



Women's Aid submission to the Review of the Civil Legal Aid Scheme

February 2023



Women's  Aid

Contents

Introduction.....	2
Summary of Recommendations	4
Answers to Consultation Questions	5
Issue 1 – Types of Civil Law Cases	5
Recommendations	8
Issue 2 – Eligibility	8
Recommendations	10
Issue 3 - Financial Contribution	10
Recommendations	12
Issue 4 – Mode of Delivery	12
Recommendations	13
Issue 5 – Accessibility	14
Issue 6 – Awareness and Assessment of the Current Scheme	14
Issue 7 – The Future	15
Recommendations	16
Issue 8 - Anything else?	17
Recommendations	17
Conclusion	17

Introduction

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence¹ against women and children since 1974. In this time, the organisation has built up a huge body of experience and expertise on the issue, enabling us to best support women and share this knowledge with other agencies responding to women and children experiencing domestic violence. More information on Women's Aid's work is available on www.womensaid.ie.

Women's Aid welcomes the opportunity to make a submission to the Legal Aid Board on the Review of the Civil Legal Aid Scheme. Through our decades of support to victims/survivors of domestic abuse, including advocacy, court accompaniments and a full-time drop-in service in Dolphin House Family Law Courts, as well as our participation on the Legal Aid Board External Consultative Panel, we have a very good appreciation of the importance of Legal Aid for women experiencing domestic abuse, as well as of the issues and gaps with the scheme.

Our Direct Services often support women who, following separation from an abuser, have to navigate judicial separation, divorce, resolution of property matters, custody, access and maintenance in this fraught context. We very frequently support women who seek protection through orders under the Domestic Violence Act 2018 also.

In 2021, Women's Aid responded to 26,906 contacts (including the National Free-phone Helpline and our Face-to-face services), in which 33,831 disclosures of abuse against women and children were made. In this period, our support workers accompanied 75 women to court 140 times. We supported women in the Family Law Court and the Criminal Law Courts. Of the women supported in the Family Law Court:

- 54% were in court in relation to Domestic Violence orders

¹ While recognising that the legal term in Ireland is 'domestic violence' we acknowledge that many victims/survivors identify more with the term 'domestic abuse' or 'intimate partner violence'. Women's Aid uses these terms interchangeably in this submission to refer to the same set of abusive behaviours perpetrated by current or former intimate partners (including emotional, physical, sexual and financial abuse and coercive control).

- 42% were in court in relation to child matters including custody, access and child maintenance arrangements
- 4% related to other matters such as separation and divorce in the context of domestic abuse.

We also supported 572 women during 905 drop-in visits to the Domestic Abuse Information and Support (D.A.I.S), a drop-in service for women at Dolphin House Family Law Court.

In 2021, there were 3,103 provisions of information, advocacy and referrals made during contacts with Women's Aid Face-to-Face support workers. Of these, Garda)².

We know from our direct services that women find it very difficult to navigate the legal system and that the legal advice and representation provided by Legal Aid is for them invaluable, but unfortunately not always accessible or timely.

It has to be noted that women subjected to domestic abuse and coercive control often suffer economic abuse and have little or no financial means and therefore rely to a great extent on Legal Aid to access justice.

Immediately below are the primary recommendations Women's Aid is making in response to this consultation, with more details and context offered in the text below.

² Women's Aid Annual Impact Report 2021, available at <https://www.womensaid.ie/about/policy/publications/womens-aid-annual-impact-report-2021/>

Summary of Recommendations

1. The Legal Aid scheme should extend Legal Aid to other areas such as compensation for victims of domestic abuse, application of Domestic Violence Leave, civil remedies regarding image based sexual abuse and civil orders against stalking.
2. The Legal Aid scheme should maintain priority for Domestic Violence Order proceedings.
3. The Legal Aid scheme should extend priority to all other proceedings where there is domestic violence.
4. The Legal Aid scheme should extend priority to civil orders against stalking.
5. The current threshold for Legal Aid eligibility should be increased as soon as possible.
6. When assessing the eligibility for Legal Aid of victims of domestic abuse, a flexible approach should be used which takes into consideration the capacity of the client to provide complete and accurate information on family assets and their actual access to family income/assets.
7. Women's Aid recommends to remove the Legal Aid contribution for all cases where domestic abuse is a factor (such as custody, access, maintenance, breaches of the above, separation/divorce).
8. Should that not be possible, the calculation of financial contribution should take into account the income/assets actually accessible to the victim (as mentioned in the Eligibility Section) and have a yearly limit so as not to allow the perpetrator to instigate numerous proceedings to financially drain the victim/survivor.
9. The Legal Aid scheme should ensure that victims of domestic abuse are aware of the possibility of asking for a contribution waiver in an accessible manner.
10. The Legal Aid scheme should be adequately resourced to be able to employ more solicitors directly and/or provide adequate fees to attract and retain private practitioners.
11. The lists of private practitioners should be regularly reviewed and updated to ensure they give a realistic indication of potentially available representation, and to ensure recruitment is maintained to ensure that this is adequate to meet demands nationwide.

12. Prior to mediation there should be a screening process to identify cases where there is domestic abuse, including coercive control.
13. Participation in mediation should never be a requirement or pre-requisite for accessing Legal Aid.
14. Mediators should be adequately trained in recognising domestic abuse, including coercive control, and in understanding its impacts on victims/survivors, including children.
15. Should the parties be genuinely willing to participate in mediation, notwithstanding domestic violence, special measures need to be implemented.
16. All solicitors employed by the Legal Aid Board in the legal centers through the private practitioners list should be trained on domestic abuse and coercive control.

Answers to Consultation Questions

Given our remit, we have focused on the experiences of women accessing Civil Legal Aid in the context of domestic abuse and the issues specific to this group. We have therefore only answered questions relevant to this group.

Issue 1 – Types of Civil Law Cases

Q1. Considering the current operation of the scheme and the areas of civil law that are currently covered, what areas of civil law do you think it should cover? What is your reasoning for this?

Q2. Do you have any particular views on how types of cases should be prioritised for support, advice and representation in the future under the scheme?

The main use of Legal Aid for the women we support is in relation to domestic violence orders and child related private Family Law (primarily custody, access and maintenance related proceedings), both of which areas are crucial for the safety and well-being of women and children

separating from an abuser. We believe these areas should remain a priority focus of Legal Aid provision.

For victims of Domestic Violence and Abuse (DVA) there may also be other areas where legal advice and assistance would be useful in future, such as:

- Support in accessing compensation from the perpetrator, as envisaged in Article 30 of the Istanbul Convention.
- Supporting and monitoring the correct application of the Domestic Violence Leave by employers when the Work Life Balance and Miscellaneous Provisions Bill 2022 is enacted³, so that women get the leave they are entitled to.

As well as the above, the following emerging areas (which may intersect with but are not specific to domestic violence) will need legal support:

- Civil remedies (such as take down requests and compensation) in regards to image based sexual abuse/intimate image abuse. While no clear take down orders are available at the moment, victims of image based sexual abuse need support to have images removed from the internet/social media through any available legal means and where possible to sue for defamation/claim compensation.
- Stalking civil orders: Part 5 of the Criminal Justice (Miscellaneous Provisions) Bill 2022⁴ provides for civil restraining orders against stalking. When the Bill is enacted, legal assistance should be provided for those applications in a similar way to applications under the Domestic Violence Act, 2018.

Priority

Currently proceedings under the Domestic Violence Act 2018 are rightly prioritised. However, it is important to note that being granted an order under the Domestic Violence Act can be an

3 S7 of the Work Life Balance and Miscellaneous Provisions Bill 2022,
https://data.oireachtas.ie/ie/oireachtas/bill/2022/92/eng/ver_b/b92b22d.pdf
4 https://data.oireachtas.ie/ie/oireachtas/bill/2022/83/eng/ver_a/b83a22d.pdf

important step to a life free of violence but it is certainly not sufficient. Women may also not apply or be granted such orders for a variety of reasons.

Women (and children if any) separating from an abuser need to finalise legal judicial separation and divorce proceedings in a reasonable timeframe, obtain safe access and custody arrangements and appropriate financial supports (including fair property division and maintenance) to be able to move on from the abuse and rebuild their lives.

Therefore, Women's Aid believes that victims of domestic violence need to be prioritised in **all** proceedings (orders under the DV Act, Custody, Access, Maintenance, Guardianship, Judicial Separation and Divorce) to ensure their and their children's safety, as well as adequate and viable financial support and fair property division.

Anecdotal evidence from our Direct Services team suggests that women trying to access Legal Aid for separation and divorce can be waiting a number of months, or even years, to get Legal Aid for representation for these proceedings. This means that the woman may be left without legal representation while they wait for their Legal Aid certificate to come through. The waiting times for people seeking legal separations are very difficult on everybody, but in situations of domestic violence they create a vacuum for dangerous interim arrangements and for the perpetrator to continue to abuse the woman. It can also be a period during which the abusive party may deplete joint assets. It has been a concern to Women's Aid for several years that civil legal aid is not adequately resourced, such that this is leading to unacceptable waiting times. We recommend increased and adequate resourcing for the service, as well as prioritising **all** proceedings where domestic abuse is a factor.

Civil Proceedings regarding orders against stalking and/or harassment should be similarly prioritised due to the risks to the safety and well-being of the victim.

Recommendations

Women's Aid recommends that the Legal Aid scheme:

- extends Legal Aid to other areas such as compensation for victims of domestic abuse, application of Domestic Violence Leave, civil remedies regarding image based sexual abuse and civil orders against stalking
- maintains priority for Domestic Violence Order proceedings
- extends priority to all other proceedings where there is domestic violence
- extends priority to civil orders against stalking

Issue 2 – Eligibility

Q4. How appropriate are the current eligibility thresholds? i. How should the financial eligibility threshold be determined to access the scheme or any successor in the future? ii. Is there a particular figure which you would set? iii. What is your rationale for that figure?

Q5. Are there other allowances or considerations, which should be made in determining eligibility (financial or otherwise) for the scheme?

Q6. Are there certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test? If so, what types of cases do you believe fall into this category?

Q7. Should some form of merits test apply to the cases at 7? If so, what should that look like?

Q8. Do you agree with how merit is defined and what matters should be included in the merits test?

Women's Aid believes that the current threshold is too low and needs to be raised significantly as soon as possible. While the low threshold has already been an issue for the past years, the current rate of inflation and cost of living crisis makes raising it as soon as possible imperative.

In our experience, the disposable income threshold of €18,000 means that women are often denied Legal Aid, however, they cannot afford to pay for private representation either and this restricts their access to justice in the family courts.

In our services we often meet women subjected to abuse who are not eligible for Legal Aid but the perpetrator is. In such scenarios where the woman is not eligible but also does not have sufficient means for private representation, she is extremely disadvantaged as she frequently has to represent herself at the proceedings and the perpetrator has representation. Facing an abuser without legal knowledge and qualified support, and mindful of the acute impacts that abuse itself can have on victims/survivors, creates an incredibly stressful and unfair scenario in a court room setting.

Women who have been economically abused may not have full knowledge and access to practical **information** of all the household finances, including debts, assets and properties that may be held in their name. The requirement to submit all this information as part of the legal aid assessment hampers women's access to legal aid for separation and divorce proceedings.

Moreover, women separating in the context of domestic violence often do not have **access** to their own or to jointly owned accounts and other financial means of the family. They may have been coerced to give their income to the abuser, often do not receive the maintenance that has been agreed or ordered, and may find themselves responsible for debts accrued by the perpetrator and of which they may or may not be informed. The income and assets they have access to may be quite different to what they have on paper.

Therefore, when assessing eligibility for a victim of DVA, it is important to have a degree of flexibility and to consider the income and assets she actually has at her disposal, as well as liabilities she may have unwillingly or unknowingly incurred. The focus should not be exclusively on the situation on paper.

Recommendations

Women's Aid recommend that:

- The current threshold for Legal Aid eligibility is increased as soon as possible
- When assessing the eligibility for Legal Aid of victims of domestic abuse, a flexible approach should be used which takes into consideration the capacity of the client to provide complete and accurate information on family assets and their actual access to family income/assets

Issue 3 - Financial Contribution

Q9. How appropriate are the current levels of financial contributions?

Q10. Should the financial contribution be assessed differently in respect of different types of subject matter?

Q11. If so, should an individual pay a contribution based on the complexity of the subject matter and pay that in instalments over the length of the case as the case is progressed on his/her behalf?

In our experience women may find it very difficult to pay the Legal Aid contribution. For example, women who qualify for Legal Aid but who are earning more than €12,000 and up to €18,000 may have to contribute €417 for a certificate and women who earn less than €11,000 will be assessed as owing €130 (unless they are able to get a waiver).

Separation is often a financially difficult time for people in general, and separation from an abuser particularly so. Women who leave an abusive partner may have escaped with little or no personal belongings, may have to relocate, may have to pay for children's needs (new school uniforms or counselling), and may be unable to work for a period of time.

While it is to be welcomed that women applying for DV orders who are entitled to Legal Aid no longer have to pay the €130 fee as in the past, women in abusive relationships often need legal aid and legal representation for other family law proceedings for which the Legal Aid fee still exists. These proceedings can include representation for separation/divorce, access hearings, applications for maintenance, production of infants and others.

It also needs to be noted that abusive men often use the Family Courts as a way to continue financial and psychological abuse of their separating partner, therefore they delay and obstruct proceedings and/or instigate new and repeated meritless proceedings against their partners with the aim of draining them financially and emotionally. Therefore, women separating from an abusive partner may have a high number of civil law cases (and at times criminal ones as well) in which they are applicant or respondent occurring at the same time or in a short period of time. Abusers also often use tactics to make proceedings complicated and prolonged.

It is important that women in these situations of prolonged legal proceedings are legally advised and represented in **all of them**, and that the requirement of financial contributions does not hamper their access to justice.

Women need to be made more systematically aware of the possibility to apply for contribution waiver for domestic violence cases.

Recommendations

- Women's Aid recommends **to remove the Legal Aid contribution for all cases where domestic abuse is a factor (such as custody, access, maintenance, breaches of the above, separation/divorce)**
- Should that not be possible, the calculation of financial contribution should take into account the income/assets **actually accessible** to the victim (as mentioned in the Eligibility Section) and have a yearly limit so as not to allow the perpetrator to instigate numerous proceedings to financially drain the victim/survivor
- Ensure that victims of domestic abuse are aware of the possibility of asking for a contribution waiver in an accessible manner

Issue 4 – Mode of Delivery

Q12. What are your views on the current modes of delivery of civil legal aid (i.e., through family law centres and private panel of solicitors)? Are there additional modes you would suggest?

Women's Aid has no preference in relation to legal aid being delivered through family law centres or the private panel, as long as it is delivered in a reasonable time and practitioners are all trained on the dynamics and impacts of domestic violence, including coercive control. This should include a focus on both its impact on children and its impact on women's ability to engage in legal proceedings.

It is also essential that there are enough Legal Aid solicitors available in court to provide adequate representation to women, whose cases are often complex, and where her safety may be at stake.

Currently there is a distinct lack of available Legal Aid solicitors operating in Dolphin House Family Law Courts (where Women's Aid support staff and service users primarily frequent), which means that the caseload for the few who are accepting Legal Aid clients is far too onerous. With such a

heavy caseload (we have observed 20-25 cases in a single day) it is simply impossible to give enough time and consideration to each case, and this impacts on outcomes and length of proceedings (e.g., cases are frequently adjourned).

The Legal Aid Board Private Practitioners List in Dublin is not up to date: it is our experience that many of the solicitors on this list no longer take Legal Aid clients, so when women or our support staff contact them seeking legal representation, they are told they actually no longer accept Legal Aid clients. This leaves women with very limited choice or options regarding their potential legal representation.

Our colleagues supporting victims/survivors in other areas across the country including in less urban locations, also report to us that the list of available practitioners is very limited.

Additional Note: Women's Aid wish to acknowledge that the current situation where the Legal Aid centre is located on 3rd floor of Dolphin House family law courts in Dublin works really well for court users subjected to domestic abuse and the staff are extremely helpful and do their very best for them. This service also refers when appropriate to Women's Aid drop-in information service, co-located in the same Courts, and vice versa.

Recommendations

Women's Aid recommends that:

- the Legal Aid scheme is adequately resourced to be able to employ more solicitors directly and/or provide adequate fees to attract and retain private practitioners.
- the lists of private practitioners are regularly reviewed and updated to ensure they give a realistic indication of potentially available representation, and to ensure recruitment is maintained to ensure that this is adequate to meet demands nationwide.

Issue 5 – Accessibility

Q13. What are key barriers to accessing the service?

Q14. How can the administration and delivery of the service be made to work better for the individual users, NGOs and communities?

As already mentioned above, the key barriers are: the lack of solicitors and the long waiting times for matters other than DV orders, the low eligibility threshold and the financial contribution. All this presents a huge barrier to access to justice for victims/survivors of domestic abuse.

Moreover, in our experience it is very difficult to access initial legal advice in a timely manner and women therefor have to refer to private solicitors for such legal advice, which they can hardly afford. Increased resourcing of Legal Aid is needed to address this issue.

It can be difficult to access Legal Aid representation in complex access/custody cases because, in our experience, solicitors do not want to take these cases because they take too much time. Such cases can be extremely protracted in nature especially where reports such as Section 32(a) or (b) etc. have been requested.

The process to make a complaint about a Legal Aid solicitor and to change solicitor needs to be clearly articulated, in our experience, the process of changing solicitor can be onerous and time consuming.

Issue 6 – Awareness and Assessment of the Current Scheme

In relation to the current scheme:

Q15. What are the benefits of the current scheme?

Q16. What are its challenges?

Q17. What are its advantages?

Q18. What are its disadvantages?

As mentioned in previous questions.

Issue 7 – The Future

Q19. How can an individual's awareness and understanding about justiciable problems or legal disputes be raised?

Q20. How should individuals on low incomes and other marginalised groups be supported to access justice in the future?

Q21. What should the aim of a civil legal aid scheme be?

Q22. What values should underpin it?

Q23. How can the service best be targeted or prioritised for recipients in the future?

Q24. What should the scheme's relationship be to other forms of publicly-funded/part publicly-funded legal assistance initiatives?

Q25. What additional roles should or could the Legal Aid Board have, if any, in relation to public legal assistance?

Q26. Is there a role for mediation and/or other alternative dispute resolution processes as part of a civil legal aid scheme or similar support system in the future? If not, why not? If so, what should the role be?

Women's Aid believes that, while mediation can have a useful role to play in Family Law disputes, this is not the case if there is domestic abuse in the relationship, including post separation coercive control continuing which is common.

Mediation is predicated on the parties having an equal relationship and being able and willing to cooperate with each other. It is unrealistic to think that a perpetrator of coercion and controlling behaviour would cooperate with his victim in an honest and equal way, or that this process would be able to reverse or overcome what may have been years of dominance and abuse.

Participation in mediation can put women in danger of further abuse and harassment through contact with the abuser on arrival, during negotiations and on departure. For example, women accessing our helpline and support services report that mediation in Family Law is easily abused by their partner/husbands and some have even been abused during the mediation sessions without the mediator intervening.

It may also lead to unsafe and unfair outcomes: women who have experienced domestic violence may feel intimidated and fearful during negotiations with the ex-partners, regardless of the presence of mediators, which would impact on their capacity to negotiate confidently a safe and fair outcome for themselves and their children. These situations can result in pushing women traumatised by the coercive control they have been (and may continue to be) subjected to to accept terms which may not be in their own, or their children's best interests, simply in order to end the engagement. It is our experience that women may agree to such disadvantageous arrangements and/or may not be able to freely articulate their fear and concerns in the presence of the abuser due to this trauma.

It is therefore very important that if the Legal Aid Board includes and/or expands the role of mediation as part of the Civil Legal Aid scheme, **any** proceedings where domestic is alleged abuse, and particularly coercive control continue to be screened out of this process and no pressure (direct or implied) is put on victims to participate. It is essential victims/survivors are guaranteed access to Legal Aid without having to participate in mediation as a condition of eligibility.

Recommendations

In relation to any future expansion of the role of mediation in the LAB remit, Women's Aid recommends that:

- Prior to mediation there is a screening process to identify cases where there is domestic abuse, including coercive control.
- Participation in mediation should never be a requirement or pre-requisite for accessing Legal Aid.
- Mediators are adequately trained in recognising domestic abuse including coercive control, and in understanding its impacts on victims/survivors, including children.
- Should the parties be genuinely willing to participate in mediation notwithstanding domestic violence, special measures need to be implemented.

Issue 8 - Anything else?

Domestic abuse is very common in Ireland and many cases in the Family Law Court will include parties where domestic abuse and coercive control are features of the relationship. This includes not only proceedings for orders under the Domestic Violence Act 2018, but a range of Family Law proceedings including separation/divorce, custody and access, maintenance and relevant breaches.

It is very important that solicitors who deal with such cases understand the dynamics of domestic abuse including coercive control, the impact on children as direct victims rather than 'witnesses' and therefore on advocating appropriate Custody and Access arrangements. It is also important to understand the tactics and impacts of economic/financial abuse and the impact of these experiences on the victim/survivor's ability to engage in legal proceedings.

A solicitor with a clear understanding of the risk implications of the outcomes of Family Law proceedings and of the safety precautions that need to be taken in and around court can make a huge difference to survivors.

Recommendations

- Women's Aid recommends that all solicitors employed by the Legal Aid Board in the legal centres through the private practitioners list are trained on domestic abuse and coercive control.

Conclusion

We would like to thank you for your attention to and consideration of our submission. We welcome any opportunity to discuss the contents with you directly.

Follow up contact can be made to: Sarah Benson, Sarah.Benson@womensaid.ie or Denise Kiernan, denise.kiernan@womensaid.ie