



THE BAR  
OF IRELAND

*The Law Library*

Submission by Council of The Bar of  
Ireland to the Joint Committee on  
Justice and Equality on  
Access to Justice and Legal Costs

25 November 2019

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## **1. INTRODUCTION**

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**1.1** The Council of The Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,170 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

## **2. SCOPE OF SUBMISSION**

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**2.1** The Council has prepared these submissions at the request of the Joint Committee on Justice and Equality for the purposes of considering the topics of **access to justice and legal costs**.

The Committee has indicated that, in particular, it wishes to examine:

### **ACCESS TO JUSTICE**

- The barriers that currently exist to ordinary citizens accessing the courts in Ireland – whether it is purely a financial issue or whether there are other factors involved;
- How the legal aid system in Ireland compares to other jurisdictions – is it overly restrictive? How should the legal aid system be reformed? To what extent is it currently under-resourced?
- Do current court structures or rules of procedure also restrict the ability of people to make or defend claims?
- Does the current system adequately assist or protect lay litigants?
- Does Ireland need legislative reform in this area – for example, by providing a legal basis for class actions or multi-party actions?
- Is there scope for innovative solutions – for example, the use of online courts in smaller or more straightforward cases?
- Can the legal profession do more in terms of the development or formalisation of pro-bono practice?

### **LEGAL COSTS**

- Would it be accurate to say that costs of legal services have soared in recent years? If so, what are the factors driving this?
- Would an increase in the number of judges help to reduce costs?

- How do the costs of legal services in Ireland compare with other jurisdictions? Are the fees charged by practitioners too high?
- Is there a need for greater transparency in relation to legal costs in Ireland?
- Is there scope to increase competition within the legal sector and thereby reduce costs?

This submission aims to assist the Joint Committee in gaining a deeper understanding and insight into each of the above matters.

### 3. ABOUT THE PROFESSION

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#### 3.1 A barrister has an important role in safe-guarding justice

3.1.1 Barristers, who are members of the Law Library, provide specialist advocacy and advisory services in a wide variety of areas and in many different types of forum, including the courtroom, and in other dispute resolution forums such as arbitration and mediation. Members of the Law Library are independent referral practitioners who are trained to be both independent and objective. An independent referral bar has a crucial role to play in safe-guarding justice: defending the independence of the courts and in securing their efficient functioning, in affording effective access to justice and in promoting the rule of law.

#### 3.2 A competitive profession

3.2.1 Members of the Law Library are independent sole practitioners, who compete with each other on a daily basis. Barristers practice in a **highly competitive market**, and it usually takes many years to become established. As of October 2019, the total number of barristers who are in membership of the Law Library comprised 2,170 members; 1,813 of whom are Junior Counsel (84%) and 357 are Senior Counsel (16%). 38% of the total membership of the Law Library are in their first 10 years of practice at the Bar.

#### 3.3 Membership of the Law Library reduces practice overheads

3.3.1 While it is not a requirement for a barrister to be a member of the Law Library, membership offers numerous advantages to the sole practitioner. The economies of scale achieved through the collective buying power of 2,170 members are significant. Each barrister has access to five fully serviced and stocked legal libraries and legal databases that facilitate and support a barrister to perform their role and members benefit from decades of investment, in the five specialised and fully serviced legal libraries where over €9mn has been invested in legal books, journals and other material over the last 30 years. The wide-ranging services and benefits available to members include Library Services, ICT Services, Professional Practice & Support, Communications, Education & Public Affairs, Preferential Financial Services, Access to on-site Facilities.

3.3.2 The collective structure of the Law Library aims to ensure value for money for our members in the delivery of services and benefits and ensures that overheads of a barrister in practice are maintained at a competitive rate. A comparison between the cost that would be incurred by a barrister who practises outside of the shared structure provided by membership of the Law Library versus the cost of the annual membership subscriptions, demonstrates savings ranging from 38% to 90% depending on the stage of practice. Those barristers who are most junior

achieve the greatest savings from their membership of the Law Library and this assists them in being able to establish and maintain a career at the Bar in the early years.

3.3.3 The most valuable benefit of membership of the Law Library is that it fosters a culture of collegiality and cooperation among independent lawyers, which ensures professional support, enforcement of the highest ethical standards and encouragement of continuous sharing and challenging of ideas and approaches, at all levels of practice. Members also benefit from the advice of other colleagues, particularly more senior practitioners.

### **3.4 New developments in the regulation of the profession has increased overheads**

3.4.1 The Legal Services Regulatory Authority (LSRA) came into being in October 2016 following the enactment of the Legal Services Regulation Act 2015. Its primary function is to regulate the provision of legal services by legal practitioners (barristers and solicitors) and ensure the maintenance and improvement of standards in the provision of such services in the State. The Authority undertakes its functions in accordance with the following objectives:

- protecting and promoting the public interest,
- supporting the proper and effective administration of justice,
- protecting and promoting the interests of consumers relating to the provision of legal services,
- promoting competition in the provision of legal services in the State,
- encouraging an independent, strong and effective legal profession, and
- promoting and maintaining adherence to professional principles specified in the Act.

3.4.2 Under Part 9 of the Act, the LSRA was required to establish and maintain a Roll of Practising Barristers. The Roll is a register of those who are entitled to practise as barristers in the State and came into being on 28 December 2018. It is a criminal offence to provide legal services as a barrister without being on the Roll of Practising Barristers.

3.4.3 As of 4<sup>th</sup> November 2019, there were 2,737 barristers on the Roll of Practising Barristers, suggesting that there are an additional 567 practising barristers providing advocacy and advisory services outside of membership of the Law Library. 198 of the 567 are in the full-time employ of the State. The remaining 369 'non-members of the Law Library', include barristers in the employ of the private sector, those who may primarily practice in other jurisdictions, in-house barristers and retired barristers who are volunteering their services but are still required to be on the Roll.

3.4.4 The establishment of the Legal Services Regulatory Authority to regulate the provision of legal services by barristers has given rise to an increase in the overheads of the profession as a levy is now payable by each practising barrister to fund the activities of the Authority that is estimated to rise to €500 per annum when the Authority is fully functioning in 2020.

### **3.5 Reduction in professional fees over last decade**

- 3.5.1 Similar to public and civil servants and other State contractors, barristers' fees were impacted by the budgetary restraints imposed by the State across many public services due to the economic crash. Since 2008, cuts to professional fee levels for work undertaken on behalf of the Director of Public Prosecutions and under the Criminal Legal Aid Scheme have ranged in the order of 28.5% to 69%. A series of cuts imposed by the Legal Aid Board on brief fees in Circuit Court cases amount to an overall reduction of 32% since February 2009. These cuts have made it unattractive for many legal practitioners to continue to participate in State-funded schemes such as the civil and criminal legal aid schemes.
- 3.5.2 Despite the fact that a reversal in the cuts applied to public and civil servants has already taken place, no such reversal in the cuts applied to the professional fees of barristers who provide legal services on behalf of the State have taken place. A recent analysis of the number of barristers opting to practice in criminal law has demonstrated that there is an emerging dearth of experienced junior barristers who can survive the early years of poor income from a criminal practice and survive long enough to then go on to maintain a career at the criminal bar. Our data has indicated that following six years of criminal practice, retention rates at the criminal bar drop to **less than a third** of those who set out to pursue a career in criminal law and this points to a real and developing concern within the criminal bar as the numbers of junior barristers with experience in crime are simply too low to replenish the loss of senior barristers who retire from the profession. If the situation is not addressed, it will undoubtedly have a profound effect on the administration of justice and the public good.

### **3.6 Getting paid is an ongoing problem for the profession**

- 3.6.1 There is increasing evidence of delayed or even non-payment of fees to barristers. Unpaid professional fees are particularly problematic for any self-employed profession as overheads are still incurred and the ability of an independent sole practitioner to access debt facilities at the early part of their career is challenging. Data provided by legal account services LawServ indicates a continued growth in the number of barristers resorting to fee recovery services for non-payment of fees. Since October 2014, approximately 332 barristers (15% of members of the Law Library) have used the LawServ facility to seek to recover professional fees owed. Consequently, The Bar of Ireland is now in the process of establishing an internal fee recovery unit to improve support for members of the Law Library in relation to fee collection.

## 4. ACCESS TO JUSTICE

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For any legal system to operate at its optimum level, access to justice must be available to all. Vulnerable sections of society often encounter difficulties in accessing the legal system. In this section, we discuss how the structure of the independent referral bar and its commitment to *pro bono* legal services plays a vital role in narrowing the justice gap and how the State and the Courts can better support the principle of access to justice.

### 4.1 Structure of the independent referral bar safe-guards access to justice

- 4.1.1 Justice is a fundamental value of utmost importance in the life of every citizen and barristers, as advocates, play a vital role in promoting and safeguarding an equal right of access to justice. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the regulatory framework for barristers.
- 4.1.2 Members of the Law Library are bound by the Code of Conduct for The Bar of Ireland which places an obligation on members of the independent referral bar to abide by the ‘Cab Rank Rule’ which precludes a barrister from refusing instructions on the grounds that the nature of the case, or the conduct, opinions or beliefs of a client, are controversial or unacceptable to the advocate, thereby ensuring that legal representation is available to all who need it. In other words, members of the Law Library are bound to accept instructions in any case in the field in which they profess to practice (having regard to their experience and seniority) subject to the payment of a proper professional fee.<sup>1</sup> Barristers cannot pick and choose which types of clients they act for if the work is within their area of expertise. Similar to a taxi, the barrister must accept the client if the barrister is available; and provided they are offered a suitable “fare”.
- 4.1.3 Strict adherence to this rule has the important effect of upholding a person’s constitutional right of access to the courts and to the proper administration of justice. A barrister will promote and protect fearlessly, and by all proper and lawful means, the best interests of the client they represent and safeguard that person’s constitutional right to a fair hearing on an equality-of-arms basis. A principle which is of key importance in cases where an individual may be pitted against vastly better-resourced opponents such as a bank, a multinational company, or the State.

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<sup>1</sup> See 3.10, Code of Conduct for The Bar of Ireland. Available at: [https://www.lawlibrary.ie/media/lawlibrary/media/Code-of-Conduct-22-7-19-commencements-11-11-19-PDF\\_1.pdf](https://www.lawlibrary.ie/media/lawlibrary/media/Code-of-Conduct-22-7-19-commencements-11-11-19-PDF_1.pdf)



## 4.2 Pro Bono at the Bar

- 4.2.1 While there are State-run schemes, such as civil legal aid and criminal legal aid, they are increasingly insufficient to meet growing needs, and members of the Law Library, alongside organisations such as FLAC (Free Legal Advice Centre), strive to do everything possible to support and empower people who may not otherwise have the means to access justice.
- 4.2.2 A survey conducted by The Bar of Ireland reported that 82% of barristers undertake *pro bono* legal services for clients where otherwise such clients would not be able to access justice.
- 4.2.3 The **Voluntary Assistance Scheme (VAS)** is the formal *pro bono* scheme of The Bar of Ireland which makes *pro bono* voluntary legal assistance available directly to charities, non-government organisations and civic society groups. Since its establishment in 2004, the VAS has provided *pro bono* legal assistance in over 650 matters for over 100 charities and NGOs. Organisations to whom assistance has been provided include: Galway Traveller Movement, Rape Crisis Network Ireland, Community Law and Mediation Coolock, Ballymun Youth Action Project, National Advocacy Service for People with Disabilities, Migrant Rights Centre Ireland, St Vincent De Paul, Bunratty Child Care, Money Advice and Budgeting Service (MABS), and Citizens Information.
- 4.2.4 The VAS does not generally provide services in family law, child care law or criminal law, as these are areas where State legal aid schemes provide access to legal services, but most areas of law are covered by the Scheme including issues relating to debt; housing; landlord and tenant law; social welfare appeals; employment law; equality law; and prison-related issues. No minimum contribution is required – once a request for assistance is made, a barrister is assigned, and the service is provided free of charge. The Scheme makes available every service that barristers ordinarily provide to clients including opinion work, legal research, advice, consultations and representation in Court. The VAS also provides training in advocacy to charities and organisations in the NGO sector that may need to represent clients themselves.
- 4.2.5 A **Legal Assistance Scheme** established by the Supreme Court also benefits from the *pro bono* services of members of the Law Library. The Scheme, established in 2016, enables a lay litigant with a stateable legal argument to access a solicitor and counsel from a panel of participating practitioners to argue the points on their behalf.
- 4.2.6 Members of the Law Library also provide voluntary legal assistance through a number of community outreach projects that operate outside of the Bar. For example, in 2018, 350 barristers provided services to the **Public Interest Law Alliance (PILA)**; and in 2018, **Community Law and Mediation (CLM)**, an independent law centre, ran 44 free legal advice clinics with the assistance of a panel of 28 volunteer barristers enabling 735 clients to receive free legal advice. The Bar of Ireland also makes an annual contribution to help fund the important work of both CLM and FLAC, and sponsors a myriad of fellowship and scholarship

opportunities which enable barristers to work for organisations such as the Children’s Rights Alliance and the Irish Council for Civil Liberties, contributing to initiatives that deliver legal, policy and social change for the citizens of Ireland.

### **4.3 No foal, no fee is a form of free legal aid**

4.3.1 In appropriate cases that are not covered by legal aid schemes, a barrister may be willing to take on individual client cases on a “no foal, no fee” basis. This means that the barrister will not require the payment of fees unless his or her client is successful (in which case the fees are usually ordered by the court to be paid by the other side). This is, in effect, a free legal aid system operated by barristers at their own risk and provides many people with access to the courts where they would not have had access otherwise. The importance of a “no foal, no fee” system has been highlighted by FLAC and independent law centres such as CLM, particularly where there is no comprehensive civil legal aid system in the State.

4.3.2 The no foal-no fee payment structure is frequently applied in medical malpractice suits, constitutional litigation, actions concerning environmental protection issues, challenges to planning decisions and similar public interest-based litigation. This approach has played a significant part in bringing to court many highly publicised actions in which individuals of limited means have taken on powerful companies and institutions – and have often won. The hearing of such cases can take a protracted period of time during which the barrister or barristers involved have to give their full commitment (often with no guarantee of payment), even though this means that they must forego other work offered to them. That this system has benefited the development of our law and constitution cannot be refuted.

### **4.4 An under-resourced legal aid system**

4.4.1 In Ireland, while there are State-run legal aid schemes aimed at supporting access to justice, the legal aid system in Ireland is chronically under-resourced. According to the latest data (2016) by the European Commission for the Efficiency of Justice (CEPEJ), Ireland’s annual public budget allocation to civil and criminal legal aid decreased from €87m in 2010 to €82m in 2016. Legal aid represented 35.1% of Ireland’s total budget for the judicial system (which comprises the courts, legal aid, and public prosecution services) at €19.61 per capita in 2016. By contrast, our common law neighbour in England and Wales allocated a generous 39% at €31 per capita, the second most substantial budgetary effort of all European states in facilitating access to justice through legal aid.<sup>2</sup>

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<sup>2</sup> Council of Europe. European Commission for the Efficiency of Justice (October 2018). *European Judicial Systems: Efficiency and Quality of Justice. CEPEJ Studies No. 26. 2018 Edition (2016 data)*. Available at <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

- 4.4.2 It is clear that the Legal Aid Board requires significant additional resources if a properly functioning civil legal aid system is to be provided. Whilst the Civil Legal Aid Scheme does, in general terms, provide a very good service to its clients in very challenging circumstances, our members have, over the years, observed and experienced a number of difficulties across the operation of the Scheme which, in the opinion of the Council are hindering its capacity to provide meaningful legal aid to the most vulnerable sectors of society on a long term and sustainable basis. Many recipients of legal aid are among some of the most vulnerable cohorts of society and their access to the legal system must be supported and protected in the highest possible way. Despite the best efforts of practitioners, there are regularly lengthy delays where either or both parties are represented by the Legal Aid Board (awaiting assessment or applying for certificates), adding to delays and costs and leading to additional stress for clients.
- 4.4.3 There is manifest desirability for improvements to the civil legal aid system in Ireland in terms of eligibility and the areas of law to which legal aid applies. In the event that civil legal aid was to be made more widely available this would help, not only to achieve equal access to justice and to secure effective legal representation for all, but also to address the increasing incidence of litigants in person in the Courts. The Courts have increasingly had to determine cases that have (at least) one litigant in person participating. There are a number of reasons behind self-representation but the inability to afford legal representation and non-qualification for legal aid are predominant factors.
- 4.4.4 While the law is clear that any litigant in criminal or civil proceedings is entitled to exercise their right of self-representation, difficulties can arise as a result of the litigant in person not being familiar with court rules and procedures. Understandably, this often leads to frustration on all sides, with proceedings becoming disjointed and lengthier than they would otherwise be. The consequences of this for the smooth, efficient and economical administration of justice are well known. In the event that civil legal aid was to be made more widely available this would undoubtedly lead to the smoother and more efficient administration of justice in the civil courts.
- 4.4.5 Additional services and changes to practice and procedure have been introduced within the past few years which have been of some assistance to litigants in person. However, more could be done by the Courts Service to address this increasing phenomenon, starting with the provision of basic guides and information that are readily accessible in one location and in an understandable format. The information currently provided online, while considerable in its detail, is not in one central location, is unnecessarily difficult to identify where on the website the information required is located and when located is overly complex. As Lord Justice Gillen stated in his report on Civil Justice in Northern Ireland, litigants in person are not a group that need to be “dealt with” but rather, like any other court user, they should be facilitated in obtaining effective access to justice.

## 4.5 Economic Value of Legal Aid

4.5.1 The availability of legal aid to those who cannot afford legal representation is an essential element in the administration of justice in a democratic society. Legal aid has long been recognised as a vital component to ensuring that a person's constitutional rights of access to the courts and to a fair hearing are given effect to, and that litigation can and (can be seen to) operate on an equality-of-arms basis. A recent Report of the World Bank, in collaboration with the International Bar Association Access to Justice and Legal Aid Committee, 'A Tool for Justice: The Cost Benefit Analysis of Legal Aid' (September 2019)<sup>3</sup> notes that:

*'Legal aid has long been viewed as an expression of society's values. The primary arguments for supporting legal aid have rested on the inherent value to society of protecting the most vulnerable, and of ensuring access to justice for those who cannot afford a lawyer. By leaning heavily on constitutional, human rights and ideological principles underpinning the concepts of "access to justice" and "rule of law," proponents highlight how legal aid is intrinsically tied to the concept of the state and its duty to guarantee equality of arms as an element of equality under the law. Legal aid can help to ensure that people have access to information about their rights, entitlements, and obligations. It is also essential for the protection and promotion of all other civil, cultural, economic, political and social rights. Without it, people who are living in poverty or otherwise vulnerable are denied the opportunity to claim their rights, resolve disputes, or challenge crimes, abuses or human rights violations committed against them.'*

4.5.2 The Report goes on to state:

*'There are also economic arguments that support investment in justice and legal aid in particular. The price of failing to address the global justice gap is high. 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.'*

*'Investments in legal aid can lead to significant government savings through avoided cost of arrest, conviction, incarceration, probation, and post-prison supervision. In addition, public investments in legal aid are also found to generate net savings in terms of avoided shelter/housing costs. Studies find significant net economic benefits, even in the short term, including immediate benefits to clients and cost-savings to governments.'*

4.5.3 The Report examines the findings of the various cost benefit analyses throughout the world and provides guidance on how to conduct a cost benefit analysis of a legal aid programme. A cost-

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<sup>3</sup> <http://documents.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>

benefit analysis in an Irish context would be of considerable assistance to the Government in understanding the additional value that can be gained from increased investment in legal aid.

#### **4.6 Investment is needed in the Courts System**

- 4.6.1 Legal aid cannot meaningfully be reformed in isolation. The true cost of access to justice requires the reform and funding of civil litigation and the justice system more generally.
- 4.6.2 A series of studies by the European Commission for the Efficiency of Justice (CEPEJ) illustrates how, since 2010, Ireland's expenditure on its judicial system (relative to GDP), which comprises the courts, legal aid, and public prosecution services, is consistently lower than that of its neighbouring jurisdictions. According to CEPEJ, Ireland's budget for the judicial system has decreased by 16%, from €280m in 2010 to €234m in 2016. The public budget allocated to the judicial system in 2016 came in at €50.20 per capita, which is well below the budgetary efforts of our neighbouring jurisdiction in England and Wales (€78.70 per capita). Despite our remarkably high GDP per capita, Ireland's budgetary efforts are relatively poor. The annual budget allocated to the judicial system in Ireland represented 0.09% of GDP in 2016. By contrast, England and Wales' allocation represented more than double that of Ireland's at 0.25% of GDP.<sup>4</sup>
- 4.6.3 Constricting budgets are making it harder for the courts to do their work. In 2016, Ireland allocated 48% of its budget for the judicial system to the functioning of the courts alone, a per capita budget allocation of €24. By comparison, the per capita budget allocation to the Courts of our common law counterpart England and Wales is significantly greater at €38.<sup>5</sup>

#### **4.7 Number of Judges needs to be increased**

- 4.7.1 The ability of courts to cope with caseload is closely related to a continuing shortage of judges. In 2016, Ireland had the second-lowest number of judges of 47 countries examined by CEPEJ at 3.4 per 100,000 inhabitants.<sup>6</sup> This deficit must be confronted as a possible factor in delays and inefficiencies of the courts system.
- 4.7.2 An increase in the number of judges is the obvious solution and the recent increase in the number of Judges appointed to the Court of Appeal to 15 is welcomed. However, with suitable training and resources, the capacity to enhance the functions of County Registrars and other eligible court officers in decision-making ought to be considered. Too much of decision making

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<sup>4</sup> Council of Europe. European Commission for the Efficiency of Justice (October 2018). *European Judicial Systems: Efficiency and Quality of Justice. CEPEJ Studies No. 26. 2018 Edition (2016 data)*. Available at <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

<sup>5</sup> Ibid.

<sup>6</sup> Council of Europe. European Commission for the Efficiency of Justice (October 2018). *European Judicial Systems: Efficiency and Quality of Justice. CEPEJ Studies No. 26. 2018 Edition (2016 data)*. Available at <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

in our courts is currently required to be carried out by constitutional office holders. Where this extends to non-core decisions (e.g. interlocutory applications), alternatives could be found. For example, in the UK and Northern Irish courts, a system of Masters with decision making powers works very well. Once there is recourse by way of appeal to the Court, there can be no issue with compliance with constitutional rights. Consideration should also be given to enhancing the Judicial Assistant Programme. Judicial Assistants offer a valuable resource to judges in conducting legal research etc.

#### 4.8 Court procedure reforms are ongoing

4.8.1 According to the *Doing Business* survey of the World Bank Group for 2020, Ireland ranks 91 out of 190 countries in the category relating to ease of resolving a contractual dispute.<sup>7</sup> Ireland's rank would appear to be attributable largely to its low score of 8.5/18 in the category concerning the quality of court processes. This quality index measures whether each economy has adopted a series of good practices that promote quality and efficiency in its court system across four areas:

- court structure and proceedings,
- case management,
- court automation and
- alternative dispute resolution.

4.8.2 Despite strong results in the sub-categories of court structure and proceedings (4.5/5) and alternative dispute resolution (2.5/3), Ireland received a low mark for this category overall by virtue of its scores for case management (1/6) and court automation (0.5/4). Unnecessary court appearances; over-listing of court dates; listing of all cases at the same time, and; uncertainty over whether a case will proceed, increase the cost of litigation and result in lengthy court days and delays in cases being heard, all of which act as a barrier to justice to citizens. It would therefore be useful to consider how to ameliorate these issues.

4.8.3 Ireland's score of 8.5/18 is significantly lower than that of any of the other eight common law jurisdictions surveyed (of these New Zealand, with a score of 9.5/18, scored the next lowest in this category) and is well below the average score of 12.5 for all common law jurisdictions.<sup>8</sup> Additionally, of the common law jurisdictions referred to in the survey, Ireland performed the second worst in the category of "time". Time is recorded in calendar days, counted from the moment that a claim is filed until payment. Only Canada (910 days) takes longer than Ireland's

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<sup>7</sup> World Bank Group. *Doing Business 2020 Economy Profile: Ireland*. Available at <https://www.doingbusiness.org/content/dam/doingBusiness/country/i/ireland/IRL.pdf>

<sup>8</sup> World Bank Group. *Doing Business 2020: Enforcing Contracts Data*. Available at <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts>

score of 650 days, which is well above the average of 442 days across the eight common law jurisdictions surveyed.<sup>9</sup>

- 4.8.4 It is prudent to note that the World Bank Survey is a measure of the time, quality and cost involved in resolving a **commercial** dispute, however the issues relating to case management, in particular, resonate across most areas of litigation.
- 4.8.5 There are a wide range of reforms required so that timely and efficient access to justice is accessible to all those that need it. Reforms to the discovery process, the increased use of electronic filing and service procedures, improvements to the process for listing cases, enhanced case management tools across all courts, and class action litigation are but some of the changes which would increase the efficiency of civil litigation in Ireland and reduce costs.
- 4.8.6 The Courts Service is commended in its efforts to reduce time for case processing and facilitating greater efficiency in the way trials are managed through initiatives such as e-filing, the e-courts system and other procedural and legislative reforms such as the recent amendments to the Rules of the Superior Courts in relation to the conduct of trials and pre-trial procedures. However, depleting court budgets have restricted the Courts Service ability to realise the full potential for increased technological solutions through increased investment in Information & Communications Technology. The Council is supportive of innovative solutions to improve access to justice - the profession itself has introduced initiatives which facilitate, for example, paperless litigation which help to improve efficiencies and minimise costs.
- 4.8.7 Reference should also be made to the ongoing work of the Administration of Civil Justice Review Group chaired by the President of the High Court, Mr. Justice Peter Kelly, established in 2017 to review the administration of civil justice in the State. It is examining a wide range of measures to improve access to justice and to achieve more effective outcomes for impecunious litigants through potential cost-savings measures such as e-litigation.

#### **4.9 Class action litigation should be permitted**

- 4.9.1 Ireland is one of the few jurisdictions where no class action litigation is permitted. Within the past number of years there has been a clear indication of the need for procedures to allow for such claims. If introduced, benefit could be seen by both litigants and the court system.
- 4.9.2 One need only consider the volume of cases relating to the DePuy litigation that occupy the Dublin High Court Personal Injuries List or, historically, litigation surrounding the use of pyrite contaminated building materials to realise that there is merit to conducting a review of whether provision should be made for class action litigation in this jurisdiction. Looking to the future,

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<sup>9</sup> Ibid

regard must be had to the possible wave of litigation against financial institutions arising from the recent controversy surrounding tracker mortgages as well as the potentially crippling number of cases that could arise from a single incident of a breach under the GDPR which will provide for compensation for non-pecuniary loss that has been occasioned by a data breach.

4.9.3 The attraction of class action suits is considerable. The burden placed on the courts system is limited in that the number of individual cases over which the courts must adjudicate is markedly reduced to a sample drawn from the class. Those who do not wish to form part of the class are free to opt-out and accordingly there is no interference with one's right to independently pursue a claim. Conversely, an opt-in model could be considered. The legal costs to the plaintiffs who choose to participate are, to a certain degree, spread across the class thus reducing the overall cost and risk borne by each individual member. In addition, the legal costs faced by the defendant(s) are also reduced given the way in which liability and quantum fall to be determined on a class basis rather than on a case-by-case basis thereby reducing the costs burden of litigation on defendants.

4.9.4 A strong public policy argument favouring the establishment of class action litigation is that such cases assist in ensuring that large corporate entities are held accountable for their behaviour in relation to groups such as consumers which on an individual basis may not have cost a significant amount but when repeated across the class of individuals concerned has enabled the defendant to realise very significant gains from its wrongful behaviour. It is contended that provision for class action litigation in this jurisdiction would promote access to justice for individuals, and in particular consumers, who have suffered minor but not insignificant loss or damage by reason of the wrongful conduct of service providers and other operators in the domestic marketplace.

#### **4.10 Improved court facilities needed for family court users**

4.10.1 The recent recommendation of the Joint Committee on Justice and Equality to establish a dedicated and integrated family court within existing court structures and, critically, to ensure the necessary resources and supports for its implementation is welcomed and the Council joins the Committee's calls on the Minister to bring forward the required legislation as a matter of priority.

4.10.2 The failure to construct a purpose-built family law court venue at Hammond Lane, in conjunction with inadequate facilities, gives rise to a significant and serious risk that the existing system cannot adequately protect the rights of individuals or children participating in family law proceedings, and is inhibiting access to justice for some of the most vulnerable members of our society.

4.10.3 The Council commends the Joint Committee for its comprehensive report which highlights the many challenges facing family law clients and their advocates. The considered approach and



recommendations on a range of relevant issues including the voice of the child, transparency, alternative dispute resolution and better public education on the family law system demonstrates a most thorough approach which, if realised, will undoubtedly significantly improve access to justice for family court users.

## **5. LEGAL COSTS**

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The Council recognises that unduly high legal costs can constitute a barrier to access to justice and it has long been supportive of the recently enacted provisions of the Legal Services Regulation Act 2015 (“the 2015 Act”) dealing with legal costs and the fair delivery of legal services to the citizens of Ireland.

### **5.1 Ireland is not found to be a high-cost jurisdiction for legal costs**

5.1.1 The *Doing Business* survey of the World Bank Group for 2020 offers a useful benchmark for the comparison of legal costs. While the cost of legal services in other EU Member States can appear an obvious comparator, the fundamental procedural and structural differences between common law and civil law jurisdictions must be accounted for in any meaningful comparison.

5.1.2 It has been estimated that the total cost to the tax payer of providing a court system in a country which operates a broadly common law courts process is approximately one quarter to one third of the costs applicable in a civil law jurisdiction. Clarke J (as he then was), speaking extra-judicially in 2016, explained the reason for this as follows:

*“In the common law world, we place a much greater onus on the parties in relation to the fact finding and legal determination aspects of the court’s work. In civil law countries a much greater part of that burden is undertaken by the court itself coupled with research and assistance provided from the court’s own resources. That is why a civil law courts system costs an awful lot more. The saving achieved in the common law world for the taxpayer is at the expense of the transference of a significant part of the burden onto the parties and, in particular, onto those representing them.”*

5.1.3 Lawyers’ fees will inevitably constitute a much higher proportion of the overall costs of settling a legal dispute in countries with a common law legal system than they will in civil law jurisdictions. The comparatively high cost of lawyers’ fees in a common law jurisdiction is an inescapable consequence of the particular demands made of the parties by the common law system itself, which expects the parties to carry a greater proportion of the costs than does the civil law.

5.1.4 Focusing on lawyers’ fees when comparing a common law jurisdiction to civil law legal systems does not fully reflect the total cost of resolving a legal dispute. Therefore, the most appropriate

comparators for Ireland in an assessment of legal costs are jurisdictions which share a common law legal tradition e.g. countries such as the UK, Canada and Australia whose legal systems bear the greatest resemblance to our own.

5.1.5 When an assessment of legal costs is confined to common law jurisdictions, Ireland, contrary to popular belief, is not found to be a high-cost jurisdiction for legal costs. According to the World Bank survey, of the eight common law jurisdictions compared, Ireland has the fourth lowest lawyers' fees at 18.8% the value of the claim which is almost identical to Australia's figure of 18.5%, the third lowest rate of lawyers' fees across the common law jurisdictions surveyed.

## 5.2 Severe reduction in professional fee levels paid to barristers

5.2.1 The market for barristers' services is more competitive than it has ever been. This has led to very considerable reductions in fees paid to most barristers, particularly by private clients where there is no set scale of fees and the fee and manner of payment is usually negotiated by the solicitor on behalf of the client. On the other hand, barristers who undertake work on behalf of the State are, in the main, working to a set schedule or scale of fees. As such there is little or no negotiation, and in many cases, this involves barristers appearing for a client at less than the normal commercial rate and at no cost to the client.

5.2.2 According to a paper authored by the Irish Government Economic and Evaluation Service (IGEES), State bodies are the largest single consumer of legal services.<sup>10</sup> Barristers represent clients who have been granted civil legal aid by the Legal Aid Board, and for persons to whom certificates for free legal aid have been granted via the Department of Justice and Equality in criminal proceedings. A panel of barristers is maintained by the Office of the Attorney General/Chief State Solicitor's Office who brief counsel to give legal advice and to appear on behalf of State parties in litigation, and by the State Claims Agency in managing claims against the State and State authorities. Counsel is furthermore engaged by the Director of Public Prosecutions in trials on indictment. There are also regular "*Requests for Tenders*" in respect of panels of barristers for the provision of legal services to public sector bodies. Recent examples include the Commission for Communications Regulation (ComReg), the Central Bank, and the Nursing & Midwifery Board of Ireland.

5.2.3 Similar to public and civil servants and other State contractors, severe cuts were applied to barristers' fees during the economic downturn. Since 2008, cuts to professional fee levels have ranged in the order of 28.5% to 69%. Despite severe cuts to the fee levels, barristers continue to contribute to the maintenance of an efficient justice system in the public interest, by providing excellent advice and advocacy services to their clients whose representation is funded under the Civil and Criminal Legal Aid Schemes. However, for many legal practitioners, these cuts have

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<sup>10</sup> Irish Government Economic and Evaluation Service (IGEES) (2013). Public Expenditure on Legal Services. Available at <https://igees.gov.ie/wp-content/uploads/2014/02/Public-Expenditure-on-Legal-Services.pdf>

made it unviable to continue to participate in State-funded schemes, and many new entrants to the Law Library are voting with their feet and choosing not to practice in legally aided areas such as crime and family law. For example, an analysis of barristers practising in criminal law conducted in October 2019 has demonstrated that 70% of those who commence a career at the criminal bar opt out by their sixth year of practice. These areas of law involve long hours of work which is either poorly paid or for which there is no payment whatsoever and new entrants to the profession are often not able to sustain a career working on complex cases where professional fee levels remain at such impracticable levels.

5.2.4 In July 2018, the Government's own Spending Review report on Criminal Legal Aid<sup>11</sup> recognised that our cost effective and robust Criminal Legal Aid system facilitates a high standard but low-cost representation of defendants through skilled advocates on the Criminal Legal Aid Panel. Furthermore, the report recognises 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.

5.2.5 Whilst cuts to the salaries and allowances of public and civil servants were imposed on some form of systemic basis, this was not practicable in the area of fees to barristers. Therefore, barristers experienced severe income reduction irrespective of what their income actually was. The harshness of the cuts is magnified where barristers carry the entirety of the cost of their practice and the fee level is a gross fee from which the barrister must pay all practice and related costs, including VAT at 23%, income tax, secretarial support, professional indemnity insurance, Law Library fees, office rental, LSRA levy etc. Such a blunt and all-encompassing reduction has been particularly difficult for average or low earning practitioners at the Bar and is pointing towards an emerging dearth of experienced junior barristers to undertake legal aid work in the near future, which is most certainly not in the public interest.

### **5.3 A competitive profession**

5.3.1 As outlined in Section 3 above, members of the Law Library are independent sole practitioners, who compete with each other on a daily basis. Barristers practice in a highly competitive market, and it usually takes many years to become established.

5.3.2 While it is not a requirement for a barrister to be a member of the Law Library, membership offers numerous advantages to the sole practitioner. The economies of scale achieved through the collective buying power of 2,170 members are significant and ensures that the overheads of a barrister in practice are maintained at a competitive rate. Ensuring value for money for our

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<sup>11</sup> Spending Review 2018 Criminal Legal Aid: Overview of current system and potential lessons from an international comparison <https://igees.gov.ie/wp-content/uploads/2018/07/10.-Review-of-Criminal-Legal-Aid-Department-of-Justice-Equality.pdf>

members in the delivery of services and benefits through the collective structure of the Law Library translates into cost-savings and value for money for the consumer.

#### **5.4 Increased transparency generates competition**

- 5.4.1 The relationship between transparency and costs has been central to over a decade of research, discussion and reform of legal costs in Ireland, with a view to lowering the cost of legal services for the consumer and consequently improving access to justice.
- 5.4.2 The Reports of the Legal Costs Working Group in 2005<sup>12</sup> and the Competition Authority in 2006<sup>13</sup> identified increased transparency as a priority, not just as an end in itself, but because transparency of costs results in informed consumers who shop around for the best price and thereby put downward pressure on prices.
- 5.4.3 Increased transparency in legal costs will have the inevitable effect of generating more competition amongst legal service providers. By increasing the amount of information available to consumers about the price of legal services it enables consumers to make informed decisions about which lawyer to choose and at what rates. If consumers are able to compare the prices for legal services, this creates an additional incentive for lawyers to compete on price. The pool of legal service providers is also soon to be enhanced by the establishment of legal partnerships as provided for in the 2015 Act, thereby increasing consumer choice.

#### **5.5 Fee estimates and the new costs provisions under the Legal Services Regulation Act 2015**

- 5.5.1 It is a longstanding requirement that, on receiving instructions from a client, a barrister must on request provide the client with a written fee estimate. This requirement is set out in the Code of Conduct of The Bar of Ireland and the obligation is now reinforced under the new costs provisions of the Legal Services Regulation 2015 Act which demand a certain level of detail to enhance clarity and transparency for the client. This obligation empowers the client to shop around so as to ensure they obtain the best representation and the best value for money.
- 5.5.2 The key benefits of the new cost provisions of the 2015 Act include:
- 5.5.3 *Greater visibility and transparency for clients in advance in terms of the costs of litigation*
- 5.5.4 On receiving instructions, legal practitioners are required to disclose to clients in writing the amount of legal costs that will be incurred, or at the very least to set out the basis on which the

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<sup>12</sup> Report of the Legal Costs Working Group (2005). Available at <http://www.justice.ie/en/JELR/legalcosts.pdf/Files/legalcosts.pdf>

<sup>13</sup> The Competition Authority (2006). *Competition in Professional Services: Solicitors and Barristers*. Available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/03/Solicitors-and-barristers-full-report.pdf>

legal costs are to be calculated. Practitioners must furthermore notify clients as to: the likely legal and financial consequences of the client withdrawing from the litigation; the circumstances in which the client would be likely to be required to pay the costs of other parties; and, the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from the other parties. A 10-day cooling-off period allows the client time to consider the costs and the associated financial risks before he or she commits to the services of the practitioner.

*5.5.5 Greater visibility and transparency for clients in terms of the costs as the case progresses*

5.5.6 The legal practitioner is obliged to notify the client where he or she becomes aware of any factor that would make the legal costs likely to be incurred significantly greater than those disclosed or indicated at the outset. This provision reflects current practices under the Code of Conduct. Communicating up-to-date information to clients at each stage of the legal process is imperative as it ensures that the client is always fully aware and informed of the financial consequences.

*5.5.7 More detailed information on bills of costs*

5.5.8 After concluding the provision of legal services, a legal practitioner must prepare and sign a detailed bill of costs which must include the following information:

- a) a summary of the legal services provided;
- b) an itemised statement of the amounts of costs in respect of the legal services provided;
- c) the registration number of the legal practitioner for the purposes of value-added tax, and the amount of value-added tax chargeable;
- d) where time is a factor in the calculation of legal costs, the time spent in dealing with the matter;
- e) the amount of any damages or other monies recovered or payable to the client; and,
- f) the amount of any legal costs recovered by or payable to the legal practitioner from another party or an insurer on behalf of another party.

5.5.9 A detailed outline of the work completed and an itemised statement of costs will increase clarity and transparency for the client so that they know precisely what it is they are being charged for.

*5.5.10 A facility for clients and opposing parties to challenge costs in accordance with clear principles*

5.5.11 The legal practitioner must provide with the bill of costs an explanation of the procedure to be followed should the client wish to dispute any aspect of the bill of costs. Where a dispute is made, the legal practitioner must take all appropriate and reasonable steps to resolve the dispute by informal means, for example through mediation. However, where these attempts

are unsuccessful, the client can apply to the Office of the Legal Costs Adjudicator for any matter or item in the bill of costs to be adjudicated upon. The Legal Costs Adjudicator shall have regard to the principles set out in a) to j) below and verify that: the work was actually done; that it was appropriate that a charge was made; and, that the charge was fair and reasonable in the circumstances. Such principles allow considerable scope for the scrutiny and review of fees.

- a) the complexity and novelty of the issues involved;
- b) the skill or specialised knowledge that the legal practitioner has applied to the matter;
- c) the time and labour that the legal practitioner has reasonably expended on the matter;
- d) the urgency attached to the matter by the client and whether this required the legal practitioner to give priority to that matter over other matters;
- e) the place and circumstances in which the matter was transacted;
- f) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;
- g) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;
- h) whether or not there is an agreement to limit the liability of the legal practitioner;
- i) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed; and,
- j) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.

#### *5.5.12 Greater transparency and consistency in the adjudication of legal costs*

5.5.13 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.

## **5.6 Alternative Dispute Resolution**

5.6.1 Alternative legal mechanisms have been introduced by legislation to resolve disputes at a fraction of the legal cost by keeping matters out of Court. The Mediation Act 2017 is a good example of this. The 2017 Act requires that solicitors must advise their client to consider mediation to resolve a dispute, as well as the possible advantages of resolving a dispute otherwise than by court action. Solicitors are now obliged to certify that they have given this advice. The Act also provides for the Court to invite parties to litigation to mediate having regard to the circumstances of the case. The Court could penalise a litigant in costs where they have been unreasonable in their refusal to consider mediation. As noted earlier in this

submission, Ireland scores favourably in comparison to other jurisdictions in the quality of court processes under the heading of alternative dispute resolution (2.5/3).<sup>14</sup>

## **5.7 Legal Costs should not be viewed in isolation - wider reforms are needed**

- 5.7.1 As referenced above, Ireland stands at 91<sup>st</sup> place out of 190 countries in the category relating to ease of resolving a contractual dispute and it is clear that the cost of resolving a dispute is not primarily responsible for this ranking. The statistics illustrate that the total cost (inclusive of lawyers' fees, court fees and enforcement costs) of resolving a contractual dispute in Ireland amounts to 26.9% the value of a claim. Ranked 1<sup>st</sup> in the category relating to ease of resolving a contractual dispute was Singapore, a common law jurisdiction with an overall costs percentage extremely similar to that of Ireland: 25.8%.
- 5.7.2 Rather than the price of lawyers' fees which are responsible for Ireland's rank of 91/190 in the "ease of resolving a contractual dispute" category, it is Ireland's performance with regards the quality of processes, particularly in the area of case management, court automation, and time, that would appear to be key factors affecting most areas of litigation. This does not mean that further reforms to legal costs should not be pursued, however the Council draws attention to these statistics to illustrate the point that high legal costs are not an isolated issue and suggests that wider reforms across the civil litigation and justice system generally are arguably more pressing and necessary than any further changes to the costs regime in this jurisdiction.
- 5.7.3 A key focus of the Council's advocacy this year has been on the opportunity for Ireland to increase the market for international legal services post Brexit. A joint initiative was produced by The Bar of Ireland, the Law Society and the wider legal community (with support from the IDA and the Department of Justice and Equality) to promote Ireland as a leading centre globally for international legal services.
- 5.7.4 An implementation group was established under the Chairmanship of John Bruton and held its first meeting on October 25, 2019, where an action plan to take the initiative forward was agreed. In order to maximise the opportunity for Ireland, the Government must demonstrate its commitment by way of reform and modernisation of the existing courts and legal system, and to commit the additional financial and other resources required.
- 5.7.5 Recent increases in the number of judges in the Court of Appeal to 15, the Civil Justice Review being carried out by Mr Justice Peter Kelly, and the introduction of e-filing in the Supreme Court, demonstrate that work is already underway. However, more needs to be done to further develop Ireland's laws and legal system to make them even more effective, responsive and

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<sup>14</sup> World Bank Group. Doing Business 2020: Enforcing Contracts Data. Available at <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts>

business friendly, and to make dispute resolution more efficient and predictable. Such reforms will be of benefit to the wider justice system as a whole.

## **6. CONCLUSIONS**

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### **6.1 More investment in Legal Aid needed**

- 6.1.1 The availability of legal aid to those who cannot afford legal representation is an essential element in the administration of justice in a democratic society. Legal aid has long been recognised as a vital component to ensuring that a person's constitutional rights of access to the courts and to a fair hearing are given effect to, and that litigation can and (can be seen to) operate on an equality-of-arms basis.
- 6.1.2 It is clear that the legal aid system in Ireland is chronically under-resourced. The Legal Aid Board requires significant additional resources if a timely, efficient and effective civil legal aid system is to be provided.
- 6.1.3 There is manifest desirability for improvements to the civil legal aid system in Ireland in terms of eligibility and the areas of law to which legal aid applies. In the event that civil legal aid was to be made more widely available this would help, not only to achieve equal access to justice and to secure effective legal representation for all, but also to address the increasing incidence of litigants in person in the Courts. There are a number of reasons behind self-representation but the inability to afford legal representation and non-qualification for legal aid are predominant factors. Greater investment in civil legal aid would help to address the increasing incidence of litigants in person in the Courts and ensure the smoother and more efficient administration of justice in the civil courts.
- 6.1.4 Furthermore, according to a series of cost benefit analyses undertaken in other jurisdictions, it is clear that there are considerable economic gains to be garnered from increased investment in legal aid. As stated in a recent report of the World Bank, in collaboration with the International Bar Association (IBA), investment in legal aid can lead to significant government savings by avoiding the transfer of costs imposed by unresolved legal problems to other areas of expenditure such as healthcare, housing, and child protection. The Council submits that a cost-benefit analysis in an Irish context would be of considerable assistance to the Government in understanding the additional value to be gained from increased investment in legal aid.

### **6.2 Increase in the number of Judges and enhancing capacity of other decision makers**

- 6.2.1 Constricting budgets are making it harder for the courts to do their work. The ability of courts to cope with caseload is closely related to a continuing shortage of judges and this deficit must be confronted as a possible factor in delays and inefficiencies of the courts system.



6.2.2 An increase in the number of judges is the obvious solution. However, with suitable training and resources, consideration should also be given to enhancing the capacity of County Registrars and other eligible court officers in the decision-making function. Consideration should also be given to enhancing the Judicial Assistant Programme which offers a valuable resource to the judiciary.

### **6.3 Report of the Administration of Civil Justice Review Group expected in 2020**

6.3.1 Better case management and more rigorous and stringent timelines for the listing of cases would help to address unnecessary court appearances; over-listing of court dates; listing of all cases at the same time, and; uncertainty over whether a case will proceed, all of which increase the cost of litigation and result in lengthy court days and delays in cases being heard. The Administration of Civil Justice Review Group chaired by the President of the High Court, Mr. Justice Peter Kelly, is examining a wide range of measures to improve access to justice and to achieve more effective outcomes for impecunious litigants through potential cost-savings measures such as e-litigation. Its publication is expected in 2020.

### **6.4 Class action litigation should be permitted**

6.4.1 Class action litigation should be permitted in Ireland. A strong public policy argument favouring the establishment of class action litigation is that such cases assist in ensuring that large corporate entities are held accountable for their behaviour. It is contended that provision for class action litigation in this jurisdiction would promote access to justice for individuals, and in particular consumers, who have suffered minor but not insignificant loss or damage by reason of the wrongful conduct of service providers and other operators in the domestic marketplace.

### **6.5 Improved court facilities needed for family court users**

6.5.1 The recent recommendation of the Joint Committee on Justice and Equality to establish a dedicated and integrated family court within existing court structures and, critically, to ensure the necessary resources and supports for its implementation is welcomed and the Council joins the Committee's calls on the Minister to bring forward the required legislation as a matter of priority. The failure to construct a purpose-built family law court venue at Hammond Lane, in conjunction with inadequate facilities, gives rise to a significant and serious risk that the existing system cannot adequately protect the rights of individuals or children participating in family law proceedings, and is inhibiting access to justice for some of the most vulnerable members of our society.

## **6.6 Promote consumer awareness of new costs provisions**

- 6.6.1 It is a longstanding requirement that, on receiving instructions from a client, a barrister must on request provide the client with a written fee estimate. This requirement is set out in the Code of Conduct of The Bar of Ireland and the obligation is now reinforced under the new costs provisions of the Legal Services Regulation 2015 Act which demand a certain level of detail to enhance clarity and transparency for the client. This obligation allows the client time to consider the costs and the associated financial risks before he or she commits to the services of the practitioner, and furthermore empowers the client to shop around so as to ensure they obtain the best representation and the best value for money. These provisions ought to be promoted widely among members of the public.

## **6.7 Promote alternative dispute resolution**

- 6.7.1 Alternative legal mechanisms have been introduced by legislation to resolve disputes at a fraction of the legal cost by keeping matters out of Court. The Mediation Act 2017 imposes new obligations on the providers of legal services to advise their clients about the advantages of resolving disputes through alternative dispute resolution methods including mediation. Alternative Dispute Resolution should be encouraged in suitable cases. This can be done not only by legal practitioners but also, when litigation is in being, by Courts in the context of case management.
- 6.7.2 Mediation can present an efficient and cost-effective means of resolving family law matters in particular situations, however greater investment in mediation facilities is needed across the courts. The much-needed construction of a purpose-built family law court venue at Hammond Lane is an opportunity to adequately resource and enhance the provision of ADR services in a family law setting.

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# THE BAR OF IRELAND

*The Law Library*

Distillery Building  
145-151 Church Street  
Dublin 7 D07 WDX8

Tel: +353 1 817 5000  
Fax: +353 1 817 5150  
Email: [thebarofireland@lawlibrary.ie](mailto:thebarofireland@lawlibrary.ie)  
Twitter: @TheBarofIreland  
[www.lawlibrary.ie](http://www.lawlibrary.ie)