



THE BAR  
OF IRELAND

*The Law Library*

BARRA NA hÉIREANN

*An Leabharlann Dlí*

# OIREACHTAS INFORMATION DAY 2023

Overview of The Bar of Ireland's Policy Priorities



THE BAR  
OF IRELAND

*The Law Library*

BARRA NA hÉIREANN

*An Leabharlann Dí*

# Table of Contents

<b>Criminal Legal Aid</b> .....	<b>4</b>
<b>Judicial Appointments</b> .....	<b>5</b>
<b>The Civil Legal Aid Scheme</b> .....	<b>6</b>
<b>Family Courts Bill</b> .....	<b>8</b>
<b>Access and Diversity in the Profession</b> .....	<b>9</b>
<b>How Legal Costs Work</b> .....	<b>10</b>
<b>Council Members</b> .....	<b>12</b>
<b>Specialist Bar Associations</b> .....	<b>13</b>

# FOREWORD

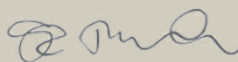
## HOW THE LAW INTERACTS WITH THE LIVES OF PEOPLE MUST BE A SHARED CONCERN OF BOTH POLITICIANS AND LAWYERS.

Justice, and recourse to the law, is a central pillar of a functioning democratic State. An independent, resourced legal system, and an informed legislature all contribute to trust in our rule of law, which serves everyone.

Almost 2,200 barristers of The Bar of Ireland work at the coalface of how the legislation approved by the Oireachtas is interpreted and applied. This provides The Bar of Ireland with a valuable insight into the effectiveness of, and the threats, to our legal system. Principal amongst those threats is the justice gap. That legal aid apply to a greater range of issues and scenarios – for example in employment disputes before the Workplace Relations Commission – and consideration be given to the eligibility criteria; are just two aspects that society and constituents can benefit from.

Constructive engagement with Oireachtas members on how the law is and can be applied is key to safeguarding access to justice and promoting public trust and confidence in our justice system. As law reform is an iterative process - enriched by dialogue, discussion and contest of ideas – The Bar of Ireland welcomes the opportunity to share our insights and perspectives.

On behalf of the Council of The Bar of Ireland, I am delighted to meet with you and your colleagues to discuss our policy priorities, and your own law reform agenda.



**Sara Phelan SC**

Senior Counsel,  
Member of the Inner Bar  
Chair of the Council of The Bar of Ireland



# RESTORATION OF CRIMINAL LEGAL AID FEES A PUBLIC INTEREST IMPERATIVE

– CALL FOR IMMEDIATE UNWINDING OF CUTS

Access to justice and a sustainable criminal bar remains a key concern for The Bar of Ireland. As a direct consequence of the deep cuts that were applied to Criminal Legal Aid fee rates during the financial crisis of 2008-2011, a career choice for recently qualified junior barristers in crime has become unattractive when compared to opportunities in other areas of law. The evidence shows that two thirds of barristers who commence a career in criminal law leave after only 6 years in practice.

The effects of this exodus are felt on both sides of the criminal justice system. A skilled and experienced criminal prosecution bar can only emerge after many years of practice in the junior ranks of criminal defence law. It takes many years of practice at the Bar to acquire the necessary experience to effectively and skilfully prosecute serious cases on behalf of the State and it is imperative that newly qualified talented barristers are encouraged to practice in the area of criminal law. One significant form of such encouragement is to be fairly and reasonably rewarded for their services.

The government's own 2018 spending review report on criminal legal aid - '[Criminal legal aid: overview of current system and potential lessons from an international comparison](#)' - recognised that our cost effective and robust criminal legal aid system facilitates a high standard but low-cost representation of defendants and furthermore recognised that the fee structure and the incentives of this fee structure must be monitored on an ongoing basis to ensure a fair, effective and efficient criminal justice system.

Despite numerous requests over the past 7 years to address the professional fees paid to barristers (both prosecution and defence), the Government has failed to meaningfully engage with the profession to confirm the approach of the State in addressing the restoration of the cuts that

were applied. All other public fund recipients in the justice system have had a process of pay restoration agreed and implemented since 2017. It is only fair and reasonable that barristers should be treated in the same way.

## Three important reasons why the State must unwind the cuts:

1. To attract the best advocates to practice at the criminal bar to ensure that the State can prosecute criminal matters in the courts on behalf of the people of Ireland;
2. To treat barristers fairly and reasonably, consistent with the approach taken to restore cuts for other groups of workers;
3. To stop the exit of junior barristers away from criminal practice.



**TWO THIRDS**  
OF CRIMINAL BARRISTERS  
LEAVE PRACTICE AFTER ONLY  
**6 YEARS**  
IN PRACTICE



**CUTS APPLIED**  
TO FEES DURING  
2008 - 2011  
**28.5-69%**

# INCREASE IN JUDICIAL APPOINTMENTS WELCOME

– FUTURE-PROOFING ESSENTIAL

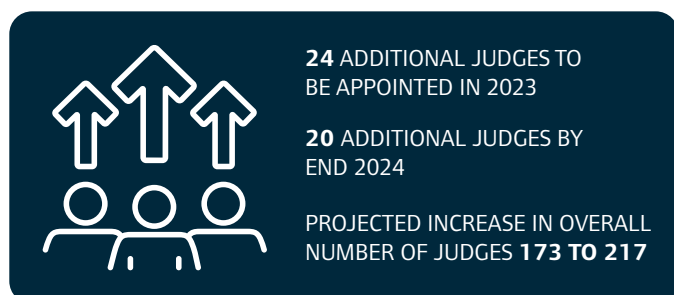
**An efficient judicial system is necessary to protect citizen’s rights; to ensure legal certainty; and to promote public confidence in the rule of law.**

The recent announcement by the Minister for Justice to increase the number of judicial appointments in a phased manner is a significant step toward satisfying the OECD’s recommendation of a 26.2% judicial increase for Ireland.

With a growing population and presumably an increase in the numbers of litigants accordingly; together with an increase in the complexity of cases and resultant time required to try such cases, an increase in the number of judges is essential.

## The need for additional supports

Increasing judicial capacity alone will not be sufficient to handle the number of cases before them. Other necessary supports will need to be provided to assist judges in managing their caseloads effectively. Limiting cases or time slots for litigants is not a solution; the solution lies in augmenting the resources of those responsible for deciding the outcome of cases. Initiatives driven by the Courts Service, including its 10 year Modernisation Programme, will play an integral part in facilitating that support. The Council welcomes the recent allocation of additional funding to this programme.



## Informing future demand:

Further increases in the number of judges will be reviewed in 2025. Any such review will need to be guided by:

### ■ Access to Data and Metrics

The lack of published data or metrics to measure the efficiency of Irish Court lists is concerning. Gathering and making available such information on a list-by-list basis could help focus additional judicial resources where they are most needed, in addition to existing data provided by the Courts Service.

### ■ Reform Programmes

Ongoing reforms such as the Family Justice Strategy and the Review of the Civil Legal Aid System will also inform future resource needs for the Courts and must be viewed from multiple perspectives. Dialogue and joined-up thinking between the various Review Groups, with input from practitioners operating at the coal face, will be an important factor in safeguarding access to justice and promoting public trust in our justice system.

### ■ Emerging Areas of Law

Climate and environmental litigation is one of the fastest growing areas of litigation across Europe and worldwide. There is a critical need to provide for access to justice in this area, while allowing for speedy resolution of challenges to, for example, the building of appropriate housing and other strategic infrastructure projects. The establishment of a Planning and Environmental Court is being considered by the government at present. Any such development will need to be properly resourced.

# THE CIVIL LEGAL AID SCHEME MUST HAVE BROAD APPLICABILITY

– 5 KEY PRINCIPLES TO CONSIDER

The Council of The Bar of Ireland made a submission to the Civil Legal Aid Review Group in February during its public consultation process. The Review Group, chaired by former Chief Justice Frank Clarke, was established by the Minister for Justice in June 2022 to review the Civil Legal Aid scheme for the first time in over 40 years.

## European Principles

The Council urges the Review Group to consider five key principles, based on seminal judgments of the European Court of Human Rights and approved by the Court of Justice of the European Union, when reviewing the types of cases and jurisdictions in which legal aid should apply.

1

The importance of what is at stake for the applicant;

2

The vulnerability of the applicant and their capacity to represent themselves;

3

The emotional involvement of the applicant which impedes the degree of objectivity required by advocacy;

4

The complexity of the relevant law or procedure;



Scan this QR code to read more: Submission Of The Council Of The Bar Of Ireland To The Review Group On Civil Legal Aid

5

The need to establish facts through expert evidence and the examination of witnesses.

# LEGAL AID REFORM

– The Council makes the following recommendations with these principles in mind.



## ELIGIBILITY

- Minimise the bureaucratic burden on applicants by reducing the number of documents they are required to provide in order to prove eligibility.
- Increase capital and income thresholds.
- Regularly adjust the means test to reflect changes in the cost of living and the increasing volatility of economic cycles.
- Eliminate compulsory contributions.
- Allow for discretion in the assessment of eligibility to afford legal aid in exceptional cases.



## AREAS OF LAW AND JURISDICTIONS

- Expand legal aid to cover housing, debt, social welfare, equality, and employment, and in emerging areas such as environmental law.
- Extend legal aid to cover legal representation in quasi-judicial settings such as the Workplace Relations Commission (WRC), the Labour Court, and the Residential Tenancies Board (RTB).
- Encourage Alternative Dispute Resolution (ADR) early in the litigation process, to be funded by the Legal Aid Board and with access to an appropriate level of legal advice and representation.



## PUBLIC AWARENESS

- Launch a national public information campaign to increase awareness of legal aid services. The Legal Aid Board should have a presence at national events such as the Ploughing Championships and utilise TV and radio broadcasts.
- The Legal Aid Board should host regular information sessions to educate TDs and councillors about the scheme so they can impart useful knowledge to their constituents.
- Extend the scheme's reach to marginalised groups through community outreach initiatives similar to the Mincéir/Traveller Legal Support Service.



## INVESTMENT

- Increase funding and resourcing for the Legal Aid Board to facilitate the determination of eligibility assessments and the holding of initial consultations with clients in a more timely and efficient manner.
- Conduct a cost-benefit analysis to understand the cost of failing to adequately address the justice gap. Not providing legal aid can be a false economy, as the costs of unresolved problems shift to other areas of government spending such as health care, housing, child protection, and incarceration.
- Carry out a review of the 2012 Terms and Conditions for the Retention of Counsel. The current terms are wholly inadequate and constitute a severe undervaluation of legal aid work.



# FAMILY COURTS BILL

## – EXPANSION OF DISTRICT COURT JURISDICTION NOT IN THE PUBLIC INTEREST

### The Family Courts Bill revises the jurisdiction of the Courts and will increase the workload upon the District Court significantly.

The High Court retains exclusive jurisdiction in certain family law proceedings such as child abduction, however, in many other areas of child and family law the right to bring family law proceedings to the High Court is confined to instances where there is ‘a special reason to do so’. As such a significant amount of family law adjudication is transferred to the Circuit Court and, more so, to the District Court.

Under the Bill, the District Court is being granted jurisdiction under the Family Home Protection Act 1976 for the first time; and monetary limitations placed upon the District Court’s jurisdiction under the following Acts are expanded considerably:

- Guardianship of Infants Act 1964
- Family Law (Maintenance of Spouses and Children) Act 1976
- Family Law Act 1981
- Judicial Separation and Family Reform Act 1989
- Family Law Act 1995
- Family Law (Divorce) Act 1996, and
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

#### The District Court is not equipped to deal with complex and lengthy cases, even with enhanced resources

The foregoing Acts concern the rights of families and the rights of children - two groups with constitutionally entrenched rights under Articles 41 and 42A of the Constitution. Planned increases in the number of judges at District Court level is a positive development as far as resourcing is concerned generally, however, the reality is, as a Court of summary jurisdiction, the District Court is not set up to deal, on an ongoing basis, with complex cases such as divorce and judicial separation. These proceedings invariably involve a number of issues such as child custody/access,

maintenance, property, pensions, and other assets. Unless settled, such cases are regularly of long duration and the District Court is not equipped to deal with lengthy cases. Similarly, as a Court of summary jurisdiction, the substantial increase in the monetary jurisdiction of the District Court (up to €1 million) is inappropriate and marks a radical departure from its current jurisdiction. There is no discussion around the transfer of high value commercial disputes or personal injury claims to the District Court. Why should family law be different?

#### Implications for the development of vital case law

##### The transfer of such adjudication from the High and Circuit Courts to an already overburdened District Court will lead to:

1. Reduced court time for families and children in the determination of their rights.
2. Less authoritative jurisprudence in family and child law due to fewer written judgments.
3. Limited access to the specialist input and expertise of counsel due to the fact that District Court litigation is more frequently conducted by solicitors.

The High Court’s constitutional status as a court with full original jurisdiction is central to the development of precedent. If it is no longer a court of first instance in certain proceedings, such as judicial separation and divorce, it may lead to fewer written judgments, which would, in turn, hinder the ongoing development of child and family law.

Any proposal to reduce the ability of the High Court to contribute to the development of domestic and international legal principles and remove judicial assistance to the lower courts is not in the public interest. It is vital that a body of caselaw continues to be generated to serve this area of law.



# ACCESS AND DIVERSITY IN THE PROFESSION

– EQUALITY OF OPPORTUNITY ESSENTIAL TO FUNCTIONING LEGAL SECTOR

The Bar of Ireland is playing its part in delivering the transformative power of equality, diversity and inclusion (EDI) to the delivery of legal services. We are committed to building a working environment where everyone feels welcomed and valued, and ensuring the full, equal and effective participation of all.

A more diverse profession brings a greater variety of experience, enhanced insights, skill sets, tactics and decision-making. Greater inclusion reflects community expectations of fairness in all aspects of the administration of the law, and ensures a profession that is more representative of the composition of the community it serves.



Pictured on the left James Browne TD, Minister of State at the Department of Justice with responsibility for Law Reform launching the Equality Action Plan

## Equality Action Plan

In June 2022, The Bar of Ireland launched its first Equality Action Plan in an effort to address the challenges faced by underrepresented, disadvantaged and minority groups in pursuing a career at the Bar. Areas of focus include, among others, gender, race and ethnicity, sexual orientation, disability, and socio-economic background.

### The overarching objectives of the plan are:

- To enhance public awareness of a positive equality, diversity and inclusion culture at the Bar
- To introduce and embed diversity awareness training at the Bar
- To enhance access to the Profession

- To support fair and equitable practice development and career progression opportunities
- To enhance the accessibility of member services at the Bar

## Equitable Briefing Policy

Launched in March of this year, the Equitable Briefing Policy is a key tenet of the Equality Action Plan. It calls attention to unconscious bias in briefing decisions and encourages gender-equitable distribution of briefs in all areas of practice. Equitable Briefing promotes equality of opportunity among legal practitioners and benefits clients and the development of the law by increasing exposure to a greater range of expertise and perspectives.

Briefing entities (solicitor firms, in-house legal departments & State bodies), as well as counsel, are now invited to become signatories of the Policy.

## The Denham Fellowship

Established in 2017, the Fellowship, which is run by The Bar of Ireland in association with The Honorable Society of King's Inns, endeavours to encourage more diversity in the legal profession. The programme supports aspiring barristers who come from socio-economically disadvantaged backgrounds to gain access to a professional legal education at the King's Inns and professional practice at the Bar. The Fellows receive financial support and mentorship on commencement of the Barrister-at-Law degree programme and through their first four years of practice at the Law Library. Twelve Fellows have been supported to date.

# HOW LEGAL COSTS WORK

## – OVERVIEW OF THE BENEFITS FOR CLIENTS

**Barristers are required to provide clients with a written fee estimate upon request, as mandated by the Code of Conduct of The Bar of Ireland and the Legal Services Regulation Act 2015.**

**This promotes transparency and enables clients to assess the costs and associated financial risks before committing to legal services, as well as allowing them to shop around for the best representation and value for money.**

**Key benefits for clients include:**

### **1 Transparency of costs in advance**

Legal practitioners must provide clients with a written disclosure of the expected legal costs upon receiving instructions, commonly referred to as a Section 150 letter. This letter must include information about the potential consequences of withdrawing from litigation, circumstances in which the client may be responsible for other parties' costs, and situations where the practitioner's costs may not be fully recoverable. The client is granted a 10-day cooling-off period to assess the costs and financial risks before committing to the practitioner's services.

### **2 Transparency of costs as the case progresses**

Legal practitioners are required to inform clients if they become aware of any factors that could significantly increase the anticipated legal costs beyond what was initially disclosed. This reflects the current practices under the Code of Conduct and ensures that clients are kept up-to-date throughout the legal process, enabling them to stay informed about the financial implications of their case.

### **3 More detailed information on bills of costs**

When a legal practitioner completes their services, they must prepare and sign a detailed bill of costs for the client which enhances transparency and provides clarity for the client as to what they are being charged for.

**This bill must include:**

- a summary of the services provided
- a detailed breakdown of the costs
- the practitioner's VAT registration number
- the time spent on the matter (where time is a factor in the calculation of legal costs)
- any damages or monies recoverable or payable to the client, and
- any legal costs recoverable or payable to the legal practitioner from another party or their insurer



#### **4 A facility to challenge costs in accordance with clear principles**

Legal practitioners must provide clients with an explanation of the dispute resolution process along with the bill of costs. If a dispute arises, practitioners must attempt informal resolution methods, such as mediation. If these methods are unsuccessful, clients can apply to the Office of the Legal Costs Adjudicator for adjudication. The adjudicator will ensure that the work was done, that a charge was appropriate, and that the charge was reasonable in the circumstances.

**The Legal Costs Adjudicator will consider a number of factors such as:**

- the complexity and novelty of the legal issues involved,
- the skill and specialised knowledge required,
- the time and labour expended,
- the urgency of the matter,
- the number and complexity of the documents involved,
- the value of any money or property involved,
- any liability limitation agreement,
- the need for research or investigative work,
- the use and cost of expert witnesses or other expertise.

#### **5 Transparency and consistency in the adjudication of legal costs**

One of the most important provisions designed to address the issue of transparency in the new costs adjudication system is the establishment and maintenance of a publicly available register of determinations, which will record the outcome and reasoning behind each determination. This will ensure a consistent approach in the adjudication of costs and serve to codify reasonable and appropriate fee levels for legal work.

# COUNCIL MEMBERS

– THE BAR OF IRELAND

## INNER BAR PANEL



Sara Phelan SC,  
Chair



Denise Brett SC,  
Vice Chair



Séamus Clarke SC,  
Treasurer



Mark J Dunne SC



Seán Guerin SC



Timothy Harley SC



Murray Johnson SC



Brendan Kirwan SC



Darren Lehane SC



Seán Ó hUallacháin SC

## OUTER BAR PANEL



Deirdre Browne BL



Mema Byrne BL



Aoife Farrelly BL



Cian P Kelly BL



Roderick Maguire BL



Lewis Mooney BL



Paul Gunning BL



Michael D Hourigan BL



Aoife O'Leary BL



Catherine White BL

## CO-OPTES



Nessa Cahill SC



Jessica Bartak-Healy BL



Sean O'Sullivan BL



Tanya Smith BL

# SPECIALIST BAR ASSOCIATIONS

– The Bar of Ireland is home to a number of Specialist Bar Associations, each a vibrant hub of activity that facilitates the exchange and advance of specialist knowledge and expertise through conferences, seminars, papers and periodicals; promoting The Bar of Ireland as a specialist provider of advocacy and legal advice services across a range of practice areas.

For more information visit [www.lawlibrary.ie/legal-services/sba](http://www.lawlibrary.ie/legal-services/sba)



CONSTRUCTION BAR ASSOCIATION OF IRELAND  
[www.cbairland.ie](http://www.cbairland.ie)



CORPORATE & INSOLVENCY BAR ASSOCIATION OF IRELAND  
[www.corporateandinsolvency.ie](http://www.corporateandinsolvency.ie)



CLIMATE BAR COMHSHAOL  
[www.climatebar.ie](http://www.climatebar.ie)



CUMANN BARRA NA GAELIGE  
[www.cumannbarra.ie](http://www.cumannbarra.ie)



EMPLOYMENT BAR ASSOCIATION  
[www.employmentbar.ie](http://www.employmentbar.ie)



EU BAR ASSOCIATION IRELAND  
[www.euba.ie](http://www.euba.ie)



FAMILY LAWYERS ASSOCIATION OF IRELAND  
[www.familylawyers.ie](http://www.familylawyers.ie)



FINANCIAL SERVICES BAR ASSOCIATION  
[www.fsba.ie](http://www.fsba.ie)



IMMIGRATION, ASYLUM & CITIZENSHIP BAR ASSOCIATION  
[www.iacba.ie](http://www.iacba.ie)



IRISH CRIMINAL BAR ASSOCIATION  
[www.icba.ie](http://www.icba.ie)



MEDIA, INTERNET & DATA PROTECTION BAR ASSOCIATION  
[www.midba.ie](http://www.midba.ie)



THE PROBATE BAR ASSOCIATION OF IRELAND  
[www.probatebar.ie](http://www.probatebar.ie)



PLANNING, ENVIRONMENTAL & LOCAL GOV. BAR ASSOCIATION  
[www.pelgba.ie](http://www.pelgba.ie)



PROF., REG. AND DISCIPLINARY BAR ASSOCIATION OF IRELAND  
[www.prdba.ie](http://www.prdba.ie)



SPORTS LAW BAR ASSOCIATION OF IRELAND  
[www.slba.ie](http://www.slba.ie)



TAX BAR ASSOCIATION  
[www.taxbar.ie](http://www.taxbar.ie)



TORT & INSURANCE BAR ASSOCIATION  
[www.tiba.ie](http://www.tiba.ie)

# KEEP UP-TO-DATE

– STAY INFORMED ON THE LATEST UPDATES FROM THE BAR OF IRELAND



## Viewpoints Blog

Viewpoints is The Bar of Ireland's blog, which seeks to showcase subject matter experts and thought leadership from our members on key debates that impact on law, policy, and society. [lawlibrary.ie/viewpoints](http://lawlibrary.ie/viewpoints)



## The Bar of Ireland Podcasts

From history to current affairs, and legal developments to art and literature, our podcast episodes cover all aspects of the barrister's profession. [lawlibrary.ie/podcast](http://lawlibrary.ie/podcast)



## Twitter

Keep up-to-date with all developments, news, events and more by following [@thebarofireland](https://twitter.com/thebarofireland) on Twitter.



## LinkedIn

Connect with the Law Library and the latest updates from our members by following [The Bar of Ireland](https://www.linkedin.com/company/the-bar-of-ireland) on LinkedIn.



## The Bar Review

The Bar Review is the official journal of The Bar of Ireland which includes expert legal analysis, opinions and interviews with top figures in the Irish legal sector. Read it at [barreview.ie](http://barreview.ie)



## Email

Have a query or feedback? Our Communications & Policy team can be contacted at [communications@lawlibrary.ie](mailto:communications@lawlibrary.ie)

“To provide leadership and representation on behalf of members of the independent referral Bar of Ireland, ensure the highest standards of ethical and professional conduct within the profession and to deliver valued and quality services for the benefit of members”





THE BAR  
OF IRELAND

*The Law Library*

BARRA NA hÉIREANN

*An Leabharlann Dlí*

Distillery Building  
145-151 Church Street  
Dublin 7 D07 WDX8

Tel: +353 1 817 5000  
[www.lawlibrary.ie](http://www.lawlibrary.ie)