DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 11 Nollaig 2019

Wednesday, 11 December 2019

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair/Members present:

Jack Chambers,	Martin Conway,
Catherine Connolly,	Niall Ó Donnghaile.
Jim O'Callaghan,	
Thomas Pringle.	

I láthair/In attendance: Deputy Martin Kenny and Senator Lynn Ruane.

Teachta/Deputy Caoimhghín Ó Caoláin sa Chathaoir/in the Chair.

Business of Joint Committee

Chairman: I thank Senator Lynn Ruane, who has accommodated us in the commencement of our business.

I remind members to switch off their mobile phones as they interfere with the recording equipment.

The joint committee went into private session at 9.07 a.m., suspended at 9.19 a.m. and resumed in public session at 9.23 a.m.

Access to Justice and Legal Costs: Discussion (Resumed)

Chairman: The purpose of this morning's engagement is to resume our consideration of the issues of access to justice and legal costs. We are joined by Ms Rose Wall, chief executive officer, and Ms Jane O'Sullivan, managing solicitor, Community Law and Mediation, CLM; Ms Rebecca Keatinge, managing solicitor, and Mr. Paul Dornan, solicitor, Mercy Law Resource Centre; and Professor Gerard Whyte, Trinity College Dublin. They are all very welcome. I will shortly invite witnesses to make their opening statements in the order in which I introduced them, but first I must ask them and anyone in the Visitors Gallery to please switch off their mobile phones, since they interfere with the recording equipment. I have to read the caution related to privilege.

Witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members of the committee should be aware that under the salient rulings of the Chair, members should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I invite Ms Wall to make her opening statement.

Ms Rose Wall: We are delighted to be here today with our colleagues from the Mercy Law Resource Centre and Professor Gerry Whyte and I thank the committee for the opportunity to speak. I am the CEO of CLM. We have two community law centres in Coolock and Limerick and currently assist more than 3,000 people every year through our range of services, which include legal advice and representation, information and education, and mediation and conflict coaching. It is fitting that CLM has been invited to present our views on the issue of access to justice given our origins. CLM, originally known as Coolock Community Law Centre, was established in 1975 as the first independent community law centre in Ireland. It originally served as a prototype of the neighbourhood or community law centre model which could underpin a nationwide civil legal aid scheme, which did not then exist.

The community law centre model, under which we operate, has a number of important char-

acteristics. Our services are free and embedded in the community, making them as accessible as possible. Many of our information talks and legal advice clinics are delivered on an outreach basis in locations where the community is congregating such as parish halls, public libraries and community organisations. Local organisations and interest groups are represented on our board and advisory committees to ensure our services are responsive to, and shaped by, the needs of the community. Second, community education is a critical part of our work. Access to justice begins long before anyone steps inside the courtroom. It begins with creating an awareness of rights and the law, and how the law can be used to enforce those rights. In CLM, we often encounter a lack of awareness of how the law can assist in situations of homelessness or accessing social welfare, issues that are critical to social inclusion as they most affect a person's ability to participate fully in society. Third, the community is empowered to use the law through our legal advice and representation service. CLM currently partners with other organisations to provide more than 180 outreach legal advice clinics every year and our legal representation work is focused on areas of law which disproportionately affect those living in disadvantage, such as employment, equality, social welfare, debt, education and housing, all areas which are not covered by the State-funded civil legal aid scheme. Fourth, CLM campaigns for law reform, and for the safeguarding of rights enshrined in law. Our priorities for law reform are directly linked to the issues encountered in our clinics.

The right of access to justice is accepted as a constitutional principle and a right under the European Convention on Human Rights, ECHR. Without it, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. It is a fundamental tenet of a functioning democratic society. In the absence of access to justice, challenging incorrect decisions or unfair practices by an arm of the State or other body would be more difficult, more distressing or just impossible, especially for vulnerable groups or at vulnerable times. Access to justice is vital for social inclusion and many of CLM's legal services are focused on areas which are critical to social inclusion, for example, preventing homelessness, assisting with accessing social welfare, education and other services, preventing job loss and challenging discrimination. Currently, the right of access to justice is being denied to many. Susan Gogan's research on unmet legal need in Ballymun in 2005 showed that 76% of those with legal problems had sought help but were unable to obtain it. Further, the community consultation process during the set-up of CLM Limerick in 2012 showed that community organisations rated the availability of legal services in their area as not good or bad and they had limited expertise in the areas themselves.

In my presentation, I will briefly address three points: barriers to accessing justice, limitations of civil legal aid and suggestions for reform, and structural barriers within the legal system itself. Barriers to accessing to justice were first identified by the Pringle report in 1977 and its conclusions were echoed in a report compiled by CLM in 2012, some 35 years later. These reports acknowledged that the obstacles facing those living in disadvantage, in need of legal services, are not just the cost and include intimidation of the legal world; inaccessibility of legal services; lack of awareness of rights and the law most relevant to disadvantaged communities, including among the legal profession; fear of not being taken seriously or of retaliation if legal action is taken; and time, including waiting times for legal aid and the time it takes for a case to be heard. Our practical experience is that these factors deter people from accessing legal services and that the best way to break down these barriers is through meaningful community engagement through the community law centre model.

My second point is on the limitations of the civil legal aid scheme. The effective availability of the services of a lawyer is a crucial element of access to justice. If someone cannot afford

a private lawyer, the right to legal aid is an essential component of his or her right of access to justice. The Pringle report in 1977, as well as our 2012 community consultation report and Susan Gogan's 2005 report, recommended that a civil legal aid scheme should offer legal representation for all types of civil legal proceedings and should have a legal education and law reform function. However, the civil legal aid scheme established in 1979 falls far short of these recommendations and as a result fails to adequately provide for access to justice. This is due to a number of factors, many of which were highlighted at this committee by the Free Legal Advice Centres, FLAC, two weeks ago. Those factors include the statutory limitations of the civil legal aid scheme itself. There is no logical reason the availability of legal aid should be determined by area of law rather than need, or why tribunals such as the Workplace Relations Commission or the Social Welfare Appeals Office should be excluded from legal aid. When an individual's job or welfare payments are being threatened, there is potential for significant adverse consequences not just for that person but also for their family. Another issue is the overly strict means test, which is out of touch with the reality of the cost of living and which results in people on low incomes who cannot afford a solicitor being denied legal aid. A further factor is the under-resourcing of the Legal Aid Board, resulting in an average waiting time for a first consultation in Dublin of up to 38 weeks and up to 58 weeks in one particular office. This is simply too long to wait and it can cause issues for those seeking legal remedies with strict time limits, such as a judicial review, which has an effective time limit of three months. Finally, the current model of legal aid has not adopted a comprehensive approach to the provision of civil legal aid, as there are no links with disadvantaged communities and there is no law reform or public education function. Members of the committee can find further detail on these factors in the notes section of our submission.

The problems and limitations of the Legal Aid Board raise the question of whether the State is complying with its obligations under Article 6 of the European Convention on Human Rights and Article 47 of the European charter on fundamental rights and freedoms in cases involving European law. People of limited means with complex legal issues are unable to obtain legal aid from the State. That said, it is important to state that despite the limitations and under-resourcing of the service, CLM's experience of working with Legal Aid Board staff and management has always been very positive. In fact, Mr. John McDaid and Ms Catherine Ryan recently delivered talks as part of CLM's community education programme.

My final point relates to structural barriers within the legal system itself. In addition to the effective availability of the services of a lawyer, a crucial element of access to justice is effective access to the courts themselves. There are several barriers to accessing the protection of the courts, including the cost of filing fees, the complexity of the language used and the intimidating atmosphere of the courts. The courts system as a whole is not designed to cater for children or people with particular vulnerabilities or complex needs. To give an example, we recently represented a man with physical and intellectual disabilities before the District Court. He had difficulties with communication and comprehension and neither the barristers nor the judge appeared to have any guidance to follow on how to approach questioning him. His case was significantly hampered as a result. A further issue in this area is the delay in implementing reforms contained in the Assisted Decision-Making (Capacity) Act 2015. These reforms will help ensure that people whose decision-making capacity is impaired are afforded the fundamental human right of making their own decisions about their personal and financial affairs, as far as is possible. At the moment, however, the Victorian concept of wardship still applies through the Lunacy Regulation (Ireland) Act 1871. As a community law centre, we also encounter obstacles to taking public interest cases such as the absence of a class action mechanism, restrictive rules relating to *locus standi* and fear of costs. We often meet clients who have made a decision

not to take a case to vindicate their rights because of the fear of a significant costs order should they lose the case. This occurred recently in the case of a woman who had a very strong legal case regarding the discriminatory provisions of the State pension scheme, which raised broader public interest issues.

Apart from the changes that need to happen, there is currently a threat to access to justice in the form of the proposed housing and planning and development Bill 2019, which I understand is due to be debated early in the new year. If enacted, it will increase costs exposure and make it more difficult for ordinary citizens and environmental NGOs to achieve the necessary legal standing to take cases challenging decisions which have an impact on the environment. Environmental democracy and oversight is protected by EU law and the Aarhus Convention and has never been so important as we grapple with the challenges posed by climate change.

We recommend first restructuring the civil legal aid scheme in line with the community law centre model to include a public legal education and law reform function. In the interim, greater funding security should be ensured for community law centres, such as CLM and Mercy Law Resource Centre, which continue to meet the need arising from the gap in services. Second, we recommend reviewing the civil legal aid scheme to ensure it is properly resourced and is provided on the basis of need rather than areas of law, and that the financial means test is more inclusive. Finally, we need to ensure effective access to the courts by examining issues such as accessibility, cost, class actions, and *locus standi* and protective costs orders, while bearing these matters in mind with the proposed housing and planning and development Bill.

I will conclude by paraphrasing the American attorney Kimberley Motley, who said that the laws are ours; that they belong to us and need to be used. If people do not know about their rights under the law, do not know how to assert their rights or are unable to do so without legal assistance, then those rights are not being protected.

Chairman: I thank Ms Wall very much. I call Ms Rebecca Keatinge from the Mercy Law Resource Centre, MLRC.

Ms Rebecca Keatinge: I thank the Chairman and the committee for the invitation to address it today. We welcome the committee's focus on access to justice and legal costs and we are very glad of the opportunity to address its members. They have our full statement, which I will draw on to explain the work of the Mercy Law Resource Centre as a community law centre in facilitating access to justice, and to speak to some of the specific questions set out by the committee.

Mercy Law Resource Centre, MLRC, was established in 2009 and is an independent law centre and registered charity, providing free legal advice and representation to people who are homeless or at risk of becoming homeless. We have a vision of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, which is fundamental to each human being. MLRC also envisages a society where each individual enjoys equal access to justice and legal recourse in order to vindicate those rights. The need for Mercy Law's services far exceeds demand. The number of people to whom we have provided advice and representation since 2009 has increased year on year, and in 2018 we assisted over 1,300 individuals and families.

There is a vital role for access to justice in the housing sphere. The UN special rapporteur on adequate housing has highlighted this, stating:

> Violations of the right to housing are as much failures in the administration of justice as they are failures of housing programmes. If those living in inadequate housing and in homelessness have no access to justice, they are deprived of agency to bring violations to light, to address root causes or ensure appropriate responses. They are unable to challenge the policy choices and decisions that created the conditions in which they live.

Mercy Law sees access to justice as an enabling right which allows those who perceive their rights as having been violated to enforce them and seek redress. Access to justice encompasses effective availability of access to legal information, timely advice and remedies, accessible legal representation, conflict resolution services, and to the courts system and a fair system of remedies. Similarly to Community Law and Mediation, MLRC enables access to justice through the operations of legal outreach clinics, ensuring advice is embedded in the community and is accessible; free legal representation for marginalised groups; the provision of legal support for professionals and community organisations which are supporting homeless people to promote resolution of legal issues without the need for legal intervention; delivery of formal training on housing law to community groups and professionals; and active engagement in law reform and policy change. Mercy Law's work is evidence that a community law centre model, similar to CLM's, can facilitate real access to justice. At a recent MLRC event, the Chief Justice recognised the "vital role" that dedicated, community-oriented groups were providing, which would not be provided in any other way.

I will touch on some of the specific issues raised by the committee in its invitation. Regarding barriers to accessing the courts, the primary challenge for any individual with a potential legal issue is access to legal advice and information in the first instance. Many of the vulnerable groups and individuals Mercy Law engages with would struggle to access legal advice in the absence of our service, let alone access the courts system. With respect to legal aid, the majority of our clients would be eligible under the Legal Aid Board's means test, but are essentially deemed ineligible because the Civil Legal Aid Act 1995 specifically excludes the granting of legal aid in disputes concerning rights and interests over land. An exemption to this exclusion does apply in limited circumstances but in our experience, this is not widely known or availed of. MLRC believes that the current delivery of civil legal aid, specifically with regard to housing and homelessness matters, is wholly inadequate. The level of legal aid provision on housing and homeless matters currently delivered by the board is negligible. The board is not empowered or resourced to disseminate legal information and to have a community presence and outreach service, nor does it have any substantive role in law reform or policy. The substantial delays in accessing advice present a further practical barrier in accessing justice through the scheme. Often clients facing homelessness require a nimble service that can proactively reach out to local authorities in order to negotiate solutions. This is not achievable if clients are required to wait weeks and months to meet with a solicitor.

A common theme in our contact with lay litigants with housing issues is the challenge of identifying the relevant legal issue or rights violation without proper legal advice. A disproportionate number of our clients who are in homelessness are migrants or those from ethnic minorities. Together with individuals with literacy issues or a disability, as many of our clients do, these groups can face substantial challenges in engaging with court procedures and representing themselves adequately in court as lay litigants.

I wish to highlight one issue regarding court structures, which is the absence of any tribunal or alternative dispute resolution process regarding housing matters. MLRC frequently engages with local authorities on housing matters and sees the wide variation in how appeals are pro-

cessed and a general lack of transparency and formalised process. MLRC would welcome the development of an independent appeals forum outside the court system to protect housing rights and make a remedy more cost-effective and accessible, and reduce inconsistencies and related unfairness of current procedures. In several instances, MLRC has advised and legally represented a large of number of clients who have been impacted by an identical issue. In such situations, bringing individual sets of proceedings may be necessary to remedy the wrongs. Class actions would provide for a much more efficient and cost-effective means of providing access to justice for a potentially large group of litigants.

MLRC warmly welcomes the current focus and expansion of *pro bono* in Ireland. In 2017, MLRC initiated an innovative *pro bono* project in partnership with A&L Goodbody, Focus Ireland and the Public Interest Law Alliance. This project involved corporate solicitors from A&L Goodbody attending a legal advice outreach clinic at Focus Ireland and providing legal advice and follow up legal representation. Together with many other examples, this *pro bono* project has had a real impact. This is extremely welcome but we firmly believe that *pro bono* cannot replace community-based and properly resourced legal advice and representation to vulnerable groups as a vital element of access to justice.

In conclusion, I will highlight some key recommendations we made in our substantive submission. We would like to see an amendment to the Civil Legal Aid Act 1995 to ensure that legal aid is available on housing and homeless matters on the basis of established need for this service, a restructuring of the delivery of civil legal aid to bring it in line with the community law centre model and better resourcing, support for and visibility of existing community law centres. We warmly welcome this opportunity to share our concerns with the committee and look forward to engaging with members on questions surrounding this issue.

Chairman: I thank Ms Keatinge. Our final contributor is Professor Gerard Whyte from the school of law, Trinity College, Dublin.

Professor Gerard Whyte: I thank the committee for inviting me to address it on this very important topic. In my opening statement, I will address five different points. I will start by looking at the various barriers to access to justice. As has already been indicated, there are a number of different factors that impede access to justice. Chief among these is the issue of cost but there is also the question of people being unaware of their legal entitlements. The Pringle committee further identified psychological or cultural barriers between disadvantaged individuals and communities and the legal world. The nature of certain legal problems can also be an issue here. What are known as problems of a diffuse nature, for example, in the area of consumer protection or environmental protection, can pose particular problems because they can impact on a large number of people but not on any one particular individual significantly or sufficiently to motivate that person to take legal action. The special position of people with disabilities is another issue. I know the committee is aware of section 42 of the Irish Human Rights and Equality Commission Act, which imposes on all public bodies a duty to address issues of discrimination in the manner in which they deliver services. This clearly applies to the Legal Aid Board. I thought it worth mentioning that in a High Court decision in 2012, Mr. Justice Hogan also identified a constitutional duty imposed on the courts under Article 40.1 of the Constitution to make reasonable accommodation for litigants with physical disabilities.

I will briefly describe the different responses one can take to these barriers to access. Models of legal aid fall into two categories. The more restricted or conservative model is known as the service model. This model focuses very much on the individual litigant and seeks to address the problem of cost. Generally speaking, a service model will not address the other bar-

riers to access I have mentioned. Moreover, the service model provides what I would describe as conventional legal services and would not engage in programmes of political lobbying or education. In contrast, the strategic model does attempt to address the various barriers I have mentioned. Whereas the focus of the service model is very much on the individual, the focus of the strategic model is on the individual as presenting or representing a structural problem in society. Strategic models will address not only the issue of cost but will also deal with the issue of people being unaware of their legal rights by providing programmes of legal education. They will also try to address the psychological or cultural barrier by locating their services in disadvantaged areas to put people at their ease. They also engage in campaigning for legal and social reform regarding the problems their clients present to them. In the Irish context, the strategic model is represented in the voluntary sector among community law organisations while the Legal Aid Board would use the service model.

I draw the committee's attention to a recent report published by the World Bank and the International Bar Association entitled A Tool for Justice: The Cost Benefit Analysis of Legal Aid, which was published in September 2019. It is a cost-benefit analysis of legal aid that looks at various jurisdictions. Unfortunately, Ireland was not one of the jurisdictions that was examined but the central point made by the report could equally apply here. It is argues that while the provision of legal aid involves an immediate cost, it can bring about significant savings for the State in other areas. In thinking about legal aid, we should not see it simply as net expenditure. There are savings to be made and this warrants investment in legal aid.

I will say a few things about the statutory scheme of civil legal aid. I preface my remarks by acknowledging the great work done by the Legal Aid Board in delivering legal aid to individuals over the years in particularly trying circumstances. I will highlight three limitations of the current scheme. Some of these have already been mentioned. The first is that the current scheme does not extend to the provision of legal representation before tribunals. As has already been mentioned, social welfare appeals tribunals, cases going before the Workplace Relations Commission or cases going before the RTB are key areas, particularly for disadvantaged individuals, yet the current scheme means that the Legal Aid Board is not in a position to provide representation for anyone appearing before those tribunals. The second limitation I would like to highlight refers to the exclusion of disputes concerning rights or interests in or over land from the availability of legal aid certificates. At best the position here is unclear and at worst this exclusion could prevent the Legal Aid Board providing legal aid in respect of housing cases. I have heard anecdotally that the board sometimes provides such support but it is not clear that this comes within the terms of the legislation. It is an area that requires clarification.

My final point regarding the Legal Aid Board is to highlight the delays involved in obtaining consultation with solicitors in various centres. In my submission I give more detail on the delays in various centres, which in some cases are in excess of a year. This highlights the point that the Legal Aid Board is significantly under-resourced. There is, again, anecdotal evidence that the board is having difficulty recruiting staff because the payscales it offers are simply not competitive with the private market or other positions in the public sector. It is a serious matter that must be addressed quickly.

The other matter before the committee is litigation and rules of procedures. I will make two very quick points in this regard. There is a need for an appropriate system of class actions. I understand legislation is currently before the Oireachtas on the topic and this mechanism is important. Looking at the sort of law handled by law centres, the areas often have a significant public impact. For example, in the area of social welfare, one social welfare claimant bring-

ing a case could stand in the place of hundreds or perhaps even thousands of similarly situated welfare claimants. An effective mechanism for processing those sort of disputes is by way of class action but, unfortunately, the mechanisms we have in this jurisdiction are not fit for that purpose. Some change is needed here as well.

I mention in my submission that an alternative to class actions in some types of cases is for Departments to be encouraged, where they have been sued, to actively review their files and see if there are similarly situated cases that have not yet been litigated. I commend the Department of Employment Affairs and Social Protection as when it was sued in respect of the implementation of the third equality directive in the 1980s with respect to equality for men and women in social welfare, it engaged in just such an exercise. In the absence of a class action, it is certainly something to be commended.

I will mention the mechanism of a protective costs order, which is available to the courts and can be granted to somebody in advance of litigation taking place. It offers a sort of assurance to the litigant that even if the litigation is unsuccessful, the liability for costs would be limited. However, that mechanism has a major limitation in that it is not available to a litigant with a personal interest in the litigation. It only applies to a case where somebody is acting altruistically in the public interest. For example, it would not apply to a social welfare claimant challenging the policy of the Department, although the policy would have implications for many others. In my submission I highlight the matter and suggest that perhaps rules or procedures could be drafted to broaden the availability of this mechanism.

Chairman: Members will know that earlier, in private session, we acknowledged receipt of the copy of the report that Professor Whyte references from the World Bank, A Tool for Justice: The Cost-Benefit Analysis of Legal Aid. The Bar Council provided it to us last week and all 60 pages were circulated to members on Friday. They have much homework. I thank all our contributors and I will open the debate to members.

Deputy Jim O'Callaghan: I thank the witnesses for coming and the submissions made. At the end of this process, we will produce a report that will have recommendations. The contents of the submissions and what is said today is very important for the purposes of us finalising our recommendations.

All the witnesses agree that the first immediate obstacle to a person accessing justice is awareness of the law. In many respects, people only become aware of the law as a result of a traumatic event. For example, people could be the victim of crime or be accused of a crime. They could have a family law dispute and the break-up of a family or a row in employment or in a tenancy. We just need to try to elaborate on what can be done to make people more aware of the law and the rights they have instead of waiting for people to have a traumatic event.

In these Houses, we spend all our time making laws but sometimes I wonder how many people are aware of the laws being made here. What can be done in a practical sense to make members of the public aware of the law? This does not apply simply to disadvantaged areas. How can we make members of the public aware of the rights they have under the Constitution and, more specifically, under statute law? How do the witnesses recommend we do it? Should it come through a community law centre or through education?

Ms Rose Wall: There is a major need for a community education programme and it has two aspects. As the Deputy correctly indicated, sometimes people become aware of how the law is relevant to their lives through a traumatic event but sometimes it is still not obvious after a

traumatic event. We have experience of people coming into our clinic to get advice on a slip and fall, which is a classic legal matter. Talking to these people one might also realise they are homeless or have been refused social welfare; they might have a range of legal issues that they may not even have identified as being legal problems. Sometimes a traumatic event is not enough for them to crystallise it as a legal issue.

A community education programme is critical and it should go to the community, as we do, to speak to people about law, rights and how the law can be used to enforce those rights. One must also work with organisations that might be contacted by individuals, including those dealing with citizens' information and family resource centres. These are organisations that link with the community on a regular basis. People might go to them for help but perhaps they might not categorise it as legal help. We often go to the community and provide education to individuals and training or capacity-building for organisations that provide information. They might be the first port of call for individuals.

Ms Rebecca Keatinge: We are similar to CLM in that we do much community education work. We do formal training on housing law, for which there is a great demand. We get many community groups and NGOs that are exclusively working in the housing space attending that education process, which empowers them to support their clients without having to go the classic route of meeting a solicitor. We often find they are not aware of the information we give, so there is a need to educate people on fair procedures in dealing with local authorities, for example. That touches on the constitutional rights issue.

We are often asked to go to an organisation and do a housing rights session. We like to be able to do it but often this comes back to resources for us. We are a small law centre with three solicitors and three administrative staff. We will do this insofar as we can as we see the real value in it. Ultimately, advising on individual cases goes some way but we also need to do community education to disseminate information as broadly as possible to have the maximum impact.

Professor Gerard Whyte: Another strategy is to target schools. Some of the law centres - I am thinking specifically of Ballymun Community Law Centre - have programmes where they go to local schools and involve children at second level. Once they understand the legal world, this helps to break down the psychological barrier I mentioned. The Law Society operates a street law programme as well that has a similar purpose.

Deputy Jim O'Callaghan: Do the witnesses think the Oireachtas should consider its role and see if there is another way it can simply communicate laws that are passed here? When they are passed and promulgated by the President, we do not do much to inform the public about them. There is no big announcement. It is hard to understand complicated statutory laws. Do the witnesses think that another way of making people aware of their rights is that the people with whom they are engaged, be they employers, landlords or financial institutions, should have a greater obligation to apprise individuals of their legal rights in their dealings with them? It would be ideal if we had unlimited resources and a community law centre in every community in the same way as there is a post office or a bank but that probably is not feasible. We need to think of different mechanisms for making people aware of their rights and legal entitlements.

Chairman: Does anybody wish to reply to that? I invite Ms O'Sullivan and Mr. Dornan to be full participants. It is open to all of you.

Ms Rebecca Keatinge: The citizens information centres play a major role in communicat-

ing the law, including new laws, to people on their website. We have had some of their website team attend our training. They are very engaged to ensure the accuracy of information. That is a valuable way of disseminating it.

We work to some degree with private tenants. Putting an obligation on a landlord to inform people of their rights is difficult because the situation is already adversarial and there is a power imbalance. We do not work much in the private rented sphere, as we are primarily focused on social housing, but in some instances we go to the Residential Tenancies Board, RTB. There is an inequality of arms there because often a landlord will have the resources to bring a solicitor, which is absolutely his or her entitlement, and it will ultimately assist the landlord. We see the converse where the tenant perceives that he or she is disadvantaged, and in some respects he or she will be disadvantaged in being able to put his or her case forward properly because the legislation is vast and technical.

Professor Whyte raised the point about tribunals being excluded from the scope of civil legal aid, except for the International Protection Office. There might be a consideration there because we are moving to a position where we are providing less social housing but more social housing support through the housing assistance payment, so the rights of private tenants are increasingly relevant, particularly to the marginalised groups and vulnerable people with whom we engage.

Ms Jane O'Sullivan: To take up the point Ms Keatinge made about tribunals, when the Workplace Relations Commission was established, one of its aims was to make the system more accessible and informal for people who were taking equal status or employment equality cases. The reality, however, is that if one is representing a client of the law centre at the Workplace Relations Commission, the employer always brings what is often an extensive legal team so the inequality of arms is very apparent. In those circumstances one is looking at a relationship that is unbalanced with regard to resources. That is a difficulty in circumstances where the civil legal aid scheme does not cover that tribunal. There is certainly a gap there in terms of information, advice and representation.

Deputy Jim O'Callaghan: Where is the greatest demand at present from people for legal services? Is it in the area of housing or in consumer areas? What other aspect of the law is most required to be conveyed to people at present?

Ms Rose Wall: In our services, which is all we can comment on, the biggest area of demand is family law advice because of the under-resourcing of the Legal Aid Board and because people do not know about the board. We often see people at an early stage of their family law issue and they do not know where to go. They know about our law centre because it is embedded in the community, but they have not heard of the Legal Aid Board. Family law is an area of demand for us. The other main areas are housing, employment and debt. There is a growing need arising in the area of education. We have been handling many cases recently for children with disabilities who are put on shortened school days or who have informal exclusion mechanisms applied to them. We are providing them with advice. Those are the main areas, but they can change. Sometimes it changes in response to a new circular or a new practice that has developed in an office or body of the State which creates a new area of demand. Apart from family law, employment, housing and debt are big areas and they are not catered for by the legal aid scheme.

Deputy Jim O'Callaghan: One of the points all the witnesses made was that the fear of a costs order can be an obstacle to accessing justice. In the WRC there is no prospect of a costs order being made against somebody. Does Ms O'Sullivan think that makes things fairer? She

said there is still inequality there. What does she think of the proposal that if one removes the possibility of costs orders being made against individuals, as is the case in the WRC, it would make access easier?

Ms Jane O'Sullivan: It is certainly an advantage to the new system in the WRC. However, if somebody is faced with the termination of his or her employment for an unfair reason and is taking a case, he or she is still not entitled to any civil legal aid and representation at the outset of that case. I find with people who come to our services through one of our outreach clinics that the costs and final outcome of the case are quite remote for them at that time. As for accessing what can be a very difficult process to get through, for example, in an equal status case or an employment equality case, there is an obligation on the individual who is taking the case to make written submissions in advance of the case. The case is front-loaded in that way.

Employment law is a massively technical area and often engages difficult concepts in European law. That in itself is a barrier. I accept that the WRC being a no-cost environment is one advantage but, for me, the intimidation begins at a much earlier stage and the advice or representation is required at that earlier stage. Often in our advocacy work we might assist somebody in writing the initial letters and sometimes there is no need to progress with litigation and end up in the WRC. Sometimes a letter to an employer setting out the infringements can resolve the situation at an earlier stage.

Deputy Jim O'Callaghan: The solution to that issue, one would think, is that the civil legal aid scheme should be expanded to cover the WRC and other tribunals such as the Social Welfare Tribunal.

Ms Jane O'Sullivan: Absolutely.

Deputy Jim O'Callaghan: One cannot use the civil legal scheme in respect of the Residential Tenancies Board.

Ms Rebecca Keatinge: One cannot.

Deputy Jim O'Callaghan: Ms Keatinge would want to see it applied to that as well.

Ms Rebecca Keatinge: It is not a prescribed tribunal and a number of complex matters go through the RTB. We believe there is a role for legal advice and representation for tenants in that forum.

With regard to the fear of a costs order, it is similar with the RTB. As an adjunct to that in respect of the RTB, we deal with some matters where we appeal to the High Court on a point of law. We are appealing a determination of the board and that is also a highly complex area. We see lay litigants in that process who are struggling to articulate their case. If one is seeking legal representation at the point where one is going to the High Court, that is another complicated scenario. It points to the need for legal representation at the earlier stage. As regards the fear of costs orders, we have had clients decide not to go to litigation because of the risk of a costs order. They would have been public interest cases which would have affected many other clients, similar to the example Ms Wall gave. The costs order consideration comes a little way down the line. One is initially assessing whether people have a claim, what the remedy is and then one comes to the costs consideration. It is not an isolated issue. There has to be a holistic approach to all the aspects.

Deputy Jim O'Callaghan: Professor Whyte spoke about protective costs orders. Obvi-

ously, they are available but, as he said, one cannot have a personal interest in the outcome of the case. He also mentioned class actions. When people hear about class actions one of their concerns is that they could be like the class actions in America in which lawyers end up taking a large percentage of the pot that is recovered. How do we get around that and ensure it would not happen?

Professor Gerard Whyte: First, the system of levying costs in the United States if different from the system here because lawyers there can charge contingency fees, claiming a share of whatever award is made. That is precluded in our system. I do not see that as a particular problem.

The LRC in 2005 recommended the introduction of multiparty actions for the reasons I gave earlier. I would support that for one additional reason, which I mentioned in my original statement but did not mention in my oral presentation. Sometimes, when dealing with a Department and challenging some aspect of questionable policy, if one sets up a legal case, the case will be frustrated if the Department decides to settle it and then imposes a confidentiality agreement on the litigant. There is evidence of this in the Travers report dealing with the nursing home fees in the 2000s. A class action would counter that because if the Department is facing a class action taken by two or three people representing a larger class, then settlement of that action changes the policy and so, for that reason, there is a need to introduce class actions. At the moment, questionable public policy can be protected by a Department simply settling cases and preventing the courts from having a chance to scrutinise what is going on.

Deputy Catherine Connolly: I thank the witnesses for the comprehensive opening statements, which are certainly food for thought. Access to justice begins long before anyone steps into a courtroom. I thank them for bringing that to my attention and making us reflect on it.

Page 3 of the CLM presentation, set outs the Pringle report from 1977, which has not been implemented, in bullet points referring to the intimidation of the legal world, inaccessibility of legal services and so on. They could apply to any public body, given my experience as a councillor for many years. When I think of that fear of retribution, I think of making complaints to the health services or I think of housing and local authorities. Whether it is accurate, it is certainly the perception. Those bullet points could apply to any public body, unfortunately.

We come back to the strategic model that is empowering and enabling, or a very specific model trying to sort out problems after they have arisen. That is the kernel and it is where Governments baulk because, if we take the strategic model, they think it is going to open up the floodgates, when the reality is it will probably save money in the long run. Is that not the challenge? The World Bank has examined the report to which the witnesses have referred us. It is not an easy read and I would recommend it be written in a different way because the message will be lost, other than us quoting two or three lines from it. It is not an easy report to read. It is certainly more effective to have a proper service. Is it not the challenge to get Governments to realise-----

Chairman: Is that question directed to everybody?

Deputy Catherine Connolly: Yes, to everybody. It is an enabling model.

Chairman: I call Ms Wall to respond.

Ms Rose Wall: To echo Professor Whyte's earlier point, we come across the same issue time and again in regard to local authorities. Time and again, we set up a case, institute a case

and settle a case and there is a confidentiality clause, but then a new client comes in the following morning with the same issue. That is not effective and is certainly not cost-effective from the State's point of view as well as our own. That is why we advocate this community law centre model. It is not just about trying to deal with the individual issue coming through the door and trying to look at it more broadly. First, it is trying to educate people in regard to asserting their rights but then trying to look at it from a law reform perspective. For example, what are the issues coming through our work and through our clinics? What are the broader issues we can try to tackle through a law reform mechanism, through a lobbying mechanism or through strategic litigation, if we get that far? That model is critical.

Deputy Catherine Connolly: The model is critical but I ask Ms Wall to consider the challenges to the adoption of that model by the powers that be. Is that the challenge?

Ms Rose Wall: Yes.

Deputy Catherine Connolly: Are there examples in other countries anywhere in the world where this strategic model has worked, or at least worked in a better way than in Ireland?

Professor Gerard Whyte: Some European countries, particularly the Netherlands, have a mixed delivery system, which involves a service model complemented by a strategic model. Lawyers and legal firms deliver legal aid to individual clients, complemented by a network of law centres doing the more strategic work. We have that de facto here, when we combine the State sector with the private sector because, as I indicated earlier, the State sector and the Legal Aid Board are essentially service models. However, the work done by the community law centres and the different legal aid groups is more strategic.

Deputy Catherine Connolly: I understand. I believe the witnesses are all in agreement that the Legal Aid Board is not an adequate model, not through a fault of its own but due to the manner in which it is funded and the underpinning legislation.

Professor Gerard Whyte: There is State funding in Ireland for two strategic models, which occurred out of the housing regeneration programmes. Limerick Community Law and Mediation Centre, on which Ms Wall can speak, and Ballymun Community Law Centre, which is publicly funded, are examples of strategic models that emerged from housing regeneration. It was, therefore, the Department of Housing, Planning and Local Government, not the Department of Justice and Equality.

Deputy Catherine Connolly: What is that called?

Professor Gerard Whyte: It is the Ballymun Community Law Centre, and the Limerick Community Law and Mediation is a very similar organisation coming out of the same stable.

Ms Rose Wall: From the State's point of view, and from the point of view of how to incentivise the State to create a more strategic model, there is a lot to be said for looking at the public education function. If people are aware of the law and their rights at an early stage, and engage with the legal services at an earlier stage, an issue can often be resolved at an early stage. Whether it is through a simple letter or a simple phone call, the issue can be resolved before it becomes entrenched, more difficult and there is a need to go to court. From an effectiveness and cost saving point of view, there is certainly an argument to be made.

Similarly, from a law reform point of view - and this is why we would advocate that the civil legal aid scheme should have a law reform function - if they are dealing with the same is-

sue and pouring resources into the same issue time and again, rather than dealing with the root cause of the problem, there is certainly the cost saving exercise to be done. As Professor Whyte highlighted on the issue of social return on investment, if we invest properly in these services, there is a social return because we are preventing homelessness, job losses and so on.

Deputy Catherine Connolly: I agree. I am asking how we overcome those challenges to make the system change. The witnesses made very specific recommendations in regard to the Legal Aid Board and the legislation underpinning it to broaden it out so it has a reform and education role. Is Ms Wall saying the roll-out of more independent law centres is part of the answer?

Ms Rose Wall: It depends on what is done. At the moment, what the law centres are doing is meeting the gap.

Deputy Catherine Connolly: They are filling the gap.

Ms Rose Wall: They are filling the gap. It is because of the areas of law we work in and the type of work we do, but also because of how we do it. We go out to communities and go where the people are. It depends on how comprehensive civil legal aid can be. It depends on whether there is going to be a need in the future. In reality, would it not be great if there was no need for individual community law centres that have to fundraise for their activities and do not have any security around that? Would it not be great if we had a proper comprehensive State scheme for that? It depends on how comprehensive it can be going forward.

Deputy Catherine Connolly: With regard to the Mercy Law Resource Centre, that gets no public funding at all.

Ms Rebecca Keatinge: Exactly. On the Deputy's broader point, I echo the comments made by Ms Wall and Professor Whyte. We do not receive any State funding. In an ideal world, community law centres would be rolled out but it has to be an incremental approach where we look at providing security for existing centres so they can fulfil the function that we fulfil.

Deputy Catherine Connolly: Has the centre applied for public funding?

Ms Rebecca Keatinge: We have applied for some public funding and have not been successful.

Deputy Catherine Connolly: It was not successful.

Ms Rebecca Keatinge: No, we were not successful.

Deputy Catherine Connolly: What reasons were given?

Ms Rebecca Keatinge: We have had feedback. We were competing against a number of organisations in a range of spheres, so it was not necessarily a specific law fund, as it were. Positioning our service in the homeless and housing space is, in some respects, challenging. If one speaks to a lawyer, it is clear that we can lift a lot of barriers to people accessing adequate housing, so they do not need to access an emergency bed somewhere, or we lift the reason why they need a free meal in the evening. We fulfil a function but articulating that can be more challenging.

Deputy Catherine Connolly: I read Ms Keatinge's submission in detail. There are 10,518 homeless people and it is becoming more difficult. Even before that, when I was a councillor

in a previous life, it was increasingly difficult and appeals were a nightmare. There was a lack of openness and accountability. Ms Keatinge is suggesting an alternative dispute resolution mechanism and I worry that will add another layer of difficulty, as opposed to looking at what is wrong with the system and improving it.

Ms Rebecca Keatinge: The Deputy makes a good point. The proposal of an alternative to the courts is based on the notion that, ideally, people do not need a lawyer to be able to resolve a housing matter but oftentimes they do, and the courts are so remote.

Deputy Catherine Connolly: I am not talking about the courts. I am talking the internal system in the council. There is often no information to tell someone that they can appeal a decision, how to do so or what the time limits are and so on. Is that not where improvements are needed?

Ms Rebecca Keatinge: There are a number of ways that it could be implemented. Some councils, in their schemes of allocation, will include an appeals procedure and set a time limit for that. As the people we meet in our clinics have not read the scheme of allocation for the relevant local authority, we, or a citizens information centre, need to tell them that.

Deputy Catherine Connolly: I see.

Ms Rebecca Keatinge: Some councils do not include an appeals mechanism and it is often extremely difficult to engage a local authority. I think the points that Ms Wall made about cost saving were well put. We sometimes get referrals from local authorities because we can expedite the process of resolving a difficulty and advise somebody as to how the scheme operates, why they cannot get an entitlement or how they can go about that. We can ease that process.

Deputy Catherine Connolly: The resource centre is giving help on the scheme of letting priorities which, on occasions, is a Kafkaesque nightmare and on appeals. Is that where the resource centre is focusing?

Ms Rebecca Keatinge: We would like to see uniformity and consistency about how appeals mechanisms operate across the local authorities.

Deputy Catherine Connolly: That comes back to the Department of Housing, Planning and Local Government setting proper procedures, rather than each local authority approaching the matter in an *ad hoc* fashion.

Ms Rebecca Keatinge: Consistency would add to efficient resolution of disputes and make the process ultimately more accessible and much more cost effective for people.

We have all spoken to the law reform piece. We were before the Oireachtas Joint Committee on Housing, Planning and Local Government in June and gave recommendations on family homelessness. It is through our accumulated experience of deficiencies in the current legal framework that we are able to bring recommendations that were included in the committee's report from November. All the recommendations we made are now in that report. There is real value in that in bringing about broader, more structural change in the specific practice areas in which we are involved.

Deputy Catherine Connolly: Will our guests' organisations be making submissions on the housing and planning and development Bill?

Ms Rose Wall: Most likely.

Deputy Catherine Connolly: What is being outlined in the planning and development Bill would be of concern to me. The courts have been proactive in talking about the trinity of planning laws comprising the local authority, the developer and the engaged citizen. There is a theoretical emphasis on the importance of the citizen, which this proposed Bill seems to curtail.

Ms Rose Wall: It does. It certainly curtails oversight of planning decisions. There is a question mark over whether it complies with our obligations under EU law and the Aarhus Convention. To consider it more broadly, we are in the middle of a climate emergency, as declared by the Dáil, and we need to have proper oversight of any development decisions that have an impact on the environment. The mechanisms in place at the moment allow for that, for more relaxed standing rules and protection as to costs in these cases and they will be considerably restricted with this new Bill.

Deputy Catherine Connolly: I am concerned about that. We had a presentation from Science Foundation Ireland some time in the past 12 months which put an emphasis on policy based on evidence. It seems to me there is a mantra about serial objectors to planning permission without any evidence at all. I do not see any evidence coming forward, or an analysis of what the problems in planning are. Would our guests agree that is a big defect or would they have opinions on that?

Ms Rose Wall: There is sometimes a little bit of reframing and rebranding to be done around environmental issues.

Deputy Catherine Connolly: Yes.

Ms Rose Wall: The Deputy is right that there is a perception of the serial objector that is not borne out in reality. The reality is that climate and environmental issues affect every person in our community and will continue to do so over the next while. The idea that opposition is coming from an anti-development position, a crank or a serial objector is not the reality.

Deputy Catherine Connolly: It is a particular narrative.

Ms Rose Wall: It is a particular narrative.

Deputy Catherine Connolly: The area of confidentiality on the settlement of cases is important and there would be learning opportunities if there were not confidentiality clauses. I do not think any Department involved in any litigation should insist on a confidentiality clause because there can be no learning in that case. It should be up to the affected plaintiff to seek a confidentiality clause if they want it, but not the Department or the official body. Am I too extreme with that view?

Professor Gerard Whyte: I would agree with Deputy but, in these types of situation, Departments are buying off individual litigants so that they can protect the policy they have in place. I came across that through work I did with FLAC. In one particular case, FLAC was bringing a High Court challenge on a Monday morning and, on the Sunday night, a senior counsel from the other side rang our senior counsel to say they would give us what we were looking for but insisted on a confidentiality agreement. In such a situation, the client has got what he or she is looking for. One cannot go into the High Court and tell the judge to highlight the fact that there is a problem for dozens, maybe even hundreds, of other similarly situated welfare claimants. The use of confidentiality clauses is a strategy to protect policies.

Deputy Catherine Connolly: It is a seriously defective strategy because it prevents the

learning of lessons and ends up costing more to the taxpayer.

Ms Rose Wall: Apart from the loss of learning opportunities and the effectiveness piece, it is also unjust for all the other people who are affected by the policy that the defendant has, in effect, accepted as being illegal, unfair or unjust because the defendant will not remedy the problem for people who have not taken a case. It is unjust.

Deputy Catherine Connolly: My final point is about taking cases. There were serious questions as to whether we are complying with our obligations under the European Convention on Human Rights and the Charter of Fundamental Rights. Are there avenues for any of our guests to pursue with clients and take a case, or have they done that, in relation to access to justice and the courts?

Ms Rose Wall: My understanding is that, legally, it can be tricky to take a case for somebody while arguing that person does not have legal assistance. A law centre is providing legal assistance to a client while arguing that the client cannot get legal assistance.

Deputy Catherine Connolly: And yet Ms Wall is highlighting our non-compliance with our obligations under those instruments as a serious problem.

Ms Rose Wall: There would be a legal obstacle that we would encounter in taking such a case.

Chairman: Before I move on to Deputy Martin Kenny, I know that Deputy O'Callaghan has had to leave, I hope briefly. Deputy Jack Chambers might text Deputy O'Callaghan. We want to invite our guests to have a photograph with us at the end our session.

Deputy Jack Chambers: I will grab Deputy O'Callaghan.

Chairman: Will Deputy Chambers let Deputy O'Callaghan know?

Deputy Jack Chambers: I will.

Chairman: Senator Conway might also be advised of that. I should have flagged it at the outset. Our next contributor will be Deputy Martin Kenny, to be followed by Deputy Pringle, and I ask anybody else who wants to participate to indicate.

Deputy Martin Kenny: I thank all of our guests for their contributions this morning. I would like to tease out a few things a little more. Almost all the contributors have referred to class actions, multiparty actions and the impact they may have. I recently raised with the Minister for Health the case of a woman who had a settlement in court. She is one of probably 150 or 200 people in the country who have made the same complaint and each has been told by their solicitor that they would have to take a separate case and it would be fought separately by the State because it feels it has an obligation to defend taxpayers' money. That was the reason put forward. I am trying to be delicate. The excuse, or the reason, that is being put forward is that each individual's illness is particular to themselves and each has his or her own bodily system, which will react differently. I find, however, that there is a tendency in these situations for the State to block or push back for as long as it can and when it realises that will not work it settles with a confidentiality clause. It will then set up a system to bring all those people together and say there will be redress. The difficulty is that the redress is part of that system of holding on for as long as possible, giving and admitting as little as possible.

What are the problems that could come into play in the multiparty action? There is a resis-

tance to that. My colleagues, Deputies Pearse Doherty and Ó Laoghaire, have brought forward legislation and gone some distance with it but there is considerable resistance to this becoming law from the system. If there are valid reasons for that I would like to know what they are.

Chairman: We hope that the answer will not be money messages because that is the obstacle that all Private Member's Bills face. I know that is the barrier in that particular case.

Professor Gerard Whyte: There can be issues relating to class actions. The experience in the US indicates that there are issues to be addressed, for example, identifying a class. Deputy Martin Kenny referred to 150 people with medical problems where the medical situation might vary from one to another. It is a question of deciding whether there is sufficient similarity in the cases to be a class. In the US the class action works on the basis of two or three people presenting with a common problem. The action goes ahead in the name of those individuals but subsequently if anybody else has been similarly affected they can get the benefit of the ruling. This sets the context for the second problem which is that there are several people driving the action, there is a class behind them but will they properly represent the interests of their fellow class members or could their particular issues be addressed to the detriment of issues that other members of the class might want to see highlighted? This type of problem can present itself. I am not sure that it is possible to come up with a model that will avoid those. We have to just engage with them on a case by case basis.

Deputy Martin Kenny: Is it possible to ensure that the legislation contains as many conditions as possible to avoid any negative impact like that?

Professor Gerard Whyte: I am not sure that can be done because those would be issues of fact. Determining whether there is a particular class can be done only in the context of a particular problem and the possibility of litigation. I cannot see how legislation could obviate that particular issue.

Deputy Martin Kenny: One current example is the replacement hip joint used for hundreds or probably thousands of people in the country which was found to be defective. It was used all over the world, yet in Ireland each person is fighting individually. To me that would be a very typical multiparty class action and there would not be an issue because it is very clear there is a problem. The reason Professor Whyte gives is valid but only to a certain extent. When we get past that the multiparty or class action could bring huge benefit, not just from the point of view of the people taking it but from that of the State because the State is being put to huge cost defending each case. Apart from legal costs there is the cost to society and the injustice to the individuals.

One of the big barriers for people is the cost of taking legal action. They fear that if they lose the case they will lose a lot of money. It can be a minor problem but they can feel very aggrieved. Sometimes we, as elected representatives, meet individuals whose lives are dominated by some wrong that they felt happened to them and they could get no justice anywhere. Sometimes they are on to us three and four times a week. Their mental health is affected. When we bore into it we might find that it started out as a minor issue but they found there was nowhere to go with it. Is there scope to develop something like the small claims court? I think at the moment the limit is €2,000 and it has to be for the purchase of an item. It is quite restricted. Is there a possibility of opening that up for people to have access to justice that would not impose the big cost on them of having to employ a solicitor and get into a legal tangle?

Ms Jane O'Sullivan: I think that probably goes back to a point that was made earlier by

Ms Wall that a civil legal aid system should not be limited in terms of area of law but rather by a person's need for legal assistance. The Deputy gives the example of someone going to the small claims court but the case snowballs which has an impact throughout their lives. I recall one person who came to a clinic who was living in a family hub and was in difficulty with their mobile phone provider. This was having a disproportionate impact on that person's situation and was affecting their child's access to education because the person was not able to focus on making sure that was fulfilled. Those areas of law do disproportionately affect the communities we work with, people facing disadvantage. The Deputy is absolutely right that representation and advice at that early stage is vital, no matter what the area of law.

Deputy Martin Kenny: If the civil legal aid was expanded and properly resourced, would that resolve many of those issues?

Ms Jane O'Sullivan: Absolutely, yes.

Deputy Martin Kenny: In respect of homelessness and housing, we come across people paying very high rent who cannot get any result if the house is damp or cold, the heating does not work, the landlord will do nothing and they go to the Residential Tenancies Board, RTB, and the battle goes on. They feel they cannot get anywhere. On the other side, there are people in rented accommodation who do not pay the rent. The landlord may put up with them for a year or two but cannot get anything out of them. Eventually when the landlord gets them out they are left with a big bill which has been unpaid for a long time. The tenant gets a house somewhere but the landlord wonders why they are letting houses to people who will not pay the rent. They feel they have no come back because the first question a solicitor will ask is whether the person has any assets or money. If the landlord says they do not seem to that causes a huge problem. I am sure every public representative comes across this regularly. If the individual does not have means the landlord has to put up with it. There is an injustice there as well. Is there a solution to that type of situation?

Ms Rebecca Keatinge: There are mechanisms by which the landlords can pursue their arrears at an earlier stage. We all know about the RTB dispute resolution process. It could serve its warnings and be in there pretty quick. Our understanding is that the RTB will prioritise the more straightforward cases. There is also an enforcement process and mechanism within the RTB where, in some instances, it will take that forward and seek an order from the court to enforce it. I hear what the Deputy is saying on the mark in respect of recovering it but landlords may reduce their potential losses by pursuing what is a remedy that is available to them at an earlier stage.

With respect to conditions, the Mercy Law Centre would have traditionally looked to some of those cases to provide advice. Given the scale of the homeless crisis, we are prioritising our cases so we devote a considerable time to the real acute need of people who cannot even access a bed for the night. That is where our resources go. There are certainly very legitimate legal issues for people who are in very substandard housing and whose health is being compromised by that but there is very little recourse in terms of legal advice. When we have people contacting our service it is very hard to know where we can direct them to get that support.

I shall comment briefly on costs as mentioned by the Deputy. There is the chilling effect of, potentially, getting a cost order against one. Even paying basic stamp duty costs is a barrier in itself. Many of the cases we are dealing with concern fair procedures and, therefore, are in the High Court so then one is into having €300 to get a case initiated and then the costs will grow. That is just simple stamp duty. Those costs are a challenge for us, as a law centre, to meet if

we are bringing a lot of litigation and for an individual the costs would be substantial as well.

Deputy Connolly asked about appeals mechanisms. From our perspective on the housing side, if there were some consistency around how appeals were dealt with by the local authority that may be a mechanism to avoid, perhaps, going to the High Court in the first instance. That could happen if one knew that one had a meaningful, transparent and consistent procedure that one could engage with that may resolve things and not require one to take a leap. There could be an equivalent to the small claims court in the local authority housing sphere.

Deputy Martin Kenny: We often find that cases go to an inappropriate court. If the cases were dealt with earlier and effectively these matters could be more efficiently dealt with in a lower tier court and at less cost. That is something we could possibly consider but maybe there are reasons for that being otherwise.

Ms Rose Wall: Depending on the case, there might be a role for mediation. CLM provides a mediation service. Mediation is particularly important when what is at issue are relationships such as disputes between neighbours, family members or colleagues where an ongoing relationship is critical. Sometimes the law is not the best avenue in such instances and mediation is much more appropriate. We have the family mediation service, through the civil legal aid scheme. The service can be a good mechanism for certain types of disputes. It is probably a less suitable mechanism where a client is up against a State body. A case can be more difficult in that situation. When what is at issue is a relationship, a damaged relationship and a dispute between parties who do have a relationship, then mediation certainly has a role.

Deputy Martin Kenny: How are mediators paid? I ask because many of the mediators involved in the process have found it difficult to make a living.

Ms Rose Wall: Absolutely. Our mediation service is free and our mediation service is provided by volunteer mediators so they are not paid. The family mediation service is also free but it uses a panel of mediators who are paid by the service. There are private mediators who work, for example, in the area of employment law and others.

Deputy Martin Kenny: Is it an area that could be resourced better?

Ms Rose Wall: Yes. The Family Mediation Service could possibly be resourced better because it has waiting lists too.

Deputy Thomas Pringle: I thank everybody for their evidence and we have had an interesting discussion.

The Pringle Report mentioned was published 42 years ago in 1977. If a review of the report was conducted over the next year or so would we point towards its recommendations that have been implemented? Has the report stood the test of time? If we implemented its recommendations now would it meet our current requirements?

Professor Gerard Whyte: Certainly, I feel that if the recommendations of the Pringle Report had been acted on we would have a very different State-funded legal aid model from the one that we have today. One must consider the sequence of events. The Pringle Report appeared in 1977 but no progress was made on it and then we had the Airey case, which came before European Court of Human Rights in 1980. It was the Airey case that pushed the State into agreeing to provide free legal aid. The Airey case was a fantastic case to bring but it only highlighted one of the problems that we have identified, that of cost. Mrs. Airey was certainly

not intimidated by the legal profession and was well aware of her legal rights. Her particular problem was she could not afford legal representation so that was the sole focus of her case. In turn, it meant that the State, in order to comply with Airey, only had to focus in on the issue of costs and did not have to address the other problems that were identified in the Pringle Report as barriers to accessing justice such as people being unaware of their rights or being intimated by the legal world. The Airey case took the wind out the Pringle Report in the sense that now there was a State scheme and the State could say it complied with the European Convention on Human Rights but that is not the model recommended in the Pringle Report.

Deputy Thomas Pringle: We are here almost 50 years later.

Professor Gerard Whyte: Yes.

Deputy Thomas Pringle: That is telling in itself.

Ms Rose Wall: We set up CLM Limerick in 2012-2013. Prior to setting it up we carried out a community consultation in the form of focus groups in the local community. The initiative came up with pretty much the same conclusions as Pringle in deciding what were the barriers to accessing justice but also what is the shape of this service going forward, and how should it be provided to the community. The issues were the same. While cost is certainly an issue in terms of being a barrier to accessing justice, all of the other issues came up like an intimidating legal world, the inability to access legal services, a lack of legal education, and the lack of awareness of rights in the law. What people were crying out for was an accessible legal service in the community where legal education and law reform would perform part of its functions. It was interesting that 35 years later the same issues arose.

Deputy Thomas Pringle: Unfortunately, probably 35 years from now those issues will arise too.

Ms Rose Wall: That will depend on the report of this committee and how successful that is.

Deputy Thomas Pringle: Ms Wall has a lot more faith in it than I do. It depends on the result of the next general election, more so.

Chairman: To digress briefly, the Deputy had no doubt that Pringle is always relevant. Is that not the message from the Deputy?

Deputy Thomas Pringle: I hope it will be as relevant after the next general election too.

Deputy O'Callaghan mentioned barriers. The biggest barrier is money, as has been outlined. That aspect is one that was not mentioned in that discussion. I do not have a legal background but I know that everybody thinks straightaway about costs when considering legal stuff. Our whole legal structure is based on paying for legal advice; if one has money one gets justice but if one does not have money one will have to sing for it. Ms Wall said that CLM services are free.

Ms Rose Wall: Yes.

Deputy Thomas Pringle: When the Free Legal Advice Centres, FLAC, came before this committee its representatives talked about free services. However, when one delved into the matter one discovered that it costs €130 for an initial consultation, which means assistance is not free and, therefore, poses a real barrier. Are the CLM services entirely free?

Ms Rose Wall: They are entirely free. I suspect that the cost the Deputy referred to relates to the Legal Aid Board rather than FLAC, which is also entirely free.

Deputy Thomas Pringle: Sorry, the Legal Aid Board or whatever.

Ms Rose Wall: Cost is a factor. While people are eligible for legal aid, once they get legal aid there is, as the Deputy said, a minimum fee to be paid. An important obstacle to legal aid at the moment is the means test. We have a means test where one cannot earn over €18,000 but after that one is allowed certain allowances. However, those allowances have not been visited in some time and are totally out of touch with the reality of the cost of living. For example, one is allowed an allowance of a maximum amount of €8,000 for rent or mortgage payments. If one rents in Dublin and is in receipt, for example, of a housing assistance payment, HAP, particularly a homeless HAP, one will be in excess of €8,000. HAP is treated as income under the means test.

Deputy Thomas Pringle: Yes.

Ms Rose Wall: One has a situation where the HAP is paid directly to the landlord so one never sees a penny of it yet HAP could bring one over the qualifying amount in the means test thus making one no longer eligible for legal aid, which is crazy. There are a lot of anomalies with the means test, which mean that people who cannot afford the services of a lawyer are being denied legal aid. Frankly, there are very few people who can afford the services of a lawyer. The average person in Ireland, I would say, cannot afford to take a case to the High Court to vindicate his or her rights as it is just out of his or her reach.

Deputy Thomas Pringle: It definitely is. I thank Ms Wall. It was mentioned that legal aid was not allowable at the WRC. For my own information, is it allowable where the WRC makes a judgment that is then challenged in the courts? I know of instances where someone who got a favourable judgment at the WRC that was then challenged in the courts by the employer lost there because he or she had no legal representation.

Professor Gerard Whyte: My understanding is that legal aid certificates apply to proceedings in the courts. The one tribunal where someone can get legal representation is the International Protection Appeals Tribunal. That is the limit of the legal aid certificate. Once a case moves from a tribunal to the courts, there is the possibility of getting legal representation from the Legal Aid Board. At least, that is my understanding.

Deputy Thomas Pringle: That is something of which people are not aware. In a number of instances that I know of, people won their cases for genuine reasons but, when they went to court, they were ruled against because they had no legal representation. That is-----

Ms Jane O'Sullivan: I will add to that. The WRC has an enforcement unit that can provide people in some circumstances with assistance in enforcing awards in the District Court. Not everyone is aware of that.

Deputy Thomas Pringle: The WRC probably does not make people aware of it either.

Ms Jane O'Sullivan: I cannot comment on that. The enforcement of judgments is a whole other problem that we could probably discuss for another day. People get awards against their former employers or, in an equal status case, a service provider, but enforcing that award and getting the money is the start of a new journey, one that is difficult to navigate. The manner in which companies are structured in Ireland can pose problems. Piercing the corporate veil and

accessing the money can be difficult. If someone has already fought a long and often distressing employment law case, embarking on another fight is frequently too much.

Deputy Thomas Pringle: I thank Ms O'Sullivan. I have two further questions. It was mentioned in passing that the legal advice was funded by the Department of Housing, Planning and Local Government rather than the Department of Justice and Equality. This may be an unfair question for the witnesses, but I believe that is the crux of the problem, in that the Department of Justice and Equality is not about justice and is not the right Department to deal with many of these matters. Perhaps it needs to be broken up and the law, the Garda and so on need to be kept separate from the civil legal aid system. The Department of Housing, Planning and Local Government has funded these advices and the Department of Justice and Equality has not. How does that work?

Professor Gerard Whyte: The context was housing regeneration in Ballymun and Limerick. As such, it was just a different Department. Ballymun Regeneration Company Limited, which I believe was set up by Dublin City Council, convened a meeting of stakeholders to see what sorts of service could be delivered generally in the Ballymun area. The Free Legal Advice Centres, FLAC, highlighted the need for a legal aid service. The company went with the strategic model that FLAC had advocated.

Deputy Thomas Pringle: It is telling that the Department of Housing, Planning and Local Government did that rather than the Department of Justice and Equality.

Professor Gerard Whyte: The Department of Housing, Planning and Local Government was ultimately the funding Department, but it was done through the local authorities. My point was that it was a State-funded strategic model. It can be done if there is the political will.

Deputy Thomas Pringle: That is everything from me.

Chairman: I thank the Deputy. I call Deputy Chambers, please.

Deputy Jack Chambers: Most of my points have already been raised. I apologise for being delayed.

The Pringle report has been referenced a number of times. Can the witnesses point to any radical or tangible improvement since the report? Are we facing a legacy of people being left behind in this space? Is there anything in the past 40 years about which we can be positive? According to one of these documents, many of the core areas in 1977 were still problematic in 2012. Did anyone take policy action? Will someone else be here in 40 years time asking what the parliamentarians of today did not do?

Professor Gerard Whyte: The Legal Aid Board statutory scheme is still a service model, as was its predecessor, the extra-statutory scheme. However, there was a significant increase in resourcing in anticipation of the divorce referendum in 1995 or 1996. Until that time, the board had operated through 12 law centres, four of which were in Dublin with the other eight distributed around the country. Now, there are approximately 30 law centres. Under the statutory scheme, there has been a greater involvement of private practitioners. As far as I recall, there was no involvement of private practitioners under its predecessor. Essentially, there were 30 or so solicitors trying to provide legal aid for the entire country. That has changed. There are now more Legal Aid Board solicitors. For limited types of case, the board can get private practitioners involved in providing legal services.

That said, it remains the case that the board is significantly under-resourced. A number of us have mentioned the board's difficulties in recruiting staff. That is a serious problem and is manifesting in delays in getting an initial appointment in some centres. I should clarify that the Legal Aid Board has a system of prioritising cases that are not subject to those delays. If one is not a priority case, though, one can be waiting many months to get an initial consultation with a board solicitor. That speaks to me of under-resourcing.

Chairman: Does anyone else wish to reply?

Ms Rebecca Keatinge: We recognise that the Legal Aid Board provides substantially more legal services than were available in that period, albeit in fairly discrete areas. The community law centres are dealing with a large unmet need in other areas where there are no entitlements to legal aid. The issue of community law centres has arisen in the interim period. There are nearly ten of them now. We operate in a network, co-ordinate our work - we share our legal expertise and experiences - and work on law reform to a degree. There is a certain strength, but it is an under-resourced area with relatively low visibility. I just wanted to raise those concerns.

Ms Rose Wall: I will echo those comments. Compared to where we were in the 1970s, we have made some progress. For example, we have a civil legal aid scheme, Abhaile and the Citizens Information Board. We have more than we had, but the point we are making today is that we could do much better.

Deputy Jack Chambers: Yes. We all deal at the coalface with constituents who, in their sense of the world, see no empowerment in positioning themselves and accessing justice. The witnesses have outlined statutory limitations, resource issues and issues with the model of civil legal aid. This area needs to be radically reformed. Regarding statutory limitations, could the statutory framework be expanded to deal with the anomalies or should the whole thing be uprooted and changed? Given the witnesses' critique of the model, will it ever be fit for purpose?

Ms Rose Wall: To achieve the ideal, the model of legal aid - the areas covered, the means test, etc. - would need to be uprooted and changed entirely. It could be done incrementally. One could start with resourcing to try to reduce waiting times. One could start with the areas of law that it covers. One could start with the means test, which should be reviewed every year and expanded. To be more realistic, there are more discrete things that could be done in following a path to examining the whole system.

Chairman: If the Deputy is satisfied, that will bring us to the end of our engagement. I record our sincere thanks to all our witnesses. This is the second of our series. We are moving on next week, which is the final sitting of this year, and we will conclude our hearings on access to justice and legal costs. Our final line-up will be Insurance Ireland, the State Claims Agency, the Competition and Consumer Protection Commission and the Legal Services Regulatory Authority.

We will, hopefully early in the new year, publish our report with recommendations. There will be a degree of jitteriness around here that we had better do it quickly or we might not do it at all because the whole place could collapse, so we will try to do it as early in 2020 as we can because do not want this work to be lost. We will invite the witnesses back, if they are in a position to join us for that launch, to offer their opinions on the report and, very importantly, its recommendations. I have no doubt that, in looking through their respective opening statements and the information they have shared with us today, they will see a lot of what they have reflected to us re-reflected in what we will be publishing ourselves.

I thank all of the witnesses from Community Law and Mediation, who are also joined by a colleague in the Visitors Gallery, the Mercy Law Resource Centre and Trinity College Dublin school of law. We would like to invite them to join us for a photograph for our book, and we do that as a matter of course.

We will launch our report on direct provision tomorrow in the audiovisual room at 11 a.m. Robert Kennedy-Cochrane from the Oireachtas press office indicated he would like to do the group photograph, weather permitting, on the Plinth in advance of the launch of the report because it has proven very difficult to get people to stay on after an event. If everyone agrees, I propose we meet at 10:45 a.m. tomorrow morning on the Plinth, for those who can do so.

Senator Niall Ó Donnghaile: I will be voting tomorrow.

Chairman: Yes, indeed, the Senator from the Short Strand. I wish him well with that.

The joint committee adjourned at 11.02 a.m. until 9 a.m. on Wednesday, 18 December 2019.