

# INTERNATIONAL LEGAL AID GROUP

**Boston 2023**

## NATIONAL REPORT - IRELAND

### 1. Country Details

Name: Ireland<sup>1</sup>

Population: Approx 5.1m

GDP: Approx €423bn (2021)

Poverty line / % of population deemed to be living in poverty – 5.3% (consistent poverty rate), 13.1% (at risk of poverty rate) (2022).

Number of practising lawyers in the jurisdiction: Approximately 12,000 practising solicitors (attorneys/general practitioner lawyers) and approximately 2,965 practising barristers (trial advocates/specialist lawyers) (of which approximately 325 are Senior Counsel or senior lawyers particularly learned in the law).

### 2. Legal Aid Organisation

#### **Criminal**

There is no single organisation responsible for the provision of criminal legal aid services. Different aspects of the criminal legal aid scheme are managed by the Department of Justice (administration of payments to lawyers and policy matters), the courts (admission of persons to the scheme), court officers (admission of lawyers to legal aid panels), and the Legal Aid Board (management of certain ad-hoc schemes of legal aid connected with legal advice in police stations, recovery of the proceeds of crime and certain public law actions connected with criminal matters). There are no published figures in relation to the number of lawyers admitted to criminal legal aid panels in Ireland.

#### **Civil**

Civil legal aid is provided or facilitated by the Legal Aid Board, a statutory body (a corporation established under public law). It is comprised of a Chairperson and 12 members appointed by the Minister for Justice. The Board is independent in the performance of its functions. The Minister is empowered to give general policy directives to the Board but has not exercised that power in many years and cannot in any event give any direction in relation to any particular legal aid case. The Board employs approximately 80 salaried solicitors with approximately 600 private solicitors and 1,100 barristers admitted onto civil legal aid panels. Work is effectively split more or less 50/50 between law centres and private solicitors though it should be observed that law centres tend to take on more complex matters in the higher courts while the majority of work referred to private solicitors are relatively short cases

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<sup>1</sup> Sometimes referred to by its statutory description *the Republic of Ireland*.

heard in the District Court (the lowest level of the Irish courts system). Payment of private solicitors is generally on a per case flat fee basis. Barristers are paid a brief (case) fee and refresher fees similar to criminal legal aid.

### **3. Budget and Spend:**

#### **Criminal**

Expenditure on criminal legal aid (including ad-hoc schemes) expenditure amounted to €79.49m in 2021, up from €66.48m in 2020. This money is entirely comprised of funding provided to the Minister for Justice by Parliament and there is no element of self-funding. This budget is entirely demand-led.

#### **Civil**

For 2021, the last year in which published figures are available, the budget for civil legal aid and advice (including family mediation services) amounted to €47m. Actual expenditure was €43m in 2021. The vast majority of the Board's budget comes from a grant from the Minister for Justice out of money provided to the Minister by Parliament. A small amount of the budget comes from an element of self-funding in the form of a contribution paid by legally aided persons toward their legal aid and recovery of costs either from the other party or from money or real property preserved or recovered on behalf of the legally aided person in the course of proceedings. The civil legal aid budget is mostly capped with the proviso that it is demand-led in certain matters (primarily personal insolvency).

### **4. Scope, Caseload and Eligibility:**

#### **Criminal**

An application for legal aid may be made by a person accused of a crime to the trial judge. The test is essentially two-fold (a) the means of the person and (b) either the charge is murder, or if not, an "interests of justice" test applies. In relation to the means of the person there is no particular test set down and it is up to the judge in each case to satisfy themselves that the defendant's means are insufficient. The "interests of justice" test relates to the gravity of the charge or if there are other exceptional circumstances. No particular criminal charge is excluded but criminal legal aid is not generally granted for minor matters not attracting a prison sentence.

80,831 legal aid certificates were granted in the District Court (in which all criminal cases bar a relatively small number of terrorist and organised crime cases start) in 2021 with 73,611 such certificates having being granted in 2020. There is no contribution towards legal aid in criminal matters and, notwithstanding the discretion of the courts to award costs in any matter, the general practice is that costs are not awarded in criminal cases.

#### **Civil legal aid**

Civil legal aid works on the basis that all matters are in scope unless specifically excluded. Specifically excluded are defamation, disputes regarding rights and interests over land (but with significant exemptions), small claims, conveyancing, licensing, election petitions, and group litigation. Except for asylum claims, legal aid is not available at administrative tribunals, only in courts of law.

There were 15,291 applications for civil legal aid and advice in 2021, up from 14,383 in 2020. 5,025 new cases were taken on by law centres in 2021 (down from 5,261 in 2020) while 8,129 persons in 2021 were granted legal aid certificates entitling them to representation by a private solicitor (up from 7,044 persons in 2020).

With certain exceptions (domestic violence, cases involving taking children into State care, and services to victims of crime) persons granted legal aid must pay a contribution which is means related. The minimum legal aid contribution is €130. A proportion of this contribution is payable at the initial advice stage (at least €30). Most legally aided persons are assessed at the minimum payment. In International Protection matters a standard €10 contribution applies.

In Ireland the costs of a matter generally fall to the losing party to pay (a rule known as *costs follow the event*) and the presence or absence of legal aid does not modify this rule. However it should be noted that the general rule is not applied in family law, public law child care, and personal insolvency cases. In these matters, which make up about 85% of all legal aid matters, the parties pay their own costs and those of the legally aided person will be met by the Board subject to the possibility of their recovery from money or real property recovered or preserved on the legally aided person's behalf. In other cases (which make up about 15% of the Board's work but include some of the most costly legal aid matters) the losing party must pay both sides costs and legal aid will not meet the costs of the successful party. The losing party is personally liable for these costs. It should also be noted that the Court has full discretion over costs in any matter and can and does depart from the general rule in specific instances.

## **5. Quality assurance**

### **Criminal**

There are no specific quality assurance measures for criminal legal aid lawyers outside of those applicable to the legal profession generally. Up until relatively recently the legal professions were self regulating and there were separate complaints processes for solicitors and barristers. Since late 2019 the Legal Services Regulatory Authority has taken over the processing of complaints against solicitors and barristers. Complaints can be made in three categories: (a) inadequate service (b) excessive costs and (c) professional misconduct. Certain serious complaints falling largely into the third category may be referred to the independent Legal Practitioners Disciplinary Tribunal.

Legal practitioners are required by their professional bodies to undergo continuous professional development and accumulate a certain number of "CPD points" each year given for attending courses/seminars and group study.

There are no specific requirements for entry onto a criminal legal aid panel other than admission to the profession in the normal manner and having a current tax clearance certificate.

### **Civil**

The Legal Aid Board is responsible for quality assuring lawyers providing civil legal aid and advice and does this in a number of ways. It sets out Best Practice

Guidelines which are a series of steps that should normally be taken in matters in which legal aid is frequently provided and the time in which they should be taken. Allied to this is a system of file reviews in which senior solicitors review the files of more junior colleagues to assure adherence to the BPGs and that a professional service is generally provided. Non-solicitor staff who are authorised by the Board may also conduct file reviews in certain instances.

Complaints against solicitors and barristers providing civil legal aid are dealt with by the internal Legal Aid Board process. However anyone may make a complaint against a solicitor or barrister to the Legal Services Regulatory Authority.

The CPD system also equally applies to civil as well as criminal practitioners.

All solicitors providing civil legal aid services must be admitted to the profession in the normal manner. Solicitors employed by the Legal Aid Board are recruited according to normal civil service recruitment procedures and must meet specific qualification and experience requirements in relation to the position they are recruited for. Panel solicitors must have sufficient professional indemnity insurance and have a current tax clearance certificate. Depending on the requirements of the particular panel they may require expertise in a particular area of law or be required to attend a training course in a particular area of law prior to admission to the panel.

## **6. Public Legal Education:**

The Law Society of Ireland (the solicitors' professional body) supports Public Legal Education (PLE) projects through a series of initiatives and engagement with solicitor, trainees and the public. PLE aims to increase awareness of the law by teaching people about Ireland's legal system to ensure they can exercise their legal rights and responsibilities.

Street Law is an initiative where trainee solicitors studying at the Law Society of Ireland engage with local schools, prisons and communities to teach about law. Street Law and Street Law Prison aim to promote legal literacy, equality, access to law, and to teach high cognitive and social skills that enhance participants' effectiveness in legal matters. Street Law Prison facilitates a Prison Law programme in Wheatfield Prison, in partnership with the charity, Solas and their Compass Programme for prisoners. The Law Society trainee solicitors also attend Mountjoy prison to work with prisoners to raise their awareness and understanding of the law in areas such as human rights, employment law, refugee rights and discrimination<sup>2</sup>.

PILA (Public Interest Law Alliance) is a public interest law network that seeks to engage civil society and the legal community in using the law to advance social change in Ireland. PILA has an alliance of 35 law firms with close to 2,000 solicitors, 4 in-house legal teams, more than 350 barristers, 12 law schools, and 150 NGOs and Independent Law Centres.

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<sup>2</sup> Law Society of Ireland. Street Law Prison. Available at: <https://www.lawsociety.ie/Public/Public-Legal-Education/streetlaw-prison/>  
PILA. Supporting clinical legal education, Available at:

PILA promotes clinical legal education, which seeks to complement the theoretical training law students receive in the classroom with practical, hands-on experience in real world placements and clinics in return for academic credit. Clinical legal education was designed to provide pro bono assistance to those most in need and serve the wider needs of the community, while fostering a greater sense of professional ethics and responsibility in the next generation of lawyers.

PILA was instrumental in establishing the Irish Clinical Legal Education Association, which brings together all the major third level institutions seeking to develop a more supportive environment for clinical legal education in Ireland. In 2015, PILA commissioned a report '*Clinical Legal Education in Ireland: Progress and Potential*'. The report took a comprehensive look at the existing clinical legal education programmes in Ireland and outlines a number of recommendations for the future development of clinical legal education in Ireland.

## **7. Alternative Sources of legal services**

Private solicitors will often take on what they consider to be winnable personal injuries and other torts cases on what is known as a conditional fee agreement or more widely as “no foal no fee”. This means that they will not take any fee from the client unless they are successful in the proceedings. The client will still be personally liable for the others party’s costs if they are unsuccessful.

The Bar Council (the barristers’ professional body) operates a formal “Voluntary Assistance Scheme” which provides assistance to clients of NGOs, civil society groups, and charitable organisations. Although operated by the Bar Council, solicitors may also participate (this is a necessity for the scheme’s effective operation, as a barrister may only act in any matter on foot of a brief from a solicitor). There is no similar formal programme organised by the Law Society however another pro bono project involving solicitors is the Public Interest Law Alliance operated by Free Legal Advices Centres CLG (FLAC), an NGO that campaigns for access to justice.

FLAC is the largest and most well known independent law centre in the country and operates advice clinics nationwide staffed by volunteer lawyers as well as a national helpline. It sometimes takes on strategic legal cases intended to bring about changes in the law. Other independent law centres exist such as Community Law and Mediation, Ballymun Community Law Centre, Mercy Law Resource Centre. Community law centres target particular geographic areas or particular communities of interest and make their services available largely via advice as well as taking on a relatively small amount of litigation work. While no consolidated figures for the NGO/CLC sector are available, in 2019 FLAC received almost 27,000 requests for legal advice divided between its clinics and telephone advice service and took on 57 litigation cases.

Legal assistance may also be available through trade unions and other sources but again there are no consolidated figures available for representation through such sources.

## **8. Holistic legal services:**

In Ireland there has traditionally been an expectation/rule that law firms will be owned by solicitors either as sole practitioners or unlimited partnerships while traditionally all practising barristers were sole traders practising out of the Law Library. There have been certain changes recently with the recognition of in-house Counsel as being “practising” as well as allowing employed barristers to perform legal work on behalf of their firms.

Limited Liability Partnerships have been brought into force by the Legal Services Regulation Act 2015 (“the LSR Act”). There are 430 such partnerships on the register in operation. The multi-disciplinary practice, where legal practitioners might work side by side with other professionals, was provided for under the LSR Act 2015 but the relevant sections of the Act have not yet been brought into force. A public consultation held in 2017 effectively deferred making any substantive recommendations as to their introduction.

One model of collaboration can be found in personal insolvency where the Abhaile (“Home”) programme delivers a suite of legal and financial advice for insolvent persons facing home repossession. There is an element of working together between personal insolvency practitioners and lawyers in order to implement a solution to a person’s debts that will allow them to remain in their home, known as a personal insolvency arrangement (similar to an individual voluntary arrangement found in other jurisdictions).

## **9. UN SDG Standard 16.3**

Sustainable Development Goal 16.3 states:

*“Promote the rule of law at the national and international levels and ensure equal access to justice for all”*

The indicators set out for this goal are:

16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms.

16.3.2 Unsentenced detainees as a proportion of overall prison population.

16.3.3: Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism.

Ireland’s 2018 Voluntary National Review of the SDGs stated as follows in relation to goal 16.3:

*“In March 2017, it was announced that a Group would be established to review and reform the administration of civil justice in the State. The Group is to report to the Minister for Justice and Equality and will make recommendations for changes with a view to improving access to civil*

*justice in Ireland. The aim of the Review is to examine the current administration of civil justice in the State with a view to, among other things, improving access to justice, reducing the cost of litigation, and ensuring timely hearings.”*

The Review (of the Administration of Civil Justice) referred to above reported in late 2020 and several of its actions have been included in the Justice Plan for 2021.

“The Voluntary National Review went on to say:

*“The promotion of the rule of law and ensuring access to justice for all is reflected in Ireland’s active adherence to core international and European human rights treaties, strong support for strengthening the regional and multilateral human rights framework and support for universal adherence to the Rome Statue establishing the International Criminal Court. Ireland is committed to the universality, indivisibility and interrelatedness of all human rights, to accountability for human rights violations and abuses and to the protection of those who are most vulnerable and marginalised. We participate in the scrutiny of the UN members’ human rights records through the Universal Periodic Review process. We contribute to the EU’s human rights work through EU human rights dialogues with non-EU countries and EU human rights country strategy. We are committed to the Council of Europe’s role as the reference point for human rights, democracy and rule of law across Europe, and the role of the European Convention on Human Rights and its associated Court. We promote respect for and adherence to International Humanitarian Law in all circumstances”*