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## Introduction

The Society of St Vincent de Paul is the largest charity of social concern in Ireland supporting households in need for over 177 years. The main activity of SVP is visiting people in their homes and providing support to those facing financial difficulties and social exclusion. The role of the SVP is not only to provide immediate help to people in need, but also to tackle the root causes of the problems that we see. We seek to influence policy makers and public opinion based on extensive research and direct feedback from our volunteers who work with people experiencing poverty across the island of Ireland.

In SVP's experience, the inability to access legal and justice services can be both a result and a cause of poverty. People who are more vulnerable to social exclusion typically have more legal issues than other groups. At the same time, legal issues can trigger other non-legal problems and further financial difficulties for individuals and families.

Those experiencing poverty typically experience multiple forms of exclusion and discrimination which can compound existing barriers to accessing justice. Without access to justice and early intervention, legal problems can perpetuate a cycle of disadvantage for marginalised and low-income groups.

Research presented by Professor Trevor Farrow at the Access to Justice Conference in October 2021,<sup>1</sup> provides compelling evidence why access to justice should be accessible to all who require it. He provided an evidential basis showing the benefits of investing in justice far outweigh the costs and that there are substantial economic and social costs in not doing so. He suggested that justiciable problems trigger health and social problems and that the benefits of investing in justice include more efficient courts; lower unemployment rates; lower eviction rates; reduced

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<sup>1</sup> Organised by the Office of the Chief Justice in Conjunction with the Law Society of Ireland, FLAC (Free Legal Advice Centres), The Bar of Ireland and the Legal Aid Board  
1<sup>st</sup> and 2<sup>nd</sup> October 2021 Chief Justice's Working Group on Access to Justice Conference

homelessness; reduced government spending on social assistance; employment insurance; and healthcare”.<sup>2</sup>

Civil Legal Aid is an important mechanism in promoting access to justice and we welcome the opportunity to respond to this review and consultation.

## Experience of SVP and Civil Legal Aid

### *Profile of those seeking SVP's support*

SVP received about 191,000 requests for help last year and spent approximately €30 million on direct assistance to people experiencing poverty, social exclusion, and financial instability. Most households we work with are on low incomes either from social welfare or low paid work.

Approximately 70% of the calls we receive are from households with children and as the group most at risk of poverty in Ireland today, one parent families are the largest group assisted by SVP. A significant proportion of the households SVP support includes a family member with a long term illness or disability.

The types of issues volunteers encounter reflect the multifaceted nature of poverty in Ireland today:

- Energy poverty & utilities arrears
- Educational disadvantage & education costs
- Poor quality housing, unsustainable housing costs & homelessness
- Unemployment and difficulties accessing social welfare
- Food poverty

Legal issues that most frequently come up in our work:

- Family law – maintenance, access, domestic violence
- International protection and asylum cases
- Housing issues
- Debt/ arrears – threat of legal action
- Social welfare appeals/ employment issues

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<sup>2</sup> Organised by the Office of the Chief Justice in Conjunction with the Law Society of Ireland, FLAC (Free Legal Advice Centres), The Bar of Ireland and the Legal Aid Board  
1<sup>st</sup> and 2<sup>nd</sup> October 2021 Chief Justice's Working Group on Access to Justice Conference Page 9 &P46-64

Those experiencing poverty typically experience multiple forms of exclusion and discrimination which can compound existing barriers to accessing justice. Understanding poverty as multifaceted and interconnected issues is therefore critical. This requires recognising that inequalities and discrimination related to gender, ethnicity, race, disability etc. can perpetuate poverty and social exclusion.

### *Barriers to Accessing Justice and Civil Legal Aid*

Many economic, structural, and institutional factors obstruct access to justice. The main barriers as seen by SVP include:

- **Legal aid contributions:**

In our experience those who qualify for legal aid – the contribution causes financial difficulties for individuals – they cut back on food/heating as a result.

There were just over **500 requests** to SVP between 2019-2021 for help with the legal aid contribution. However, this is likely to be an underestimate as the initial request may be for food after money is spent on the legal aid contribution.

**Case study:** “I was wondering if it was possible to get help with legal aid fees. I have two court dates with my ex-partner coming up, one for breach of a maintenance order and one for breach of access and the fees are €130 each time. I am on One Parent Family Payment and there is no way I can pay €130, never mind €260. Otherwise, I would literally be taking food from my children’s mouths”.

- **Low-income households who don’t qualify for legal aid but are struggling.**

**Case study:** Lone parent with three year old who is a victim of domestic abuse. She works in low paid work and is €200 over the threshold for legal aid after applying twice. She is in court for a safety order and contacted SVP to see if help could be given to support legal representation. She says, “she has nowhere else to turn and is feeling desperate”.

- **Hidden or extra costs: transport, childcare, assessments, reports etc.**

**Case study from a member in mid-west:** Recently, a family lost €100 ( transport /childcare ) because they did not receive sufficient notice that a custody case was being adjourned. The same family has to pay for reports , take taxis ( no public transport etc ) to make depositions. It seems to us that the justice system has no understanding of the hardship which it is inflicting on families.

**Additional barriers which have arisen through SVP member home visitation:**

- Delays – impact of financial situation of households for example in cases where maintenance payments are to be determined.
- Loss of income to attend court/appointments – those of low income more likely to be in temporary insecure work.
- Language barriers
- Literacy issues
- Limited awareness of legal supports available in community
- Mistrust of legal system
- Jargon and inaccessible and complex legal language
- Accessibility issues due to visible and invisible disabilities
- Infrastructural and geographical barriers – lack of public transport particularly in rural areas
- Digital divide

## Response to Consultation Questions

### Types of civil law cases

*Considering the current operation of the Scheme and the areas of civil law that are currently covered, what areas of civil law do you think it should cover? What is your reasoning for this?*

### **Housing and Homelessness**

SVP have a unique insight into the current reality of people experiencing homelessness and housing exclusion, as SVP members visit families in hotels, B&B's, family hubs, and those that are experiencing 'hidden' homelessness. SVP staff and volunteers also work in resource centres operated by the society which provide vital supports to families experiencing homelessness and housing exclusion. In addition, the society is a provider of social housing with almost 1,000 units across the country, and engages in advocacy on the issue of housing, homelessness, and homeless prevention, drawing on the experience of members and policy analysis to seek to bring about the necessary policy change.

### **SVP experience of the issues for households affected by housing exclusion and homelessness:**

- Rising Rents and the performance of the Housing Assistance Payment (HAP) in housing policy and practice
- Tenants struggling with their rent and their tenancies are at risk as a result
- Receiving a notice of termination from a private rented landlord
- Families having to find their own accommodation after being registered as homeless
- Poor standards in Private Rented and Local Authority accommodation
- Refused access to the social housing list due to eligibility under the Habitual Residency Clause (HRC).

Our members typically signpost households to relevant statutory agencies and NGO services that specialise in housing related matters, such as Community Law and Mediation, Mercy Law Resource Centre, and Threshold. Issues are usually dealt with

through advice, information, and advocacy. However, there are a number of households who require legal advice.

In 2019, the Citizen Information Service dealt with approximately 92,000 housing related queries.<sup>3</sup> Whilst all queries would not have a legal dimension to them, it does highlight the need for people experiencing disadvantage to have access to free legal advice particularly given the importance of a home to a person's dignity and the often complex and confusing dimensions related to housing law.

Access to Housing is a fundamental human right protected under international conventions such as the Universal Declaration of Human Rights.<sup>4</sup> Adequate Housing is among the rights stated in Article 25 of the Universal Declaration of Human Rights:<sup>5</sup>

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [...].*

The Civil Legal Aid Act 1995<sup>6</sup>, Section 28, Paragraph (9)(a) states that legal aid shall not be granted in “disputes concerning rights and interests in or over land”. In the same section, in paragraph (c) it states that “Notwithstanding the provisions of paragraph (a) and subject to the other provisions of this Act, legal aid may be granted – (i) in respect of proceedings under the Landlord and Tenants Act, 1967 to

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<https://www.svp.ie/wpcontent/uploads/2022/09/Combating%20Housing%20Exclusion%20in%20Ireland%202021.pdf>

<sup>4</sup> Cited in Grotti, R., Russell, H., Fahey, E., MaMaître June 2008 Discrimination and Inequality in Housing in Ireland Published by Irish Human Rights and Equality Commission, Economic & Social Research Institute.

<https://www.ihrec.ie/app/uploads/2022/08/Discrimination-and-Inequality-in-Housing-in-Ireland..pdf>

<sup>5</sup> Universal Declaration of Human Rights. Article 25 Universal Declaration of Human Rights

<https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2025&text=Motherhood%20and%20childhood%20are%20entitled,enjoy%20the%20same%20social%20protection.>

<sup>6</sup> Irish Statute Board Civil Legal Aid Act 1995 Section 28 Paragraph 9 (a)(ii) and (c)(i) ,(c)(ii)  
<https://www.irishstatutebook.ie/eli/1995/act/32/section/28/enacted/en/html#sec28>



1994 (in so far as they relate to residential property)” and (c)(ii) “in respect of proceedings arising out of a dispute as to the title to or possession of any property”.

The current housing crisis is one of Ireland’s most acute social issues. There are currently over 11,500 people experiencing homelessness in Ireland.<sup>7</sup> There are thousands more who are affected by hidden homelessness and access to affordable, accessible, and safe accommodation. It is important therefore to situate the need for clear, appropriate, accessible, and enforceable legal rights in the context of the housing and homeless crisis. The current legislation is ambiguous; it is not clear to most people that they can in fact access legal aid for some housing issues. However, the legislation does not go far enough to protect or accommodate low income households when they are faced with a legal issue concerning matters relating to how or where they live.

There is a responsibility on the State to ensure households who are affected by low incomes can have access to justice if required. Access to the courts and legal advice for important human rights issues should not be based on a person’s ability to pay for such access. The denial of such rights in the Republic of Ireland is at odds with the current legal entitlement in England and Wales. The entitlement to legal aid is set out in the UK Legal Services Commission’s Funding Code. “This acknowledges that in cases involving housing, the cost-benefit test is applied in a way which requires that the “likely benefits of the proceedings justify the likely costs, having regard to the prospects of success and all other circumstances. Where a case is of “overwhelming importance to the client” the Code also allows funding to be granted even though the prospects of success are only borderline. Such cases could involve the issue of the client’s accommodation”.<sup>8</sup>

Other areas of law which are not covered by free legal aid such as social welfare appeals and employment and equality claims before the Workplace Relations

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<sup>7</sup> Department of Housing, Local Government and Heritage Homeless Report November 2022 Published on 6 January 2023 <https://www.gov.ie/en/publication/528f0-homeless-report-november-2022/>

<sup>8</sup> Cited in Access to Justice: A Right or a Privilege? A Blueprint for Civil Legal Aid in Ireland A Free Legal Advice Report FLAC. Published by FLAC (Free Legal Advice Centres), July 1995. Page 26

Commission should also be included. These are all issues that can affect low income households and without access to legal aid, it can make the experience even more stressful and traumatic for them. Their voices are not heard and are pushed even further into poverty, social isolation, and marginalisation as a result.

There is a need for research to be undertaken to understand in what areas of law free legal need is needed and the best manner in which to deliver it. For example, by the end of May 2020, employment law topped the area of queries to FLAC (Free Legal Advice Centres) telephone line. However, employment law is not covered by the civil legal aid scheme.<sup>9</sup> Therefore, those that are affected and are unable to meet the costs for legal advice out of their own resources are severely disadvantaged.

**SVP Recommendation:** Include housing related issues, social welfare appeals, employment, and equality claims in the scope of the Civil Legal Aid Scheme.

### Eligibility

*How appropriate are the current eligibility thresholds?*

In SVP's experience, the financial eligibility thresholds for civil legal aid do not reflect that many vulnerable and low income households cannot access legal services while trying to meet the basic needs of their household. For example, the base rate for legal aid is €18,000, but the annual rate of a living wage as set out by the Living Wage Technical Group is €28,162.<sup>10</sup>

The financial eligibility criteria for legal aid and advice have not changed since 2006. They should be reviewed regularly to reflect the real cost of living nor do they reflect

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<sup>9</sup> Barry E., Plenary Session: An Overview of Unmet Legal Needs-Eilis Barry, Chief Executive, FLAC (Free Legal Advice Centres) Organised by the Office of the Chief Justice in Conjunction with the Law Society of Ireland, FLAC (Free Legal Advice Centres), The Bar of Ireland and the Legal Aid Board 1<sup>st</sup> and 2<sup>nd</sup> October 2021 Chief Justice's Working Group on Access to Justice Conference Page 83

<sup>10</sup> The Living Wage Technical Group October 2022 Living Wage Update 2022/23 [Microsoft Word - Living Wage 2022-23 4 page document](#)

the changes in state supports such as the introduction of the Housing Assistance Payment (HAP). This leads to contradictory results for example, a single adult in receipt of jobseekers and rent supplement would have a higher disposable income than when in full-time NMW employment and receiving HAP.

The legislation also does not allow for a tapered approach to eligibility. As a result, in our experience they are some households who are on low incomes that are excluded from free legal aid, however, they are unable to afford the services of a private solicitor for legal advice and assistance.

A fairer and more coherent process would be to follow the approach of ensuring a person's basic living expenses are accommodated. There is already legislation and guidelines in place under Section 23 of the Personal Insolvency Act 2012<sup>11</sup> as to what constitutes a reasonable standard of living and reasonable living expenses. In developing these guidelines, they have looked to the Minimum Essential Standard of Living (MESL)<sup>12</sup> in Ireland developed by the Vincentian MESL Research Centre.<sup>13</sup> Whilst the Reasonable Living Expenses model does not include as much of the goods and services as MESL, it would better inform where the eligibility base should be. It would also provide a more nuanced and up to date reflection of household circumstances as expenses are reviewed annually.

**This RLE type model for financial thresholds would capture:**

1. Household composition- number of adults and children (if any) living in the house.
2. Need for a car- does the household require a car and is the quality and accessibility of public transport good?
3. Other costs-mortgage costs and, if applicable, childcare costs.
4. Special circumstances-medicine/health costs associated with a physical or mental health condition and college-going children if applicable.

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<sup>11</sup> Irish Insolvency Bord Personal Insolvency Act 2012  
<https://www.irishstatutebook.ie/eli/2012/act/44/section/23/enacted/en/index.html>

<sup>12</sup> Vincentian MESL Research Centre <https://www.budgeting.ie/>

<sup>13</sup> Previously known as the Vincentian Partnership for Social Justice (VPSJ)



member with a disability who are faced with extra weekly cost. Recent research from the VPSJ shows the net 'Additional Costs' required to enable a socially acceptable MESL for a household caring for a child with a profound intellectual disability range from €207 to €308 per week.<sup>17</sup>

**Recommendation:** Review eligibility thresholds annually in line with disposable incomes and the cost of a Minimum Essential Standard of Living.

**Recommendation:** Legal aid income thresholds should be tapered, with a smooth withdrawal rate as income increases.

### Financial Contributions

As outlined, SVP receives hundreds of requests for assistance from people struggling to pay the legal aid contribution. While a waiver system is in place for where the Legal Aid Board is of the opinion that not to do so would “create hardship” for the person. In our experience, people are not aware of the waiver system or find it too cumbersome to access. The data from the Vincentian MESL Research Centre provided above shows that almost all social welfare income households already have incomes below what is required to meet a minimum standard of living. Extra costs such as legal aid contributions will almost always cause hardship for households on low and fixed incomes, thereby making a strong case for automatic waivers in such instances. This would also reduce the administrative burden for the Legal Aid Board.

**Recommendation:** SVP propose that a financial contribution should be automatically waived if a household's main source of income is from a social welfare payment or low paid employment (Minimum wage employment and/or families in receipt of the Working Family Payment).

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<sup>17</sup> The Vincentian Partnership for Social Justice (VPSJ) Care at Home, Costs of Care Arising from Disability <https://www.budgeting.ie/download/pdf/care-at-home-costs-of-care-arising-from-disability-2022.pdf>

### Mode of delivery and accessibility

At the moment, we don't know what the level of need for civil legal aid is in society. There is also a lack of evidence on people's experiences of accessing legal aid and the financial and non-financial barriers they may face. Often times people are not aware that the issue they are dealing with has a legal dimension to it. That is also evident within the work of SVP. It is often the case that when members visit people in their homes and develop a relationship with the household, it is only then that they see that access to justice is also a requirement. They hear of the reasons for legal services and the consequences when that need cannot be met from the household budget. Delivering legal information and education needs to become more visible and accessible in communities affected by poverty and marginalisation. Understanding the needs, barriers, and experiences of those accessing legal aid is therefore vital. This can be achieved by research on pathways into legal aid and through the system, as well as lived experience panels.

SVP would endorse the views of FLAC that the expansion of community law centres<sup>18</sup>, such as the law centre based in Coolock is an effective way to meet the legal needs of households who are already experiencing disadvantage and require legal information, advice, and advocacy. Independent law centres such as Community Law and Mediation and Mercy Law Resource Centre perform an important role within those communities ensuring households can access legal education, support, advice, and legal representation if needed. SVP members are grateful for the work those organisations do; however, it is disappointing as an All-Ireland organisation these services are not available to every household that SVP support and visit. A publicly funded service similar to the aims and objectives carried out by those independent law centres should be considered for the future direction to delivering civil legal aid in Ireland.

**Recommendation:** Research commissioned to understand the pathway to and through legal aid and the justice system for low income, marginalised and

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<sup>18</sup> ibid

disadvantaged groups. This requires a focus on outcomes- i.e., the ability of people to address their legal needs in a fair, accessible, cost efficient , timely and effective manner.

**Recommendation:** Information regarding legal aid as well as court forms and procedures need to be clear, practical, and accessible, including for people who English is not their first language, those with literacy issues and for people with disabilities.

**Recommendation:** Experience panels with the direct representation of marginalised groups, as well as reps from NGOs, Court Services and Equality bodies should be formed to ensure every aspect of written and verbal information is accessible, easily understood, and clear.

**Recommendation:** Finally, access to justice is not mentioned in the current Government Anti-Poverty Policy Roadmap for Social Inclusion 2020-2025. Nor is socioeconomic status included as a ground in our equality legislation limiting the ability of those in poverty to assert their rights. Access to justice should be embedded in broader anti-poverty policies because it is essential if we want a just society and an end to poverty.

## Conclusions

SVP welcomes the opportunity to put forward our insights and recommendations on the Civil Legal Aid Review. There is an urgent need for change and reform for the low income households that we visit and support.

The income limits and financial contributions required are not reflective or cognisant of the financial hardships low income households are enduring on a daily basis. There is simply no additional income in the household to provide for access to justice. This has become all the more evident and stark as low income households continue to experience the rise in household costs, such as food, accommodation, energy, and heat. A low income should not be a barrier which prevents or obstructs a household with limited resources to access justice. We have recommended that

Reasonable Living Expenses (RLEs), which is already recognised by the court system through the work of the Insolvency Service of Ireland (ISI) be explored as a fairer way to calculate means and on a case by case basis.

The exclusion of certain types of law from the civil legal aid scheme is unfair and unjust, particularly when a person's right to access their basic needs, such as housing is in question. As our housing and homeless crisis deepens, affecting the most vulnerable and marginalised in our society, access to justice should not also be a further obstacles they need to overcome.

We acknowledge the vital work that the Legal Aid Board currently undertake, particularly for some of the most marginalised groups in society, such as providing Traveller specific and International Protection legal services . The work our members carry out in communities is appreciated by those who require assistance not least by the manner in which it is carried out. Our members visit people in their homes and as a result they develop and foster positive, empowering relationships with the whole household. This is a core value of the Society. Whilst we are not recommending that this method be carried out to provide legal justice, it is important that any future policy, practical and legal adjustments to the civil legal aid scheme has the needs and voices of low income households to the fore. The work of independent law centres have ensured that the needs of the community are being met by listening and ensuring their work reflects community needs.

We have highlighted the gaps in the current system from the perspectives of the households we support; the areas of law covered, the limited coverage of legal supports to households experiencing disadvantage and the restrictive financial eligibility criteria currently in place. We look forward to assisting in progressing our recommendations so that the civil legal aid scheme is accessible, reflects and is responsive to the needs of low income and marginalised households who require access to legal justice.