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An Comhchoiste um Dhlí agus Ceart

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille um Cheartas Coiriúil (Cúnamh Dlíthiúil), 2023

Nollaig 2023

Joint Committee on Justice

33/JC/44 Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice (Legal Aid) Bill 2023

December 2023

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CATHAOIRLEACH'S FOREWORD

In July 2023, the Minister for Justice, Ms. Helen McEntee TD, forwarded the General Scheme of the Criminal Justice (Legal Aid) Bill 2023 to the Joint Committee on Justice in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

In welcoming this legislation, the Committee acknowledges that having a robust and effective criminal legal aid system is important for several reasons, among them, ensuring that the public maintains its trust in the functioning of the courts system; that there is equal access to justice for all citizens; and to uphold the rule of law in Ireland.

In recognising that there are certain areas in relation to criminal legal aid that require amending, for example, the issue of the restoration of criminal legal aid fees to barristers, (highlighted by the withdrawal of services by barristers in October 2023), the Committee also welcomes statements by witnesses that Ireland's current legal aid system does function effectively and efficiently in other areas.

In undertaking pre-legislative scrutiny, the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. Areas identified for further examination within the General Scheme include the transfer of payment of criminal legal aid from the Department of Justice to the Legal Aid Board; amendments of section 26 of the Act of 1995 (Head 47) and the proposals to extend the provision of legal advice to victims of rape and sexual assaults, among other offences; proposed changes to expert witness and other fees (Head 29); and provisions relating to the granting of legal aid certificates and further provisions relating to their assignment [Heads 18 and 19].

The Committee has made a number of recommendations and a copy of this report and recommendations will be sent to the Minister for Justice. I would like to express my appreciation to all the witnesses for their contributions and to the Members of the Committee for their work on this subject.

Finally, I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



James Lawless TD (FF) [Cathaoirleach]
December 2023

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Colm Brophy TD
(FG)



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Mark Ward TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG) [Leaschathaoirleach]

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy Jennifer Carroll MacNeill elected as Leas-Chathaoirleach on 6 October 2020.
4. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
5. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
6. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.
7. Deputy Jennifer Carroll MacNeill was discharged, pursuant to Standing Order 34, on 21st December 2022.
8. Senator Barry Ward was elected as Leas-Chathaoirleach at the Committee meeting on 15th February 2023.
9. Deputy Colm Brophy nominated to serve on the Committee by the Twenty First Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 7th March 2023.
10. Deputy Martin Kenny discharged and Deputy Mark Ward nominated to serve in his stead by the Twenty-Third Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 26th April 2023.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee recommends that the legal aid fees for criminal barristers are restored as soon as possible, and as a matter of urgency.
2. The Committee recommends that the proposal, in Part V of the General Scheme of the Bill would be reconsidered and that the payment of criminal legal aid would not be transferred to the Legal Aid Board.
3. The Committee recommends that consideration is given to introducing a system of direct payment of fees to barristers, representing criminal legal aid cases at District Court level, which should be put on a statutory basis.
4. The Committee recommends that the legislation should state clearly that victims shall not be required to comply with a means test or make any contributions, in order to access legal aid services or legal advice in relation to sexual offences.
5. The Committee recommends that there should be a more generalised definition of harms that are covered under Head 47, to ensure that victims of related crimes are not prevented from qualifying for legal aid services.
6. The Committee recommends that the following provisions be listed as two separate elements under Head 47: that legal advice should be available regardless of whether a formal complaint is made by a victim; and that legal advice would be available to victims at any stage of the criminal justice process.
7. The Committee recommends that the right to legal advice should also apply to victims of all domestic violence-related offences and that a pool of suitably qualified and experienced people should be readily available to provide this advice.

8. The Committee recommends that Head 29 be revised so that decisions regarding the authorisation of expert witnesses is the responsibility of the Court and not of the Legal Aid Board.
9. The Committee recommends that Heads 18 and 19 should maintain current provisions under the *Criminal Justice (Legal Aid) Act, 1962*, that an accused person would be automatically entitled to one counsel in the Circuit Court and two counsel in the Central Criminal Court, with the possibility of further counsel, in either court, when required.
10. The Committee recommends that applications for criminal legal aid should not be relied on to prove and recover proceeds of crime and that the specific statutory scheme for the recovery of proceeds of crime should be used to pursue these funds.
11. The Committee recommends that further clarification be provided on how a means test would operate under the legislation.
12. The Committee recommends that a provision be made under this legislation that would permit a judge to assign legal aid to a solicitor for childcare / parental custody proceedings from the bench in an analogous manner to how criminal aid is often assigned to avoid vulnerable defendants having no representation.
13. The Committee recommends that consideration be given to establishing a pilot scheme, funded by the Legal Aid Board, assigning a group of solicitors and barristers who are specially trained in the areas of domestic and sexual violence and who would be available to provide legal aid in such proceedings.

CHAPTER 1 - Introduction

This is the report on pre-legislative scrutiny of the General Scheme of the Criminal Justice (Legal Aid) Bill 2023, which intends to modernise the legislation relating to the criminal legal aid scheme.¹

Purpose of the Bill

Among the General Scheme's objectives include transferring administrative responsibility for the Criminal Legal Aid Scheme from the Department of Justice to the Legal Aid Board; to strengthen the oversight and governance relating to the Criminal Legal Aid Scheme; and to introduce a simplified and transparent written or online application system for Criminal Legal Aid.

The General Scheme will also extend the provision of legal assistance by the Legal Aid Board for victims of rape and sexual assault, in line with recommendations from the 'Supporting a Victim's Journey' report, so that it may provide legal advice to a victim any time after an offence, even where the victim decides not to make a formal complaint.²

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 174A, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

¹ gov.ie - Means tested Criminal Legal Aid can be withdrawn or cut from applicants under reforms (www.gov.ie)

² gov.ie - Means tested Criminal Legal Aid can be withdrawn or cut from applicants under reforms (www.gov.ie)

Engagement with stakeholders

The Joint Committee on Justice invited submissions from stakeholders on the General Scheme of the Criminal Justice (Legal Aid) Bill 2023.

On 3rd October 2023, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation	Witnesses	Date of appearance
	Mr. Darren Lalor BL & Mr. William Morrin BL	3 rd October 2023
The Irish Criminal Bar Association (ICBA)	Mr. Simon Donagh BL, Chair	3 rd October 2023
The Bar of Ireland	Ms. Sara Phelan SC, Chair	3 rd October 2023
	Mr. Seán Guerin SC, chair of Criminal State Bar Committee	
Rape Crisis Network Ireland (RCNI)	Dr Clíona Saidléar, Executive Director	3 rd October 2023
	Ms. Donna Parau, Legal Director	
Safe Ireland	Ms. Caroline Counihan, Legal Support Manager	3 rd October 2023
The Probation Service	Ms. Fíona Ní Chinnéide, Director of Operations (Prisoners & Reintegration)	3 rd October 2023

Ms. Leah McCormack, Assistant
Principal Probation Officer (Head of
the Legal & Quality Assurance Unit)

Department of Justice

Mr. Kevin Condon, Principal Officer, 3rd October 2023
Civil Legislation

The primary focus of this meeting was to allow for an engagement between the Members and stakeholders to discuss areas of the General Scheme which may require amending.

This report summarises the engagement and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found [here](#).

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised.

A summary of the main areas discussed in evidence to the Committee follows.

1. General observations in relation to the Criminal Legal Aid System

During the engagement, Members and witnesses made several general observations in relation to the criminal legal aid system.

Members and witnesses emphasised the importance of an effective and robust criminal legal aid system, which is vital to ensure there is public trust in the administration of justice and the courts system in Ireland and Ireland's international rule of law obligations. The Committee was told that a fair system of legal aid is important to ensure equal access to justice, so that all citizens may be provided with adequate legal representation when on trial.

Other witnesses told the Committee that, while it would be beneficial to amend elements of the current legal aid system, it is important to note that Ireland's current criminal legal aid system functions relatively effectively. Witnesses cautioned that it would be important for any potential changes to the civil legal aid system to avoid trying to 'fix something that is not broken'.

Feeds paid to barristers under the Criminal Legal Aid Scheme

Members and witnesses also discussed the fees paid to barristers by the Director of Public Prosecutions (DPP) and under the Criminal Justice (Legal Aid) scheme. Witnesses highlighted the withdrawal of professional services by criminal barristers, that took place on 3rd October 2023, calling for the restoration of the fees paid to criminal barristers under the legal aid scheme. The Committee heard that these fees were reduced during the recession and in real terms, criminal barristers have suffered a pay cut of higher than 40% over the last 20 years and their fees remain at a lower level than they were in 2002.

Witnesses emphasised that this withdrawal of services was protesting to achieve the *restoration* of the pay for criminal barristers under this scheme, and not to increase their pay and that a review from 2018 had also recommended that these fees should be restored. It was pointed out that other professional bodies operating in the courts, including the Judiciary, members of the Courts Service and Gardaí, have all since had their pay restored from when it was reduced during the recession.

The Committee was told that the current situation in relation to fees has a significant impact on the numbers of criminal barristers available to prosecute and defend serious criminal cases, with witnesses stating that two thirds of practitioners now leave the criminal bar within six years of commencing their practice. Witnesses expressed concern at this situation, which results in a ‘brain drain’ and a loss of expertise.

The Committee heard that it can now take up to ten years for a practicing criminal barrister to be able to make an independent living from their work in this area and that many must hold other positions including lecturing, editing law reports or other work, to financially sustain themselves.

The Committee was told that in order to receive payment for their work, criminal barristers often rely on solicitors to allocate some of their fees to them, under casual arrangements made between the solicitor and barrister. Witnesses pointed out that, given that the refresher fee in the District Court for a solicitor is approximately €50.40, it is unacceptable to expect such a casual arrangement to continue in order for criminal barristers to be paid for their services.

While there is a non-statutory scheme available, where a District Court Judge may deem that the circumstances of a case requires both the assistance of a solicitor and a barrister, witnesses argued that relying on this scheme is insufficient, as judges have discretion over whether to activate this scheme or not and it is uncommon in practice for this scheme to be activated by judges.

Witnesses recommended that there should be a system in place, whereby barristers practising at District Court level could be paid directly by the State for work undertaken under the civil legal aid scheme.

Representatives from the Department of Justice also clarified that the General Scheme intends to put the scheme whereby a certificate for counsel can be awarded in the District Court on a statutory footing.

Witnesses also recommended that the various *ad hoc* non-statutory schemes for payment of legal aid, should be consolidated under one centralised scheme.

In response, the Department clarified that it is the General Scheme's intention to place these non-statutory schemes on a statutory footing.

2. Amendments of section 26 of the Act of 1995 (Head 47)

Witnesses welcomed Head 47 of the General Scheme, which would amend section 26 of the Civil Legal Aid Act 1995 and would extend the provision of legal advice to victims of rape and sexual assaults, among other offences.

In discussing this Head, witnesses raised the following points:

- **No requirement for means test**

It was recommended to the Committee that the legislation should state clearly that victims must not be required to comply with a means test or make any contributions, in order to access legal aid services or legal advice in relation to sexual offences.

- **More generalised definition**

The Committee was told that, as currently worded, Head 47 lists the specific statutory crimes for which victims would qualify for legal aid services. However, this excludes other crimes of a sexual nature that are not listed but the victims of which should qualify for legal aid services, e.g., upskirting, downblousing, or distributing, publishing and recording intimate images without consent. Witnesses welcomed the introduction of a 'harm-led' or more generalised definition of the crimes that would qualify victims for legal aid services under this Head, as it would focus on the needs of survivors and ensure there is clarity and ease of access in relation to the scheme for these victims.

Some witnesses suggested that, to prevent the definition under this Head being too broad and to prevent it from applying to every criminal offence, the threshold could be reached where serious offences against the person have occurred. Others suggested that, as a more generalised definition would apply to legal advice, rather than legal representation, then it should not be too onerous or intensive to implement.

- **Split Head 47 into two separate elements**

Witnesses welcomed provisions under this Head, that legal advice would be available to victims regardless of whether a formal complaint is ever made and provisions that legal advice would be available to victims at any stage of the criminal justice process. It was suggested that these two elements should be written in two separate parts within this Head, to make them clearer and to emphasise their importance.

- **Extension of legal advice to other groups**

Some witnesses suggested that the extension of the right to legal advice should also apply to victims of all domestic violence-related offences, who may be at increased risk of experiencing witness intimidation. The Committee heard that there should be an availability of legal professionals trained in these areas.

- **Transfer of payment of legal aid to the Legal Aid Board**

Part V (Heads 37 and 38) provide for the plan to transfer responsibility for paying criminal legal aid from the Department of Justice to the Legal Aid Board. Witnesses recounted that the current payments under the Criminal Legal Aid Scheme were well managed and efficient and it was suggested that the experience of lawyers who receive payments for legal services from the Legal Aid Board found the Board slow and frustrating. No witness could identify any efficiency that would be achieved from this transfer and no witness expressed support for the proposal. In the circumstances, many took the view that, given that system appears to be operating well as is, any change would be unnecessary.

3. Expert witness and other fees (Head 29)

Members and witnesses highlighted their concerns with Head 29 and the proposal that the Legal Aid Board, rather than the Judiciary, would be responsible for making decisions on the need for the services of expert witnesses in particular cases.

Witnesses argued that the Judiciary is better suited to make determinations on applications for expert witnesses, as judges have more experience presiding over the trial process and can make faster decisions as to whether expert witnesses are required in a particular case.

In response, representatives from the Department of Justice highlighted that this Head proposes only to move the administrative element of the expert witness scheme from the Department of Justice to the Legal Aid Board.

It was highlighted that, while the Department is always conscious of the expenditure in relation to expert witnesses, this does not impact on the decisions issued by the courts in relation to expert witnesses.

4. Grant of legal aid certificate [Head 18] and Criminal legal aid certificate: further provisions relating to assignment [Head 19]

Witnesses disagreed with the current provisions under Heads 18 and 19 of the General Scheme, which would remove the automatic entitlement to a solicitor and counsel for trial on indictment and the entitlement to solicitor and two counsel for trials in the Central Criminal Court.

Witnesses argued that the corresponding provisions under *the Criminal Justice (Legal Aid) Act, 1962* should be retained.

It was argued that the presumptive minimum entitlements to legal representation are set on the basis that cases which are dealt with in the higher courts are generally more serious in nature and therefore require additional legal representation. In addition, certain cases in the Circuit Court may require additional representation based on the substance of the case, for example, offences including drug offences, which carry maximum life sentences, would require two counsel.

Witnesses also pointed towards provisions in England and Wales, where the assistance of solicitor and counsel is provided for cases prosecuted on indictment, as it is assumed that the fact these cases are being prosecuted on indictment, indicates the gravity of these cases and the need for additional legal representation.

5. Objection to grant of legal aid (Head 20)

Members raised questions in relation to Head 20 of the General Scheme and the provisions around whether proceeds of crime may be considered in an application for legal aid, or whether an individual can apply for legal aid if they appealing a decision made against them, which found that they have profited from the proceeds of crime.

Witnesses pointed out that, when discussing legal aid and the proceeds of crime, a distinction must be made between those guilty of being in possession of the proceeds of crime and those who intend to use the proceeds of crime to pay for legal services.

The Committee was told that often, vulnerable individuals may be holding the proceeds of crime for others and that these people have the right to access legal aid and support, which can be provided under the Criminal Assets Bureau *ad hoc* legal aid scheme.

However, witnesses stressed that the use of criminal funds to pay for legal services is forbidden under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*.

Witnesses also underlined that applications for legal aid should not be used as a method through which to pursue and recover proceeds of crime. The Committee was told that there is a specific statutory scheme for the recovery of the proceeds of crime, which should be used for this purpose.

6. Regulations to provide for the Statement of Financial Circumstances (Head 14) and Power of court to grant or refuse legal aid (Head 15)

Members and witnesses discussed the means test for legal aid as set out under Head 15(6), whether disposable income would be included for this test and where the threshold for this means test would be set.

Some witnesses responded that currently, there is not set definition for the threshold at which an individual can obtain legal aid. It was pointed out that the lack of definition has not yet posed any issues and witnesses argued that it may be better to leave this threshold undefined.

Others witnesses informed the Committee that there are concerns around the use of the specified threshold measure under head 14(4) of the General Scheme. Witnesses pointed out that applying a fixed income limit as a threshold for obtaining legal aid may be unfair, as it would not consider additional factors that may apply to individual cases, such as the length or difficulty of a case, alongside factors that may apply to the individual, such as their familial commitments or caring obligations.

It was recommended that further clarification be provided around how a means test would operate under the legislation, in light of the considerations highlighted by stakeholders.

7. Additional measures to strengthen the legislation

- **Selection of a solicitor by a complainant**

Members and witnesses discussed the potential for complainants to select their own solicitor, similar to the approach used by criminal defendants.

The Committee heard that, were such a situation possible, it would be important that victims could select the services of a solicitor or barrister who would be specially trained in particular areas, e.g. domestic and sexual violence, and who would be facilitated to provide services under the legal aid scheme. One witness from the Probation Service noted the need to support all attempts to ensure the Legal Aid Scheme is more responsive to victims' needs, which is a central focus for their work within restorative justice and victim's services unit.

Witnesses said that while there are intentions to begin a short pilot programme, which would provide for such a group of expert solicitors and barristers under the legal aid scheme, these experts should be permanently available under the legal aid scheme.

- **Legal aid reform in relation to childcare proceedings**

It was pointed out that the provision of legal representation in childcare proceedings is extremely important, however, for many individuals involved in these cases, they may be experiencing difficulties within their own lives and may struggle to fulfil the procedures required to apply for legal aid.

The Committee was told that, while some judges may, in practice, request that a local solicitor would assist in such cases, there is currently no official provision for legal aid to be assigned by the Judiciary in these cases.

It was suggested that provision be made to permit a judge to assign legal aid to a local solicitor for childcare / parental custody proceedings from the bench, in the same manner that happens for other cases of criminal legal aid.

The Committee was also told that the review of the civil legal aid scheme being undertaken will also consider the provision of legal aid to vulnerable individuals under any expanded legal aid scheme.

CHAPTER 3 - Summary of Submissions

The Committee received submissions from the following Stakeholders.

- Mr. Darren Lalor BL
- The Probation Service
- The Irish Criminal Bar Association (ICBA)
- Rape Crisis Network Ireland (RCNI)
- The Bar of Ireland
- Safe Ireland

Stakeholders welcomed the objective of the General Scheme to modernise the operation of the Criminal Legal Aid Scheme.

The submissions provided commentary in relation to several heads of the General Scheme, in particular, the provisions around applications for criminal legal aid (Head 12); granting of legal aid certificates (Head 18) and further provisions relating to its assignment (Head 19); and amendment of section 26 (3A) of the Act of 1995 (Head 47).

1. Overview of the criminal legal aid system in the District Court and the role / remuneration of solicitors and barristers

- A system of direct payment of fees to barristers, similar to the system used in the higher courts, should be introduced and put on a statutory basis.
- Current criminal legal aid system is largely effective in achieving its objectives and does not cause undue delays to the operation of the criminal justice system.

In his submission, Mr. Darren Lalor BL outlined the current situation regarding defendants in the District Court that have qualified for criminal legal aid and the role and remuneration of solicitors and barristers involved in these cases.

He stated that solicitors rely on the services of barristers for assistance with cases they are progressing in the District Court, due to the volume of prosecutions in the District Court. It was pointed out that, under the current system, while these solicitors are paid their fees directly by the State for representing these clients, these payments do not account for any work that may be undertaken by barristers assisting with these cases and therefore, barristers must rely on the solicitors to provide them payment from the salary they have received under the criminal legal aid scheme.

Mr. Lalor stated there are a substantial number of cases where barristers are not receiving their payment from solicitors for their work on these cases and underlined that this is unacceptable, given the substantial work that barristers undertake to assist with these cases and as barristers must be fairly remunerated for their services.

While there is a non-statutory scheme which provides for direct claiming by barristers for work undertaken by them in the District Court, Mr. Lalor highlighted that judges have discretion over whether to activate this scheme or not. He pointed out that there is an inconsistency in how various judges choose to activate this scheme and that it is inflexible and only allows for one payment figures.

To resolve these issues, Mr. Lalor recommended that a system of direct payment of fees to barristers, similar to the system used in the higher courts, be introduced and put on a statutory basis.

He recommended that barristers should be directly paid for services and court appearances including, but not limited to, consultation(s) with defendants in custody, consultation(s) with defendants on bail, appearances at bail applications and appearances at pleas in mitigation and that use of the non-statutory scheme could be reserved for more complex cases.

To enable direct claiming by barristers, Mr. Lalor pointed out that an amended version of LA10 form that is used in the higher courts could be introduced for use in the District Court and would require only the Legal Aid Certificate Number and District Court Case Number.

The Bar of Ireland ('the Bar') also highlighted several general observations in relation to the criminal legal aid system.

Firstly, it was stated that the current criminal legal aid system is largely effective in achieving its objectives and it does not cause any undue delays to the operation of the criminal justice system.

Secondly, the Bar cautioned that, in reforming the criminal legal aid system, care must be taken to ensure that reforms introduced do not "cause more harm than good" to a system that already operates reasonably effectively and economically.

Finally, the Bar underlined the importance of recognizing how barristers are being treated differently to others involved in the administration of criminal justice, in relation to the need to restore their fees.

On this note, the Bar highlighted that on October 3rd 2023 a withdrawal of services will take place by members of the Bar, to advocate for the restoration of professional fees for barristers and to protest for the creation of a robust, independent mechanism to determine the fees that would be payable to barristers by the Director of Public Prosecutions (DPP) under the criminal legal aid scheme.

2. Amendments of section 26 of the Act of 1995 (Head 47)

- Potential to extend legal advice to all victims of serious offences be examined.
- A more generalized definition of harms covered under this Head should be applied.
- Victims should have access to legal advice through the Legal Aid Board, without the need to first engage with An Garda Síochána or the Director of Public Prosecutions (DPP).

Stakeholders welcomed Head 47 of the General Scheme, which would extend the provision of legal advice to victims of rape and sexual assaults, among other offences, and would extend this right to any time following the offence and even in situations where the victim decides not to proceed with their complaint or prosecution.

Stakeholders made several comments in relation to this Head, including the following:

- Some stakeholders questioned whether the extension of legal advice to these victims could be extended further and cover all victims of serious offences. Other stakeholders recommended that the extension of the right to legal advice should also apply to victims of all domestic violence-related offences, as these victims specifically may encounter witness intimidation and retaliation and extended access to legal aid would help support them. It was recommended that modifying or adapting the approach used to define ‘relevant offence’ in section 40 of the Domestic Violence Act 2018 for use in this legislation, could help to ensure that domestic violence-related offences are included under this Head.
- It was suggested that the proposed new definition of “sexual assault offences” contained within the *Criminal Law (Sexual Offences and Human Trafficking) Bill 2023* could be included under this Head.

- Submissions argued that this Head adopts a restrictive approach, by listing the specific statutory crimes for which victims would qualify for legal aid. This would exclude victims of related crimes from qualifying for legal aid, including victims of coercive control, harassment, and stalking, online harms including the distribution, publication and recording of intimate images without consent and other unwelcome behaviours of “upskirting” or “downblousing”. It was recommended that a more generalised definition of harms of this nature be included under Head 47, to avoid excluding such crimes or the need to amend this legislation to cover changing definitions e.g. of online harms in future.
- Submissions recommended two amendments to section 26 (3A) of Head 47. Firstly, this section should re-affirm that victims of sexual offences should not be obligated to undertake a means test or make a monetary contribution in order to access legal aid services. This is important to ensure there is equality of access to services and a standardization in the level of services provided. Secondly, this section should make its two primary objectives clearer by separating them from one another – for example, to state that legal advice will be available to victims of offences under this Head at any time after the offence occurred and then to state that this right applies regardless of whether an investigation is taking place or not.
- It was argued that Head 47 should ensure, that where a defendant is not permitted to cross-examine a victim in person, they should be allowed to use the services of a legal representative to undertake this on their behalf, regardless of whether this defendant has fulfilled all of the criteria necessary to access criminal legal aid. This is particularly important for victims of domestic violence, as the potential for them to be personally cross-examined by the defendant would cause significant distress and submissions recommended that this should not be allowed to take place simply due to a lack of compliance with administrative procedures.

- Submissions argued that Head 47 does not provide sufficient details on the extent to which a victim can access legal advice or the stages at which any legal advice will be provided. It was pointed out that the Head as currently phrased, appears to place a requirement on victims to engage with An Garda Síochána (AGS) before they can access legal advice. Stakeholders disagreed with this requirement and recommended that victims should have access to legal advice through the Legal Aid Board before the need to consult with AGS or the Director of Public Prosecutions (DPP). This is important so that victims understand the process that will be ahead of them if they proceed with their complaint and to be aware of their rights under this process, e.g. in relation to the disclosure of counselling records or other private documents as evidence. It would also ensure that victims are best prepared to make a decision on whether to proceed with a complaint or not.
- It was recommended that legal advice given should be available to victims throughout the entire legal process, including the trial.

3. Application for Criminal Legal Aid (Head 12)

- It should be possible to submit applications for legal aid during any part of the proceedings.
- Head 12 should provide further information on the how legal aid applications will be processed and the timelines within which they will be considered.

Head 12 proposes to introduce a simple written or online system for applications for criminal legal aid.

Stakeholders recommended that Head 12(3) be amended to ensure that applications for legal aid can be submitted at any stage of proceedings, rather than being limited to the start of proceedings, as those accused may not realise the need for legal representation at the outset of proceedings or due to changes in the accused's financial status during the course of proceedings, among other reasons.

Submissions recommended that Head 12 should provide more information on how legal aid applications will be processed, should provide a timeline within which legal aid applications would be considered and should include provisions around applications for legal aid for those who lack capacity.

Stakeholders also highlighted Head 12(2) and references to applications for legal aid being made in writing. Stakeholders argued that submitting an application in writing could be challenging for those with disabilities or those who are non-native speakers and suggested that Head 12(2) should make allowances for such groups.

It was also suggested that this Head should be revised to clarify that the court can grant access to legal aid, whether or not a written application for legal aid has been submitted.

4. Grant of legal aid certificate [Head 18] and Criminal legal aid certificate: further provisions relating to assignment [Head 19]

- Heads 18 and 19 should maintain current provisions that an accused person would be automatically entitled to one counsel in the Circuit Court and two counsel in the Central Criminal Court, with the possibility of further counsel, when required.

Stakeholders argued that Heads 18 and 19 of the General Scheme as currently proposed, would erode the right of those accused of serious offences to access legal representation and pointed out that the General Scheme does not provide any rationale for restricting the existing rights to legal representation for these offences.

Submissions pointed to several subheads that would impact on this right, including

- Head 19(4) and 19(5), which would impact on the right of an accused individual to the services of a solicitor and counsel and also significantly amend Section 3 of the *Criminal Justice (Legal Aid) Act, 1962*.
- Head 19(6), which could potentially erode the long-established right to two counsel in the case of a trial on indictment in the Central Criminal Court.

Stakeholders highlighted the references to 'exceptionality' mentioned under these Heads (e.g. exceptional circumstances, exceptional difficulty) when determining the right of the accused to counsel. However, they maintained that indictment cases are often complex and warrant the right of the accused to both a solicitor and counsel, in order to ensure the right to a fair trial was achieved.

Stakeholders argued that this right should also provide for the right to a solicitor and two counsel for cases of trial on indictment in the Central Criminal Court and the Special Criminal Court and that other circumstances, including the complexity of cases, should also allow for the right to two counsel.

Submissions recommended that Head 18(2) be amended to correspond with current provisions and to ensure that an accused person would be entitled to one counsel in

the Circuit Court and two counsel in the Central Criminal Court, with the possibility of further counsel also, when required.

5. Objection to grant of legal aid [Head 20]

- Head 20 should provide that only legitimate income can be used when assessing means for legal aid applications, to forbid use of illicit or criminal funds.
- A separate legal aid fund should be available to cover the costs of legal aid applications, where the entitlement to legal aid is disputed.

Stakeholders pointed out that under Head 20, which addresses objections to the provision of legal aid, it should be stated that only legitimate income may be considered when assessing means for legal aid applications, to ensure that the proceeds of crime or other illicit funds could not be considered.

It was pointed out that anti-money laundering responsibilities of legal representatives already prevent use of these funds for securing legal representation and stakeholders cautioned that if objections were raised regarding the use of these criminal funds for legal aid, this could therefore delay or obstruct the course of the prosecution. It was recommended that an approach be developed to manage and address such situations.

In situations where potential use of criminal funds is identified, it was recommended that, where possible, those responsible should try and make use of the relevant statutory scheme to freeze and recover these funds. Submissions stated that applications for criminal legal aid should not be relied on to prove and recover proceeds of crime and that separate means should be used to do this.

Submissions also recommended that there should be a separate legal aid fund provided to cover the costs of legal aid applications, in situations where the entitlement to legal aid is disputed.

6. Additional Points

In addition to the above key issues, some stakeholders indicated specific interest in certain areas, as follows:

- **Regulations (Head 7)**

Submissions highlighted the phrase "the circumstances in which fees may or may not be paid" and argued that it appears to suggest that the Minister or Board may be able to limit the entitlement of a solicitor or barrister to payment for services they provided.

Submissions stressed that where a solicitor or barrister has incurred fees as part of their preparation or execution of an individual's defence, they should always be entitled to payment and this Head should not suggest otherwise.

- **Expert witness and other fees (Head 29)**

Submissions recommended this Head should be amended, so that decisions regarding the authorisation of expert witness expenses is the responsibility of the court and not of the Board, as a trial judge has significant experience presiding over trials and would make these decisions more speedily and efficiently than the Board.

Submissions also requested further information on the rationale behind this Head and on the proposed function of the Criminal Legal Aid (Expert Witnesses) Committee, with some suggesting that it is not the responsibility of the Legal Aid Board to decide whether an expert or witness is necessary for the preparation of the defence.

- **Court to inform person of legal aid (Head 11)**

The Bar of Ireland ('the Bar') highlighted that Head 11(2), as currently phrased, may obligate a defendant to elect trial or plead guilty without the assistance of legal counsel.

To ensure the protection of an accused individual that has been granted legal representation, it was recommended that the legislation stipulate that proceedings should not progress until the accused has access to legal representation.

The Bar also questioned what plans or administrative resourcing will be in place to help support the new process for reviewing legal aid applications, as this may result in significant delays to proceedings if applications are not processed swiftly. In addition, where delays to proceedings did occur, the Bar stated it Head 11(2) would have to be extended to those who had not received a final decision on their application for a legal aid certificate.

- **Regulations to provide for the Statement of Financial Circumstances (Head 14) & Power of court to grant or refuse legal aid (Head 15)**

The Bar argued that the process of applying for legal aid under Heads 12-15 is more complicated than the current system and may result in significant delays. It was recommended that there should be clear timelines within which decisions made by the Legal Aid Board should be issued.

It was also highlighted that the stipulation under Head 15(10), that courts would provide to applicants, in writing, the grounds on which their legal aid application was refused, could also contribute to delays in proceedings.

The Bar also pointed to the 'specific threshold' measure under Head 14(4), relating to a 'specified amount of an applicant's disposable income and a specified amount of an applicant's disposable capital' and asked the following questions in relation to this threshold:

- The objective of the 'specific threshold';
- The nature and application of the threshold;
- Whether the threshold will be a standard amount; and
- Whether the complexity of the case at hand will be taken into account when assessing thresholds.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)³; and

³ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁴

⁴ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders:

- Mr. Darren Lalor BL
- The Probation Service
- The Irish Criminal Bar Association (ICBA)
- Rape Crisis Network Ireland (RCNI)
- The Bar of Ireland
- Safe Ireland

[Submissions are available in the online version of the Committee's Report, which will be accessible at <https://www.oireachtas.ie/en/committees/33/justice/>].

SUBMISSIONS AS OF 23 AUGUST 2023
ON THE DRAFT GENERAL SCHEME OF CRIMINAL JUSTICE
(LEGAL AID) BILL 2023

DARREN LALOR BL

INTRODUCTION

I have been invited to make these submissions on the above draft given my work and experience as a barrister working in the area of criminal law since 2015 when I was called to the Bar of Ireland. My principal area of work is in Dublin conducting the defences of accused persons prosecuted in the District Court. The vast majority of defendants in the District Court have qualified for certificates providing for direct payment to their solicitors of fees for their defence payable by the Department of Justice in accordance with scales of fees set by the department.

SUBMISSIONS

1. Prosecutions in the District Court concern offences many of which carry maximum sentences of imprisonment of twelve months and in certain circumstances cumulatively up to two years. These are serious matters for accused persons, their families, and society (including victims of crime).

WHAT SOLICITORS DO

2. The volume of prosecutions in the District Court has grown hugely. The Department of Justice maintains a list of those solicitors willing to act in cases where fees are paid by the State on behalf of accused persons who cannot afford to pay fees from their own resources. These solicitors must provide incidental services such as attending garda stations for interviews of suspects, visiting prisoners in custody awaiting trial or appeal, contacting family members to arrange bail, and arranging medical and or psychiatric reports on their clients. They must also maintain staff and run functional offices from which they must brief and attend counsel in the higher courts during trials.
3. Unsurprisingly, solicitors invariably rely on the services of barristers in the District Court while they themselves are committed to providing the aforesaid services in any number of different courts and other locations. The number of District Court prosecutions and court venues have made it impossible for solicitors (particularly sole practitioners) to cover all their cases without the assistance of barristers.

THE CHOSEN ONES - SOLICITORS

4. Solicitors are generally chosen from the panel by each defendant, but others are assigned by the presiding judge where a defendant has no legal representation or has no knowledge of the criminal justice system. Hard working solicitors and barristers earn their reputations as reliable legal representatives. They do not want to lose them.

THEIR CHOSEN ONES - BARRISTERS

5. Reliable barristers are frequently contacted at short notice by solicitors who will themselves have had little notice of a court listing. They rely on the experience and training of barristers to represent their clients and are seldom disappointed by the services provided. Criminal prosecutions in the District Court have grown in their complexity, particularly with the arrival of CCTV footage and mobile phone data and records, all requiring careful attention and examination.

WHAT BARRISTERS DO

6. Barristers when so briefed must themselves meet the defendant, take instructions, meet, and consult with prosecuting gardai, meet family members of the defendant and perhaps defence witnesses. When all of this is done the barristers will be in a position to advise defendants of the courses open to them and the advantages and benefits of a plea of guilty or a trial hearing. It is then a matter for the defendant to choose and the case then takes its course to a trial or to a guilty plea followed by the presentation of mitigation.
7. The scales of fees for work done in the preparation and conduct of the defence of accused persons make no provision whatsoever for the payment of fees to barristers. Such fees as are paid come from the fees paid to the instructing solicitor under the criminal legal aid scheme.

ANOTHER REASON FOR DIRECT PAYMENT

8. Regrettably, a number of solicitors fail to pass on the payment to barristers in a substantial number of cases and bring shame on their profession and embarrassment to their honourable colleagues.

A STICKING PLASTER – NON-STATUTORY SCHEME¹ – AN EXCEPTION

9. Limited direct claiming by barristers for their work done in certain District Court cases is already up and running. The Non-Statutory Scheme may be activated by a District Court Judge who certifies that the gravity of the charge and complexity of the case, as well as any other exceptional circumstances make it essential in the interest of justice that he or she should have the assistance of counsel in the preparation and conduct of her or his defence.
10. This certification by a Judge in the District Court is discretionary and to that extent unsatisfactory. Barristers with their experience and training conducting the defence of a defendant, particularly in a trial hearing, should have their fees paid directly to them by the State in every such case. Judges currently operating the non-statutory scheme display an inconsistent methodology in its application. Some judges are notorious reluctant to certify at all. The scheme is rigid and provides one payment figure only.
11. This scheme could be kept in reserve for the most complex of cases requiring exceptional preparation and legal complexities. It is not of its time and should be replaced by direct payments to barristers of fees for the following services and court appearances when provided and claimed for:

Barristers' Services for Case Preparation in the District Court:

- Consultation(s) with defendants in custody
- Consultation(s) with defendants on bail
- Disclosure² review
- Advice on proofs³

¹ www.gov.ie/en/service/c094f-barrister-fee-claim-district-court-or-circuit-court-appeal/

² CCTV and mobile phone footage, and other digital materials disclosed to the defence by the prosecution.

³ A list compiled by the defence barrister of documents and witnesses required for the trial of the defendant. This list is given to the instructing solicitor to ensure the documents and witnesses are in court at the time of trial and / or sentence hearing. This procedure ensures trials are completed without waste of court time thereby avoiding unnecessary adjournments.

Provision should be made for direct claiming by barristers for their fees for these services. Currently in the higher courts a simple LA10 Form⁴ is submitted to the Department of Justice by barristers without any third-party involvement. An amended form for the District Court would cite the Legal Aid Certificate Number and District Court Case Number.

District Court Appearances by Barristers:

- Bail Applications
- Remands
- Pleas in mitigation
- Full trial hearings

WHAT IS NEEDED IN THE CRIMINAL JUSTICE (LEGAL AID) BILL 2023

12. Direct claiming by barristers for court appearances in the District Court:

Claims for these payments should be made directly by barristers as is done in the higher courts where registrars each court day provide claim forms to be completed by barristers. These forms are then certified by registrars who confirm the attendance of the barrister. Forms are then transmitted by registrars to the Department of Justice for processing of payment directly to barristers.

13. Direct payment to barristers by the Department of Justice:

Direct payments should be put on a statutory basis similar to that in the higher courts where barristers' fees are electronically transmitted directly to barristers.

CONCLUSION

The Draft Bill needs to incorporate the items set out in paragraph 11, 12 & 13 of these submissions. In an age of advanced Information Technology and claiming and payment software capabilities available to the State, the above proposals present no difficulty or challenge.

Darren Lalor BL

23 August 2023

⁴www.gov.ie/pdf/?file=https://assets.gov.ie/45704/0ce0974c14d8434d95f7a92102be60f6.pdf#page=null



Submission to the Oireachtas Joint Committee on Justice on the General Scheme of the Criminal Justice (Legal Aid) Bill 2023.

30th August 2023

Dear Deputy Lawless,

I wish to thank you and your colleagues on the Oireachtas Joint Committee on Justice for the invitation on the 3rd August 2023 to make a written submission on behalf of the Probation Service in relation to the General Scheme of the Criminal Justice (Legal Aid) Bill 2023.

As the Committee will be aware, the Probation Service is an executive agency of the Department of Justice with the primary purpose of assessment and management of offenders in the community and is committed to working to reduce offending, create safer communities and fewer victims through offender rehabilitation.

The Probation Service is a national service, delivered locally, providing services to courts, custodial institutions and communities across the country. On any one day, the Service engages with more than 10,000 people in the community, including 2,000 persons serving post release supervision orders and 500 children. We also work with approximately 2,000 people in custody¹.

The Service welcomes the publication of the Criminal Justice (Legal Aid) Bill 2023 which seeks to modernise the operation of the Criminal Legal Aid Scheme and will introduce a number of important reforms that will safeguard the operation of the Scheme into the future. Below I have outlined some key observations in respect of the Bill as they relate to the operations of the Probation Service and our clients.

Current Legal Aid Provision in Ireland

1. The Supreme Court has held that there is a need to put a person charged with a criminal offence on equal terms with the prosecution. Without legal representation,

¹ Probation Service, [July 2023 Point in Time Statistics](#)



an ordinary person without any experience of criminal law and court proceedings would be at a serious disadvantage against the legal resources of the prosecution.

2. The General Scheme of the Bill does not directly impact the Probation Service, except insofar as persons are entitled to legal aid when they are prosecuted by the Service for non-compliance, or are entitled to apply for legal aid as a victim in certain matters or as a parent, guardian, or other responsible adult. While acknowledging this, the Probation Service can play a central role in criminal justice proceedings, post-conviction and is uniquely placed to understand the socio-economic context of those appearing before the courts, in relation to criminal proceedings, both adults and children, as well as, having an insight and understanding of victim impact issues and concerns.

Observations - General Scheme of the Criminal Justice (Legal Aid) Bill 2023

The new provisions in the attending to the following matters are welcomed by the Probation Service:

Governance, Oversight and Transparency:

3. The General Scheme of the Criminal Justice (Legal Aid) Bill 2023 proposes to transfer administrative responsibility for the criminal legal aid scheme from the Department of Justice to the Legal Aid Board, which already administers legal aid in civil cases, such as family law. We understand this will provide higher levels of efficiency and effectiveness in the delivery of the Scheme which will enhance service-user experience and strengthen cohesion across the entire justice system.
4. The General Scheme of the Bill provides for a new Oversight Committee (Part 6 Head 39) involving stakeholders to provide necessary oversight and ensure effective cross-agency collaboration. It is recognised that recipients of legal aid are proportionately more likely to experience complex needs and may require additional support due to higher instances of socio-economic disadvantage, disability or social exclusion. We therefore welcome all efforts to strengthen oversight and governance

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structures which will ensure the highest quality of service is received by all recipients.

5. The General Scheme of the Bill also proposes in Head 12 to introduce a simple and transparent written or online application system for Criminal Legal Aid, supported by a Statement of Financial Circumstances (Head 13). We welcome this user-centred approach and support all efforts to increase access to legal representation, where appropriate.

Extension of the Scheme to Victims:

6. The General Scheme of the Bill will extend free legal advice to victims (Part X Advice to Victims of Sexual Offences. Head 47). Legal advice will be available to a victim at any time after an offence, even when it is decided not to make a complaint or proceed with a prosecution, for offences including rape, sexual assault, and sexual abuse of minors and people with mental illness or intellectual disability. These changes are in line with commitments made by the Minister under Supporting a Victim's Journey (Supporting Victims of Crime) and will complement the capacity framework being established by the Assisted Decision Making (Capacity) Act 2015.
7. The Probation Service supports all attempts to ensure that the Legal Aid Scheme is more responsive to victims' needs. The revised Bill will ensure victims of some of the most serious and traumatic crimes are better supported at every step in through the criminal justice system. This will be of relevance to the work of the Probation Service's dedicated *Restorative Justice and Victim Services Unit* which provides information and support to victims of crime.

Extension of the Scheme to Parents, Guardians or Other Responsible Adults:

8. Finally, the Service notes that the General Scheme of the Bill allows for legal advice to be granted to a parent, guardian, or other responsible adult in certain cases (Head 47 (3B)), which is particularly relevant to proceedings under the Children Act 2001. We welcome the alignment with the United Nations Principles and Guidelines on

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Access to Legal Aid in Criminal Justice System (Section 4, 11 and Principle 7) and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

9. The Probation Service's Young Person Probation (YPP) team works to meet the statutory obligations of the [Children Act 2001](#). It works with circa 500 children and young people and their families on an annual basis, using a child-centred approach, focusing on the ability of the child to change and to make better life choices. These interventions are an important opportunity for Courts to explore alternative measures in sanctioning offending and addressing the underlying causes, including anti-social behaviour. We fully support the extension of the Legal Aid Scheme to parents, guardians or other responsible adults and will endeavour to promote awareness of the Scheme when working with children and their families through the course of our work.

Concluding Remarks

10. The Probation Service welcomes the publication of the new General Scheme of the Criminal Justice (Legal Aid) Bill 2023. Access to legal representation is recognised as a core component in any modern, fair and equal justice system and we support the Minister's objective to maximise efficiency, effectiveness and accountability in the provision of Legal Aid in Ireland.
11. If you have any queries on the comments made on behalf of the Probation Service, please do not hesitate to contact: Cillian Smith, Principal Officer for Corporate Affairs & Communications CISmith@probation.ie (+353 (0)1 817 6534).

Mark Wilson,
Director, Probation Service

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An Leabharlann Dlí

Committee Secretariat,
Committee on Justice,
Houses of the Oireachtas Service.
Via email to justice@oireachtas.ie.

CJLAB_03

30 August 2023

**Re: General Scheme of the Criminal Justice (Legal Aid) Bill 2023
Submission on behalf of the Irish Criminal Bar Association**

Dear Mr Guidan,

I write on behalf of the Irish Criminal Bar Association (ICBA) in response to your letter of 03 August 2023 inviting submissions on the General Scheme of the Legal Aid (Criminal Aid) Bill 2023. As our submission is brief, I set it out herein.

Head 7 - Regulations

ICBA welcomes the reference to travelling expenses for "*solicitors and / or barristers*". However, ICBA does have concern over the reference to "*the circumstances in which fees may or may not be paid*". The reference to fees not being paid would appear to permit the Minister and/or the Board to limit the entitlement to payment notwithstanding that the required work has already been performed. Where a solicitor or barrister has properly incurred fees then they should be entitled to payment. It should not be open to the Minister or the Board to enact regulations to say otherwise. The reference to "*discovery*" should be replaced with a reference to "*disclosure*" (discovery applies to civil proceedings; disclosure to criminal).

Head 12 - Application for Criminal Legal Aid

Head 12(3) should be amended to make clear that an application for legal aid may be made at any stage of the proceedings, not just at the commencement of proceedings. There are legitimate reasons why a defendant may not apply for legal aid at the commencement of proceedings. For example, an accused person may not initially



appreciate the need for legal representation, additional evidence/disclosure may be served, or an accused person's financial circumstances could change during the proceedings so that they can no longer afford private legal representation. It should be made explicit that an application for legal aid can be made at any time.

Head 12(2) refers to applications being made "*in writing*". Such a requirement is likely to cause confusion and delay. It should be made clear that the Court can grant legal aid irrespective of whether a written application has been made.

Heads 18 & 19 - Grant of Legal Aid Certificate & Further Provisions Relating to Assignment

ICBA has a significant concern that Heads 18 and 19 could serve to significantly reduce an accused person's right to solicitor *and* counsel in respect of serious offences. Head 18(2) should be amended to reflect the current position that an accused person is automatically entitled to one counsel in the Circuit Court and two counsel in the Central Criminal Court, with the possibility of further counsel when required. Heads 18 & 19, as currently drafted, serve to dangerously erode an accused person's right to legal representation.

Head 20 - Objection to the Grant of Legal Aid

While it is proper that objection can be taken to granting legal aid where an accused is in a position to afford legal representation, this Head warrants further consideration in two respects. First, it should be expressly stated that in assessing the means of an accused only legitimate income may be considered. It would be entirely wrong for a Court to take into account, for example, the proceeds of crime in assessing the means by which legal representation could be paid for. Second, if there is a dispute over the entitlement to legal aid, then a separate, and limited, legal aid assignment should be available to cover the costs of the legal aid application.

Head 29 - Expert Witness and Other Fees

Head 29 leaves the decision of authorising expert witness expenses to the Board with a right of appeal to the Criminal Legal Aid (Expert witnesses) Appeal Committee.



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ICBA submits that it should be the Court of trial, not the Board, which decides such matters. In order for the Board to make a decision, it will need to familiarise itself with the proceedings and this will only serve to delay the preparation of the case. The Court itself is far better placed to decide the application. A trial Judge, with all their experience in presiding over trials, is best placed to decide when such authorisation is required, and to do so more efficiently.

Yours sincerely,

SIMON DONAGH BL

Chair of the Irish Criminal Bar Association (ICBA).



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RCNI Commentary on the
General Scheme of the
Criminal Justice (Legal Aid) Bill
to the
Joint Committee on Justice
As initiated
August 2023

Introduction - Rape Crisis Network Ireland (RCNI)

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling, and other support services to survivors of sexual violence in Ireland.

Comment on submission - Criminal Justice (Legal Aid) Bill

RCNI welcomes the extension of legal aid available to victims¹ of sexual offences. Due to our area of focus in research and advocacy related to sexual violence, this submission will be directed at Head 47 which is the amendment of section 26 (3A) of the Act of 1995. We will further address the wider approach which forms the basis of our work, that being a trauma-informed response. For many victims, their experience of the criminal justice process is one characterised as a re-traumatisation. Part of this is due to their isolation and inability to obtain the necessary assistance in navigating such a complex and opaque process. The provision of legal advice for victims of sexual crimes is a crucial step in supporting survivors and facilitating better engagement of victims with the criminal justice system which directly affects rates of attrition. While not considered an equal participant in the legal process, the central role of the victim means they require supports and protections of their rights. The intimate nature of these crimes combined with the associated rape myths and victim-blaming that exists makes many victims reluctant to make and sustain a criminal complaint. However, having access to independent legal advice from an early stage and continuing throughout the process empowers victims to engage with and withstand the criminal justice process. While RCNI and rape crisis centres around the country provide legal support to victims on an ad hoc basis, what is required is a comprehensive and far-reaching approach which more adequately caters

¹ When referring to victims in this submission, the reference includes the parent, guardian or adults relative of child victims (Head 47 3B (a)) and to the decision-making assistant or co-decision maker of a victim who lacks capacity (Head 47 3B (b)).

to the needs of victims of sexual violence. This submission will address three points which need to be highlighted. The first is the criteria applied for victims to qualify for legal aid, namely, the specific crimes stated in the Head that the Bill will apply to; secondly, the barrier facing most victims is resources, thus we are advocating that victims are not subject to means testing; and lastly, clarity on when and how victims will be able to access the legal aid services proposed.

Crime qualification categories

The Head as proposed is restrictive in its approach to which specified crimes will qualify a victim for legal aid services. The Third National Strategy on Domestic, Sexual & Gender-Based Violence seeks to ‘embed a victim/survivor centred approach’ which places victims needs at the forefront of its policy and responses.² In its framework for action the pillar of Prosecution undertakes to enhance access to the legal system for individuals experiencing DSGBV. This category is not limited to only certain individuals but all who have experienced DSGBV. This Head provides a list of crimes which qualify a victim for legal advice rather than a general all-encompassing definition which includes all crimes where the victim has been subjected to DSGBV. This listing of specific statutory crimes leaves victims, whose experience does not fall into a narrow prescriptive category, outside of the support of the legal aid system. Examples include instances of coercive control, harassment, and stalking, as well as online harms including the distributing, publishing and recording of intimate images without consent. Online harms pose a particular challenge in that the definitions, guidelines and resultant legislation require constant amendment to keep up with the ever-changing landscape. Amendments to legislation can create confusion, especially where Acts have not yet been consolidated and updated. Choosing language carefully in the drafting process can make such amendments unnecessary.

RCNI recommendation: It is our submission that rather than attempting to compile an extensive and exhaustive list of every possible crime which should be included, a more generalised definition covering all harms of this nature will mitigate against the possibility of

² <https://www.gov.ie/pdf/?file=https://assets.gov.ie/228480/67b6e3af-a0d2-4d70-889f-0b1e2001995b.pdf#page=null>

some crimes being excluded and further avoid the need for constant amendments to the legislation.

Means

A further barrier is means; legal services must be accessible to all victims. The Legal Aid Board currently provides free legal advice to victims of rape and sexual assault cases but only under limited circumstances.³ The practice is that these victims are not means tested nor are they required to make a contribution. Having the legal services provided by the Legal Aid Board is not only about assisting with the costs but also contributes to a standardisation of the level of expertise and services offered to victims. Due to various amendments to the legislation the legal provision for this right that victims enjoy in practice have not been clearly set out.

RCNI recommendation: We submit therefore that this Bill must clearly and unequivocally confirm that victims of sexual offences will not be required to comply with a means test nor will they be required to make contributions to access legal aid services for sexual offences.

Clarity on the ‘How’ and ‘When’

Victims are severely limited in the process of how and when they can access legal aid. Currently, two particular areas of concern are the access to legal advice before a decision to make a complaint and continued legal support throughout the criminal justice process, particularly during the trial. The introduction of this Bill is a welcome first step in the improvement of these services, however there is a lack of clarity in the wording of Head 47 as to the timing and extent of how a victim may access legal advice and at what stages that legal advice will be provided. We submit that the following requires discussion and amendment:

³ www.legalaidboard.ie/en/our-services/criminal-legal-aid/victims-of-crime/

‘Legal advice under this subsection may be provided to a victim of the following offences at any time before, subsequent to, or whether or not a complaint or decision to prosecute in the matter is made’

Our understanding of this clause is that the victim may access legal advice at any time preceding their making a complaint and any time subsequent to their engagement with the Gardai. Furthermore, should a complaint be made, they may access legal advice before and subsequent to a decision on whether to prosecute being made. The clause itself lacks clarity how and when a victim may access this legal advice. On the surface it places a requirement on the victim to at the very least come forward and engage with the Gardai before being able to access legal advice. For many victims, the decision to make a complaint is influenced not only by their prior experiences with the Gardai but also their perceptions as to what will be asked of them in the justice process. This creates a potential barrier for many victims and could discourage them from reporting in the first place. While the Gardai are required and do provide victims with information on the criminal justice process, measures and the victim’s rights, it is not their role to provide legal advice to victims on aspects of the case that may be covered before and in the initial interview. Victims often require legal advice before they approach the Gardai to better understand the process and their rights on matters such as disclosure of counselling records and other privacy considerations on evidence gathering.

RCNI recommendation: It is our submission that victims should be given the opportunity to access this legal advice directly through the Legal Aid Board or a suitable facilitator before any engagement with the Gardai and DPP is considered, if they so choose.

As stated above, obtaining legal advice, and gaining a better understanding of the process beforehand empowers victims to make informed decisions as to whether they wish to make a complaint and whether they are prepared to sustain the complaint going forward. It is important that those victims who do engage directly with the Gardai should be provided with legal advice before making a complaint or even being interviewed. This legal advice should of course extend to when a decision on whether or not to prosecute has been made. Victims need advice on what review and alternative procedures are available to them. The Head further lacks clarity on the duration of when the legal advice would be accessible. The

language as it stands, refers to 'subsequent to' but does not provide specifics on when that period ends. Does this 'subsequent' period end at a decision whether or not to prosecute or does it continue on throughout the legal process including trial? RCNI has consistently called for legal advice to be available to victims, free of charge, regardless of the sexual offences involved, from the moment the offence takes place until conclusion of the criminal proceedings whether that be a decision not to prosecute or a continuation to trial and we reiterate that call now.

RCNI recommendation: We submit that the legal advice referred to should be available to victims throughout the legal process including the trial.

Summary:

- Rather than attempting to compile an extensive and exhaustive list of every possible crime which should be included, a more generalised definition covering all harms of this nature will mitigate against the possibility of some crimes being excluded and further avoid the need for constant amendments to the legislation.
- This Bill must clearly and unequivocally confirm that victims of sexual offences will not be required to comply with a means test nor will they be required to make contributions to access legal aid services for sexual offences.
- Victims should be given the opportunity to access this legal advice directly through the Legal Aid Board or a suitable facilitator before any engagement with the Gardai and DPP is considered.

We submit that the legal advice referred to should be available to victims throughout the legal process including the trial. RCNI are at your disposal should you wish to engage with us further on any of these points.

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August 2023

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Submission to the Joint Committee on Justice on the

General Scheme of the Criminal Justice (Legal Aid) Bill 2023

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Introduction

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 2,159 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 advice 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.

Scope of submission

The Joint Committee on Justice has invited the Council to make a written submission on the General Scheme of the Criminal Justice (Legal Aid) Bill (the “General Scheme”). The Council welcomes this opportunity and sets out its observations on a head by head basis.

Before commenting on the General Scheme, the Council would like to highlight from the outset, two general observations of importance:

1. The right to legal aid is an aspect of the fundamental rights of the citizen, necessary to ensure the protection and vindication of the right to a fair trial and of those rights, including the right to one’s good name and the right to liberty, which are always at stake in the criminal trial process. The current criminal legal aid system, while always capable of improvement, is both effective and economical in achieving these aims.
2. There is an important public interest in the efficient and timely operation of the criminal justice system. Delay of any sort is contrary to that public interest and invidious to the interests of justice and to the protection of the personal rights of all parties involved (whether victims, accused or witnesses). The operation of the current criminal legal aid system does not cause any significant delay in the criminal justice system.

As it currently stands, the criminal legal aid system is effective, economical and consistent with the efficient operation of the criminal justice system in a manner in line with interests of all parties involved. New legislation on the subject of criminal legal aid must take caution to avoid amending a system that is not broken which may lead to doing more harm than good in the process.

The Council made a submission to the Department of Justice in November 2022 that set out some preliminary observations in respect of a previous Draft General Scheme of the Criminal

Justice (Legal Aid) Bill, following a meeting with the Department held on 21st October 2022. Many of the Council's preliminary observations and recommendations persist, and it is clear from the current General Scheme there are areas of importance within the Scheme where legislative proposals remain to be finalised.

Finally, it is important to note barristers are being treated differently to other actors involved in the administration of criminal justice in relation to fee restoration. Since July 2018, the Council has been asking the Government to implement the outcome of a detailed review process led by the Office of the Director of Public Prosecutions in conjunction with the Department of Justice and sanctioned by the Department of Public Expenditure & Reform.

Unfortunately, despite repeated attempts by the Council, along with the support of the Minister for Justice and the Office of the DPP, over several years in our call for the restoration of professional fees, there has been no meaningful engagement on the issue and the Council can only conclude that the Government has no intention of responding to our request to be treated fairly and reasonably, consistent with the approach taken in relation to other groups of workers and independent contractors where the State is the paymaster. The Council has been left with no option but to recommend to our members an initial one-day withdrawal of their professional services in pursuit of a meaningful, independent mechanism to determine the fees payable to barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) scheme. This withdrawal of services will occur on Tuesday, 3rd October 2023. The Council greatly regrets having to pursue this course of action and is acutely conscious that the disruption that will inevitably occur will impact on victims of crime, those accused of criminal offences, juries and other stakeholders involved in the administration of criminal justice. The flexibility delivered by barristers, and their cooperation with reform of the criminal justice system over the past decade, as acknowledged and accepted by both the Department of Justice and the Office of the DPP, have enabled a range of improvements and efficiencies to be implemented for the benefit of all stakeholders. The Bar has not been found wanting in that respect. It is now clear, regrettably, that the goodwill of our members is being taken for granted.

Observations on Part 1 of the General Scheme

Head 4: Advances to the Board

1. In regard to the transfer of responsibility of criminal legal aid to the Legal Aid Board, it would be beneficial to the Council to better understand its intended consequences and what measures will be put in place to ensure sufficiency of the criminal legal aid budget. As referenced in the Council's preliminary observations on the General Scheme [\[insert link\]](#), it would be of assistance to receive further information in respect of how standards of efficiency and service to users will be maintained, especially during the transitional period and upon full implementation.
2. In the event where the Legal Aid Board oversees both criminal and civil legal aid, the Council seeks confirmation that the legislation will protect ring fenced funding specifically for the criminal legal aid budget.
3. The Council recommends Head 4 or Head 5 to explicitly outline the need for parity of representation between the prosecution and the defence.

Head 6: Repeal

4. As mentioned in our preliminary observations, the Council would request further information in respect to any proposal to consolidate various provisions for different types of legal aid certificates.

Head 7: Regulations

5. As currently written, Head 7 permits the Minister to *"make regulations for carrying this Act into effect including in relation to any matter referred to in this Act as prescribed or to be specified"*. Clarification as to the necessity for particularised powers to create regulations and what regulations the Minister intends to implement would be of assistance to the Council. Specifically, further information on the justification for measures in Head 7(1)(iii) to (xi) would be beneficial.
6. The Council expresses a significant concern in Head 7 referencing the following text: *"The circumstances in which fees may or may not be paid, the terms and conditions under which different fees and expenses may be paid and how the rates of fees are structured in specified circumstances"*. This could be interpreted as granting authority to restrict compensation for legitimate expenses accrued during preparation and

execution of an accused person's defence. Further clarification as to the intention of this measure would be of assistance.

Head 9: Transitional

7. As mentioned in the Council's preliminary observations in November 2022, it is suggested that comprehensive provision for transitional measures should include provision for the recent administrative mechanism for payment of fees for review of significant disclosure.

Observations on Part 2 of the General Scheme

Head 10: Persons subject to proceedings ("specified person")

8. Regarding Head 10, the Council welcomes the inclusion of measure 10(vii): "*A person the subject of another proceeding of a criminal nature*", broadening the list of specified persons. The Council would appreciate additional information on whether this amendment permits the inclusion of persons subject to quasi-criminal and ancillary proceedings. This would reflect the European Convention jurisprudence and the application of Article 6 rights. Article 6 protection extends more widely than matters traditionally considered as involving the exercise of strictly criminal jurisdiction in the Irish legal system.
9. The Council seeks further information as to the rationale for the current provision of categories of a "specified person" within Head 10. Further clarification of the meaning of "*relevant proceedings*" mentioned in 10(vi) would also be beneficial.
10. The Council would also suggest Head 10 specifies legal aid for persons charged before the Special Criminal Court in the event they are not persons who have "returned for trial" as mentioned in measure 10(iii).

Head 11: Court to inform of legal aid

11. In respect of Head 11(2) which states "*a trial*" of a matter should not continue in the absence of legal representation where a certificate has been accepted, the Council has significant concerns. A literal interpretation of this provision has the potential to legally compel a defendant to elect trial or plead guilty without the advantage of legal counsel. It is submitted that greater protection should be afforded to an accused person who has been granted legal representation to include a principle that

proceedings should not progress in any substantive or meaningful way until the accused has legal representation.

12. In addition, the Council has concerns that a new process for reviewing legal aid applications in the General Scheme could possibly result in setbacks and inefficiencies in advancing proceedings if legal aid applications are not processed promptly. A new procedure has the potential to cause significant delays and may be counterproductive for the General Scheme, therefore more information regarding administrative plans to support the General Scheme would be of assistance.
13. It should also be noted that if delays do occur from the result of new procedures set out by the General Scheme, it would be mandatory that Head 11(2) is extended to persons whose application for a legal aid certificate has not yet received a final decision.
14. The Council would suggest that further consideration is given to Head 12 in that it does not explicitly provide for circumstances where a defendant decides to discharge legal counsel near the trial date.

Head 12: Application for Criminal Legal Aid

15. The Council welcomes changes to the provision within Head 12(3) which has been amended to provide clarity in respect of the requirement for a specified person (or a person nominated on his or her behalf) to make an application for Criminal Legal Aid *“at the commencement of the proceedings or at another time in the proceedings having regard to the interests of justice”*.
16. The Council continues to encourage the inclusion of a provision for an application for Criminal Legal Aid in respect of a person who lacks capacity (for example by a mental disorder).
17. Consistent with the observations made in Head 11, the Council would benefit from additional information as to how legal aid applications are to be processed and requests a timeframe for consideration of such applications.
18. As stated by the Council in preliminary observations *[insert link]* made regarding the General Scheme in 2022:

“[The Council] is mindful that specified persons who have not received station bail, for example, will be brought to Court in custody in respect of their first appearance.

Head 12(2) requires that the specified person makes an application for legal aid in writing or in an online / electronic form. The practicality of such a person being able to make an application in writing or in online / electronic form requires further consideration.”

19. The above observation remains relevant for the purpose of this submission and the Council would welcome additional review of Head 12(2). In addition, the necessity for a specified person to submit an application in writing may also prove to be difficult for persons with a disability or in the event of an individual is a non-native speaker or for those with literacy problems. The Council suggests the inclusion of a provision for these circumstances.

Head 14 and 15: Regulations to provide for Statement of Financial Circumstances and power of court to grant or refuse legal aid

20. In Heads 14 and 15, significant issues arise and require further detailed review by the Council. The Council appreciates there is a balance to be met between the clarification of financial circumstances of an accused person and the public interest in the administration of justice. As stated in the introduction of this submission, the current preparation and consideration of applications for legal aid will only in extremely rare cases result in added delay to the criminal justice system.
21. The process of legal aid applications detailed in Heads 12-15 is notably more complicated than the current system in place. It can be predicted that very lengthy setbacks will result in criminal proceedings in the event where a person is delayed in obtaining necessary legal aid and advice, specifically in the instance where a referral is made by a Court to the Legal Aid Board in line with Head 15(4). It would be unfair and partisan to allow the prosecution to continue in any significant way before legal aid is finalised. Therefore, the Council suggests clear timelines for the makings of decisions by the Legal Aid Board be considered.
22. In addition, the requirements for courts to provide reasons in writing to applicants as to why their legal aid application was refused or denied under Head 15(10) could also add to delays.
23. The specific details and requirements of the application process and required information to provide in an application is not generally an area upon which the experience of the Bar would allow us to provide detailed information. Therefore, we defer to views of experienced criminal defence solicitors. Despite this, it would helpful

for clarity to be provided on the purpose of the “specified threshold” measure under Head 14(4). In particular, additional information as to the nature and application of the threshold would be of assistance and whether the “specified threshold” will be a standard, specific amount and if the complexity or difficulty of the case will be taken into consideration in assessing thresholds.

Head 16: Refusal of Legal Aid: Further Provisions

24. As submitted in our preliminary observations of the General Scheme in 2022, the proposal to review a decision of the court to refuse criminal legal aid on the financial ground provided for in Head 16 could be problematic. It seems to be intended that the Court which made the decision will have the sole responsibility for deciding whether that decision is to be considered by the Legal Aid Board. The Council's concerns lie in the constitutionality of the provision as the General Scheme does not state grounds upon which a court's refusal to review may be based.
25. A review process involving an appeal from a decision of a court to the Legal Aid Board is both unusual and questionable. The Council would suggest instead a measure requiring a court to refer an application to the Legal Aid Board in the event where a court is considering refusing legal aid on financial ground.

Head 17: Interests of Justice

26. The Council requests clarification of the meaning of Head 7(1)(a) where it states: “the nature of the defence if any that may have been set up”. It should be stressed that the process of applying for legal aid must not serve as a pretext for infringing upon established rights of the defence and this must be clearly stated in the law. Further, there does not appear to be any relevancy between the nature of a defence and entitlement to legal aid.
27. The UK Criminal Legal Aid Regulations 2013 assumes the interest of justice requirement is met in various cases, including those which fall within the General Scheme. The provisions in Head 17 is in stark contrast to this and the Council suggests that certain matters, such as trials on indictment and proceedings in the Superior Courts, where the legislation should acknowledge the obvious reality that the interests of justice test will always be met.
28. As it is currently drafted, the General Scheme indicates a reservation to trust in the judgement of the courts, contrary to the 2013 Regulations which show a willingness

to leave the question of what is in the interests of justice to the court without additional clarification. The Council would strongly encourage the General Scheme to acknowledge that a decision as to what is in the interest of justice will exclusively be a matter for the courts established under and in line with the Constitution.

Heads 18 and 19: Grant of a legal aid certificate

29. The Council maintains its concerns in respect to several provisions in Heads 18 and 19 from its preliminary observations in 2022. The consequence of Heads 18 and 19 as they currently stand would significantly reduce an accused person's right to representation by solicitor and counsel in respect of serious offences. The Council would be concerned by such measures as there is no reason for the abolition or reduction of rights or the restriction of access to legal representation by solicitor and counsel detailed in the explanatory note accompanying the General Scheme.
30. It is noted that the Department provided assurance to the Council, during a meeting convened by the Department on 21 October 2022, that it did not intend to make any substantive changes to the right to criminal legal aid. Based on this reassurance, Heads 18 and 19 will require amendment.
31. Regarding Head 18, the interests of justice in having a solicitor *and* counsel assigned to a case is apparent in nearly every offence which is prosecuted on indictment. In such a situation, provisions 19(4) and (5) significantly impede on the right of an accused person to be granted the services of solicitor and counsel and would result in a significant and unintended amendment of Section 3 of the Criminal Justice (Legal Aid) Act 1962.
32. As currently written, Head 19(6) could potentially erode the established right to two counsel in the case of a trial on indictment in the Central Criminal Court. Again, the Council has received reassurance from the Department that it does not intend to make such a change in the General Scheme.
33. It should be noted with considerable care the references to exceptionality (whether exceptional gravity or exceptional difficulty) when determining if the accused has the right to counsel. Such analysis is appropriate in cases prosecuted in the District Court, where it might be legitimately observed, as in the decision of the Supreme Court in *Carmody*, that "solicitors are professionally well qualified to represent and conduct defences" in most cases. On the other hand, in indictment cases, there is a routine complexity involved that requires the right to both solicitor *and* counsel to

warrant the right to a fair trial. This right properly extends to the right to a solicitor and two counsel in the cases of trial on indictment in the Central Criminal Court and the Special Criminal Court. Under particular circumstances, such as the complexity and volume of material, the right to more than two counsel is justified. Similar considerations apply generally to quasi-criminal and ancillary proceedings heard by the Superior Courts. These actualities must be recognised in the General Scheme.

Head 20: Objection to grant of legal aid

34. In the circumstance where a person is in possession of or has access to illicit funds, those resources cannot be used to obtain legal aid. Objection to legal aid in these situations is in some ways futile because such funds, although appearing to be available, cannot be used for the purpose of securing legal representation due to anti-money-laundering obligations of legal professionals. In such a situation, once it is understood that the funds represent the proceeds of crime and cannot be used to secure legal aid, objecting to the grant of legal aid services will only delay or obstruct the course of the prosecution. The Council would encourage further consideration to such situations as to eliminate potential delays and obstruction to legal proceedings.
35. This suggestion is by no means implying that the possession of illicit funds should be ignored. A statutory scheme is available to freeze and recover the proceeds of crime and should be pursued if there is evidence to support it. It is important to note that an application for legal aid should not be used as parallel means for securing the identification and recovery of the proceeds of crime.

Head 21 to 24: Referral to Board etc.

36. In its current draft, it appears the General Scheme intends that the Legal Aid Board will remain responsible in full for fees and costs of legal practitioners. The Council welcomes the confirmation of this position which was provided by the Department in the meeting convened by the Department on 21 October 2022. This means that the Scheme must operate on the basis that the contribution is paid for and recovered by the Legal Aid Board. This is independent of the entitlement to payment of solicitors and counsel pursuant to the grant of a legal aid certificate. Any other procedure to the Scheme would be unfeasible.
37. Noting this, the General Scheme should consider explicitly stating that the contribution mechanism must not disrupt the availability of legal aid. If this is not

clearly stated, an accused person could intentionally disrupt the process of a criminal prosecution by delaying in making contribution payments.

38. In order to avoid delays and ensure efficient progress of proceedings, the Council recommends the implementation of a time limit for the conduct of a means assessment by the Legal Aid Board in accordance with Head 22.

Head 25: Further determination by court on recommendation of Board

39. Preservation of the right of payment to solicitors and counsel for work done prior to amendment is outlined in Head 25(3) under the current scheme. However, the Council suggests it creates an impression that withdrawal or amendment of a legal aid certificate may result from a failure to contribute, with the intended consequence that the assigned solicitor or counsel will not be paid for work done after that time. This would effectively give the accused a reason to delaying on the trial by refusing to pay a contribution. The Council welcomes the Department's confirmation, given at the meeting on the 21st October 2022, that this is not intended and, accordingly, this Head will require revision to reflect the stated intention.
40. A different approach could involve standard payment under the Scheme, followed by collection of the contribution as a debt owed to the Legal Aid Board. Not only would this model give certainty for solicitors and counsel working under the scheme, but it would also be in line with the Department's intention and in accordance with the operation of the criminal justice system. It is important to consider that a significant amount of work is completed by counsel in case preparation but before a brief fee is officially payable. It would be unjust to withdraw or amend a certificate for legal aid after extensive preparatory work is completed but before a brief fee is payable. The Counsel urges the revision of the terms of Head 25 with this situation in mind.

Head 26: Refusal of certificate (appeal and case stated)

41. S.4(1) of the Criminal Justice (Legal Aid) Act of 1961 appears to have been amended by effect of Head 26(1)(b)(ii) as it appears the automatic right to counsel before the Court has been removed. In its current form, the provision would represent a substantial reduction in the accused person's right to legal aid compared to the 1962 Act. Concerns previously outlined in Heads 18 and 19 are equally applicable in this provision. Again, the Council welcomes the Department's confirmation that this is not the intended effect of the General Scheme, which will require revision accordingly.

Head 27 and 28: Custody aid and custody legal aid

42. Although it is recognised that the Legal Aid Custody Issues Scheme and / or the Attorney General's Scheme have operated previously on a non-statutory basis, the Council suggests that if they are to be put on a statutory basis, they should function like the general legal aid system. It is argued there is no fundamental difference justifying the implementation of separate systems. Specifically, it is irrelevant whether a legal issue from a criminal proceeding is raised by way of case stated or judicial review from the perspective of the need for legal representation. For this reason, the Council believes the General Scheme is an opportunity to create a process for clearly determining at the beginning of relevant proceedings, what a person's entitlement is to legal aid (if any) and is aware of the judgement of Baker J. in *O'Shea v. The Legal Aid Board* in that regard. Further, the Council will draw attention again to similar observations made under Head 10.

Head 29: Expert witnesses and other fees

43. The Council requests further information and justification of the intended purpose and function of the Criminal Legal Aid (Expert Witnesses) Committee. It would be of the Council's understanding that the question as to whether an expert or witness is necessary for the preparation of the defence or other proceedings is not a matter for the Legal Aid Board to decide. The rationale for this provision is unknown and further information on this would be beneficial.

Observations on Part 4 of the General Scheme

Head 34: Restrictions of rights and obligations under Data Protection Regulation

44. As previously stated in the Council's initial observation to the General Scheme, Head 34 is vague and remains to be viewed as a work in progress. The Council reiterates its suggestion that given the importance of the issues arising and the extent of the financial information required to be provided in support of a legal aid application, that a much greater degree of detail and clarity as to the intended effect is required.

Observations on Part 5 of the General Scheme

Head 37: Amendment to Act of 1995

45. Current arrangements for the payment and administration of criminal legal aid claims are relatively reliable, efficient and operate in an orderly manner. The Council will echo its previous comments that a proposal to transfer those functions to another State agency is not an idea the Council would have a particular view on, other than to ensure that the agency in question is properly resourced, financially and technically, with regard to human resources. This will establish a similar level of timeliness and reliability in the performance of the transferred operations. If such a transfer of functions is not supported with necessary resources, there is a significant risk of delays arising in the prosecution of offences.
46. The Council notes an alternative to transferring the function of the criminal legal aid scheme to the Legal Aid Board would be to simply improve existing standards of administration within the Department. This is particularly relevant when improving and / or implementing audit recommendations. Rather than implement new audit recommendations under the General Scheme, a simpler approach would be to improve and repair existing Department standards to allow for appropriate audit requirements to be met. An explanation as to why such a simpler alternative not be adopted would be appreciated by the Council.

Observations on Part 6 of the General Scheme

Head 38: Functions of Board: Criminal legal aid

47. Further to the submissions made above in the Introduction and regarding Heads 11, 14 & 15, 20, 21-24, 25 and 37, the Council is concerned as to the efficient functioning of the criminal justice system and the functions of the Legal Aid Board should encompass the administration of criminal legal aid in such a manner so as to ensure the efficient and expeditious functioning of the criminal justice system.

Head 39: Criminal Legal Aid Oversight Committee

48. The inclusion of a representative of The Bar of Ireland on the Oversight Committee is welcomed. The Council observes that such a representative would be essential to the

Observations on Part 7 of the General Scheme

Head 41: Counsel providing services under the Act

49. The Council acknowledges and welcomes the amendment at Head 41 with “counsels” replaced by “counsel”.

Head 43: Time limit for submission of payment claims

50. The Council is requesting justification for the 6-month time limit in respect to solicitors and counsel filing claims for payment following the conclusion of a legal aid proceeding. More information as to why this limitation exists and why the ordinary limitation period should not apply would be beneficial to the Council.

Head 44: Payment claims and tax compliance

51. Insofar as the Council is aware, Tax Clearance Certificates are no longer issued by the revenue commissioners and the Bill should reflect the current practice, which is that the revenue commissioners provide counsel with a Tax Clearance Status Access No and the payor (currently the Department of Justice, but obviously the Legal Aid Board in the context of the General Scheme) then logs on to the revenue commissioners’ website to ascertain counsels’ tax clearance status.
52. Further, the Council is not aware of the requirement for the making of a statutory declaration as applying to any other professionals paid by the State for services rendered (for example, doctors, dentists, pharmacists etc) and the Council is unclear as to the rationale underpinning this requirement. In the absence of a clear and cogent rationale, it is suggested that the requirement is excessive and should not be incorporated in the Bill. Lastly, Head 44 refers to a ‘section 25’, but there is no section 25 in the General Scheme and the Council seeks clarity in relation to this reference.

Observations on Part 9 of the General Scheme

Head 46: Representation in matters concerning proceeds of crime and other matters

53. Parallel to our observations regarding the Legal Aid Custody Issues Scheme and / or the Attorney General’s Scheme outlined in Head 27 and 28, the Council recommends placing the Proceeds of Crime Scheme on a statutory footing under the General

Scheme rather than having a separate ad-hoc system. The recommendations made in Head 10 are again repeated in this provision.

Observations on Part 10 of the General Scheme

Head 47: Advice to Victims of Sexual Offences

54. The *Criminal Justice (Sexual Offences and Human Trafficking) Bill* submitted a measure re-defining “sexual assault offence” and it is possible this definition can be applied in this context. While it is commendable that State-funded legal advice for crime victims has been expanded, it is reasonable to ask whether there is justification for not extending the General Scheme to encompass all victims of serious personal offenses. More information on the possibility to extend the scheme would be appreciated by the Council.

Conclusion

The Council appreciates the invitation to make this written submission to the Oireachtas Joint Committee on Justice and welcomes continued engagement in respect of the Bill. The Council furthermore remains available to the Joint Committee should it have any queries or requests for clarification in relation to any aspect of its submission.



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General Scheme of the Criminal Justice (Legal Aid) Bill 2023¹: Submission to the Joint Oireachtas Committee on Justice

Introduction: Safe Ireland

Safe Ireland is the national development and co-ordination body working to eradicate Domestic Violence (DV). We have five distinct functions: investigating the causes and effects of violence and coercion based on sex, gender and sexuality; delivering frontline refuge, support and outreach services; supporting the development, delivery and coordination of frontline Domestic Violence member services; developing best practice guidelines for skilled community-led domestic violence response; and influencing civil society and national strategic policy. This is achieved through our collaborations with our network of affiliated independent frontline DV services; local communities; professionals; public bodies; academic institutions; philanthropists; and corporate partners.

There are thirty-eight DV services across Ireland affiliated as members to Safe Ireland. Each delivers various combinations of services including national and local crisis helplines, emergency accommodation, housing and practical supports, one-to-one emotional and therapeutic support, information and advocacy, Garda / Court accompaniment, and welfare advice. Twenty of these services operate staffed DV Refuges.

Our core strategic focus is to change culture, transform responses to sex, gender, and sexuality-based coercion and violence in communities across Ireland, and to progress towards creating a free and Safe Ireland for women, for young people, and for children.

Introduction: This submission

Most of this submission will focus on the content of Head 47, on the amendment of Section 26 (3A) of the Act of 1995, the Civil Legal Aid Act 1995 as amended. The proposed new text of Section 26 (3A) is cited in full, with Safe Ireland commentary and recommendations underneath. This is followed by a brief submission in relation to the remaining Heads of the proposed new Bill.

I Text of Head 47: Amendment of section 26 (3A) of the Act of 1995 as drafted

“To provide that :

- (a) Section 26 (3A) of the Act of 1995, inserted by the Civil Law (Miscellaneous Provisions) Act 2008 is substituted by the following

¹¹ Accessible online via this web-link: [Draft of General Scheme of Criminal Justice \(Legal Aid\) Bill 2023 - c32b1cc8-6c6b-4112-a505-48cd3cb73b96.pdf \(www.gov.ie\)](https://www.gov.ie/c32b1cc8-6c6b-4112-a505-48cd3cb73b96.pdf)

“3A Legal advice under this subsection may be provided to a victim of the following offences at any time before, subsequent to , or whether or not a complaint or a decision to prosecute in the matter is made –

- (a) the offence of rape under the common law
- (b) the offence of rape under section 2 of the Criminal Law (Rape) Act 1981
- (c) the offence of aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990
- (d) the offence of rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990
- (e) an offence under section 6 (inserted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 of the Criminal Law (Sexual Offences) Act 1993
- (f) an offence under the Criminal Law (Sexual Offences) Act 2006
- (g) an offence of incest under section 1 or 2 of the Punishment of Incest Act 1908
- (h) the offence of sexual assault under section 2 of the Criminal Law (Rape) (Amendment) Act 1990
- (i) the offences created by sections 3 to 8 of the Criminal Law (Sexual Offence) Act 2017 ,
- (j) section 18 of the Criminal Law (Sexual Offence) Act 2017
- (k) sections 21 and 22 of the Criminal Law (Sexual Offence) Act 2017 ,

(b). Section 26 of the Act of 1995, as amended, is amended by the insertion of the following subsection

3B. Nothing in this Act shall operate in such a manner as to prevent the Board providing advice

(a) where the victim is a child, to a parent or guardian or an adult relative of that child [including a suitable adult within the meaning of the Sexual Offences Act 2001] or

(b) where the victim is a person (with a mental illness or intellectual disability) that lacks capacity within the meaning of section 3 of the Assisted Decision Making (Capacity) Act 2015 or is a relevant person for the purposes of the Act of 2015, to a decision making assistant or co-decision maker within the meaning of that Act in respect of the matters set out in subsection (3) that the Board would otherwise provide under this Act to a person.

(c) advice under this section shall not be provided to a person who is under suspicion or investigation in any respect for committing the offence or a related offence against the victim”.

II Safe Ireland Commentary on Head 47:

1. **Additional inclusions:** This is a reasonably full list of sexual offences for which it will be possible to seek legal advice from the Legal Aid Board as a victim of one or more of those offences, and importantly, it includes the offence, which is the one by far most commonly charged, sexual assault. However, in Safe Ireland’s view, there are a number

of recently created offences which are sexual in nature and are capable of causing intense alarm, distress and harm which should also be included on this list. We are aware from our daily work supporting survivors of domestic violence that the behaviours criminalised by these offences are all common in the context of a more widespread pattern of domestic violence and abuse of an intimate partner. They are:

- Offences contrary to Sections 2 and 3 of the Harassment, Harmful Communications and Related Offences Act 2020² (distributing, publishing and recording intimate images without consent); and
- Offences contrary to Section 45 Criminal Law (Sexual Offences) Act 2017³ (exposure, offensive conduct of a sexual nature – especially Section 45 (3)), which is generally phrased and might be used to cover a wide range of unwanted sexual behaviours, for example, such unwanted behaviours as “upskirting” or “downblousing”.

2. Extension of the right to legal advice to victims of domestic violence-related offences generally:

- In Safe Ireland’s respectful submission, it would also be appropriate to extend the right to legal advice to victims of all domestic violence-related offences which are unambiguously identifiable as such. Victims of domestic violence who make the courageous decision to make a formal complaint to An Garda Síochána need to access a range of supports, including general legal information and advice from an independent and reputable source. Often, they cannot afford to pay a private solicitor and it is not possible either to access legal advice from a pro-bono source. The criminal justice process itself is likely to take many months (sometimes even years) to complete. Throughout all this time the victim needs to be able to get answers to her legal concerns as they arise. This need is particularly acute for victims of domestic violence related offences, where issues such as witness intimidation and retaliation may well arise and need to be addressed swiftly and effectively. There can be no doubt that widespread attrition of victims from the criminal justice system should be avoided as far as possible, in the public interest as well as in the interests of the victim concerned, so that perpetrators of these offences are held accountable for them. Given that some delay before the final trial is unavoidable, it is also necessary to avoid as far as possible any secondary traumatisation of victims arising from the criminal justice process itself. In our view, access to legal information and advice for this group of victims will do much to alleviate the twin risks of attrition and secondary traumatisation.

² Accessible online in original form via this web-link: [Harassment, Harmful Communications and Related Offences Act 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2020/act/12/enacted/en/html)

³ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie/)

- In practical terms, there is no doubt that the creation of a list of domestic violence-related offences does pose a drafting challenge. However, we suggest that this challenge might be addressed by adopting and adapting the formula used in Section 40 of the Domestic Violence Act 2018⁴ to define a “relevant offence”, for instance using the wording set out below or a similar one. Our proposed changes to the existing wording of extracted text from Section 40 are in pink type for easy reference:

[insert the text below after Head 47 (a) above, to continue the list of offences covered after [Section 26] 3A, (a) to (k):

- (l) an offence under sections 2 to 15 of the Non-Fatal Offences against the Person Act 1997⁵;
 - (m) an offence under section 2 or 3 of the Harassment, Harmful Communications and Related Offences Act 2020,
 - (n) any offence which involves violence or a threat of violence to a person other than one referred to in paragraphs (a) to (k) above;
 - (o) any offence contrary to Section 45 of the Criminal Law (Sexual Offences) Act 2017;
 - (p) any offence contrary to Sections 33, 38 or 39 of the Domestic Violence Act 2018; and
 - (q) any offence contrary to Sections 21, 22, 23 or 44 of the Criminal Justice (Miscellaneous Provisions) Act 2023⁶
3. **Clarity of Drafting:** With very great respect, Safe Ireland’s view is that in the drafting of the proposed new Section 26 (3A) of the Civil Legal Aid Act 1995 as amended, it is very important that it is very clear in two areas in particular:
- The right to legal advice from the Legal Aid Board to a victim of a number of serious sexual offences is not subject to means test or to a contribution at present. This is set out in Section 26 (3) (b) of the Civil Legal Aid Act 1995, but not in the current Section 26 (3A). With great respect, it would be very helpful both to victims and their supporters to spell this out clearly and unambiguously in the proposed new Section 26 (3A), so that the full extent of the rights of crime victims in this regard may be found in one place.
 - It appears that the intention of the current draft of Head 47 is to convey that legal advice is available regardless of whether a formal complaint is ever made and also, at any stage of the criminal justice process, including before the making of any such complaint. Safe Ireland suggests, again with very great respect, that it might be clearer to separate out

⁴ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

⁵ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

⁶ Relevant sections are not yet in force as at 29/08/23 but the text is accessible online in its original form at: [Criminal Justice \(Miscellaneous Provisions\) Act 2023 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie)

these two aspects, for instance by stating first of all that legal advice is available to victims of the listed offences at any time after the offence has been committed, subject only to investigative constraints, and then by qualifying that statement by a second statement that for the avoidance of doubt, this right obtains whether or not there is any criminal investigation or prosecution in being at the time that the advice is sought.

4. Right of the Accused Person to Legal Representation in Criminal Justice Proceedings:

- In any case in which the defendant is not given permission to cross-examine the victim or other prosecution witness in person by the judge, he or she should retain the right to access the services of a legal representative to carry out that cross-examination on his or her behalf, whether or not he or she has complied with any condition which would normally be imposed on the grant of criminal legal aid. Note that the power of the court to refuse to allow cross-examination in person by a defendant has recently been extended to include any “relevant offence” as defined (this time) by the Criminal Evidence Act 1992, so that this is an issue which may affect large numbers of victims of domestic violence related offences. If legal representation is not allowed in these circumstances because the defendant has not complied with any administrative requirements for the grant to him of criminal legal aid, and the consequence is that the defendant is allowed to cross-examine the victim in person, it is the victim who will be at risk of serious psychological harm as a result. This must not be allowed to happen. In our respectful submission, personal cross-examinations should never be allowed to proceed simply because the defendant has failed to comply with any administrative requirements in respect of the grant of criminal legal aid to him.

In conclusion, Safe Ireland would like to thank the Committee sincerely for taking the time to consider these submissions. We would be happy to do our best to respond to any query from the Committee on any aspect of them.

SI/LSM/Final

Safe Ireland clg

Dated this 30th day of August 2023

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