

## **Submission**

### **Justice Action Plan 2021 Judicial Planning Working Group**

#### **Open Consultation (word count 2000)**

Madam Chairman,

Please submit this short non- academic submission on the four main themes to the working group for the purpose of lending the voice of a citizen to the conversation. It is respectfully submitted that citizens of the Irish State, clients of legal services and or self- representing persons have been excluded from any form of representation on the working committee.

Such persons bring a valued experience to the table along with their finding and or experience of accessing Justice, Rule of Law, dignity if afforded to them under the Rule of Law and affordability of the service. Before addressing the themes, it is further submitted:-

There are two limbs to the legal system whether dealing with the injustices on society or individuals, both require equal consideration in how the working group considers the consequences for the citizens who seek to protect their rights, liberty, property, integrity in the Irish Legal System.

Before moving on the specific themes, it is submitted from the writer, that access to Justice is access to the Law where citizens rely on the official determination to be made in a balanced and sound process affording them equality before the law and Judiciary who will act without fear or favour. The separation of powers to be respected and implemented.

Ownership of the legal system. Who has ownership of the legal system? It is further submitted that following a ten year process before the courts, compelled into civil litigation by legal advocates, transferring to lay litigant, learning on the hoof, monitoring the courts, conducting research, studying the work of the learned man. It has become very clear that there is a broken legal system, not fit to serve the needs of citizen in today's fast changing world. The system is in the ownership of the legal sector to the exclusion of the citizen.

I submit if the many changes in court practices and procedures were opened to scrutiny it would be seen that the changes favour the officer of the Court in their practice but not the need of the citizen to access the law.

Ownership must be restored to the citizens as the control of the legal system is in the protection of the legal sector, the making of laws, regulation, appointment of Judiciary, rules of the courts, earning capacity, legal education in fact all aspects rests with the legal sector. The practice of law in this country is big business, lucrative for its officers, Revenue, Court Services, therefore, there exists a conflict because access to Justice for citizens harms the commercial interest of the sector.

There is no public civil legal system beyond the District Court for citizens. It is noteworthy that a person on a modest salary of €30k per year with a legal bill of €300k would have to surrender their gross income for up to 10 years to avail of legal services within the appropriate monetary jurisdiction. How can that be fair, equitable and or sustainable.

## Themes

- The administration of Justice requires radical reform and appointing more Judges is to only serve the crisis of bag log in the system, but does not serve the fundamental rights of the public to access Justice in a fair, equitable and just process. Great care, due diligence, the need for skill set, wisdom, jurisprudence, temperament and suitability to the role should be paramount in the appointment of Judges. It is simply not the case.

Currently the requirement to be a judge is to have practised as a solicitor or barrister for minimum of 10 years, have a tax clearance cert and of course if you are political favoured.

Judges should have integrity, propriety, skill, competence, good human nature. Any person or practising Judge who has availed of a bank bail out or write down, should not be sitting in judgment of any person. It is simply unthinkable.

There is historical record of politically favoured persons been fast tracked to the Superior Court, the same old trends. The citizens before the Courts are in no doubt that there are excellent persons serving on the bench who have no appetite to harm citizens, persons who are aware of the consequences of their decisions. Equally, it is noted that many citizens before the Courts cannot succeed because they lack not only privilege, but skill set and many Judges have nowhere to go to rescue them.

It is well established that such failed persons are learning by their mistakes and they continue to with appeals to remedied their positions and believe that they will eventually get their truth before the courts. The economic interest of the Court is ticking away, the costs metre is running and the citizen does not have the funding, hence, their home, assets, livelihood and event their health is lost to the process.

The public at large not trained in civil litigation, lacking the higher education and skill believe the system, the services and individuals etc, etc are corrupt. The system has been structured over all to protect the livelihoods of its servants. The lay citizen is not protected is unwelcomed and as witnessed treated with misogyny. Trust and respect has been lost and the profession no longer deserving of the status of Honourable or professional. The professional status was given to the practice of Law, Medicine and Theology as these were the professions that were to attain to the interest and protection of life over and above personal gain.

The reform in the UK following the report of Lord Woulfe led to the overriding objective and the implementation of better practices for an efficient service. Litigation should be the last resort and not the first. The back log of cases arises due

to the inordinate delay via the abuse of Court Rules, the disproportionality of costs and the increase of citizens having to self- represent. No citizen should be self- representing in the Superior Courts where they are self- harming their position and denied justice.

The role of a Judge carries substantial power where decisions can be life changing and or life destroying for individuals. An Order of the High Court is the law, as stated by a very respected senior Judge on one occasion. Therefore, the utmost scrutiny must be exercised before fixing any individual represented or not with an Order. Many Counsels today, do not care how they get their Orders, providing they get one by fair means or foul.

There must be urgent and immediate change with very heavy sanctions fixed on Counsels, the Judges of tomorrow, who abuse the Court process, abuse the Court Rules, take inappropriate applications, fail to make proper disclosure, falsify Affidavits, give false consent for their clients, misuse interlocutory process, fuelling dispute for their own gain, delay and purpose.

It should be acknowledged that there are family law, probate among some of the long trailing cases, they enter the appeals process, thereafter, Judicial review, Supreme Court applications. The Judges whose decisions from the High Court lack proper reasoning, dishonest judgments, Judges who refuse to hear cases, should be open to scrutiny as they play a role in the denial of justice, delay, abuse of costs.

Brexit cases cannot be put into the civil system that already has a duty of care to the cases that have not been settled properly.

New Judges as part of their judicial skill should sit firstly in the lower courts before any promotion to the Superior Courts. There are many excellent Judges in the District Court who should be head hunted for the Superior Courts.

Officers of the Law Society of Ireland and The Bar Council should not be considered to sit on the appointments board. These persons have a conflict of interest, they are too close to the members and it is necessary to break the link. Any legal expertise should be from out of State to examine the suitability of a candidate.

No further appointments should be considered until the new Judicial Committee for complaints against Judges is up and running. May citizens waited four years to have appeals heard while waiting for the introduction of the Appellate Courts.

Courts have too generous holidays, the working day is too short and if necessary sit on Saturdays and open the Court offices on Saturdays. No other profession serving the public operates on a nine to five working day. Evening hearings twice a week should be considered.

Better case management and preparation to ensure that only disputes not capable of settlement by ADR or mediation where a genuine cause of action can be established should be set down for judicial determination.

Provide an alternative method of remedy for those who are outside the affordability of professional advocacy. This would serve both the legal profession and the citizen better and those who are privileged enough to pay for a private hearing in the Superior Courts, ie celebrities, corporates, high income earners, likened to the private health care, if you cannot afford the private clinic, you go public, you wait for treatment.

Its time to divide the civil system up and then decided on the appointments of Judges. Consider the role of law professors and other professional trained in law to make adjudications. Case stated arising in these processes can be directed to the High Court.

Digital technology, provide a centre or facility for those before the Courts who have no access to technology to be provided with access to any Court from their local Courts. Provide facility for the general public to hear any case remotely. It is not acceptable that citizens bring the process of going to Court into their homes, their cars, it is simply not the correct setting for zoom appearances.

Recording, a party in proceedings cannot record while in Court and that situation is open to abuse in a zoom setting. Therefore, zoom hearings to be set up in zoom centre in local court, where each case can have access to the facility under controlled environment.

DAR the digital recording of the court to be taken out of the ownership of the Judge and made available on disc to the parties in the action in the interest of justice.

Working practices: There can be no doubt that Order 19, section 27 and 27 and inherent jurisdiction of the Court is open to abuse. Isaac Wunder Orders used for the purpose of obstructing a lay litigant, hence, the need for the newer Court hearing for those of modest means. Trainee Barristers, trainee Solicitors and or advocates could assist members of the public in preparation for the Private Courts. It is possible for various elements both working and availing of courts to benefit.

The public over all can afford some level of representation, if that representation was properly structured, many cases could be resolved in small settings irrespective of monetary jurisdiction. Far better to be heard fairly with access to law in a modest structure than the struggle of obstruction in the Private Court where affordability is a bar to the right.

Finally, it is respectfully submitted that in light of the recent RTE investigations documentary on Wardship of the Court and the loss of Wardship funds in the guardianship of the High Court, that the said Presidents of the High Court during

those periods, retired or otherwise be held to inquiry and or investigation of the funds lost. In the event of a failure to do so, racketeering cannot be ruled out. The process in Probate Law and Administration of Estates also comes under scrutiny and concerns to be addressed.

No steps were ever taken for the protection of the public with a solicitor who committed fraud in probate was promoted to a the bench. The public have good reason to be concerned.

Judgments from all Courts to be properly reasoned.

Constitutional law and European law to be observed in our courts.

The fallout from Brexit and whether or not we could lose the Common Law should also be a topic for separate working group.

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12<sup>th</sup> November, 2021

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