Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

CIVIL LEGAL AID: FROM REVIEW TO REFORM

Delivered by Mr. Justice Donal O'Donnell, Chief Justice, at the *FLAC Civil Legal Aid: From Review to Reform* Conference in Trinity College Dublin on 12 January 2026

Introduction

1. Good morning, it is a pleasure to be here in Trinity College for this conference. I would like to congratulate FLAC and Trinity College for assembling such an impressive line-up of participants and speakers to address the timely, important, and I would say urgent topic of the moving from the review of the Civil Legal Aid system in Ireland to its reform and implementation in reality. The publication in July 2025 of the majority and minority reports of the Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme marked an important development. It was the first comprehensive review of the civil legal aid system since its inception and, as we approach fifty years since the publication of the Pringle report next year, it provides a valuable opportunity to step back and examine how the State supports access to justice in Ireland.

Access to Justice

2. The Review Group process has moved in tandem with my tenure as Chief Justice and it is something which I take a particular interest in. I was a member of the Chief Justice's Access to Justice Group set up by my predecessor Frank Clarke who went on to chair the Review Group, I participated in the first Chief Justice's Access to Justice conference in September 2021 and when I became Chief Justice I maintained the group and we organised a second Access to Justice conference in 2023 devoted solely to the question of Civil Legal Aid and the review process then underway. Many of the participants and attendees at those conferences

are here today and will have heard then versions of what I am going to say today. For me an objective of a conference like this, which I am sure anyone listening to me shares, is that it should be the last time it should be necessary to speak about the theory, and that any future conferences will be about the experience of implementation.

3. Removing barriers to access to justice is not a modern challenge. More than a century ago, an Irish judge serving in England, Mr Justice Matthew, is reputed to have observed that *"in England, justice is open to all, like the Ritz Hotel."* The remark has endured because it captures a fundamental and persistent challenge: justice may be formally open, but practically inaccessible. It reminds us that even the most carefully designed and well-functioning legal system may not achieve its purpose if it cannot be accessed by those whom it is meant to serve.

The Civil Legal Aid System

4. However, access to justice cannot be reduced to what happens in a courtroom, and it has therefore consistently been emphasised that it is a multi-faceted concept, involving far more than access to courts and litigation alone. Access to justice may involve people knowing that they have rights, being able to obtain information and advice, having accessible procedures, avoiding excessive delay, and not being deterred by cost or complexity. But acknowledging a broader landscape does not diminish the significance of civil legal aid. Access to legal advice and representation remains the essential means by which people can vindicate their rights.

The Report of the Review Group

5. As I have said, the report of the Review Group represents the most comprehensive examination of the civil legal aid system since its establishment. While the majority and minority reports differ in emphasis, there is a considerable degree of agreement in relation to the extent of the difficulties facing the existing scheme. In particular, both identify the

operation of the financial eligibility thresholds and means test as excluding significant sections of the population from effective access to justice, while also highlighting delays, capacity pressures, and the increasing complexity of legal problems for which legal aid is sought. The Review Group makes numerous recommendations directed towards addressing issues of eligibility, the operation of the means test, the scope of civil legal aid, the provision of early assistance and timely access to services, and the capacity of the civil legal aid system to meet the needs of the Ireland of today. The value of the Review lies in its analysis and recommendations taken together, and it provides a very useful basis for discussion about the future of civil legal aid and will be a resource for policy makers in the future. But we need now to move from analysis to implementation.

6. One striking thing about the conferences I have attended and the papers and discussions I have read is the absence of a contrary voice at the level of theory, philosophy or policy. What debate there is such as that between the majority and minority reports is not about the objectives of a legal aid system or the assumptions underpinning it. I am certainly not aware of any serious challenge in Ireland to the underlying thesis. No one suggests that there should not be a civil legal aid system, that people should be left to their own devices. There are no radical theorists suggesting that the whole idea is misconceived, or that AI will provide a solution at no cost. Yet reform is frustratingly slow. And that is because the resistance to reform is not at a theoretical or philosophical level but at an economic one – its location within the system is not among those responsible for the administration of justice but, I assume, among those responsible to the financing of any system and the procurement of staff to run it. And I think it has been that way since the Pringle Report.

7. I think it is important to identify that argument and give it its due, because unless we understand that argument and its merits we cannot engage with it. In fairness the historic administrative caution about legal aid did have some justification. Back at the time of the Pringle Report the gold standard of a Civil Legal Aid system was that which had been established in the UK as part of the post-war Welfare State and that is what proponents in

Ireland argued for. But it was not unreasonable in 1977 when the State's finances were much more limited than they are today, and the State's provision in terms of health, education and social welfare was a fraction of what the UK was able to provide, to worry about the potential impact of a demand led system driven by private practice but funded by the State. And the history of the civil legal aid system in the UK proved that those who were cautious about the cost of such a system were justified – and the policy response both in terms of civil and criminal legal aid was quite severe.

Investment in Civil Legal Aid

8. So, when discussion moves from analysis to implementation, any meaningful progress requires investment in the civil legal aid system. I have previously referred to an observation by the American jurist John Henry Wigmore to the effect that the State was engaged in the administration of justice long before it assumed responsibilities in areas such as public health or education. Societies with far fewer resources than those available to us today recognised that a fair and authoritative system for the resolution of disputes was essential to the maintenance of social order and cohesion.

9. As I have said before, maintaining a fair and accessible system in which disputes large and small can be resolved is not a luxury or an optional extra. It is in truth the business of the State, and it has always been the business of the State. In that context, investment in civil legal aid should not be regarded as discretionary, optional or minimalist. The contrast between the scale of public expenditure on health and on civil legal aid remains stark, even allowing for the very different nature and function of those systems. The health budget for 2026 is approximately €27.4 billion. The comparison with Social Welfare is, if anything, more telling. The Social Welfare budget for 2026 is €29 billion. By contrast the Civil Legal Aid budget is about €72 million. I am well aware that the areas of social deprivation which require assistance from the State are very many and

demanding, but are we really saying that this represents the relative prevalence of legal problems in the population, or their importance? Are we seriously saying that the business of dealing with legal issues and navigating a legal system represents 0.25% - a quarter of one per cent of the problems that persons on low incomes in Ireland face?

10. It may be tempting for the pragmatic person to suggest that reform of civil legal aid is inherently difficult, that it cannot be achieved quickly, or that it is preferable to simply muddle along within existing constraints. But it is hard to believe that as a society we would tolerate this level of unmet need in the fields of health or social welfare. It is worth asking why this has been allowed to occur in the field of legal aid. One reason of course is the lack of voice of those affected and that makes a conference like this particularly important. It is also the case that the Legal Aid Board has from its inception been obliged to make impossible choices and make its resources stretch, sometimes to breaking point to provide some assistance. And a final feature is that people who cannot get legal assistance are not turned away – instead courts, which means courts staff and judges have to try and deal with unrepresented litigants as fairly as possible in the circumstances. But it is clear that position is unacceptable at the level of policy and unsustainable in fact. A system which is required to meet increasing demand and higher complexity without appropriate investment cannot continue to function effectively.

11. In my view, the attitude that we can simply continue as usual within existing constraints is wrong for at least four reasons.

Increasingly Complex Legal Issues

12. First, it assumes that the system can continue to muddle along and will not simply break under the weight of the increasing demands being put upon it to handle a greater volume of what are increasingly complex legal issues in a broader array of fora.

13. The Review Group has highlighted that demand for civil legal aid has increased significantly, while eligibility thresholds have remained the same for many years, resulting in growing pressure on the system and longer waiting times, at a time when the legal issues involved are increasingly complex and resource intensive.

14. As noted by the Group, some issues can only be ultimately resolved through adjudication by courts or tribunals and the provision of support in this area must remain a key component of the solution. Aside from the growing complexity of legal issues which come before the courts, the legal aid scheme does not permit the provision of legal aid before all quasi-judicial fora or tribunals. The Review Group highlights a concern that areas of law on which these quasi-judicial fora adjudicate are becoming increasingly complex. It also notes that access to legal support may be required where particular areas of EU or ECHR law are engaged, regardless of the forum considering the case.

15. This position is put into even greater focus in light of the Supreme Court's decision in *Zalewski v Adjudication Officer* [2021] IESC 24 in which a majority of the Court, as you will know, held that both the WRC and the Labour Court are engaged in the administration of justice in way that is constitutionally permissible in accordance with Article 37 of the Constitution. In *Zalewski*, the Court found that where bodies exercise such functions, the constitutional standard of justice to which they are held "*cannot be lower or less demanding than the justice administered in courts under Article 34*."[1] Those functions must "*comply with the fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness, which are understood to be the essence of the administration of justice*".[2] The practical consequence of *Zalewski* is that adjudicative processes outside of the courts are now, in many cases, more formal, more structured, and more complex and yes, more legal. Some people complain about this, but in my view that is

[1] *Zalewski v Adjudication Officer* [2021] IESC 24 at page 92.
[2] ibid.

misplaced. As Chief Justice Warren is reported to have asked during argument in *Miranda v Arizona*, why is it a bad thing that lawyers should be present? Their job is to ensure that the law is applied. Isn't that what we want when we make those laws? But if important areas of citizens' lives such as employment and accommodation in rental dwellings is to be regulated by complex legal provisions and dispute resolution procedures then it may not be realistic to limit the scope of legal assistance to the area of courts.

16. Even in the area of international protection, which comes within the legal aid scheme, as noted by the Civil Legal Aid Review, there are considerable challenges in meeting the demands in that area, in particular having regard to the interaction between civil legal aid, EU law requirements, and asylum procedures, and in light of significant annual increases in applicants seeking the services of the Legal Aid Board.

Consequential Problems

17. The second reason why it is mistaken to assume that we can simply continue with business as usual is that unresolved legal problems do not exist in isolation. As was emphasised during the conferences of the Chief Justice's Working Group on Access to Justice, legal problems frequently give rise to consequential difficulties in other areas of life, including health, housing, employment and family life.

18. At the first Access to Justice conference in October 2021, Professor Trevor Farrow drew attention to the fact that legal problems tend to arise in clusters rather than as isolated issues. Difficulties relating to housing, employment, debt or social protection often interact, and where they remain unresolved, they can have significant effects on health, family relationships and economic stability. Access to legal advice frequently has a greater impact on people's lives than access to courts alone. Timely legal advice can operate as a form of early intervention, capable of preventing

problems from escalating into crises that are more difficult and more costly to resolve.

19. These themes were reinforced at the second Access to Justice conference in 2023 which focused on civil legal aid, where Professor Pascoe Pleasence and Dame Hazel Genn drew on empirical research to demonstrate how unmet legal need can exacerbate vulnerability and compound disadvantage, with consequences often displaced to other parts of the public system, including health and social services.

20. This perspective challenges the idea that investment in civil legal aid should be assessed solely by reference to the immediate cost of providing legal services. Failure to address legal problems early may simply divert costs elsewhere, where they can often be higher and less effective in addressing the underlying issues.

The Role of Law and Litigation

21. Third, it should not be assumed that the pace, scope or direction of reform of civil legal aid is a matter solely within the control of administrators or legislators. As I have said before, the administration of justice is a shared space, and the provision of legal aid has, to a significant extent, been shaped not by policy, but by the development of jurisprudence of the courts.

22. The importance of legal aid to access to justice is first and foremost based on constitutional principle rather than policy. It may be easy to forget the basic constitutional principle set out by the Supreme Court in *State (Healy) v Donoghue* [1976] IR 325 that where the gravity of a criminal charge and potential consequences so require, the right to legal representation at the expense of the State is a constitutional requirement arising from the guarantee of trial in due course of law. The relevant legislation providing for legal aid was a means of giving practical effect to the vindication of existing constitutional rights.

23. Civil legal aid was of course most dramatically influenced by the decision of the European Court of Human Rights in *Airey v Ireland* App No 6289/73, [1979] ECHR 3 which established that effective access to a court may, in certain circumstances, require the provision of civil legal aid.

24. A large and increasing proportion of our legal obligations now derive from EU measures governed by common standards applying across Member States, and in a number of areas, including international protection and European arrest warrants, such measures require access to legal assistance or representation.

25. If barriers to accessing legal aid cannot be addressed through administrative or legislative reform, it should not be surprising if they give rise to litigation, whether before the courts in Dublin, Strasbourg, or Luxembourg, or potentially all three. That is not an argument for litigation as a policy tool, but a recognition of the reality of our legal landscape.

26. This theme was explored by Dr Síofra O'Leary, then judge, and later President of the ECtHR at our 2021 Access to Justice conference and it is particularly appropriate and welcome that we will now hear from President O'Leary again.

The Rule of Law

27. The fourth reason to reject a policy of inertia or benign neglect is, I think, particularly important today. The improvement of the administration of justice through the improvement of the civil legal aid scheme is the right thing to do in its own terms, but it is also arguably essential. It is worth asking why the EU is concerned with access to justice and the administration of justice, and why the Court of Justice of the European Union has delivered a stream of judgments on the question of the independence of the judiciary and the administration of justice, starting with the *Portuguese Judges'* case, and involving as recently as the 18th

December 2025, the judgment of the CJEU in *Commission v Poland* Case C-448/23 in which it found that the Constitutional Tribunal of Poland does not satisfy the requirements of an independent and impartial tribunal established by law, and that through the decisions of that Tribunal had failed to fulfil its obligations under the Treaty of European Union, and under the general principles of autonomy, primacy, effectiveness and the uniform application of EU law.

28. These cases are, I would suggest, examples of an increasing recognition that the administration of justice is not a luxury or a mechanism that can be taken for granted. It is one of the essential features in the structure of society, which binds it together and allows it to function and provide a legal environment in which people can live their lives in freedom in the type of societies we have taken for granted in Western Europe since the Second World War. That model is under real and fundamental challenge. But if we believe that it provides the best model for human flourishing, we have to show that it is a better more humane, more generous system, and that its benefits contribute to social harmony which make it a better place to live for everyone.

29. Even when the systemic importance of a functioning legal system is acknowledged, the commentary can be sometimes frustratingly simplistic. Everyone has heard about the importance of checks and balances in the democratic system, and how courts provide a significant check and balance on the power of government and parliament, particularly in a parliamentary system where the government sits in the legislature. This, so far as it goes, is in recognition of an important and vital feature of our constitutional balance. It is also true that it is increasingly recognised that in an international world a legal system that is demonstrably impartial, competent and efficient is an essential component of an economy that seeks to attract international investment. This discussion often occurs in the context of the separation of powers. Most courts do not deal with major constitutional issues. They deal with everyday disputes.

30. The cases which come before the courts are not small or trivial matters. They may well be the only time people come before the courts, and people doing so need to believe that they will obtain justice. An important part of that is that they should feel that their side of the case will be presented, and will be heard, and that if the case is decided against them, it is not because of an imbalance in legal representation. That belief in the justice process is a critical part of the bonds that hold a society together.

31. I said at the start that I had said many of these things before, and I thought that this point was one of the relatively few things that I had thought of myself. But I recently discovered that it was made more eloquently almost two hundred years ago in Daniel Webster's eulogy for Justice Joseph Story (I am paraphrasing slightly):

> "*Justice, Sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly hono*[*u*]*red, there is a foundation for social security, general happiness …improvement and progress*…"

It seems important to remind ourselves in these days that some principles are enduring.

Conclusion

32. It is customary when opening a conference for a speaker to say that they look forward to the discussions and are confident that the conference will be fruitful. I do say this but I would say something more. I recall that in the late 70s early 80s it was said, rather idealistically, that the business of FLAC was to put itself out of business - to make the provision of free legal advice and assistance redundant by securing a fully effective civil legal aid system. That was always a bit optimistic. But my wish is that the business of this conference should be to put conferences about review of civil legal

aid out of business, because civil legal aid has been reformed and words have been overtaken by action.