



RCNI Submission

Civil Legal Aid Review, January 2023

Introduction – Rape Crisis Network Ireland

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.

Introduction – This Submission

RCNI welcomes this opportunity to make a brief submission to the Civil Legal Aid Review. Our latest RCNI Statistics Report indicates that 24%¹ of those we support who are over 18, are the victims of sexual violence by their partner or ex-partner. Very many of these clients must also get involved in family law proceedings. Through our work with them, we are familiar with some difficulties which they may encounter when they seek Civil Legal Aid in order to get legal advice or be represented in court. While most of our legal support work is within the criminal justice system, we do support some women seeking legal advice, and occasionally legal representation, as victims of sexual offences in criminal proceedings. However, we do not as a rule support victims of sexual violence within the family law system directly.

Structure of this Submission

Accordingly, this submission will confine itself to a few Issues only listed in the Stakeholder Submission Issues Paper² published by the Civil Legal Aid Review Group. Any recommendations will be found at the end of our Commentary under each relevant Issue and attendant Questions. The relevant Issues and Questions to which we would like to draw your attention are set out below in contrasting type for easy reference.

Issue 3 – Eligibility

Questions:

4. How appropriate are the current eligibility thresholds?
 - i. How should the financial eligibility threshold be determined to access the scheme or any successor in the future?
 - ii. Is there a particular figure which you would set?

¹ RCNI Statistics Report 2021, accessible online via this web-link: [RCNI-Statistics-2021-final-1.pdf](#)

² Document is accessible from this web-page: [gov.ie - Stakeholder Consultation on the Review of the Civil Legal Aid Scheme \(www.gov.ie\)](#)

iii. What is your rationale for that figure?

5. Are there other allowances or considerations, which should be made in determining eligibility (financial or otherwise) for the scheme?

6. Are there certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test? If so, what types of cases do you believe fall into this category?

7. Should some form of merits test apply to the cases at 7? If so, what should that look like?

8. Do you agree with how merit is defined and what matters should be included in the merits test?

RCNI Commentary:

4. The current eligibility thresholds (€18,000 annual income and capital of €100,000) are not suitable at all because they are so low that many people who need legal advice and representation in family law matters and cannot afford to pay a solicitor themselves, are left in a position where they have no choice but to represent themselves. This is challenging at the best of times, but when the person who has to represent themselves in proceedings which they had to initiate or respond to in family law court – is themselves the victim of often prolonged abuse by the other party – it is nothing less than re-traumatising. This is an outcome to be avoided at all costs, in our view.

(i) First, the threshold itself should be raised substantially. Second, the list of available allowances needs to be expanded to include such unavoidable and essential expenses as medical expenses, travel to and from work/some contribution at least to the costs of working from home, and third, existing allowances need to be raised to a much more realistic level, given the enormous rises not only recently in the costs of groceries, fuel and other essentials such as clothes, but also since 2006 in both childcare and accommodation costs. The current level of allowable accommodation only provides for the first €666.66 of those costs to be allowed – per calendar month. It will be seen very readily that this is very inadequate when compared to the cost of a mortgage or rent of a family-sized property in 2023. Fourth, there should be provision in the list of allowances for otherwise unspecified but also essential expenses to be allowed.

(ii) No.

5. In essence, this is answered at 4 above so will not be repeated here.

6. Yes. We would suggest that applications under the Domestic Violence Act 2018 should come into this category.

7, 8: RCNI does not have any comment on either of these questions.

Issue 4 - Financial Contribution

Questions:

9. How appropriate are the current levels of financial contributions?

10. Should the financial contribution be assessed differently in respect of different types of subject matter?

11. If so, should an individual pay a contribution based on the complexity of the subject matter and pay that in instalments over the length of the case as the case is progressed on his/her behalf?

RCNI Commentary:

9. The contribution levels are reasonable in most circumstances, but family law cases with a background of domestic violence may be the exception to this (see below at 10):

10. RCNI tentatively suggests that the criteria for waiving these contributions might be reviewed so that there is more flexibility to waive these contributions in other circumstances besides those currently described and most especially where domestic violence and abuse are in the background to the case. We say this because we are aware that financial abuse of some of our clients who may be in work and even earning a reasonable salary is so acute that the perpetrator of the abuse controls all her income to the extent that she cannot guarantee she can access even the modest sums now charged as a contribution in family law proceedings.

11. In our view, complexity of the subject matter should not be a factor in the amount of contribution to be paid.

Issue 6 – Accessibility

Questions

13. What are key barriers to accessing the service?

14. How can the administration and delivery of the service be made to work better for the individual users, NGOs and communities?

RCNI Commentary:

In response to 13 we would list the following:

- Lack of sufficient staff and private practitioners to carry out the amount of legal advice and representation needed in family law courts is a big barrier from what we hear from our clients;
- The delays before it is possible to access legal advice in the first place can be very lengthy, and occasionally we have heard of delays in having the eligibility assessment completed too;
- The low financial thresholds for eligibility as outlined above are an issue, and
- Levels of contributions, even if very modest, may be prohibitive for some clients, particularly those whose personal finances are controlled tightly by the abuser.

In response to 14 we would list the following in particular:

- More funding to recruit, train and provide support to solicitors directly who are already or willing to become, specialists in the area of family law and in both sexual and domestic violence and abuse related issues;

- More funding to recruit, train and provide support to more private practitioners who are already or willing to become, specialists in the area of family law and and in both sexual and domestic violence and abuse related issues;
- More funding in order to be able to provide significantly higher levels of fees for these private practitioners (and others, to be fair) than they have at present, as it seems to us that that would have to increase their availability;
- More flexibility to be available in order to waive contributions in a proper case, including one where financial abuse forms part of the background to the case.

Issue 8 – The future

Question:

25. What additional roles should or could the Legal Aid Board have, if any, in relation to public legal assistance?

RCNI Commentary:

RCNI looks forward to the expansion of the role of the Legal Aid Board in relation to the expansion of the free legal advice to be given to victims of sexual violence in criminal proceedings, as per the Government commitment outlined in “Supporting a Victim’s Journey”³ (1), so that it covers every stage of the criminal justice process and is not limited to the most serious sexual offences; and

RCNI would also recommend and support a similar commitment being made by the Government to the provision of legal advice to victims of domestic violence in criminal proceedings (2). In our experience, sexual violence and domestic violence are endured by the same victim all too often.

Conclusion

Please do not hesitate to contact us if you have any queries about the content of this Submission. We will do our best to help.

Ref: RCNI/LD/1

Date: 3 February 2023

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³ Accessible via this web-link:

https://jobs.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf



[Deadline: 3rd February 2023 at 6pm. Email to: legalaidcivil@justice.ie]