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LEGAL AID BOARD

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By email only

Ms Nicola Kelly
Secretary
Judicial Planning Working Group
Department of Justice

Tel: (01) 6469600

26th July 2021

Re: Submission to the Judicial Planning Working Group

Dear Nicola

Thank you for the invitation to make a submission to the Judicial Planning Working Group. By way of background the Legal Aid Board is responsible for the provision of most civil legal aid services in the State and also for the provision of the State's family mediation services. While the Civil Legal Aid Act 1995 is relatively broad in terms of inclusiveness of civil issues, the majority of those who seek legal services from the Board do so in relation to a family problem. In terms of its experience the Board also provides or facilitates the provision of legal aid;

- In most international protection cases;
- to complainants in certain sexual offences cases;
- in certain personal insolvency cases involving persons at risk of losing their home on account of mortgage arrears;
- in a small number of personal injury / medical negligence matters; and
- in other general civil matters.

The commencement of certain provisions of the Assisted Decision Making (Capacity) Act 2015 will give rise to further legal aid representation.

On behalf of the Legal Aid Board I make the following submissions:

1. The Board has welcomed the provisions of the General Scheme of a Family Court Bill. The provisions regarding the appointment of Judges to work on family law cases for a minimum of three years should effectively see the development of Judges who specialise in this area. The regard that is needed to a potential appointee's training and experience is to be endorsed as is the capacity for the President of the Court to require a judge to attend training and

education events. The family justice reform programme that is being worked upon and that the Board is actively involved with is likely to give rise to some element of regionalisation of family justice. The desired outcome from the Board's perspective is that there are a number of regional family dispute resolution centres that have District level and Circuit level Judges assigned to them (with a facility to have urgent matters heard at local District level). This will help address a problem that is frequently identified outside of Dublin where a 'visiting' Judge starts a case but is unable to complete the case in one sitting and the case then becomes difficult to complete and often takes far longer than it should. The scope for case continuity and also for the dedicated expertise of specialist Judges should significantly improve the experience for end users of the family justice system.

2. In terms of resource assignment it is the Board's view that a 'resource allocation model' should be developed and that resources should in general be assigned on the basis of the demand from the end user. Resource assignment could work on the basis of the spread of population and I am aware that in the context of the regionalisation of family courts, some attention has been given to siting those courts on the basis of some level of equivalence in terms of the population served.
3. What is not always evident is that there is judicial accountability for the amount of work that a Judge undertakes. It may be that the doctrine of separation of powers and judicial independence are being interpreted to effectively preclude Judges being accountable for their performance in terms of caseload / case throughput etc, instead of the preclusion being confined to their decision making. Any resource allocation model has to have an element of 'fairness' to it and cannot be based on resources going to the location with the longest waiting times. We believe that taking this approach incentivises undesired behaviours and it is important that the criteria for assigning resources have regard to the efficiency and effectiveness with which they are likely to be used.
4. A related issue is 'system accountability' i.e, there is little or no accountability for how the courts / justice system as a whole works. If this accountability can be achieved, having some element of consistency of performance expectation becomes easier. We are more familiar with the family justice system than other areas of law. It is notable that in the Norgrove Report on family justice in England / Wales and in the Gillen Report on family justice in Northern Ireland, the issue of system accountability was called out very strongly. It is still quite evident that the progress of a case through the court system is hugely dependent on local factors including judicial approaches and attitudes, the approach and attitude of the County Registrar and other court officials, and indeed at times the speed with which legal aid can be made available to a

person. It is also the case that there is no cross organisational oversight of time-lines or the broader efficiency and effectiveness of the system.

5. Clearly there is a need for good data in order to make informed decisions. There may be significant work to do in this regard including the use of common definitions where data is cross organisational.
6. In relation to the O'Malley Review on victims of crime our view is that this will have a relatively marginal impact in judicial time though some additional time is likely to be required for preliminary hearings. We would see the main issues stemming from the recommendations as relating to shared learning and better awareness as well as improving the availability of legal advice to victims prior to the institution of a prosecution.
7. It is not clear to me when a review of the financial eligibility criteria for legal aid will take place. There is a commitment in the Justice Plan 2021 to initiate a review of the civil legal aid scheme itself in Q3 of this year. The review of the financial eligibility criteria may well form part of this review. I should note that the main criteria in place date back to 2006 and we have a submission dating back to May 2017 to make changes to the criteria but that submission has largely not advanced. In any event if the eligibility criteria are increased this may well lead to an increased number of persons who are legally represented as opposed to unrepresented, rather than an increase in the number of cases.
8. We believe that the very recent amendments to the insolvency legislation include one amendment that has the potential to very significantly increase the number of cases taken on foot of section 115A of the Personal Insolvency Act 2012 (as amended). This is the removal of the requirement that a mortgage debtor be insolvent as of the 1st January 2015. In other words the 'sunset' clause on the original legislation has been removed. We have granted legal aid in approximately 2,500 of these cases since the Abhaile Scheme commenced in July 2016 (as per the Table).

| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 to 30 th April | Total |
|--------------|------|------|------|------|------|--------------------------------------|-------|
| Grant | 85 | 465 | 625 | 549 | 560 | 176 | 2,460 |

9. The extent to which problems, and particularly family law problems, need judicial resources is heavily influenced by alternatives to resorting to Court. The Legal Aid Board has a mediation service which is not means tested but has a limited budget. In considering whether to increase judicial resources regard should be had to applying non judicial alternatives such as mediation to resolve disputes. In the case of family law problems there is extensive

research that marital breakdown is best resolved outside of adversarial court settings though it is acknowledged that there are family law cases which will not be amenable to these alternative dispute resolution.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J McDaid', written over a horizontal line.

John McDaid
Chief Executive