as well as the courts and courts offices, should all be housed under one roof. Accommodation should incorporate appropriate areas for private consultation, child and welfare assessment services, ADR facilities, child-friendly spaces, crèche facilities, disability access and supports and guides for navigation through the process for lay-litigants. Translators should be readily available to courts to avoid lengthy delays when there are language problems.

⁶ Programme for Government; Our Shared Future, 2020.

Court Buildings and Resources

Previous governments had planned for a new family law and children's court complex at Hammond Lane to be completed in 2020. Some work has begun, and although the design stage is being finalised, the project has yet to go to tender.⁷ Though the total capital budget for the Courts Service in 2020 was €66.017million, €15.380million of which will be allocated for courthouse capital works for a variety of courthouses around the country, it is not clear what separate facilities and buildings.

FLAC notes that the Courts Service has stated that improved court accommodation and facilities is a strategic priority for them.⁸ Investment in some court buildings has improved a small number of facilities. However, significant investment is required in order to ensure that the courts infrastructure meets the needs of the public. While there are proposed courthouse developments included in the National Development Plan, these are specifically for new or refurbished courthouses in regional cities and county towns, in addition to the development of the Family Law and Children Court at Hammond Lane. There are also proposals for regional family law centres, however the allocation and timing of funding has not yet been published.

Head 7 of the General Scheme provides for the creation and alteration of District Family Court districts allowing the Courts Service after consultation with the Principal Judge of the District Family court and the President of the District Court to divide the circuits into convenient geographical areas. It is not clear whether these newly created family courts will be expected to slot into the already existing, and often insufficient, courts facilities and buildings. There is a need to invest substantially in appropriate physical infrastructure for new family courts.

In October 2019, the Joint Oireachtas Committee on Justice and Equality published a report on Reform of the Family Law System following extensive consultation with stakeholders. Following their deliberations, the Committee recommended a review of the physical infrastructure of the family law courts with a view to producing a blueprint for a modern and family friendly court structure. The Committee supported a model of family law courts that would operate as regional hubs with sittings set aside exclusively for family law, and more efficient case management systems that are child focused. The Committee also suggested that legislation for new family courts should provide for the development of a comprehensive set of overarching rules and practice guidelines to be applied uniformly across divisional courts to ensure a more unified and coherent approach to family law proceedings.

Recommendations

FLAC recommends that a Family Court Strategy and Implementation Plan be published that provides details as to the level of resources that will be allocated, and the projected time frame.

⁷ <https://www.kildarestreet.com/wrans/?id=2020-11-17a.1684&s=hammond+lane#g1685.q>

⁸ Courts Service of Ireland Annual Report 2019, Strategic Priority 5

FLAC further recommends the implementation of the recommendation of the Joint Oireachtas Committee which stated that legislation must, in turn, be backed up with the necessary resources and implementation.

Legal Aid

The provision of legal aid is a critical matter for access to justice and is central to the administration of justice and the rule of law. The right of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights, guaranteeing the right to a fair trial, to an effective remedy and legal aid for those who lack sufficient resources in order to ensure effective access to justice. Access to justice is also reflected in our constitutional system of justice, where access to the courts is guaranteed. Access to legal aid will be a key factor in the success of any reformed Family Court structure in Ireland.

The current system of civil legal aid provided by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995 is limited. The applicant's disposable income must be below €18,000 and the disposable capital threshold is €100,000. Applicants must also pay a financial contribution which in some instances may be quite significant. There are lengthy waiting times in many law centres. Core areas of law such as housing are in large part excluded from its remit. For instance the operation of the merits and means test means that many people facing family home repossessions are not entitled to legal representation.

In many cases members of the public have no option but to attempt to represent themselves and this is very evident in persons representing themselves in the District Court in family law cases.

Navigating the court process without representation can be difficult, complicated and emotionally draining on an individual. It can also add significant delay to court hearings. Family law litigation may also be connected to housing law and debt disputes involving particularly vulnerable litigants. The result is no access to justice for some and compromised access to justice for others.

There has been a growing consensus of the need to reform the legal aid system. In that regard we welcome the commitment of the Minister for Justice which is reflected in the Department's Strategy to carry out a review of the legal aid system. FLAC believes that such a review should be an external root and branch review of the legal aid system by a committee composed of relevant external stakeholders chaired by an independent person of considerable status. The review would consider matters such as the functions of the Legal Aid Board, its resources, the criteria for legal aid (including the means test, and financial contributions), the areas of law

covered, and the methods of service delivery. It would also examine what steps are necessary to ensure that the system is compliant with the State's obligations under the ECHR and the Charter of Fundamental Rights, as well as the public sector equality and human rights duty contained in section 42 of the Irish Human Rights and Equality Commission Act 2014.

It is vital that reform of the legal aid system is integral to reform of the family law system.

Recommendations

The review of the legal aid system should begin as a matter of urgency and should be treated as integral to the reform of the family law system

FLAC recommends that the Courts Services and the Legal Aid Board should work together to ensure that there is clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme available from the Courts Services and staff.

It also recommends the Legal Aid Board would be provided with an office within the new family court to provide information about its services and process applications.

Litigants in Person

The current court system is planned and administered on the basis that a litigant will be represented by a lawyer. FLAC's information line regularly receives calls from lay litigants who are representing themselves in complex court cases and in family law cases and who are desperately in need of assistance, advice and representation which FLAC does not have the resources to provide. The General Scheme of the Family Court Bill will not alter this position.

In the UK, the Civil Justice Council constituted a Working Group to examine access to justice for "litigants in person". The report of the Group entitled "Access to Justice for Litigants in Person" contains useful recommendations for immediate, medium and long-term focus. The immediate actions sought to identify practical recommendations that can be introduced without requiring additional financial resources. There has also been significant research in Northern Ireland⁹

The General Scheme proposes to amend the jurisdiction of the Court. If this is implemented, this is likely to increase the number of lay litigants seeking to access the District Court.

Recommendation

Research in Northern Ireland and the UK on litigants in person should inform the development of the new family law system. FLAC recommends introduction of a statutory obligation upon the Courts Service to ensure that lay litigant services are provided by the Courts. Information and advice services for lay litigant should be integral to the new family court system and should be provided as a vital ancillary services to be accommodated within the new structures. This should include establishing liaison person roles for persons at Court sittings who could provide practical information to assist lay litigants.

⁹ Litigants in Person in Northern Ireland

Child's Best Interests

Article 42A was inserted into the Constitution in 2012 enshrining the right of children to be heard in family law proceedings where the child is capable of forming views. Section 32 of the Children and Family Relationships Act 2015 gives effect to this right and requires the Courts to hear the voice of the child with due regard to their age and maturity. Under this Act, the court may appoint an expert to determine the views of the child through providing expert reports.

The volume of cases and lack of judges to manage them, can impact on the voice of the child being heard in many cases. This creates delays and increases costs for all parties when cases are required to return on the next sitting. In practice, despite the constitutional right of the child to be heard, the inadequate facilities, delays, lack of services and lengthy proceedings mean there are significant barriers to this right being realised.

The lack of resources also negatively impacts on this. While regulations fix the cost of an expert report at €250 or €300, the Law Society have emphasised that the cost of procuring an expert report is in the region of €3,000-4,000. For parties involved in proceedings who cannot pay these costs, an expert will not be appointed. For those entitled to legal aid, the Legal Aid Board will cover 50% of the cost but this will only cover a very small proportion of those involved in family law proceedings. In practice, the default position in family law proceedings is that the views of the child are not ascertained at all, or they may be ascertained by judges who are not specifically trained to do so without the assistance of an expert.

The absence of a structured framework in how these matters are approached has resulted in a lack of consistency from the Courts. There is a clear need for a legislative framework that ensures a multi-disciplinary approach to ensure that the voice, welfare and best interests of the child are front and centre of decision-making. While the General Scheme refers to judicial training, it is not clear what form this will take. FLAC notes the Oireachtas Committee on Justice and Equality previously stated that appropriate training should be a mandatory requirement and provided examples from other jurisdictions.

FLAC has previously highlighted this in the context of noting difficulties in the inadequate provision of civil legal aid. There is a clear need for a state service, that could be provided through the Legal Aid Board, that would ensure expert reports were provided where children were concerned. Alternatively, a state Guardian ad Litem service may be appropriate.

Recommendation

FLAC recommends that legislative provisions giving effect to Article 42A be reviewed and consolidated with a view to vindicating the child's right to be heard in family law proceedings. Appropriate funding should accompany any legislative changes.

Family Law Rules Committee

Head 18 of the General Scheme of the Bill provides for the establishment of the Family Law Rules Committee which will consist of the Principal Judge of the Family High Court; the Principal Judge of the Circuit Family Court; the Principal Judge of the District Family Court, and four nominated members; (a) a barrister with experience and relevant expertise in the area of family law nominated by the Bar Council of Ireland; (b) a solicitor with experience and relevant expertise in the area of family law nominated by the Law Society of Ireland; (c) a County Registrar, (d) a Clerk of the District Court, (e) a Clerk of the Circuit Court, (f) the Chief Executive of the Courts Service, or a member of the staff of the Courts Service to whom the Chief Executive has delegated his or her membership in writing and any such delegation may be revoked at any time by the Chief Executive; (g) a representative of the Attorney General.

The Legal Aid Board is regularly described as being the largest family law practice in the State and should be included on the Committee. In order to help ensure that the rules and procedures are equality and poverty proofed it would be helpful to have a nomination from IHREC on the committee. It would also be useful to have a representative from groups like FLAC who have experience of providing legal services to people in poverty and/or extreme poverty and who regularly hear the experience of lay litigants seeking to access the Courts.

Recommendation

The membership of the Rules Committee should be expanded to include groups like the Legal Aid Board, IHREC, FLAC and others who work with people experiencing poverty and who are regularly in contact with lay litigants.

Head 18 provides that the Rules Committee shall be tasked with prescribing documentation required for the commencement of proceedings; regulating pleadings, practice and procedure; in relation to remedies in proceedings; in respect of costs of proceedings; providing for service out of the jurisdiction; regulating the form and execution of any process, and providing for such incidental, supplementary and consequential matters as appear to the Committee to be necessary or expedient for the purposes of this Act.

All of the work of the Rules Committee shall have regard to the principles referred to in Head 5 as well as the proper and efficient administration of justice. Placing the Rules Committee on a statutory footing is to be welcomed. FLAC has earlier recommended that Head 5 of the Scheme sets out guiding principles and should reflect the obligations imposed by the Public Sector Duty. In particular the rules of court for family law proceedings should reflect these obligations and should be equality, human rights and poverty proofed. It is vital that forms and procedures are accessible including for people with disabilities, lay litigants and people with language and literacy issues and in plain English.

Recommendation

The Rules Committee should be tasked with ensuring that rules and procedures are equality, human rights and poverty proofed and are accessible including for people with disabilities, lay litigants and people with language and literacy issues and in plain English.

Change in jurisdiction

FLAC notes the proposed changes in jurisdiction set out in the General Scheme. Submission to the Joint Oireachtas Committee and the report itself did not express concerns about the allocation of jurisdiction between courts. The major concerns expressed were the volume of cases in the District Court and the manner, places and times that sittings in the District and Circuit Court take place. It would appear that the proposed changes in jurisdiction have the potential to greatly exacerbate the delays in the District Courts.

Recommendation

The proposed change in jurisdiction needs to be explained. needs assessed and equality, human rights and poverty proofed to ensure that such a change is in the best interests of family law clients. In any event such a proposal should not commence until there has been significant resources allocated for the family law courts and hearings and that all of the ancillary services are available.

Conclusion

FLAC welcomes the proposals set out in the General Scheme of the Bill. A functioning family law court that meets the needs of the community and those involved in family law proceedings is long overdue. However, FLAC is deeply concerned that establishing family law courts on a regional basis, without a clear plan to allocate the level of funding that will be required to ensure that many of the current problems are not simply replicated or actually worsened, contains many risks. As set out above, there are many difficulties with the current Court facilities available due to chronic and consistent underfunding since they were established. Establishing a new Family Court will mean very little to those who cannot access it without legal representation or advice, and it will mean little to the children involved in proceedings who cannot have their voice heard because of a lack of resources allocated to the task.

Far reaching changes present opportunities for significant progression and improvements. However these opportunities will be lost if legislative changes are not accompanied by the significant funding.

Access to justice should not be preserved solely for those who can afford it; FLAC, as a body consistently serving the unmet legal needs of those who are not provided for by the current system, urges the Department of Justice to take on board our concerns, as well as the concerns of the Oireachtas Committee on Justice and Equality, and other stakeholders working in the family law sector.