



Helen McEntee TD
Minister for Justice

By email to exmchugh@justice.ie

24 August 2022

Re: Civil Legal Aid – Family Law Private Practitioner Scheme

Dear Minister,

Following discussions with the Law Society's Family & Child Law Committee, I wanted to draw your attention to an increasing concern among family law practitioners around the unsustainable Civil Legal Aid scheme which is currently significantly out of date.

The 5% cuts to legal aid fees which were introduced in 2010 have not been restored however, a greater concern arises where the current fee structure does not provide a commercially viable means for practitioners to run legally aided, family law cases.

Any system of civil legal aid which requires work to be done by solicitors on what effectively amounts to a *pro bono* basis is unsustainable.

While your announcement of a review of the current scheme is welcome, we are conscious that the Final Report of the Review Group is not expected until after its meetings conclude in summer 2023.

In the interim, we expect to continue to see an increasing threat to access to justice in circumstances where family law practitioners are opting to withdraw from this area of work, rather than act for fees which are in no way reflective of the investment of time and skill required.

Westminster Commission on Legal Aid (“the Commission”)

The current situation in England & Wales is described by the Commission in its 2021 [Inquiry into the Sustainability and Recovery of The Legal Aid Sector](#). It reveals a system which is failing to meet the needs of citizens in large swathes of both countries and notes that:

- ⇒ **In 2012/2013** - 3,555 offices with civil legal aid contracts commenced civil legal aid work across England and Wales; but
- ⇒ **By March 2020** – that figure had fallen to 2,342.

The Commission exposes a system defined by “*legal aid deserts*”, “*advice deserts*” and “*advice droughts*” where practitioners are no longer willing to act.

It is vitally important that everything possible is done to avoid any replication of these failures here, an outcome our Family & Child Law Committee and the wider Law Society very much wants to avoid.

Reasons for the withdrawal of family law practitioners

A direct and immediate impact of the ongoing withdrawal of family law practitioners is a void in available representation for clients who are often most in need of assistance when navigating our adversarial legal system.

Our Family & Child Law Committee describe a number of geographical areas where only one family law solicitor now accepts legally aided cases. This, of course, presents an immediate difficulty for any other legally aided party seeking local representation.

The following have been identified by our Family & Child Law Committee as primary reasons for the ongoing withdrawal of solicitors:

1. Inadequacy of fees

District Court civil legal aid fees range from €339-€508(+VAT) however, the value of practitioners' time which is needed to initiate actions in these cases (i.e. opening a file and taking instructions) exceeds the bottom of this range.

Circuit Court fees for judicial separation/divorce are fixed at €3,386(+VAT) which covers all stages following service of a Notice of Trial i.e. consultations, drafting/settling pleadings, preparatory work, settlement negotiations/court appearances and any interim applications.

The fixed nature of the fee is difficult to rationalise in circumstances where multiple court appearances are often necessary in particular cases.

2. Client contribution to the Legal Aid Board can exceed solicitor's fee

Another stark reality is that the contribution paid by a client to the Legal Aid Board can exceed the fee paid by the Legal Aid Board to a solicitor.

In the District Court, the maximum legal aid contribution which a client can be required to discharge is €417 which rises to c.€4000 in the Circuit Court (although most would not reach that level). If a client experiences difficulty in making the District Court payment, they can apply for a waiver to have it reduced.

This reality, particularly when considered in tandem with the issues identified at point 4 below, is a significant factor in solicitors' decisions to withdraw.

3. Increased time commitment

Previously, a client's file was received from the Legal Aid Board which was then read, instructions taken and court representation provided. However, it is not unusual now for clients to contact solicitors with a Legal Aid Certificate but without any further paperwork from the Legal Aid Board.

This requires that the solicitor takes instructions, prepares the court application, issues proceedings, serves proceedings, attends at court, conducts talks/contests the case, drafts and serves orders and attends reviews (as required). Again, all work is undertaken for a fixed fee, irrespective of the time commitment involved.

4. No reimbursement for office outlays or travel expenses

Participating solicitors are not reimbursed for office outlays (e.g. registered post and photocopying) or for expenses arising from travel to/from court, which can be significant.

This is of particular concern in large rural districts where court dates can span significant geographical areas e.g. our Family & Child Law Committee outlined a case which involved 17 dates across District 18 (Bantry/Macroon/Bandon) which ultimately resulted in a payment to the solicitor, after expenses, of €19.94 per court appearance.

The unsustainable reality is that a solicitor who opts to participate in the civil legal aid scheme, as currently operated, does so on the basis that they will have to meet office outlays and travel expenses from their own funds.

Conclusion

The current remuneration structure must be updated without delay to reflect the commercial reality for solicitors whose ongoing participation is fundamental to its success.

Continued failure to address the issue, even by way of an interim measure pending the implementation of any recommendations of the Review Group, threatens the viability of the system of civil legal aid and continued access to justice for the most marginalised in society.

In announcing the Review Group, we appreciated your confirmation that capturing the views of those who have unmet legal needs will form an important aspect of the Group's work and further, that eligibility for civil legal aid will be considered. Both are, of course, vital aspects in the framing and delivery of a revised system of aid which meets the legal needs of those it serves.

I look forward to your response to these increasingly urgent issues.

Yours sincerely,



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President

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